

A PLAN FOR  
JUVENILE SENTENCING  
IN OHIO

A Report of the  
Ohio Criminal Sentencing Commission  
Chief Justice Thomas J. Moyer, Chair  
David J. Diroll, Executive Director, Editor

Fall, 1999



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Timi Townsend of the State Public Defender's Office joined us late in the debate, but added a distinctive voice, even if sometimes in dissent.

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Mark-David Janus and Keith Kaufman of Children's Hospital shared perspectives on child development and culpability.

Three Minnesotans visited to help us explore new sentencing options: State Public Defender John Stuart; Hennepin County Chief Juvenile Prosecuting Attorney Bill Richardson; and Juvenile Research and Planning Director Ann Jaede of the Department of Corrections. While we no longer owe them travel expenses, we are otherwise indebted.

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Interns do some of the Commission's best staff work. Katie Aldrich surveyed juvenile judges, studied gritty crime issues, and decided to practice civil law. Melissa DiNovo collected data, monitored legislation, and found a home for an imaginary pony. Michelle Gilbert studied bindovers and learned about bureaucracy. Jeffry Harris analyzed bills, forfeitures, appeals, and paths of glory. Ray Johnson solved many computer problems, including a couple he created. Tamie Snyder researched dispositional options and juvenile due process, while expanding the definition of good movies. Melissa Solyn updated us on legislation, Megan's laws, and other matters while debating whether to start her career in Vegas or Elyria. Kyle Timken worked on our judges' survey, studied which sanctions "work", and showed warning track power. Thank you and good luck as adults.

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## **2 INTRODUCTION**

This report contains the Ohio Criminal Sentencing Commission's plan for a new juvenile sentencing structure. To our knowledge, this is the first comprehensive review of Ohio's juvenile justice system since its creation a century ago. The report recognizes the value of that system, while proposing dramatic changes to it. If adopted, it should make Ohio a safer place, while providing flexibility to salvage troubled juveniles.

### **0 BACKGROUND**

The Sentencing Commission was created by the General Assembly in 1990 and began meeting in 1991. Chaired by Chief Justice Thomas Moyer, the Commission meets at least monthly in Columbus. Members serve without compensation.

The Commission submitted reports on felony, misdemeanor, and traffic offender sentencing to the General Assembly.

In 1996, the General Assembly created the Commission's Juvenile Committee in House Bill 591. The bill asked the Commission to study juvenile dispositions and propose a comprehensive plan. After over two years of work, the Commission responds with this report. Many of these proposals are before the General Assembly as S.B. 179, sponsored by Sen. Latta.

### **1 DUTIES REGARDING JUVENILES**

H.B. 591 told the Commission to (§181.26):

- Review statutes governing delinquent child, unruly child, and juvenile traffic offender dispositions;
- Review State and local resources;
- Recommend a comprehensive plan that:
  - Assists in managing resources;
  - Fosters rehabilitation, public safety, sanctions, accountability, and other reasonable goals;
  - Provides greater certainty, proportionality, uniformity, fairness, and simplicity, while retaining reasonable judicial discretion;
  - Helps restore victims of juvenile offenses.
- Assist the General Assembly in implementing these proposals and monitor them to see if they work.

## **2THE JUVENILE COMMITTEE PROCESS**

In developing these recommendations, the Juvenile Committee gathered for over 40 days in the past 30 months. Chaired by Judge H.J. Bressler, the Committee looked at changes in other states, and sought the perspectives of practitioners inside and outside of Ohio.

The Committee heard from experts in child development and juvenile competency. Members visited a State juvenile facility in Circleville and discussed offenses, deterrence, and sentencing options with juvenile offenders. The Committee traveled to detention facilities in Hamilton and Butler Counties. The group also visited two alternative schools in Butler County.

As with other packages submitted by the Commission, while there are points of contention, the plan in this report reflects a broad consensus from the diverse members who comprise the Commission. Votes on individual details of this plan were seldom unanimous. Defense attorney representatives dissented most frequently. However, over two-thirds of the Committee supported each major policy decision.

### 3EXECUTIVE SUMMARY

#### 0Purposes

- Historically, the juvenile system was designed to rehabilitate and "remove the taint of criminality" from young offenders. The victim and the community were not considered in the law's purpose statement. The plan would expand the law's purposes to cover protecting the public interest and safety, holding the offender accountable, restoring the victim, and rehabilitating the juvenile.

#### 1Dispositions

- Currently, a juvenile offender is dealt with in the juvenile system, potentially until age 21, or transferred to the adult system if over 14 and not "amenable" to the juvenile system. Transfer ("bindover") is mandatory for certain serious crimes. The proposal would reduce the number of mandatory bindovers to adult court. However, it substitutes three ideas new to Ohio law:
  - **Blended ("Serious Youthful Offender") sentences**, under which some of the most serious juvenile offenders receive *both* a juvenile and an adult sentence. The adult sentence would be suspended to encourage the youth's rehabilitation. If the juvenile were successful under the juvenile part of the sentence, the adult term would not be invoked. However, if the juvenile commits subsequent offenses or engages in certain threatening conduct in the juvenile system, he or she could be transferred to an adult facility or program and held beyond age 21.
  - **Extended jurisdiction**, under which certain serious offenders could be held in juvenile facilities and programs until age 25 (rather than be released by 21 as under present law). In these cases, the law would recognize that rehabilitation might take more time, but is preferable to outright release at age 21 or transfer to the adult system.
  - **Presumed bindover**, under which the law would presume that certain serious offenders are dealt with best in adult court. However, the juvenile would have an opportunity to show that blended, extended, or traditional sanctions are more appropriate.

- In all other (**traditional juvenile**) cases, there would be different penalties for each felony level. (Today, F-1s and F-2s are lumped together and F-3s, F-4s, and F-5s are grouped together.)
- **Fines** would be standardized and a broader range of financial sanctions would be available.

## **2Minimum Age for a DYS Commitment**

- The minimum age for commitment to a DYS facility would drop from 12 to 10 years. This would give Ohio a secure place to treat the most violent 10 to 12 year olds.

## **3New Rights**

- Since serious juvenile offenders will face adult-like sanctions, they would be given the right to jury trials and other adult rights.

## **4Juvenile Traffic Offenders**

- JTOs would remain in juvenile court, but a violations bureau could be set up to deal with certain low-level traffic offenses without a formal court hearing. JTOs would face license (or permit) suspensions similar to those faced by adults.

## **Community Sanctions**

- "Community control" sanctions are grouped more cohesively and standardized.

## **5Sex Offender Registration**

- The proposal supports S.B. 148, which applies the Sex Offender Registration ("Megan's Law") to juveniles. However, this proposal would allow community notice for those in the serious youthful offender category when the juvenile court decides that the notice is warranted.

## **6Unruly Children**

- Unruly cases (truants, runaways, other status offenders) would remain under Ch. 2151. However, unrulies who disobey court orders would be treated as delinquents under the new chapter.

- Obsolete and redundant provisions would be removed from the definition of "unruly" children.

#### **7Parental Responsibility**

- The plan would make clearer that parents can be charged with contributing to the delinquency or unruliness of their children.
- The penalty for failing to send a child to school would increase from the current fine of \$5 to \$25 to an M-4 (up to 30 days in jail, up to \$250 fine).
- The law would make clearer that parents who violate a court order to control children could be punished for contempt.

#### **8Competency**

- The plan would create a mechanism for determining whether a juvenile is competent to proceed in delinquency cases. No such mechanism exists for juveniles today.
- It would set standards to determine competency, procedures for helping a juvenile attain competency, and provisions for confining dangerous juveniles while attaining competency.

#### **9Fiscal and Population Impact**

- The Commission's Resource Subcommittee estimates that DYS will need about 189 additional beds under this plan at a cost of about \$25 million, assuming the Department goes forward with its plan to close the Training Institute Central Ohio (TICO). Annual debt service would be about \$2.12 million. Some Commission members feel fewer beds will be needed, while others say the need will be higher.
- "Public safety beds" should include any juvenile adjudicated for an F-1 or higher offense who is eligible to be a serious youthful offender. That means about 173 more public safety beds than now. Thus, an additional \$8.40 million would be kept by DYS under RECLAIM Ohio, and not distributed to counties. The State should increase the RECLAIM pool so that counties do not bear the cost of this shortfall.

- Additional funds for juvenile parole supervision will be needed. But, the plan should save DRC about one-half million dollars per year.
- The State should provide placements for dangerous juveniles who need a secure setting while attaining competency and assist in paying for these placements.
- Additional local detention facility space is needed in many counties.
- The Commission does not anticipate a significant number of jury trials in juvenile courts under the blended sentence proposal.

## 4BEGINNING A NEW CHAPTER

### 3JUVENILE CRIME TRENDS

Over the past 20 years, the number and nature of juvenile crimes have changed. Not only are there more offenses committed by children, but they are more violent than those of past generations.

In 1984, 1,233 juveniles were arrested for violent crimes in Ohio, according to Uniform Crime Reports kept by the FBI. By 1996, the number jumped to 3,188, an increase of over 150%. Yet, property crime arrests during the period only grew by about 6%.

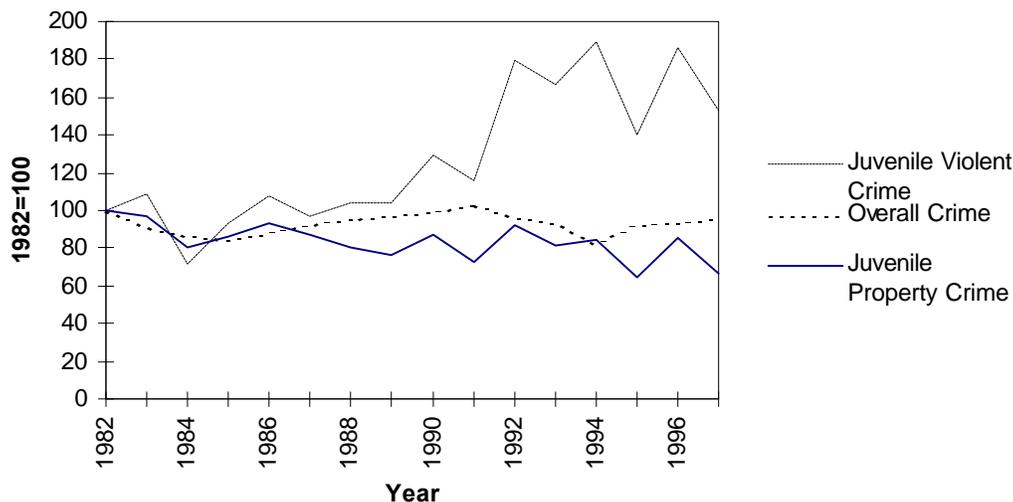
Delinquency filings in Ohio's juvenile courts rose 49% between 1987 and 1998, from 65,130 to 96,881. Juvenile courts transfer many of the most serious offenses to adult courts. Bindovers doubled between 1990 and 1998, from 275 to 555. The number was up 75% between 1990 and 1995 (482), the year *before* the mandatory bindover law took effect.

Luckily, juvenile crime began to decline recently. Tougher sentences, demographic shifts, a strong economy, better policing, and the waning of crack cocaine's popularity all get credit for the reduction. This plan recognizes the change and places more cases under the control of juvenile courts, including many that must be transferred to adult court today.

Unfortunately, even with the recent dip, juvenile violent crime rates remain significantly higher than they were 15 years ago. And the juvenile violent rate decline has not mirrored the more significant drop in the adult crime rate over the past decade.

This aside, no matter which side of the crime rate debate one finds one's self, it is distressing to note that crime rate statistics do not tell the whole story. They rely on offenses *reported* to law enforcement. The U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP) notes that only 28% of violent crimes against juveniles (typically committed by other juveniles) are reported to police. Adult offenses are much more likely to be reported.

### Crime in Ohio Since 1982



But, even if reporting increases and crime rates drop dramatically, the juvenile system needs better tools to deal with the most menacing juveniles. The juvenile law must be able to respond to the most horrible and the most innocent delinquent acts.

#### 4PURPOSES OF THE JUVENILE JUSTICE SYSTEM

Juvenile courts were created a century ago to salvage wayward youth. This is a laudable goal, and it should be retained. However, it is irresponsible to ignore other public interests, given the sometimes shocking nature of modern juvenile crime.

The purposes set forth in Ohio's Juvenile Code include rehabilitating offenders and "removing the taint of criminality". Today's Code also emphasizes the care and protection of juveniles. Those purposes do not recognize that a victim or society may have been harmed. They do not encourage a response that fits the crime. In fact, they do not contemplate public safety at all.

The Commission suggests a more mature approach to juvenile crime. The plan would expand the law's purposes to cover protecting the public interest and safety, holding the offender accountable, restoring the victim, and rehabilitating the juvenile (§2152.01(A)). It would do this in a new chapter of the Revised Code (Ch. 2152).

Note that rehabilitation holds equal status with the other purposes. Clearly, the plan gives judges more tools to restrict violent juvenile offenders. But it does not abandon the juvenile court or give up on young offenders. Rehabilitation would be balanced with public safety and the victim's loss.

Also note that the proposal still allows courts to consider the care and protection of juvenile offenders. Specifically, the plan states that Ch. 2151's purposes (care and protection of children, etc.) apply to juvenile offender cases to the extent they do not conflict with Ch. 2152's purposes (§2152.01(C)). The proposal makes clear in delinquency cases that judges may order any tool used to care for and protect abused, neglected, and dependent children (§2152.19(A)(1)).

Language on removing the taint of criminality would be repealed (see §2151.01(A)).

The Commission also recommends changes to Juvenile Rules 6 and 7 consistent with the new purposes (see RULES AMENDMENTS, below).

## **10Principles**

The plan also lays out some basic principles to apply in all cases under the new chapter (§2152.01(B)). Dispositions must be reasonably calculated to achieve the overriding purposes, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar offenders. The court should not base the disposition on the race, ethnicity, gender, or religion of the offender.

## **5NEW CHAPTER 2152**

Today, Chapter 2151 of the Revised Code creates juvenile courts and defines their jurisdiction over a broad range of acts involving juveniles.

The Commission suggests moving delinquency (felony and misdemeanor delinquencies) and juvenile traffic offender cases into a new chapter of the Revised Code (Ch. 2152). The new purposes mentioned above would apply to these cases. The chapter would cover some adult offenses, too. (Note: juvenile delinquents are those found guilty of acts that would be felonies or misdemeanors if committed by

adults. For simplicity, this report uses "felony", "misdemeanor", and similar shorthand terms to describe these offenders.)

Current Ch. 2151--with its overriding focus on the care, protection, and development of children--would continue to govern abuse, neglect, and dependency cases. The Commission's charge did not extend to these cases. The Commission also prefers keeping unruly cases under the purposes of Ch. 2151, although some amendments to the definition of "unruly child" are proposed.

Other than the purposes and a few other provisions, the general law in Ch. 2151 also would apply to new Ch. 2152 (e.g., language creating juvenile courts would not be repeated in the new chapter).

Also, as noted in the discussion of purposes, above, a clause would be added to the new chapter to make clear that the general law of Ch. 2151 continues to apply to the extent it does not conflict with specific provisions (§2152.01(C)). Similarly, introductory language in Ch. 2151 would note that procedures apply to both chapters (§2151.01(B)).

#### **11Changes to the Definition of "Delinquent"**

The definition of "delinquent child" moves from §2151.02 to §2152.02(E), with minor changes. The prohibition against employers penalizing employees for attending delinquency proceedings under subpoena would be stricken since it applies to employers, not children (current §2151.02(C)).

The status offense of seeking or obtaining a tattoo or body piercing when under age 18 would be repealed (current §2151.02(D)). It seems harsh to "criminalize" such indiscretions. Adult penalties for conducting the procedure on a minor would remain.

#### **12Related Miscellany**

Numerous other sections would move to the new chapter, be amended to recognize the new law, or be repealed as archaic. (See MISCELLANEOUS PROVISIONS, below.)

### **5SENTENCING JUVENILE OFFENDERS**

The plan gives juvenile courts more tools to deal with delinquents. Traditional juvenile jurisdiction would still

apply to most cases, with DYS terms and community supervision remaining similar to current law. For certain serious offenders, blended juvenile and adult sentences or extended juvenile jurisdiction would be available. Mandatory transfers to adult court ("bindover") will be fewer in number. Discretionary bindovers would remain for most felonies by juveniles over age 14. A narrow category of presumed bindovers would be created.

## 6ELIGIBILITY FOR VARIOUS DISPOSITIONS

The proposal describes which alleged or adjudicated offenders are eligible for each type of disposition (§2152.11). The section also contains a table to help practitioners find the appropriate category more quickly (§2152.11(J)). The table is on the next page.

The designation in each box shows the *maximum* disposition available for the level of offense and age of offender. Less restrictive dispositions generally would be available. The next few sections of the report help explain the table.

## 7ENHANCING FACTORS

The disposition available generally turns on the age of the juvenile and the offense level. However, the potential penalty may be "enhanced" under the plan when certain factors are charged and proven. They are defined in §2152.02(L), by reference to §2152.11(A):

- The act charged is defined as an "offense of violence" in §2901.01;
- The juvenile used, displayed, brandished, or otherwise indicated a firearm during the offense;
- The child previously was admitted to DYS for an F-1 or an F-2, or for an F-3 offense of violence.

The proposal defines "admitted" to a DYS facility to include admission to a facility run by, or under contract with, DYS, as well to a comparable facility outside Ohio (§2152.02(B)).

## 8ELIGIBILITY TABLE

OFFENSE LEVEL	AGI:S	17 § 16	15 § 14	13 § 12	11 § 10
Murder/Agg Murder-Enhanced		MT	PT	MSYO	MSYO
Murder/Agg Murder		MT	MSYO	DSYO	DSYO
Attempted M/Agg M-Enhanced		PT	DSYO	DSYO	DSYO

OFFENSE LEVEL	AGG'S	17 & 16	15 & 14	13 & 12	11 & 10
Attempted Murder/Agg Murder		DSYO	DSYO	DSYO	DSYO
F-1-V Enhanced		PT	DSYO	DSYO	DEJJ
F-1-V and F-1 Enhanced		DSYO	DSYO	DEJJ	TJ
F-1		DSYO	DSYO	TJ	TJ
F-2 Enhanced		DSYO	DSYO	DEJJ	TJ
F-2		DSYO	DSYO	TJ	TJ
F-3 Enhanced		DSYO	DEJJ	TJ	TJ
F-3		DEJJ	TJ	TJ	TJ
F-4 Enhanced		DSYO	TJ	TJ	TJ
F-4		TJ	TJ	TJ	TJ
F-5 Enhanced		DSYO	TJ	TJ	TJ
F-5		TJ	TJ	TJ	TJ

Discretionary bindover would not be available for the offenses and offenders in the shaded boxes.

**Key:**

- MT:** Mandatory transfer (must be bound over to adult court).
- PT:** Presumed transfer to adult court.
- MSYO:** Mandatory serious youthful offender ("blended") sentence.
- DSYO:** Discretionary serious youthful offender ("blended") sentence.
- DEJJ:** Discretionary extended juvenile jurisdiction, but no blend.
- TJ:** Traditional juvenile dispositions only (no MT, PT, SYO, or EJJ).

- Agg:** Aggravated.
- Enhanced:** One of the relevant "enhancing factors" present (see below).
- V:** Offense of violence as defined in §2901.01(A)(9).

**9TRANSFERS TO ADULT COURT ("BINDOVERS")**

Currently, certain categories of juveniles must be transferred to adult courts for prosecution. The juvenile court has discretion to bind over any other felony-level juveniles, provided they are at least age 14. This plan would narrow the mandatory bindover category, create a new type of "presumed" bindover, and make a minor change in who is eligible for discretionary bindovers.

**13Mandatory Bindovers**

By giving juvenile courts more tools to deal with serious offenders, the plan cuts the number of mandatory transfers to adult court. Some mandatory bindovers would shift to a new "presumed" transfer category and others would be replaced by the blended and extended sentences discussed in subsequent parts of this report. The plan retains the current discretionary bindover system, but eliminates the lowest level felonies from bindover eligibility.

Under the present mandatory transfer law, juvenile courts must relinquish jurisdiction over various serious offenses and transfer the cases to adult courts. These include "Category I" and "Category II" offenses. It gets confusing.

Category I covers aggravated murder, murder, or an attempt to commit either when the alleged offender is age 16 or 17, or when the juvenile is age 14 or 15 and has a prior DYS commitment for a Category I or Category II offense.

Category II offenses include voluntary manslaughter, F-1 involuntary manslaughter, aggravated arson, aggravated robbery, aggravated burglary, rape, and sometimes kidnapping. When the alleged offender is 16 or 17 and accused of any Category II offense other than kidnapping, bindover is required if the juvenile has a prior adjudication and DYS commitment for a Category I or II offense. Alternatively, if the 16 or 17 year old is accused of a Category II offense other than kidnapping and has a firearm during the offense, transfer is required. A Category II offense alone does not trigger mandatory transfer.

The problem with the current system is that it sometimes paints with too broad a brush, while sometimes the brush is not broad enough. For example, a 16 year old burglar must be bound over if his accomplice took a gun from the burgled house. The juvenile court is not allowed to keep this case. Yet, it will not look too menacing when it goes to common pleas court. This sometimes results in a softer sanction than might be meted out by the juvenile court.

Conversely, there are felonious assaults, kidnappings, and other serious offenses committed by youngsters that warrant sanctions beyond the traditional juvenile system. This puts juvenile judges in a quandary if they want to place offenders in primarily rehabilitative settings.

Under this proposal, only those accused of aggravated murder or murder at ages 16 and 17 would face *mandatory* transfer to the criminal court (§§2152.11(C)(1) & 2152.12(A)). "Category I" and "Category II" offenses would be eliminated (current §2151.26(A)), with the other offenders in these categories made eligible for a range of new sanctions.

Juveniles who were bound over before (see §2152.12(A)(2)(a) and Once Bound Over, below) and those who are adults in another state (e.g., 17 year olds in Michigan, §2152.12(A)(2)(b)) would continue as automatic bindovers.

#### **14 Presumed Bindovers**

There would be a presumption that these juveniles should be transferred to adult court (§§2152.11 & 2152.12(B)), upon a motion by the prosecutor:

- 14 and 15 year olds accused of aggravated murder or murder, when either of these enhancing factors is present: a firearm was used, displayed, brandished or indicated, or the alleged offender previously served a DYS term for an F-1, F-2, or violent F-3 (§2152.11(C)(2));
- 16 and 17 year olds accused of attempted murder with either of the enhancing factors noted in the prior bullet (§2151.11(D)(1));
- 16 and 17 year olds accused of a violent F-1, with either of the enhancing factors mentioned in the first bullet (§2152.11(E)(1)).

The presumption could be rebutted. The juvenile would have the opportunity to show that blended, extended, or traditional juvenile sanctions may be more appropriate. The test would be whether the juvenile demonstrates by a preponderance of the evidence that he or she is amenable to care in the juvenile system, and the safety of the community does not necessitate a transfer, because the factors indicating he or she should not be transferred outweigh the factors in favor of transfer (see Transfer Factors, below)(§2151.12(B)(3)). The court would have to make its findings on the record and indicate the factors considered.

The proposal allows the prosecutor to appeal the court's decision to override the presumption and keep the case in juvenile court (§2152.12(L)(1)). The appeal must be interlocutory, since jeopardy would attach at the juvenile disposition. The record on appeal includes (§2152.12(L)(2)): the transcript; any mental examination or other investigative report submitted to the court (this would not affect the otherwise confidential character of the report); the judgment entry, including the specific factors weighed; and any other oral or written statement made to or by the court at the transfer hearing.

Creating presumed transfers would necessitate changes to Juvenile Rules 3, 22, and 30 (see RULES AMENDMENTS, below).

## **15 Discretionary Bindovers**

Today, the juvenile court has discretion to bind over any felony involving a juvenile who is at least 14. The plan retains this authority (current §2151.26(C)(1) would become §2152.12(D)) with one exception. The proposal removes the possibility of bindover for those charged with an F-5 when there is no enhancing factor present (§2152.11(B)).

As with presumed transfers, the proposal would standardize the factors to be considered in favor of, or against, an elective bindover (see Transfer Factors, below). To bind the case over, the court would consider the juvenile's amenability to care in the juvenile system and public safety by finding that the factors in favor of transfer outweigh those against bindover (§2152.12(D)(3)). No new appeal would be created in discretionary transfer cases.

## **16 Transfer Factors**

Current law sets forth various things for courts to consider in weighing whether a juvenile should be bound over (§2151.26(C)(1)(c)(i)&(ii) & (C)(2)(a)-(e)). The court must find whether the child is amenable to treatment in the juvenile system and whether the safety of the community warrants keeping the juvenile beyond age 21 (§2151.26(C)(1)(c)(i)&(ii)).

It must base the amenability and public safety findings on these factors in favor of transfer: the victim is either under age 6 or 65 or older; the victim sustained physical harm; the victim was permanently and totally disabled; the accused used, displayed, brandished, or indicated a firearm; the accused has a history of failed rehabilitation attempts (§2151.26(C)(2)(a)-(e)).

The proposal would instead provide that the court must find whether the child is amenable to juvenile treatment and whether the safety of the community warrants an adult setting after reviewing lists of factors indicating whether a juvenile is suited for transfer (§2152.12(E)).

Factors favoring transfer include (§2152.12(E)):

- The victim suffered physical or psychological harm, or serious economic harm;
- The physical or mental injury suffered by the victim was exacerbated because of the physical or mental vulnerability or age of the victim;

- The juvenile's relationship with the victim facilitated the alleged offense;
- The juvenile allegedly acted for hire or as a part of a gang or other organized criminal activity;
- The juvenile had a firearm on or about his or her person or under control at the time of the alleged offense, other than CCW, and the firearm was displayed, brandished, indicated, or used;
- The juvenile was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion;
- At the time of the alleged offense, the juvenile was awaiting adjudication or disposition, under a community sanction, or on parole;
- The results of previous juvenile programs make rehabilitation unlikely in the juvenile system;
- The juvenile is emotionally, physically, or psychologically mature enough for the transfer;
- There is not sufficient time to rehabilitate the child within the juvenile system.

Factors against transfer include (§2152.12(F)):

- The victim induced or facilitated the offense;
- The juvenile acted under provocation in committing the alleged offense;
- The juvenile was not the principal offender or was under the negative influence or coercion of another;
- The juvenile did not cause physical harm to any person or property, or have reasonable cause to believe such harm would occur;
- The juvenile has not previously been adjudicated delinquent;
- The child is not emotionally, physically, or psychologically mature enough for the transfer;
- There is sufficient time to rehabilitate the child in the juvenile system and the level of security available reasonably assures public safety.

#### **17Bindover Miscellany**

The plan carries over a streamlined version of the current provisions on the investigation that must take place before considering a bindover (current §2151.26(C)(1)(c) & (C)(3), which becomes §2152.12(E)). The juvenile could waive the examination, as now.

Similarly, language on multiple counts (§2151.26(C)(4)) would be carried over and streamlined (§2152.12(H)). Provisions on notice (current §2151.26(D)), age limitations (current §2151.26(E)), and the effect of transfer (§2151.26(F)) would become §2152.12(H), (I), and (J), with ONLY technical amendments.

Current law provides that the juvenile court loses jurisdiction over a person who is not taken into custody until after age 21 for an alleged felony (§2151.26(G)).

### **18Once Bound Over**

The delinquency and bindover aspects of the definition of "child" in §2151.011(B)(6) would move to §2152.02(C), with one change. As now, once a child is bound over, he or she is an adult in all future proceedings. However, the juvenile court would no longer have to hold a hearing in cases in which a previously transferred juvenile appears on a new charge. The plan instead provides that the juvenile court must, on the next court day after verifying the prior bindover and conviction, transfer any felony or misdemeanor charge brought against the person to the criminal court, regardless of the person's age (§2151.02(C)(4)).

### **10BLENDED SENTENCING**

In recent years, several states implemented procedures to hold juveniles accountable for their offenses under both juvenile and criminal laws. The theory underpinning these procedures is that the juvenile system--even with its ability to bind over some of the worst offenders to the criminal court--needs greater flexibility in dealing with other serious juvenile offenders. Bindover is not the best option for all serious offenders. The criminal court might be too lenient on some offenders, who are younger and appear less hardened than adult felons. It might be too harsh on others, who could benefit from the greater rehabilitative opportunities in the juvenile system.

The solution lies in a flexible sentencing structure involving both juvenile and adult sanctions. "Blended sentencing" lets the court tailor a sentence using the treatment flexibility of the juvenile system and the more punitive sanctions of the criminal system. A blended sentence gives the court time to learn if the child simply needs guidance under the juvenile system and the tools to deal with a juvenile who poses an ongoing threat.

To date, five different approaches to "blended sentencing" have been adopted by the various states. The key distinctions are whether the sentence is given by the juvenile court or the criminal court, and whether the sanction given includes juvenile court sanctions, criminal court sanctions, or both.

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## **20 Blends in Criminal Court**

In criminal court blends, the adult court controls the case from trial to sentencing. The criminal court has authority to impose juvenile sanctions.

One type is the "criminal-exclusive" blend (these labels come from OJJDP). In it, the criminal court judge hears the case and decides whether to impose *either* a juvenile disposition or an adult sentence on the juvenile. According to OJJDP, at the time of the Commission's deliberations, California, Colorado, Florida, Idaho, Michigan, and Virginia used some form of the criminal-exclusive blend.

Another type is the "criminal-inclusive" blend. In it, the judge must give *both* a juvenile disposition and an adult sentence. The adult sentence is stayed upon successful completion of the juvenile disposition. The adult sentence is imposed only for certain violations or upon designated serious disruptions to the juvenile's rehabilitative efforts. Only two states use the criminal-inclusive blend: Arkansas and Missouri.

## **21 Blends in Juvenile Court**

In these blends, the juvenile court controls the case and has authority to impose adult criminal sanctions.

One type is the "juvenile-exclusive" blend. The juvenile court must give *either* a juvenile disposition or an adult sentence. The only state using this type of blend at the time of the Commission's deliberations was New Mexico.

Another type is the "juvenile-inclusive" blend. In it, the juvenile court must give *both* a juvenile disposition and an adult sentence. The adult sentence is suspended pending successful completion of the juvenile term. The adult sentence is invoked only when the juvenile violates set conditions or institutional rules in such a way as to

impede rehabilitation. Minnesota, Montana, and Connecticut use some form of the juvenile-inclusive blend.

The remaining type of blend is "juvenile-contiguous". In this scheme, a juvenile sentence is given which *may extend* beyond the typical jurisdictional age limit of juvenile court. At that point, various procedures are invoked to determine if the remainder of the sanction should be imposed in an adult correctional facility. Texas, Colorado, Massachusetts, Rhode Island, and South Carolina use some form of this blend. In Texas, for instance, a juvenile may be given a determinate sentence of up to 40 years. Before turning 21, the juvenile court holds a hearing to determine whether the offender should be transferred to adult prison for the remainder of the sentence.

## **22Pros and Cons**

The blends in criminal court are attractive because of their simplicity. Since the blended sentence creates a potential for adult punishment, and since adult-like procedures must be followed (indictment, jury trial, etc.), the criminal court appears to be well-suited to handle the case.

On the other hand, blends that begin in adult courts can be faulted for taking cases completely away from the juvenile courts that are created and funded to deal with young offenders. In addition, blends in criminal court can be illogical. Often, the process begins with a juvenile court or prosecutor determining that the juvenile system is not appropriate for treating the defendant. Yet, the criminal court can decide to impose a juvenile disposition, thereby returning the offender to a system for which he or she was deemed ill-suited. Moreover, in the exclusive model, the criminal court with a crowded docket will feel pressure to sentence the juvenile as an adult instead of giving the child a last chance at rehabilitation. In such cases, the blend becomes a bindover.

As with the criminal blends, the juvenile-contiguous blend is attractive because of its simplicity. However, its strong front end punishment bias loses some of the flexibility of other forms of blends. The hearing to decide whether to impose the full adult term is based on the juvenile's age, not subsequent conduct. The nature of the adult term (such as Texas's 40 years) makes it politically difficult to, say, release a 17 year old after serving only four years in a juvenile institution on a 40 year term for murder.

By making the court chose to impose either an adult term or a juvenile term, the juvenile-exclusive approach does not add much to the options now available. After all, courts do this now, although it is the criminal court that imposes the adult term after a bindover.

### **23The Commission's Decision on Blended Sentences**

After reviewing the five types of blended sentencing, the Commission proposes a juvenile-inclusive blend. The juvenile court is best suited to sentence juveniles, but it needs more options. The goal is to make the blended sentence a "last chance at rehabilitation" for serious juvenile offenders. If they quit harming and threatening others, the case ends with the juvenile disposition. If they commit more serious crimes or seriously threaten the juvenile system, the juvenile court judge could invoke the adult sentence.

### **24Eligibility**

**Mandatory SYOs.** Because of the severity of the offense, certain juveniles would be placed in the "mandatory serious youthful offender" ("MSYO") category. Some of these offenders face mandatory bindovers today. Under this plan, they would have to receive a blended sentence if adjudicated delinquent. Here are the MSYO offenders and offenses (summarized in the ELIGIBILITY TABLE, above):

- Those eligible for a presumed bindover, but who are not transferred (§2152.11(I)(1));
- 14 and 15 year old "unenanced" aggravated murderers (who are not in the presumed transfer category) (§2152.11(C)(4));
- 10 to 13 year old murderers with the firearm or prior DYS term enhancing factors (§2152.11(C)(3)).

**Discretionary SYOs.** The larger group of offenders eligible for blended sentencing would be termed "discretionary serious youthful offenders" ("DSYOs"). A DSYO would be *eligible* for a blended sentence, but would not have to receive one. Rather than imposing both an adult and juvenile term, the judge would be permitted to sentence a DSYO to a term of extended jurisdiction in the juvenile justice system alone (see EXTENDED JUVENILE JURISDICTION, below) or to a traditional juvenile disposition (see TRADITIONAL JUVENILE DISPOSITIONS, below).

The following list of offenders and offenses would be eligible to receive a blended sentence as a DSYO (summarized in the ELIGIBILITY TABLE, above):

- 10 to 13 year old aggravated murderers and murderers when the firearm or DYS admission enhancing factor is not present (§2152.11(C)(5));
- 10 to 15 year old attempted murderers with the firearm or prior DYS admission enhancing factor (§2152.11(D)(2));
- 10 to 17 year old attempted murderers without an enhancing factor (§2152.11(D)(2));
- 12 to 15 year olds committing F-1 offenses of violence with the firearm or prior DYS admission enhancing factor (§2152.11(E)(2));
- 14 to 17 year olds committing other F-1s and any F-2 (§2152.11(E)(4) & (F)(1));
- 16 and 17 year olds committing, with any of the three enhancing factors, F-3s, F-4s, and F-5s (§2152.11(G)(1) & (H)(1)).

The adult portion of the sentence would come from the adult sentencing statutes (Ch. 2929). However, unlike adults, a juvenile would not be eligible for capital punishment or a life sentence without parole.

## **25Rights**

By design, the specter of adult punishment looms over the SYO proceedings. After adjudication, if the court believes the eligible juvenile should receive a blended sentence, the court will give the child both a juvenile disposition and an adult sentence. The adult sentence is stayed pending successful completion of the juvenile disposition. However, if the juvenile is unsuccessful, then the previously imposed adult sentence could be invoked (§2152.13(D)).

Because the SYO-eligible offender could receive an adult sentence, the juvenile should be given rights akin to those granted to adults who appear in criminal court. The rights an SYO-eligible juvenile would receive under the Commission's plan would include the right to an open, speedy, jury trial, the right to indictment by grand jury, and the right to bail if detained (§2152.13(C)).

The right to a jury trial concerns some juvenile courts. In the Commission's survey, when juvenile judges were asked whether juvenile offenders should be given the right

generally, 89.5% said no. However, in the same survey 94.9% of the judges said there should be a mechanism for transferring juveniles from DYS to the adult prison system. The Commission concluded that any system that allows adult punishment must recognize a right to a trial by jury.

Remember too that juvenile courts can hold jury trials today, since they have authority over adult offenders in contributing to delinquency and other cases. In adult cases, relatively few defendants request jury trials (about 3.5%). There is no reason to believe that the numbers will be significantly higher in juvenile court. The Commission expects courts to cooperate, particularly in counties where the juvenile court does not have a jury box.

## **26 Procedure**

The prosecutor must initiate an SYO case by one of three routes (§2152.13(A)(1)&(2)):

- Filing a notice of intent to seek an SYO disposition within 20 days of the arraignment (or of the date the court refused to make a presumed transfer). The period may be extended by the court for good cause. (§2152.13(A)(1))
- Filing a complaint specifying that the charge is SYO-eligible (§2152.13(A)(2)); or
- By taking the case to a grand jury and indicting the juvenile as an SYO.

The juvenile cannot receive a blended sentence if the prosecutor fails to initiate the case in one of the described ways (§2152.13(A)(2)).

If the juvenile is not indicted, the notice or complaint triggers a preliminary hearing in the juvenile court. The court decides at this hearing whether there is probable cause to believe the case is eligible for blended sentencing, using the criteria just outlined. If found to be eligible for SYO disposition, the juvenile receives adult rights as the case proceeds (§2152.13(B)).

Today, a delinquency case may be filed either in the county in which the offense occurred or in the county in which the child resides. In SYO cases, the juvenile is receiving all rights a similarly situated criminal offender would receive, including the right to a jury trial. Since local resources are going to prosecute the SYO's case, and if the purpose of protecting the public interest and safety is to

be given countenance, the SYO should be tried in the county where the offense occurred, as in adult criminal law. There should be no dual venue for SYO offenders.

The Commission suggests that the Supreme Court amend Juvenile Rule 40(A) to make sure that judges, rather than magistrates, handle SYO eligibility hearings, and to make other changes (discussed in "RULES AMENDMENTS", below).

## **27 Dispositional Ranges**

The juvenile portion of the blended sentence is the extended juvenile jurisdiction (EJJ) range for that particular level of offense (see EXTENDED JUVENILE JURISDICTION, below). However, since there is no EJJ term for F-4s and F-5s, the juvenile portion of the blend for lower-level felonies comes from the traditional juvenile range for the level of offense (see TRADITIONAL JUVENILE DISPOSITIONS, below) (§2152.13(D) (1),(2), & (3)).

The adult portion of the blended sentence is determined by Title 29's provisions governing adult sentences for particular levels of offenses (§2152.13(D)(1)&(2), 1<sup>st</sup> ¶).

If the court decides not to impose an SYO sentence, it may impose EJJ or any traditional juvenile disposition alone (§2152.13(D)(3)).

The EJJ ranges and the possibility of an adult term would supercede the current mandatory bindovers for some offenders, traditional juvenile dispositions for others, the one to three year minimums available today for voluntary manslaughter, F-1 involuntary manslaughter, kidnapping, aggravated arson, aggravated robbery, and certain rapes (current §2151.355(A)(5)(a)), and the six to seven year minimums now available for attempted aggravated murder and attempted murder (§2151.355(A)(5)(b)).

## **28 Invoking the Adult Portion of an SYO Sentence**

Consistent with the minimum age for bindover, the juvenile court could not invoke the adult portion of a blended sentence until a juvenile is at least age 14 (§2152.14(A)). Nor could the court invoke the adult sentence without a hearing. The juvenile would have the right to be present, receive notice of the grounds alleged, and be represented by counsel at the hearing (§2152.14(D)).

The hearing is triggered by a motion filed (typically) by the prosecutor on behalf of DYS, if the juvenile has been

committed to DYS's custody or is on parole, or on behalf of a probation office, if the juvenile has been placed on community control sanctions.

The State must demonstrate by clear and convincing evidence that the juvenile did either of the following (§2152.14(A)(1)&(2), (B)(1)&(2), and (E)(3)), including at least one incident after the offender reaches age 14:

- Violated institutional rules or conditions of supervision in a manner tantamount to a felony or to an M-1 offense of violence; or
- Engaged in behavior that creates a substantial risk to institutional, community, or victim safety or security, or jeopardizes the programming and treatment of others.

If the juvenile court makes this finding, then the SYO could be "switched" to the adult system.

If the prosecutor declines a request to file the motion, DYS or the probation officer may file (§2152.14(C)).

#### **29 Ramifications of Invoking the Adult Term**

The juvenile court would divest itself of jurisdiction over the case upon filing the judgment entry invoking the adult portion of an SYO sentence. Once the adult term is invoked, the offender becomes an "adult" for purposes of sanctions and supervision (§2152.14(F)).

The offender could be sent to prison for the stated prison term originally imposed. The offender would receive credit for time served in a DYS facility (§2152.14(G)).

If placed on post-release control after a prison term, the offender would be supervised by the Adult Parole Authority, not DYS. If the offender is instead placed under community control (or sent to prison and later granted judicial release), he or she would be supervised by the adult probation department that serves the county (§2152.14(F)).

The Commission favors treating these as "adult" cases for various reasons: the offender demonstrated that he or she has not been rehabilitated in the juvenile setting; invoking the adult sentence is akin to a bindover; and the switch likely will occur after the offender reaches age 18.

## **11EXTENDED JUVENILE JURISDICTION**

State codes set a maximum age for bringing a child before the juvenile court (typically 18). However, the codes typically provide a higher maximum age for retaining juveniles for treatment and rehabilitation in the juvenile system (typically 21).

In Ohio, DYS must release an offender who reaches age 21. It does not matter that the offender's treatment or rehabilitation may not be complete. In fact, those released at 21 are, almost by definition, the most difficult and threatening offenders in the juvenile system. Early in the Commission's debates, the Department acknowledged that it must release some 21 year olds who are very likely to commit more crimes. DYS sought additional tools to deal with these difficult, older offenders.

According to an OJJDP Research Report, 11 states and the District of Columbia increased the maximum age of the juvenile court's ongoing jurisdiction over juvenile offenders between 1992 and 1996. California, Oregon, and Wisconsin adopted laws to permit juvenile court judges to commit a juvenile to their state juvenile corrections departments until age 25.

At least one Commission member felt that extending juvenile jurisdiction could, itself, trigger a right to a jury trial at some point. However, courts in California and Wisconsin accept the extension to age 25 without a right to a jury trial. In light of this, and since these offenders remain in the juvenile system, the Commission's majority does not recommend authorizing jury trials in these cases.

Developmental psychology research shows that the tendency to commit crimes plateaus around age 25 and then decreases. Keeping youth and young adults in a rehabilitative setting until they "age out" of the propensity to commit crimes can be an effective use of correctional resources.

To maximize rehabilitation opportunities, while protecting the public, the Commission proposes extending the juvenile court's jurisdiction for some offenses until the offender reaches age 25.

### **30Eligibility**

A juvenile is eligible for a disposition that permits extended juvenile court jurisdiction ("EJJ") for the

following offenses (see §2152.11; summarized in the ELIGIBILITY TABLE, above):

- 10 and 11 year old F-1 offenses of violence with the firearm or prior DYS admission enhancing factor (§2152.11(E)(3));
- 12 and 13 year old F-1 offenses of violence, without another enhancing factor (§2152.11(E)(5));
- 12 and 13 year old F-1s and F-2s with any enhancing factor (§2152.11(E)(5) & (F)(2));
- 14 and 15 year old F-3s, with any enhancing factor (§2152.11(G)(2));
- 16 and 17 year old F-3s, without an enhancing factor (§2152.11(G)(3)).

F-4s and F-5s would not be subject to EJJ dispositions.

### 31 Procedure

To impose extended jurisdiction on an eligible offender, on the prosecutor's motion, the court must determine that the time and sanctions available under traditional juvenile dispositions are inadequate to give the court a reasonable expectation that the purposes in §2152.01 will be met. If the court does not find that an EJJ disposition should be imposed, the court may impose any traditional disposition available (§2152.15(A)).

### 32 Dispositional Ranges

For EJJs, the judge would select a specific "period of court control" (a more honest term than "minimum") from a range. Unlike current law, the range of court control would vary for each felony level. This will make terms more proportionate to the harm caused and fairer for victims and offenders. For offenses short of murder, the maximum period would be the offender's 25<sup>th</sup> birthday. For aggravated murder and murder, the EJJ disposition is a flat commitment to DYS until the offender reaches age 25 (§2152.15(B)).

#### EJJ DISPOSITIONS

OFFENSE LEVEL	CURRENT "MINIMUM"	PROPOSED COURT CONTROL	CURRENT MAXIMUM	PROPOSED MAXIMUM
<b>Murder:</b>	Until 21	Until 25	Age 21	Age 25
<b>F-1</b>	12 Mos	12 to 60 Mos.	Age 21	Age 25
<b>F-2</b>	12 Mos	12 to 48 Mos.	Age 21	Age 25
<b>F-3</b>	6 Mos.	12 to 30 Mos.	Age 21	Age 25

EJJ would not be available for F-4s and F-5s.

The court could release the juvenile during the period of court control chosen from these ranges (see JUDICIAL RELEASE, below). DYS attains control over the commitment after this period until age 25 (§§2152.15(B)&(C) & 5139.05(A)(4)).

## **12TRADITIONAL JUVENILE DISPOSITIONS**

Many juvenile offenders will not notice changes in the juvenile court system if the Commission's plan were adopted. For low-level felonies and for younger offenders, the juvenile court's jurisdiction continues to cease at age 21, the offenders would be subject to community control sanctions, including fines and restitution, and the system would not need jury trials and other adult-type process.

### **33Eligibility**

Those juveniles not eligible for transfer, blended sentencing, or extended juvenile jurisdiction must have their cases disposed of under provisions governing traditional juvenile dispositions. Those in this category ("TJ" on the ELIGIBILITY TABLE, above) are eligible only for DYS commitment up to age 21, as under current law (see §2152.11(E)-(H)).

### **34Ranges for DYS Commitments**

Under current law, children accused of offenses that would be felonies if committed by adults can be committed to DYS facilities. Generally, F-1s and F-2s can be committed from one year to age 21, with some eligible for a minimum of 1, 2, or 3 years to age 21. F-3s, F-4s, and F-5s can be committed from 6 months to age 21.

In cases in which the court does not bind the case over or impose a blended or extended sentence, the plan would keep the current DYS commitment (up to age 21) for aggravated murder and murder. Similarly, for classified felonies, the plan would maintain the maximum age for juvenile court jurisdiction at 21.

However, the Commission favors graduating "minimum" DYS terms, based on the level of offense committed. This would be more responsive to the community's sense of proportionality and fairer to victims and offenders. For each classified felony act, the judge could pick a specific

"period of court control" (again, more honest than "minimum"). Here is a comparison of current (§2151.355(A)(4) & (5)(c)) and proposed (§2152.16(A)) law.

The court retains control for the period selected (§§2152.16(A) & 5139.05(A)(1)), during which it may consider judicial release. DYS attains control over the commitment when the period of court control ends (§2152.16(B)).

#### TRADITIONAL JUVENILE DISPOSITIONS

OFFENSE LEVEL	CURRENT "MINIMUM"	PROPOSED COURT CONTROL	CURRENT MAXIMUM	PROPOSED MAXIMUM
<b>Murder</b>	Until 1	Until 21	Age 21	Age 21
<b>F-1</b>	12 Mos	6 to 60 Mths.	Age 21	Age 21
<b>F-2</b>	12 Mos	6 to 48 Mths.	Age 21	Age 21
<b>F-3</b>	6 Mos	6 to 30 Mths.	Age 21	Age 21
<b>F-4</b>	6 Mos	6 to 18 Mths.	Age 21	Age 21
<b>F-5</b>	6 Mos	6 to 12 Mths.	Age 21	Age 21

#### 13 LOWERING THE MINIMUM DYS AGE FROM 12 TO 10

Sometimes young children commit unspeakable acts. While the State should not abandon the hope of salvaging these youth, a secure setting may be necessary to safeguard the public during the necessary period of treatment and rehabilitation.

In Jonesboro, Arkansas, in 1998, two children, including an 11 year old, pulled a fire alarm and opened fire on their classmates as they left the school. Under Ohio law, no one under age 12 can be admitted to a DYS facility. Thus, there are few safe options for the 11 year old. Most likely, he would be placed in foster care or a group home.

Under this plan, the minimum age for admission to a DYS facility would drop from 12 to 10 (§5139.05(A)). The Commission does not anticipate that many children under 12 would be committed to DYS. It would simply provide a secure place for the most dangerous 10 and 11 year olds, where formal treatment and rehabilitation can occur.

#### 14 JUDICIAL RELEASE

There are three basic ways a juvenile is released from a DYS facility today before reaching age 21. During the first

half of a juvenile's so-called "minimum" commitment, the judge can grant a "judicial release" to court supervision. During the second half of the minimum, the judge can authorize "early release" to DYS supervision. After the minimum, the offender can be paroled to DYS supervision. This section focuses on the first two types of release. Current §2151.38, governing these releases, would become §2152.22.

### **35New Terminology**

Since both types of release are "judicial" and since both are "early", the Commission favors using one term. S.B. 2 uses the term "judicial release" to describe releases authorized by judges. That term carries over here.

Rather than refer to releases before a "minimum", the proposal more honestly defines the initial commitment time as a "period of court control." As now, DYS could not release a juvenile during this period without judicial permission (§2152.22(A), 2<sup>nd</sup> ¶).

### **36Release to Court Control**

The proposal would give judges a range of choices for the period of court control, which could be shorter or longer than the current "minimum" for some dispositions. Thus, the draft moves away from using half the period to define when the court supervises and when DYS supervises in each case.

The proposal instead authorizes judicial release to court control (§2152.22(B)) during these periods:

- The first 90 days after DYS commitment for youth given traditional juvenile dispositions (§2152.22(B)(1)(a));
- The first 180 days after DYS commitment for youth given an extended disposition as an SYO or EJJ (§2152.22(B)(1)(b));
- The first half of the commitment period when the child is placed in DYS until age 21 (as a TJ) or until age 25 (as an EJJ or SYO) for murder or aggravated murder (§2152.22(B)(1)(c)).

The hearing and release procedures would be similar to current law. However, the court would have 30 days, rather than the current 20, to schedule a hearing. The change simply standardizes the hearing period for releases both to court control and to DYS supervision. Similarly, if the

court rejects a request from a child or a child's parent, and is asked to reconsider, the court would have 30 days (instead of 20) to set a hearing, if it decides to hear the request. (§152.22(B)(2))

### **37Release to DYS Supervision**

"Early release" would be renamed "judicial release to DYS supervision". It would be available any time during the remaining period of court control (currently the "minimum") after the deadlines for release to court supervision expire (§2152.22(C)(1)(a)-(c)). The hearing and release procedures would be very similar to current law (§2152.22(C)(2)&(3)).

### **38Other Changes**

Otherwise, the changes are largely technical. The judicial release statute would track the new maximum age of 25 for EJJ's (§2152.22(A), 1<sup>st</sup> ¶). Language dealing with persons who violate release under the section, including possible return to DYS, would move to §2152.22(D). DYS's duties before releasing a person, and in preparing progress reports on released persons, would remain the same, but would move from current §2151.38 to §2152.22(E) and (F), respectively. Also, technical amendments would be made to the section telling DYS how to handle commitments (§5139.05(B)).

## **15ADDITIONAL PENALTIES**

### **39Gun Specs**

Under current law (§2151.355(A)(7)(a)), juvenile courts may impose an additional DYS term on juveniles who have firearms during delinquent acts. Since this must be specified in the complaint, it is often called the "gun spec". If the gun is possessed, but not used, the additional time is one year. If the weapon is displayed, brandished, indicated, or used, is an automatic weapon or silencer, or is part of a drive-by shooting, the additional time is three years.

Unlike the adult system, the additional time is not automatic. A judge can choose to impose it. Once imposed, the one or three years authorized must be served.

Under the Commission's proposal, the additional time provisions would work this way (§2152.17(B)):

- If the juvenile possessed the gun but did not display, brandish, indicate, or use it (§2941.141), the judge could impose up to one additional year in DYS. (This also would apply irrespective of whether an accomplice knew a codefendant had a gun.)
- If the juvenile displayed, brandished, indicated, or used the gun (§2941.145), the judge would have to impose an additional definite DYS term of at least one year, but not more than three years.
- If the juvenile possessed an automatic weapon or silencer (§2941.144), the judge would have to impose an additional definite DYS term of at least one year, but not more than five years.
- If the delinquent act involved a drive-by shooting (§2941.146), the additional definite DYS term would also be in the one to five year range.

A codefendant who did not possess the weapon would be eligible for the display, brandish, indicate, or use spec, the automatic or silencer spec, or the drive-by spec only if the accomplice knew the principal offender possessed the firearm under the relevant circumstances (§2152.17(A)(2)).

Gun spec terms would be in addition to, and consecutive with, terms for the underlying offense (§5139.05(A)(3)).

#### **40Gang Spec**

At present, the "gang specification" (§2941.142) carries one to three years when the underlying offense is in Category 1 or 2 (§2151.355(A)(7)(b)). The proposal eliminates those categories. Instead, the Commission recommends a broader gang spec. The judge would have to impose an additional term of one to three years for any F-1 or F-2 or an F-3 offense of violence involving a gang (§2152.17(C)).

#### **41Limit on Specs**

Today, if the court orders that specifications be served consecutively, the total additional time cannot exceed three years, or age 21, whichever comes first (§2151.355(A)(7)(b)). Since this effectively negates consecutive specifications, the proposal would cap multiple specs at five years. The length of stay would still be capped at age 21 for traditional juvenile dispositions, but would go to age 25 for EJJ dispositions (§2152.17(D)).

#### **42Other Consecutive Terms**

Courts may order consecutive DYS terms today, up to age 21 (§2151.355(B)(2)). The proposal carries this over, raising the maximum to age 25 for EJJ's (§2152.17(E)).

#### **43Repeat Violent Offenders**

Currently, the juvenile court judge must make a specific finding that a child's adjudication in juvenile court (for certain serious offenses) may be used as a "prior" offense for purposes of the repeat violent offender (RVO) penalty in a later criminal actions (§2151.355(G)(2)). This has been criticized, since it can allow an RVO to escape the label if the juvenile prosecutor failed to seek, or the juvenile court failed to make, the finding.

The proposal eliminates the finding. Any disposition for a listed offense would later be available for use in sentencing the offender as an RVO (§2152.17(F)). A parallel change would be made to the definition of "repeat violent offender" (§2929.01(EE) (2)(b)). All juvenile court records of juveniles who have been "convicted" of certain heinous juvenile court offenses should be made available to the common pleas court for purposes of sentencing.

#### **44Underage Weapon Possession**

Current law makes the status offense of purchasing a firearm when under 18, or purchasing a handgun when under 21 (§2923.211) a delinquent act carrying a possible DYS commitment of six months to age 21 (§2151.355(A)(4)). The Commission's plan would classify the offense as an F-4 delinquency. The court could impose a DYS term of from 6 to 18 months. Age 21 remains the maximum term, except for enhanced 16 and 17 year olds, who could be held until 25.

### **16COMMUNITY DISPOSITIONS**

Obviously, this plan provides more secure tools for juvenile courts to use with serious offenders. Yet, most juveniles will leave their adjudications under some combination of community sanctions.

#### **45The Basic Options**

Juvenile courts have a broad range of local dispositions available today. Under this plan, these dispositions would

be streamlined and moved from §2151.355. Non-financial options appear in §2152.19.

As now, in any felony or misdemeanor delinquency case, the juvenile court has sweeping authority to do any of these (§2152.19(A)):

- Make any disposition allowed for abused, neglected, or dependent children (Ch. 2151). This includes foster care, group homes, etc. It allows the court to consider the need for the care and protection of the juvenile offender, when warranted (§2152.19(A)(1));
- Commit to the temporary custody of any school, camp, institution, or other facility for delinquents (§2152.19(A)(2));
- Place the juvenile under "community control" (§2152.19-(A)(3)). (This term replaces "probation", and is discussed in more detail below);
- Commit the juvenile to the temporary or permanent custody of the court (§2152.19(A)(4));
- Make any further disposition that the court finds proper, except that the juvenile cannot be placed in a prison, jail, or other adult facility (§2152.19(A)(5)).

#### **46Community Control**

As with felony sentencing under S.B. 2 and the Commission's misdemeanor sentencing proposals, the juvenile plan moves away from using the term "probation" generically in favor of the broader term "community control".

The judge can elect to impose any sanctions and conditions of community control, including but not limited to, the options listed here. Many of these were added to the Juvenile Code after S.B. 2's enactment to better track with the lists in adult law. Thus, they are the same as in current §2151.355, except where noted.

- Basic probation supervision (§2152.19(A)(3)(a));
- Intensive probation supervision (§2152.19(A)(3)(b));
- Day reporting (§2152.19(A)(3)(c));
- Community service, which would be limited to 500 hours for a felony or an M-1, as now, and 200 hours for an M-2, M-3, or M-4. For the first time, community service would be authorized for minor misdemeanant delinquents (fine only offenses today). The limit would be 30 hours. (§2152.19(A)(3)(d));

- Education, with vocational training included (§2152.19(A)(3)(e));
- Drug or alcohol monitoring (§2152.19(A)(3)(f));
- Treatment, with assessment and counseling included (§2152.19(A)(3)(g));
- Curfew (§2152.19(A)(3)(h));
- Monitored time, which would be new to the Juvenile Code (§2152.19(A)(3)(i)). It places the juvenile under no conditions other than to lead a law-abiding life;
- House arrest, with or without electronic monitoring (§2152.19(A)(3)(j));
- Electronic monitoring, with or without house arrest (§2152.19(A)(3)(k)). This would be streamlined somewhat and made more flexible. Relevant definitions should expand to allow for new monitoring technologies such as satellite and voice tracking;
- Detention for misdemeanor delinquencies would be formally authorized for the first time, up to 60 days (§2152.19(A)(3)(l), see MISDEMEANOR DETENTION, below);
- Driver's license or permit suspension (§2152.19(A)(3)(m)).

Mandatory license suspensions carry over from current law (§2152.19(A)(3)(n)) for having a weapon in school and for committing a drug offense. The language would be streamlined, however.

#### **47Supervision**

Local probation officers would monitor community control in the same manner as they monitor probation today (§2152.19(E)(1), which moves from §2151.355(L)). The plan streamlines language on notifying parents of searches by probation officers (§2152.19(E)(2), which moves from §2151.411(C)(2)(b)). The rest of that section would be repealed, with its surety language merged into the parental responsibility statute, below.)

Today, the law contains cumbersome language on minimum conditions of probation. The plan simplifies this. Any juvenile under community control would have to abide by the law, in addition to any other specific conditions imposed by the court §2152.19(A)(3)).

#### **48Sex Offender Registration**

If the case involves a sex offense, the proposal would make the juvenile subject to much of the adult Megan's Law.

However, community notice would only be available to those given blended sentences, and then, only if the judge finds at a later hearing that the notice is warranted (§2152.19(C)(1)). At disposition, the court would have to inform certain sex offenders of a duty to register (§2152.19(C)(2)). (For more on this, see VICTIMS' RIGHTS, below.)

## **17 MISDEMEANOR DETENTION**

Today, the law does not clearly allow a juvenile court to place a juvenile in detention for committing a misdemeanor, other than drunken driving. Yet, secure detention may be warranted for some misdemeanors, such as domestic violence and assault, or for repeat offenders.

The law allows juvenile courts to place an alleged or adjudicated delinquent in secure detention for up to 90 days for evaluation. Since no formal detention disposition is available, courts sometimes use the fiction of "evaluation" to hold a troubled youth in a detention facility.

This plan tries to make the system more honest. Juvenile courts could sentence a misdemeanor delinquent directly to a detention facility for up to 60 days (§2152.19(A)(3)(1)). There would not be detention time for minor misdemeanants, since adults cannot be jailed for comparable offenses.

The Commission recognizes that space is scarce in many detention facilities. Thus, use of this disposition will vary statewide, depending on available beds.

The plan would move authority to detain for evaluation from the first paragraph of §2151.34 to the new chapter (§2152.04), without significant change.

The Commission does not want courts to abuse this tool. As is done with DYS terms after a detention stay, the juvenile would be entitled to credit for any time spent being evaluated or awaiting disposition in a detention center against any detention time imposed at disposition. Similarly, if the court ordered the evaluation after the detention, the 90 day evaluation period must be reduced by time spent under a detention disposition.

## **18 FINANCIAL SANCTIONS**

The proposal broadens financial sanctions and consolidates them in one section (§2152.20).

#### 49Fines

The current juvenile fine schedule is confusing since it changes irregularly between offense levels (current §2151.3512). This plan would standardize fines in proposed §2152.20(A). Here is a comparison of fine schedules.

**TABLE OF FINES**

OFFENSE LEVEL	CURRENT MAX	PROPOSED MAX
<b>Murders</b>	\$1800	\$2000
<b>F-1</b>	\$1450	\$1500
<b>F-2</b>	\$1000	\$1000
<b>F-3</b>	\$750	\$500
<b>F-4</b>	\$400	\$400
<b>F-5</b>	\$300	\$300
<b>M-1</b>	\$225	\$250
<b>M-2</b>	\$175	\$200
<b>M-3</b>	\$125	\$150
<b>M-4</b>	\$75	\$100
<b>MM &amp; Unclass.</b>	\$50	\$50

#### 50Costs

As now, costs could be assessed against delinquents and JTOs (current §2151.3512 becomes §2152.20(B)).

#### 51Restitution

The restitution law is consolidated and improved in various ways. As with recent changes made in adult felony law based on the Commission's recommendations, restitution would be tied to the "economic loss" of the victim. This is a broader term that allows recovery of lost wages and other actual expenses. Other subtle changes in restitution law are discussed under "VICTIMS' RIGHTS" below (§2152.20(C)).

#### 52Reimbursements

The proposal makes clear that a juvenile offender could be ordered to reimburse all or part of the costs of implementing any community control sanction. This includes supervision fees (§2152.20(D)(1)) and the costs of confinement in a juvenile facility (§2152.20(D)(2)). Confinement costs could include a per diem for room and

board, the costs of medical and dental treatment, and the costs of repairing property damaged by the offender while confined. The maximum would be \$10,000 or the total the offender is able to pay. If the court does not order reimbursement, confinement costs could be assessed pursuant to a repayment policy adopted under §2929.71.

### **53Forfeitures**

The proposal gathers these forfeiture provisions together in new §2152.20(E): Current §2151.355(B), governing forfeitures for corrupt activity; §2151.355(I), governing drug offense forfeitures; and language on gang forfeitures. No substantive changes are proposed.

### **54Ability to Pay**

The court would have the option of holding a hearing, if necessary, to determine whether a juvenile is able to pay a sanction (§2152.20(F)).

### **55Community Service**

Traditionally, community service is ordered against offenders who are indigent. The proposal goes further. It makes clear that a juvenile who is not indigent can be ordered to perform community service in lieu of or in addition to a financial sanction. Moreover, it authorizes community service for minor misdemeanors, which are punishable only by fines today. Also, community service could be ordered if an offender fails to pay a financial sanction (§2152.20(G)).

### **56Improving Collection**

While the proposal does not anticipate wealthier juvenile defendants in the future, it expands the court's tools to maximize collection from those who are able to pay. It authorizes the clerk, or other authorized person, to (§2152.20(H)): enter collection contracts with public agencies or private vendors; permit payment in installments, by credit or debit card, by another electronic transfer, or by any other reasonable method, except that the maximum time for payment could not exceed five years; pay any fee associated with processing an electronic transfer out of public money, or charge the fee to the offender; and charge a reasonable fee for an offender who elects a payment plan rather than a lump sum payment.

## **6 JUVENILE TRAFFIC OFFENDERS**

Juvenile traffic offender (JTO) dispositions would change in a few small ways. The plan also suggests various amendments to court rules. The most significant would be to permit juvenile courts to establish traffic violations bureaus.

### **57 Move to Ch. 2152**

The definition of "juvenile traffic offender" would move from current §2151.021, and the JTO disposition section would move from §2151.356, to the new chapter, with no substantive changes (§§2152.02(N) & §2152.21).

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### **60 Six Point Suspension**

Today, a juvenile loses his or her driver's permit for three violations. The proposal changes this subtly. It would create a six point suspension (to parallel adults' 12 point suspension). Since many traffic offenses carry 2 points, three violations will mean a suspension, as now. However, since some traffic offenses do not carry points (e.g., speeding less than 5 m.p.h. over the posted limit in town), these will not count against a juvenile's license. (See §2152.21(A)(2) and the Commission's traffic proposals, pending in S.B. 176.)

### **61 Optional Violations Bureau**

Every juvenile cited for a traffic offense, even for a minor misdemeanor, must appear in juvenile court today. Judges get the attention of young drivers at these appearances and sometimes steer juveniles toward safer driving habits. However, the caseload in some courts can make these appearances less meaningful.

The General Assembly should ask the Supreme Court to amend Traffic Rule 13, or another appropriate rule, to authorize traffic violations bureaus in juvenile courts. This would ease the burden on busy courts by allowing JTOs to pay tickets without a court appearance.

However, this should be limited to first offense minor misdemeanor traffic offenses (e.g., speeding) that do not result in an accident. A court appearance still should be required for any more serious traffic offense. Also,

juveniles paying fines to traffic bureaus should have to admit guilt, with some evidence of parental knowledge.

Creating a violations bureau would be optional. If a juvenile court prefers to hear each JTO case, it can continue to do so.

#### **62No Jury for Minor Misdemeanor JTOs**

A Supreme Court decision (*State, ex rel. Asberry v. Payne*), the Juvenile Rules, and an Opinion of the Attorney General can be read to give a right to a jury trial in minor misdemeanor JTO cases. To ease the burden this imposes on the system, the Commission recommends making clear that jury trials are not available in MM JTO cases.

#### **63Other Rules Changes**

The Commission proposes amending Juvenile Rule 29(C) to allow "no contest" pleas in JTO and non-traffic cases. It also suggests making clear that the Juvenile Rules, rather than the Traffic Rules, apply to JTO cases. (See RULES AMENDMENTS, below.)

### **7UNRULY JUVENILES**

Ohio law uses the term "unruly" to describe juveniles who are habitually disobedient (including those who run away from home), are truant from school, or otherwise commit offenses applicable only to children (status offenses).

#### **64Generally Remain in Chapter 2151**

As noted earlier, the Commission recommends keeping these violations under Ch. 2151, rather than in the new offenders' chapter (Ch. 2152). There are adequate tools for dealing with these juveniles without "criminalizing" their conduct. These tools include the possibility of ordering detention for up to 24 hours, or for up to five days if the juvenile violates a court order.

#### **65Delinquency Aspects**

While unruly cases remain under Ch. 2151, the law should carry over the valid court order exception by making clear that the definition of "delinquent child" covers one who violates a court order imposed under either Ch. 2151 or 2152. Thus, an unruly child who violates a court order can be adjudicated delinquent. As now, this can be done without

jeopardizing Federal funds. (Federal law denies certain funds if a state incarcerates status offenders. However, the restriction does not apply to detaining delinquents).

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#### 67Unrulies Redefined

This plan would change the definition of "unruly" children to remove obsolete, redundant, and rare cases that are better dealt with under other laws (§2151.022).

Four types of misconduct would remain in the Commission's definition of "unruly child":

- **Habitual Disobedience.** A child who does not "submit" to the reasonable control of parents, teachers, guardians, or custodians by reason of being wayward or habitually disobedient would remain largely unchanged ("submit" replaces "subject himself or herself") (§2151.022(A)).
- **Truancy.** Being truant from school would be retained. Truancy from home (runaways) would be covered under (A) (§2151.022(B)).
- **Endangering Conduct.** A child who "behaves in a manner" as to injure or endanger the child's health or another's would remain essentially unchanged (the quoted phrase supplants "deports himself or herself" (§2151.022(C))).
- **Status Offense.** A child who violates a law, other than a delinquency charge under the underage gun violation law (§2923.211(A)), that is applicable only to a child would not change. (Current §2151.022 (G) becomes (D).)

However, three types of conduct would be repealed from the definition of "unruly":

- **Attempt to Marry.** Attempting to marry without permission (current §2151.022(D)) would be removed for several reasons. If an underage marriage occurs in Ohio, the juvenile who lied about his or her age can be charged with falsification, a delinquent act. If a marriage occurs out-of-state, the child may have been emancipated. In fact, the statute merely governs "attempts" to marry. These children can be treated as runaways or incorrigibles under other unruly provisions. Also, proving an *attempted* marriage can be difficult. And it is sometimes hard

to bring a child back to Ohio who attempted to marry elsewhere. In the judges' survey, only 10% ever had a case on this topic.

- **Disreputable Places and People.** Being in a disreputable or illegal place and associating with questionable people (current §2151.022(E)) is archaic, overly broad, and partially redundant. The illegal places aspects can be charged under the delinquency law. The endangering conduct part of the definition (div.(C)) could be used for many of these cases. Only one-third of the judges surveyed had heard such a case.
- **Illegal Occupations and Immoral Situations.** Engaging in an illegal occupation or in a dangerous or immoral situation (current §2151.022(F)) is archaic. Its Dickensian language seems to address a time before child labor laws and worker safety regulations. The illegal occupation aspects can be charged as delinquent acts (e.g., prostitution, gambling). Only 8.5% of the judges surveyed had heard such a case.

#### **68Dispositions**

The dispositions available today would remain. The only change proposed is mechanical. Broader "community control" would supersede using the term "probation" in §2151.354.

#### **69No Detention**

The Commission discussed authorizing detention for unrulies, but rejected the notion for several reasons: (1) There is little space in many detention facilities; (2) Unrulies can be held for 24 hours now under §2151.354(A)(5); (3) Unrulies can be held as delinquents if they violate court orders; and (4) Holding unrulies risks about \$3.5 million annually under the Federal JJDP Act.

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#### **71No Emancipation**

Parents of troubled children sometimes ask to emancipate them. Ohio does not have a statutory emancipation procedure. The Commission does not favor enacting such an emancipation statute. It could absolve parents of their duties. It could encourage Human Services Departments to drop children from their caseloads, leaving emancipated children with fewer social services.

## **8 PARENTAL RESPONSIBILITY**

Parents must sometimes share the blame for misconduct by their children. The proposal makes a few subtle changes to the law designed to give the court more flexible tools to deal with irresponsible parents.

### **72 Parental Orders**

At present, the juvenile court can issue orders against parents, guardians, or other custodians when necessary to protect a child or carry out a disposition (§2151.359). Some practitioners complain that this provision lacks any real bite, since it does not specify a penalty for violations.

Another provision (§2151.411) tells parents they must control their children. It allows courts to order the parent to post a bond of up to \$500 to ensure compliance with probation, if the court finds that the parent's failure to control the child caused a delinquency. However, the bond is jeopardized only if there is a second delinquency adjudication involving the juvenile.

The plan would streamline these provisions into one section. It would add teeth to the law by making clear that failure to comply with any court order made under this section is contempt (§2152.61(B)), with a range of punishments.

The bond language would become a tool to enforce any parental order under the section. The court would not have to wait for a second delinquency adjudication to enforce the bond. Any violation of an order to control a child would suffice (§2152.61(A)).

### **73 Contributing to Delinquency or Unruliness**

Presently, the law prohibits any person from committing acts that encourage a child to be unruly or delinquent. The offense is an M-1. While the generic definition of "person" is broad enough to cover parents, some courts, prosecutors, and law enforcement officers are reluctant to charge parents with the offense. The proposal would make clearer that persons covered by the offense include parents, guardians, and other custodians (§2919.24).

#### **74 Failure to Send to School**

Keeping children in school reduces crime. The truancy of older children can be dealt with under the unruly statutes. But, unexcused absences by younger children almost always is the fault of parents.

The penalty for failure to send a child to school today is only \$5 to \$20, with no possible jail time. The plan would increase the offense to an M-4, making parents liable for up to 30 days in jail and a fine of up to \$250 (§§3321.38 & 3321.99). Of course, more serious transgressions could be punished as contributing to a child's unruliness, an M-1.

### **9 VICTIMS' RIGHTS**

#### **75 Restoring Victims and Public Safety**

The plan attempts to make the Juvenile Code more responsive to victims. Historic practice in juvenile court focused on rehabilitation and removing the taint of criminality from the juvenile offender. As noted earlier, this proposal makes restoring victims one of the overriding purposes of juvenile sentencing. It also makes the public safety and interest a key purpose, eliminating the "taint" language. Rehabilitation remains an important purpose, because successful programs not only reform young offenders, they reduce the number of future victims.

#### **76 "Megan's Law"**

Ohio's Sex Offender Registration Law ("Megan's Law") does not apply to juveniles at present. Pending Senate Bill 148 would make juveniles subject to many of the law's requirements.

The Commission supports S.B. 148, but would tie the possibility of community notice to "sexual predators" who receive blended (SYO) sentences. It also would make a few less significant changes in S.B. 148.

This is how the law would look if S.B. 148 and the Commission's proposal were adopted. A juvenile who commits a "sexually oriented offense" would have to register annually with the local sheriff for a period of up to 10 years, as determined by the juvenile court (§2950.04(F) and §2950.07 (B)&(C)). (In adult law and S.B. 148, registration is for a flat 10 year period.) "Sexually oriented offense" includes any rape, sexual battery, gross sexual imposition,

and felonious sexual penetration. It covers kidnapping, abduction, and related offenses, and pandering obscenity and related offenses, involving a minor victim. It includes aggravated murder, murder, involuntary manslaughter, felonious assault, and kidnapping, when committed for sexual gratification. And it covers other sexually-oriented offenses. (§2950.01(D)) The registration would not be a public record in juvenile cases.

A "habitual sexual offender" would have to register annually with the sheriff for up to 20 years (§2950.07(B)&(C)). (In adult law and in S.B. 148 it is a flat 20 year period.) "Habitual sexual offender" means one found delinquent for a sexually oriented offense who has a prior adjudication for such an offense. (§2950.01(B)) The court has discretion in adult cases to order community notice on this offender. That provision would not apply to juveniles.

A "sexual predator" would register with the sheriff every 90 days for a period, up to life, determined by the juvenile court (§2950.07(B)&(C)). (Under adult law, the period is life, unless the court later removes the label.)

For adults, the "sexual predator" label carries mandatory community notification. To brand someone as a predator, the court must find that the person is guilty of a sexually oriented offense and is likely to commit such an offense in the future. (§2950.01(E))

The Commission would make community notice possible for a "sexual predator" who is eligible for, and receives, a blended (SYO) sentence. Notice would not be automatic in SYO cases. Rather, the juvenile court, at some time after the SYO disposition, would decide whether the community should be warned about the offender. The court could require community notice in an SYO case even if it does not invoke the adult portion of the sentence. (§§2152.13(E), 2152.19(C)(1), & 2950.11(F)(2)) This is the key difference between S.B. 148 and the Commission's proposal.

Materials registered under this law are confidential, with access limited to certain law enforcement purposes. The proposal would add that the materials also would be open to the superintendent of the school district in which a sexually oriented offender attends (§2950.08(C)).

## **77Extending Victims' Rights to Juvenile Court**

The General Assembly adopted the Sentencing Commission's victims' rights proposals in S.B. 186 in 1994 and in S.B. 2

in 1996. These give victims the opportunity to receive information and participate at each key stage of the proceedings in criminal courts. In House Bill 3, the 123<sup>rd</sup> General Assembly extended these rights to victims in juvenile courts.

#### **78Victim-Offender Mediation**

Victim-Offender Mediation is a disposition today (current §2151.355(A)(20)). The Commission instead suggests letting courts establish V-OM programs, in which victims and their offenders meet to discuss the offense and suggest possible restitution. With the consent of the victim, the court could require the offender to participate (§2152.19(B)).

#### **79Victim Impact Statements**

As now, the juvenile court would have a victim impact statement prepared in felony cases in which a victim suffers physical harm (Current §2151.355(H) becomes §2152.19(D)). Victims' advocates say these vary in quality and availability today. The proposal would instruct DYS to work with local probation departments and victim assistance programs to develop a standard statement §2152.19(D)(4)).

**80**

#### **81Restitution**

In addition to incorporating the broader definition of "economic loss" enacted into felony law at the Commission's suggestion, the proposal streamlines juvenile restitution law and improves it mechanically. The plan consolidates various provisions, eliminates redundancies, and repeals misleading language (such as current §2151.355 (A)(2) which "requires" restitution "if appropriate").

Other changes include (§2152.20(C)):

- Allowing the court to order the defendant to pay a surcharge of up to 5% to defray collection costs.
- Permitting the victim or the juvenile to file a motion to modify restitution if there is a substantial change in the offender's ability to pay.
- Making clear restitution can be based on an amount proposed by the victim, defendant, PSI, estimates, and other sources. A hearing would be needed only if the victim or defendant disputes the amount.
- Crediting any restitution against civil damages awarded to the victim for the same act.

- Allowing payment in open court as well as through the probation department or clerk.
- Allowing reimbursement to third parties, other than the defendant's insurer, for amounts paid to the victim or survivor. If third party reimbursement is required, it would be made to any governmental agency to repay any amounts paid by the agency to the victim or survivor before reimbursing others.

## **10COMPETENCY**

### **82Background**

Competency laws try to assure that a person accused of a crime understands the charges and can help in his or her defense. Persons must be competent to stand trial in adult court. But, the law today does not address competency in juvenile court proceedings.

Why have a competency statute for juveniles? There are several reasons. First, the plan would make adult-like sanctions available for some juveniles in the form of blended sentences. Today, many of these juveniles are transferred to criminal court, where they have the right to a competency determination. With the stakes raised in juvenile court, other adult-like rights would be available to juveniles charged as SYOs. It is logical to add a procedure to determine a juvenile's competency.

Second, judges point out that juveniles who are clearly incompetent, but dangerous, are being sent to DYS today because no safe alternative is available. When these children are not sent to DYS, it is difficult to obtain appropriate services in the community.

Third, lowering the age for admission to DYS from 12 to 10, in light of the more serious nature of juvenile crime in recent years, raises issues about the relative maturity of the youngest DYS bound juveniles and whether they are competent to go through the juvenile court process.

### **83Standard**

Under the proposal, the standard for determining whether a juvenile is competent to proceed is similar to that in adult competency law and to the standard set up by the U.S. Supreme Court (the "*Dusky* standard").

A juvenile would be presumed to be competent to proceed. The juvenile would be incompetent if he or she does not

have sufficient ability to both (§2152.51(A)): consult with a reasonable degree of rational understanding with his or her defense attorney and appropriately understand the proceedings or reasonably participate in his or her defense.

The proposal would give guidance to judges (and examiners who provide information to judges) in applying the standard. The judge would have to consider the juvenile's capacity to do all of the following (§2152.51(B)): appreciate the charges; appreciate the range and nature of penalties that may be imposed; understand the adversarial nature of the legal process; disclose to counsel pertinent facts; display appropriate courtroom behavior; and testify relevantly, by being capable of receiving and communicating accurate impressions of the facts, and relating them truly. Most of these considerations come from Florida's juvenile competency statute. The relevant testimony consideration comes from Evidence Rule 601.

#### **84What if Incompetent?**

If, based on a report from a qualified examiner, a judge finds that the juvenile is incompetent to proceed, several things can happen.

If the case is a misdemeanor, or it is found up front that the juvenile cannot attain competency, then the case can be dismissed, and the judge can initiate a dependency action (§2152.53(B)(1)).

If there is a chance that competency can be attained, then the judge places the juvenile in the appropriate setting by committing the juvenile to the mental health board, the MR/DD board, the local children services system through a dependency action, or the juvenile's parents (§2152.53(C)).

In 30 days, the appropriate entity would have to submit a plan to the court for competency attainment (§2152.53(D)). (The term "restoration" to competency is used in criminal courts. But, since the juvenile may never have been competent, "attainment" is proposed.) That entity would then work with the juvenile. Every 90 days, it would report to the court. If competency is attained, the case moves forward (§2152.53(D) through (F)).

Copies of relevant plans and reports would be available to the prosecuting attorney, juvenile's attorney, and others as ordered by the court (§2152.53(K)).

### **85What if Unattainable?**

If competency is not attained within one year, the case would be dismissed. The court could initiate a dependency action. However, the court would retain jurisdiction for up to two years, or the juvenile's 18th birthday, whichever is later (§2152.53(I)(2) & §2152.53(B)(4)).

### **86Secure Setting**

When a juvenile is both incompetent and dangerous to the community, the plan calls for the possibility of using a secure setting for competency attainment. In this case, the court could send the juvenile to the secure setting for six months, with two additional three month stays, if necessary. It sets out a procedure for transferring a juvenile to a less restrictive setting if a secure setting is no longer needed (§2152.53(G)).

A juvenile would get credit for time in a secure facility against a DYS disposition, and would be subject to the escape law.

The kind of secure facility contemplated by this proposal does not exist in Ohio today. As an essential element of this proposal, there needs to be State funding to make a secure setting possible.

The Directors of Human Services, Mental Health, MR/DD, and DYS, would accept secure beds for juveniles if:

- The beds are funded with new resources, put into the State budget specifically for this purpose (targeting the budget two years from now);
- There are no changes in the broader eligibility requirements for other public mental health, mental retardation/developmental disability, or human service system services;
- The beds are limited only to competency attainment, and those who are unattainably incompetent.

### **87Rule Change**

Currently, magistrates may handle all "pretrial" hearings. The plan calls for requiring a judge to preside at competency hearings (§2152.51(D)), which would necessitate a change to Juvenile Rule 40(A) (see RULES AMENDMENTS, below).

## **11RECORDS AND CONFIDENTIALITY**

This plan contains minor changes to the law governing juvenile records and confidentiality. The Commission may make more substantive proposals in the future.

### **88Miscellaneous Records Provisions**

These sections would move without amendment to the new chapter:

- §2151.18, dealing with certain records that must be kept by the court, in JTO and delinquency cases, etc., would become §2152.71.
- §2151.315, which requires DNA testing of certain delinquents, would become §2152.74.
- §2151.62, requiring that certain information be provided to foster caregivers before placing certain delinquents, would become §2152.72.
- §2151.99(C)'s misdemeanor penalty for violating the prior section would become §2152.99.

## **12DETENTION FACILITY LAW**

The draft moves detention facility law from Ch. 2151 to new Ch. 2152. It merged sixteen sections into four and organizes the law by topics: establishing detention facilities, employees, funding, and district facility trustees. It resolves some inconsistencies.

**Establishing Detention Facilities.** Much of current §2151.34 becomes new §2152.41, governing how to establish detention facilities. Modern detention facilities are secure and bear little resemblance to the "homes" they once were. Thus, the term "facility" replaces "home". A provision keeping DUI JTOs separate from alleged delinquents would be eliminated. The proposal makes clear that, in a county with no facility, the court "may enter a contract, subject to the approval" of the county commissioners to use another county's facility.

To streamline and more logically order the Code, the draft incorporates these provisions here, with technical changes:

- Current §2151.346, saying district detention facilities are to be run like county facilities;

- Current §2151.3414, designating an auditor as the fiscal officer for a joint district;
- Current §2151.3413 (1<sup>st</sup> & 3<sup>rd</sup> ¶s), governing withdrawal from a district facility;
- Current §2151.3415, dealing with expenses of joint boards of commissioners who form a district;
- Current §2151.345 (4<sup>th</sup> ¶), saying that the judge controls the care, removal, and transfer of the child, would apply to both county and district facilities (div.(E)).

Also, the proposal would clearly authorize courts and counties that do not have detention facilities to enter contracts with other facilities (div.(C)).

**Employees.** Parts of current §2151.34 (5<sup>th</sup> ¶) become new §2152.42, which would deal exclusively with the superintendent and other employees. It eliminates the archaic reference to "matrons". It makes clearer that the superintendent serves at the pleasure of the juvenile court or, in a district, at the pleasure of the trustees.

The proposal removes several vague, obsolete, or misleading phrases currently used to describe detention homes: "non-punitive and neutral atmosphere"; "assuring wholesome and profitable leisure time"; and ensuring "all possible treatment".

It merges in the employee provisions of current §2151.345 (1<sup>st</sup> 3 ¶s). It reconciles conflicts between current §2151.34 and §2151.345 by making clear that the superintendent's bonding requirement and authority to control the facility, currently addressed only in district facility law, also applies to county facilities (div.(A)).

The draft reconciles §2151.345, 2<sup>nd</sup> ¶ and §2151.34, 5<sup>th</sup> ¶ by clarifying that, in a county facility, the superintendent appoints all employees and fixes their compensation. The employees are unclassified, as now. In a district facility, the superintendent appoints employees and fixes their salaries, subject to the trustees' approval. Employees, except for the superintendent, remain in the classified civil service (div.(B)).

**Funding.** The first two sentences of current §2151.341, all of §2151.342, part of §2151.3412, and all of §2151.3416 would become new §2152.43, dealing with sources of facility funding. These include DYS grants, taxes, and gifts. The new section also includes §2151.3413 (2<sup>nd</sup> ¶), dealing with

tax levies when a county withdraws from a district. There are no significant changes, except to resolve a partial inconsistency between §2151.341 (2<sup>nd</sup> sentence) and §2151.3412 (3<sup>rd</sup> sentence) regarding taxes and other funding methods.

**District Facility Trustees.** The proposal combines and streamlines the various duties of district facility trustees (§§2151.343, 2151.344, 2151.345 (4<sup>th</sup> ¶), 2151.347, 2151.348, 2151.349, 2151.3410, & 2151.3411) as new §2152.44. Division (A) gathers the law from three sections on appointing trustees. Division (B) gathers the law from two sections governing the trustees' meetings. Division (C) merges two sections dealing with finding a site for the facility. Division (D) combines two sections on using existing sites and buildings. The draft does not propose any significant changes. However, it adds a clause at the behest of one district home that the trustees shall operate the facility in accord with these sections (div.(E)).

### **13 MISCELLANEOUS PROVISIONS**

Creating a new chapter for juvenile offenders (see NEW CHAPTER 2152, above) raises questions about various provisions in current Ch. 2151. Here is how the Commission would deal with sections not already discussed.

#### **89 Sections Remaining in Ch. 2151**

Some sections would remain in Ch. 2151, but would be amended to recognize changes in the new chapter:

- §§2151.07 (creation and powers of juvenile court), 2151.08 (Hamilton Co. Juvenile Court), 2151.12 (certain judges as clerks), & 2151.65, 2151.651, & 2151.652 (county schools & forestry camps)) would be amended to make clear they apply to both chapters.
- §2151.24 requires county commissioners to provide a room not used for adult trials, when available, for juvenile cases. The plan would carve out an exception for delinquency cases prosecuted as SYOs.

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#### **91 Sections Moved With Little Change**

Various other provisions would move to the new chapter, with minor or no amendments:

- §2151.11, authorizing juvenile courts to participate with others in delinquency prevention programs and to accept gifts, becomes new §2152.73.
- §2151.211, prohibiting an employer from punishing an employee for time lost for attendance at a delinquency proceeding under subpoena, would become §2152.75.
- §2151.25, governing the transfer from other courts to juvenile court when a child is arrested for a felony or misdemeanor, would move to new §2152.03. Cross-references would recognize the new bindover statute.
- §2151.27 governs complaints in juvenile court. The parts dealing with delinquency and JTO cases would move to new §2152.021, with one change. Rather than allow dual jurisdiction in both the county of residence and the county in which the alleged offense occurred, SYO cases should only be brought in the latter county.
- §2151.312 governs places of detention. The aspects dealing with delinquents and JTOs would move to new §2152.26. Aspects covering abused, neglected, dependent, and unruly children would remain in Ch. 2151. The statute would be rewritten to eliminate inconsistent and redundant provisions.
- §2151.3511, which allows the testimony of child sex offenses victims by deposition and affords other protections, would become §2152.81.
- §2151.355(F)(1) would move, without significant amendments, to new §2152.18(A). It tells juvenile courts that they cannot designate a specific DYS institution at sentencing.
- §2151.355(F)(2)&(3) require that certain records accompany a commitment to DYS. It moves, without significant amendment, to new §2152.18(C)(1)&(2).
- §2151.355(F)(4)&(5) require DYS to provide certain information to schools when a court commits a juvenile to its custody and when DYS releases an offender. These move to new §2151.18(D)(2)&(3). The only substantive amendment would be to specify that the notices be given within 14 days of commitment or release.
- §2151.355(F)(6) gives credit for detention time served against a DYS term. It moves, without significant amendment, to new §2152.18(B).
- §2151.355(G)(1)'s provision governing victims' notice regarding certain recoveries would move, without significant changes, to new §2152.82.

- §2151.355(I), governing drug offense forfeitures, would move to new §2152.20.
- §2151.355(J), governing electronic monitoring, would meld into new §2152.19(A)(5).
- §2151.355(K), requiring the court to provide certain information to schools upon a delinquency adjudication, moves, without major amendment to §2152.18(D)(1).

## **92Sections to Be Repealed**

A few provisions would be repealed outright:

- §2151.355(A)(2) would be repealed. Part of it is unnecessary and the rest largely duplicates division (A)(8)(b), which would move to proposed §2152.20.
- §2151.355(E)(1) & (2) would be repealed as unnecessary. One guides judges in favor of a DYS term when certain victims are harmed. The other tells judges to consider prior DYS terms in sentencing. Neither controls the judge's discretion.
- §2151.48 allows juvenile courts to sentence adult females to prison for misdemeanor violations of the chapter. Repealed as archaic.
- §2151.51 allows the court to order the county to pay up to 50 cents per day to maintain a dependent child when the responsible adult is imprisoned under Ch. 2151. Repealed as archaic.

These "adult" sections would move, with minor amendments, to the new chapter:

- §2151.45, governing the expense of extradition, would become §2152.65.
- §2151.46, governing bail, would become §2152.66.
- §2151.47, governing jury trials, would become §2152.67.

## **14RULES AMENDMENTS**

The Commission suggests that the Supreme Court consider amendments to various court rules in light of this plan.

### **93Changes Consistent with New Purposes**

Before 1994, §2151.31 allowed a law enforcement officer to take a child into custody if the child is endangering not

only the health and welfare of himself (as now), but also the health and welfare of others. Since the purposes in proposed §2152.01 expand to include public safety concerns, Juvenile Rule 6 should be amended to resuscitate endangering others' health and welfare as a rationale for taking a juvenile into custody. This reflects the overwhelming wish of juvenile court judges surveyed (89.8%).

A parallel change should be made in Juvenile Rule 7 to consider endangering the health and welfare of others in deciding whether to place a juvenile in detention before final disposition.

#### **94Changes re Presumed Bindovers**

Presently, Juvenile Rule 3 gives a juvenile a non-waivable right to counsel for a bindover hearing held under Juvenile Rule 30. Presumed transfers should be added to the latter rule so that children facing presumed transfer would be given a non-waivable right to counsel under Rule 3.

The State has the right to appeal a granted motion to suppress evidence under Juvenile Rule 22(F). The State's right to appeal a granted motion to rebut a presumed transfer should be listed there as well.

#### **95SYO and Competency Proceedings**

**Judges to Preside.** Currently, magistrates can handle all "pretrial" hearings. Juvenile Rule 40(A) should be amended to exclude SYO eligibility hearings and competency hearings. These should be handled only by a judge.

**Pre-Adjudicatory Issues.** Similarly, Juvenile Rule 22(D) lists the issues that must be heard before the adjudicatory hearing. Two more pre-adjudicatory hearings should be listed: the SYO eligibility hearing and the competency to be adjudicated delinquent hearing (when the issue is raised before adjudication).

**Juries, Etc.** Juvenile Rule 27(A) states that all cases involving juveniles must be heard without a jury and separate from the trial of cases against adults. SYOs should be excluded from these general provisions.

**Timing.** Currently, under Juvenile Rule 29(A), an adjudicatory hearing must be set to begin not later than 10 days after the day the complaint is filed. The period

should be extended to 30 days for prosecutors to file a notice of intent to pursue an SYO disposition.

**Dismissals.** Under Juvenile Rule 29(F)(2)(d), if allegations are proved in juvenile court, the court may dismiss the complaint if doing so would be in the best interests of the community. The rule should be amended to exclude SYOs from this dismissal option.

#### **96No Contest Pleas**

Juvenile Rule 29(C) permits only "admissions" or "denials" as pleas in juvenile court. The Commission suggests amending Juvenile Rule 29(C) to permit "no contest" pleas in JTO and non-traffic cases. This would bring the rule in line with Criminal Rule 11. It would allow juveniles to appeal a lost motion to suppress evidence after a plea. As in Criminal Rule 11 for adults, the plea would be subject to the consent of the juvenile court.

#### **97Violations Bureaus for Certain JTOs**

The Court should consider amending Traffic Rule 13, or another appropriate rule, to allow traffic violations bureaus in juvenile courts for first time, minor misdemeanor level violations. This would allow some JTOs to pay tickets without a court appearance.

#### **98Juvenile Rules Should Govern JTO Cases**

There is confusion about whether the Traffic Rules or the Juvenile Rules apply to JTO cases. The General Assembly should ask the Supreme Court to end the confusion and put all juvenile cases under the Juvenile Rules. The Commission suggests amending Traffic Rule 2 to delete "juvenile court" from the definition of "court". This would make the Traffic Rules inapplicable to juvenile courts (under Traf.R. 1(A)).

## 15 RESOURCES AND FUNDING ISSUES

The Commission studied the current costs of various dispositions and analyzed the cost and budget implications of the proposals in this report.

### 19 COSTS OF VARIOUS JUVENILE DISPOSITION OPTIONS

Here are the estimated costs of various juvenile disposition options. The source for most of the information is DYS. The Department's fiscal office monitors the cost of programs under its direct operation, including local programs that the State supports through various subsidies. ("RECLAIM Ohio" funding will be examined later in this report.)

On the next page, there is a table showing FY 1997 estimated daily costs of various options available to judges as dispositions and DYS as aftercare or parole. The following text explains how each estimate was derived.

#### 99 How the Estimates Were Derived

**DYS Facilities.** DYS operates State facilities for juvenile delinquents. During FY 1997 (which ended June 30, 1997), the State General Revenue Fund (GRF) spent \$94,661,029 to operate 10 facilities. During that time, there was an average daily system population of 2,031 (not including private facilities or community corrections facilities) for an estimated 741,315 bed-days<sup>1</sup> served. The average cost per day is the total amount spent (\$94,661,029) divided by the total bed-days (741,315) or \$127.69 per day. Adding the \$1.57 per day for administering RECLAIM Ohio (see below), brings the cost to \$129.26.

The figure includes startup costs for the Ohio River Valley Facility in Scioto County, which was not fully operating for the entire year, and the Central Medical Facility.

### ESTIMATED DAILY COSTS OF VARIOUS OPTIONS

OPTION

COST PER DAY

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<sup>1</sup> A "bed-day" is one juvenile serving one day in a facility. One juvenile serving a year would be 365 bed-days. A facility with an average daily population of 200 would have 73,000 bed-days in one year (200 x 365).

<b>DYS Facilities</b>	
Facility Operation (GRF)	\$129.26
Non-GRF (Education)	\$19.84
Debt Service	\$24.48
Central Office	\$8.39
Total DYS Facilities	\$181.97
<b>Private Facilities</b>	
Operating	\$119.46
Operating + Central Office	\$127.85
<b>Community Corrections Facilities</b>	
Operating	\$109.69
Debt Service	\$28.49
Central Office	\$8.39
Total CCFs	\$146.57
<b>Local Detention Centers</b>	\$85.74
<b>Rehabilitation and Treatment Centers</b>	\$104.88
<b>State Prisons</b>	
Operating	\$42.48
Operating + Debt Service	\$49.63
<b>Aftercare</b>	
Operating GRF	\$13.95
Operating Non GRF	\$1.75
Contracted Services	\$4.97
Central Office	\$8.39
Total	\$29.06
<b>Community Based Options Programs</b>	
Operating	\$140.14
Operating + Central Office	\$148.53

In addition, DYS receives funding from various non-GRF sources. The largest of those are the Federal government and the Ohio Department of Education. As a custody holder for children, DYS receives Federal Title IV E money. Non-GRF spending amounts to \$14,707,867, or \$19.84 per bed-day. A great deal of this cost would be borne by the local school district if the juvenile were in the community.

**RECLAIM Administration.** In addition to State facility operating costs, there is the cost of operating RECLAIM Ohio and related programs. "RECLAIM" stands for Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors. It began statewide in 1995. It is designed to give juvenile courts funds to develop community based programs for juveniles in their courts. At the same time, it is designed to provide a fiscal incentive to

judges to reduce the DYS population. Each court is allocated an amount based on the amount available and its number of felony level adjudications. Each time the court sends a youth to DYS, the allocation is reduced. The remaining money is kept by the county for local programs.

RECLAIM costs are tracked separately from DYS's other central office costs. During FY 1997, DYS spent \$1,332,067 to oversee an average daily population (counting DYS facilities, Community Correction Facilities, and delinquents in private facilities) of 2,319 juveniles (846,435 bed-days). This amounts to an additional \$1.57 per day. The \$1.57 has been added to the per diem operating costs of the DYS facilities, private facilities, and CCFs.

**Construction Costs and Debt Service.** In January, 1997, DYS opened the Ohio River Valley Youth Center. This facility is budgeted for an average daily population of 200. The design and construction cost of the facility was \$18,216,231, or \$91,081 per bed. The money came from bonds issued by the Ohio Building Authority. Assuming bonds were issued for 20 years at 7.5%, the total amount for debt service over those 20 years would be \$8,934 per year, or \$24.48 per day.

A new facility nears completion near Marion. It costs about \$133,000 per bed. (See DYS Construction Costs, below for more on the Marion facility.)

**DYS Central Office.** During FY 1997, DYS spent \$15,024,098 operating its central office. If the entire cost were spread over the 741,315 bed-days it would be \$18.56 per day. This overstates the cost because central office work includes overseeing delinquents supervised in the community. Adding the youth in Paint Creek Youth Center, those in CCFs, and those under supervision by the Division of Parole Operations, there was an average of 4,907 youth under DYS supervision during FY 1997 (1,791,055 supervision days). The total central office cost divided by the total number of juveniles under supervision works out to \$8.39 per day.

**Private Facilities.** During FY 1997, DYS contracted with three facilities on a per bed-day basis. Due to a declining population level, only one facility was still under contract in FY 1998. DYS paid \$3,268,386 for 27,725 bed-days for an average of \$117.89 per day. Adding the \$1.57 per day for administering RECLAIM Ohio, brings the cost to \$119.46.

**Marginal Cost.** A DYS study put the marginal cost of putting one additional delinquent in a State facility at \$17.19 per day, including the cost of food, medical services, clothing, laundry, inmate postage, maintenance, and utilities. Marginal cost is important for this analysis, because unless enough delinquents are diverted from DYS to close an institution, the average cost is an inappropriate measure to use in estimating savings. Likewise, if the number of offenders added to DYS under this plan does not necessitate new construction, the additional cost to taxpayers is closer to the marginal cost than to the average cost.

The \$17.19 represents the cost for one additional juvenile (or the savings for the reduction of one juvenile). As the number of juveniles added or diverted increases, the greater the cost per day. For example, after adding a few additional juveniles, DYS would have to hire additional staff, raising the marginal cost. If enough juveniles were added to the system, DYS would have to build a new facility, which raises the marginal cost to more than even the average cost.

**Community Correction Facilities.** Community correction facilities (CCFs) are organized along the lines of the community based correctional facilities (CBCFs) in the adult felony world. CCFs are State built, State funded, and locally operated facilities that house delinquents who, in theory, otherwise would be DYS bound. DYS spent \$8,800,594 on these facilities during FY 1997 via the 470-403 CCF line item in the State budget. Half of the cost of sending an offender to a CCF is credited against that county's RECLAIM Ohio account. The total average daily population of the CCFs was 223, so the average annual cost was \$39,465 or \$108.12 per day. The \$1.57 per day for administering RECLAIM Ohio, brings the cost to \$109.69.

To estimate CCF capital cost, six facilities constructed within the past five years were examined. CCF capacity totaled 224 beds, and cost \$23.75 million (\$106,027 per bed) to build. Assuming 20 year bonds, at 7.5%, the debt service per bed-day would be \$28.49.

**Local Detention Centers.** There are 35 local detention centers with a capacity of 1,199 around Ohio. During FY 1997, they received \$5,483,052 (\$12.53 per bed-day) in State money (out of the 470-502 County Youth Facility Maintenance line item in the State budget) to subsidize their operation. By formula, most centers received exactly

\$156,928. The remainder of their funding is picked up by the counties.

To get an estimate of how much detention centers cost per day (both State and local share), Commission staff looked at five facilities, which together budgeted \$3,567,453 for a year for 114 beds (41,610 bed-days). Assuming the facilities were full and the expenditures matched the budget, the average cost is \$85.74 per day, of which on average 14.6% is reimbursed by the State.

**Rehabilitation and Treatment Centers.** These residential facilities are locally run, but receive a State subsidy to operate. In FY 1997, the State reimbursed counties \$2,437,549 (out of the 470-502 County Youth Facility Maintenance line item in the State budget) toward the operation of these facilities. There are 530 beds statewide. The State subsidy works out to \$12.60 per day.

Looking at the budgets for three of the facilities (totaling 60 beds, and \$2,296,976 annual operating cost) gives an estimated per day cost of \$104.88, of which the State reimburses about 12%.

**State Prisons.** Many bound over juveniles end up in State prisons. Prisons on average cost \$42.48 per day, (including prisons themselves, DRC's central office, and the correctional training academy). Debt service for a new prison adds \$7.15 per day, bringing the total to \$49.63 per day. The marginal cost of one additional inmate at State prison is \$11.03 per day.

Presumably the average bound over juvenile offender would be more expensive because of the separation rules and education requirements. Once a juvenile reaches age 18, he or she is moved into the general population.

**Aftercare Supervision.** DYS has seven regional offices which supervise juveniles after release from DYS facilities. The average daily population of juveniles under DYS community supervision during FY 1997 was 2,541, or about 927,465 supervision days over a year. The division's GRF operating cost (for parole officers, and associated support) was \$12,935,522, for a cost of \$13.95 per day. In addition, there was related non-GRF spending of \$1.75 per day.

**Community Sanctions.** DYS's Division of Parole Operations contracts with various operators for community sanctions such as group homes, electronic monitoring, day reporting,

and drug testing. The slots are used as aftercare for juveniles coming out of State facilities. In FY 1997, the Department entered contracts with GRF money for \$4,606,591 worth of aftercare services. This works out to \$4.97 per day when divided by all juveniles under aftercare supervision.

Adding the \$13.95 Operating Cost, \$4.97 for Contractual costs, \$1.75 for non GRF costs, and \$8.39 for Central Office, brings the total average per diem for a juvenile on aftercare to \$29.06.

**Community Based Options Program.** DYS operates the Community Based Options Program (CBOP) for high risk juveniles as they come out of DYS facilities. They contract with non-profit agencies to place the juveniles. DYS spent \$2,404,034 during FY 1997 on 17,155 bed-days in these facilities for a total of \$140.14 per day. Add the \$8.39 for Central Office, and the total is \$148.53.

**Other Community Sanctions.** DYS also contracts for various other programs as part of aftercare. They include day treatment (\$45 per hour), electronic monitoring (\$7.00 per day), group homes (\$60.67 per day), and drug testing (\$33.74 per test).

**Youth Services Subsidy.** This State subsidy is given to juvenile courts for various purposes, including prevention programs (such as DARE) and programs for unrulies and misdemeanor delinquents. Each county gets \$50,000, with the remainder distributed based on county population. The cost of these subsidies totaled \$19,957,408 in FY 1997.

## 20POPULATION PROJECTIONS

This section estimates the impact of the proposals in this report on the DYS population.

### 100Serious Youthful Offenders

One of the things that has been difficult to estimate is the number of juveniles who would be sentenced as Serious Youthful Offenders, and thus have a blended sentence.

The number of SYOs has implications for the expected number of jury trials, the amount of additional supervision required in the community, and the number of transfers to DRC when the adult portion of the sentence is invoked.

The Commission staff estimates (based on current delinquent adjudications) that 4,118 juveniles annually would be eligible SYOs. However, relatively few of those are likely to actually be sentenced as SYOs. Based on a review by the Montgomery County Prosecutor's Office of 186 eligible juveniles charged between January and June of 1999, the office would charge 20 (10.75%) as SYOs. Applying that percentage to the estimated number of eligible juveniles statewide (4,118) indicates that about 443 juveniles will be charged as SYOs.

Under current law, many of these juveniles already go to DYS. Some also receive a community sanction. The Commission estimates that SYO charged delinquents would go to DYS at about the same rate as they do now. However, under the plan, there would be SYOs going to DYS who currently are bound over to adult court and sentenced to prison.

### **101DYS Population**

Using data provided by DYS, and a series of assumptions, the Commission staff estimates that the proposal would increase the DYS population by 292 beds, from a baseline estimate of 1,943 to an estimated 2,235.

The basic formula for projecting any institutional population is intake (called "admissions" in DYS) multiplied by time served (called "length of stay"). In order to project the impact of the proposed recommendations, the Commission staff compared admissions and length of stay for an intake cohort under current law and under our proposal.

### **102The Boring Details**

First, the Commission staff calculated a baseline estimate of what would happen if there were no changes in law. The model uses juveniles admitted during FY 1997, and the length of stay of those released from DYS institutions in FY 1998 to get a baseline estimate of 1,943. Again, this is the estimate of what would happen if there were no change in law. This number is higher than the current DYS population, which is between 1,850 and 1,900. There is a great deal of seasonal variation in DYS' population, so there will be times of the year when the population is lower than the baseline. 1,943 represents the average daily population.

Then, to generate the expected population under the proposal, the estimated intake and length of stay are

adjusted based on assumptions on how the new law will work, and then multiplied to get the expected population. The difference between the baseline projection and the proposal projection is the estimated impact.

### **103 Assumptions**

The accuracy of any projection turns on making accurate assumptions about how the law will be implemented. Here are some of the assumptions on which the estimates are based. These assumptions were applied to current data on admissions and length of stay. They can be adjusted.

1. **Release Decisions** - Judges (who would have much broader authority over the length of time served in DYS under the proposal) would let juveniles out at the same time as the DYS paroling authority would under current law. In other words, judges would delay release decisions over serious offenders until a time similar to the offenders' parole dates under present law, on average. Obviously, some serious offenders would be held longer. Others would come out earlier. Other than additional time for some juveniles serving beyond age 21 (see assumption 2), and the gun specification (assumption 6), the average length of stay in DYS facilities would remain the same as under current law.

2. **EJJs** - Juveniles serving an Extended Juvenile Jurisdiction term (including those who are Serious Youthful Offenders), who currently get out of DYS at age 21 would serve, on average, an additional year under the proposal.

3. **Transfers (Bindovers)** - There would be 131 fewer bindovers to adult court. This estimate assumes that the following categories of juveniles who are transferred under current law would not be transferred under the proposal (there is some double counting here, so the detail does not add up to the total):

**Non-Enhanced Juveniles.** These are the juveniles who are currently bound over, but have not been accused of an offense of violence, using a firearm, or have not spent time in DYS for a prior F-1, F-2, or F-3 offense of violence. There were 92 bindovers in this category. This would include 15 non-enhanced F-5's, who would not be eligible for bindover under the proposal.

**Transfers Not Sent to DRC.** These are juveniles who are bound over, but for some reason did not end up in DRC. There were 65 of these (some of whom are also included

in the non-enhanced category above).

The estimate assumes that all 124 juveniles that would no longer be transferred would go to DYS and would serve an average length of stay for their particular category.

4. **DYS Disposition Decisions** - The staff assumes that the percentage of felony level delinquents that judges send to DYS would stay the same (about 17.2%). The bindovers from assumption 3 would be added to these.

5. **10 and 11 Year Olds** - The estimate assumes that 10 and 11 year olds would go to DYS in the same proportion as 12 year olds do currently. A total of five 11 year olds and two 10 year olds would be admitted to DYS annually.

6. **Gun Specifications** - Gun specs would be applied at the same rate as in current DYS admissions: 1.7% of intake would have the one year gun spec (with an assumed average length of 9 months) and 2.3% of intake would have the 3 year gun spec (with an assumed average length of 24 months).

7. **SYO Switches** - The Commission staff projection assumes that no juveniles who come into DYS with a SYO disposition will be transferred by the juvenile court to the DRC due to significant misbehavior at DYS. This is not because the switch mechanism will never be invoked. It will be used by DYS in the worst cases, which will be rare. Since it probably does not have great statistical impact, it was not built into the model. However, when invoked, it will reduce the number of DYS beds needed.

By how many? An informal survey of facility superintendents done by DYS estimates that there are around 92 to 102 juveniles who are committing serious rule violations in DYS facilities, who the superintendents would like to transfer. If we assume half of them would be serving an SYO disposition, that half again would be approved for a transfer recommendation by DYS's central office, and that judges would transfer all the juveniles recommended by DYS, then there would be about 25 to 30 transfers per year. Assuming that each would serve about half of the 12.7 months that SYOs serve on average, that would reduce the number of additional DYS beds needed by 13 to 15.

#### **104DYS Facilities and Capacity**

In 1997, DYS operated a system with a rated capacity of 1,531. As the population declined, DYS stopped using a couple specialized private facilities, reducing the Department's rated capacity by 37 beds to 1,494.

Soon, DYS will open a new facility at Marion, with a rated capacity of 240, although they anticipate managing it at 300 beds. Also, DYS is planning to close TICO in Columbus, which has a current rated capacity of 98 beds (about half of TICO has already closed). This would leave the system with a rated capacity of 1,636.

The Commission staff baseline projection of 1,943 is 130.1% of current rated capacity.

This table shows DYS's capacity by facility:

#### **DYS CAPACITY BY FACILITY**

**Institutions**

Circleville Youth Center	144
Cuyahoga Hills Boys School	200
Indian River School	192
Maumee Youth Center	120
Mohican Youth Center	120
Ohio River Valley Center	144
Riverview Juvenile Correctional Center	144
Scioto Juvenile Correctional Center	192
Central Medical Facility	12
Training Institute Central Ohio	98

**Specialized Program Facilities**

Independence Hall	25
Opportunity Center	42
LYC - Paint Creek	<u>30</u>
<b>Total Current Rated Capacity</b>	<b>1,494</b>
Marion (Opening Soon)	240
TICO (Closing Soon)	<u>(98)</u>
<b>Total Planned Rated Capacity</b>	<b>1,636</b>

## **21 FUNDING RECOMMENDATIONS**

Here are funding recommendations associated with this plan. It addresses the direct impact of the proposal on State and local government. It also includes some analysis of related issues that are not direct costs of the proposal.

### **105A Word About Capacity**

Much of this analysis relies on the notion of "rated capacity" which can mean different things. For example, the new facility at Marion has a rated capacity of 240. Yet, the intention is to hold 300 juveniles there. So its operating capacity is actually 125% of its rated capacity.

The point is that rated capacity is only one way to look at the ability of a system to hold people. To further illustrate this, in 1992, DYS held 2,216 juveniles on an average day. This is not much lower than the 2,235 population that the Commission staff estimate under the proposal. It is at least theoretically possible for DYS to hold all of the additional juveniles that this proposal would generate in existing or planned facilities.

On the other hand, with a record population in 1992, DYS considered conditions dangerously crowded, and took many dramatic steps (with legislative approval) to alleviate the situation, including: establishing RECLAIM, developing CCFs, expanding funding for other community programs, and closing old institutions. DYS contends that adding 292 juveniles to the current system would mean a return to unfit conditions.

### **106DYS Construction Costs**

How much do DYS beds cost to build? DYS's Ohio River Valley Youth Center which opened in January, 1997, cost \$18,216,231 for 200 beds, or \$91,081 per bed. The more recent, more highly secure youth center at Marion (currently under construction) will cost just over \$32 million for 240 beds, or about \$133,000 per bed. DYS estimates that if built today, the Marion facility would cost \$35 million, or almost \$146,000 per bed. The Department recently put estimates for new facilities at as much as \$50 million.

### **107How Many Can Fit into These Facilities?**

The ultimate cost of this proposal to the DYS budget depends on how many juveniles can be safely held in these facilities. Commission members differ on this subject.

98 beds are currently open at TICO, but scheduled to close. If those 98 beds were operated at capacity, DYS would only have to house an additional 129 juveniles (in a facility with a rated capacity of 108) at a cost of \$14.4 million.

**Approach #1** - In the relatively recent past, DYS has held as many offenders as proposed here. Arguably, DYS could hold all 292 estimated additional juveniles in existing or planned facilities. If so, there is no need for additional capital construction.

**Approach #2** - The Commission's Resources Subcommittee recommended that DYS operate its facilities at 120% of rated capacity. That would be 2,008 juveniles in existing facilities, or 65 juveniles more than the baseline estimate.

Those 65 juveniles could presumably be absorbed into the existing DYS system, at only a marginal additional cost, bringing DYS' operation to 120% of 1997 rated capacity. This leaves the capital need to house 227 additional juveniles, which at 120% of rated capacity means 189 beds.

Assuming a 189 bed facility (to house 227 additional juveniles not absorbed into the current plan) at \$133,000 per bed, the cost would be just over \$25.1 million. Annual debt service, assuming a 7.5% interest rate and 20 year term would be about \$2.12 million.

**Approach #3** - DYS differs with Approaches 1 and 2. Its contention is that current capacity was designed with the existing system in mind. The goal of building Marion and closing TICO was to solve existing problems, not to build for future growth.

With that in mind, the Department argues that additional juveniles in the system should be covered by new resources. Here is how it would work under the Commission staff projections (keeping in mind that DYS is doing its own cost projection, which is likely to be more expensive than this):

A baseline population of 1,943 in a system designed for 1,673 (in 1997) would operate at 116.1% of capacity. 292 additional beds, at 116.1% of capacity would require a facility of about 250 beds.

At \$133,000 per bed, a 250 bed facility would cost \$33.25 million, and require debt service of \$3.26 million per year for 20 years in today's dollars. Assuming three to four years until the facility is built, the cost could be higher. Assuming 3% inflation, and a four year timetable, the total cost would be \$37.4 million or \$3.67 million in

annual debt service (again, assuming 20 years, at 7.5% interest).

### **108RECLAIM Ohio Issues**

RECLAIM Ohio is the mechanism through which much of the DYS operating budget is funded. The current biennial budget appropriates just over \$148 million for RECLAIM (line item 470-410 in the DYS budget) for FY 2000.

In theory, this money represents the cost of housing 25% of the State's felony level delinquency adjudications in State facilities. After some money is held back by DYS for administration, public safety beds, contingencies, cash flow, etc., the money is allocated to counties for local corrections programs. Whenever a judge sends an eligible juvenile to DYS, 75% of the stated cost of that juvenile is counted against the county's allocation.

### **109Distribution**

In FY 1999, here is how the RECLAIM money was allocated:

Held by DYS	\$55,523,521
Allocated to Counties	<u>\$80,546,106</u>
Total Appropriation	\$136,069,627

Of the money allocated to counties:

Charged Back to DYS	\$55,457,471
Distributed to Counties	<u>\$25,088,635</u>
Total Allocated to Counties	\$80,546,106

### **110Public Safety Beds**

Currently, there are about 363 juveniles in DYS (about 20% of the population) that fit the definition of public safety beds. They are adjudicated delinquent for:

Aggravated Murder	Rape
Attempted Agg. Murder	Voluntary Manslaughter
Murder	Involuntary Manslaughter (F-1)
Attempted Murder	Aggravated Arson
Kidnapping	Certain 3 Year Gun Specs

Also, a juvenile with a continuance granted by the DYS releasing authority for disciplinary purposes is considered a public safety bed.

Public safety beds are funded off the top of the RECLAIM pot. Therefore, increasing the number of public safety beds reduces the amount of money allocated to counties.

The Commission recommends that any juvenile who is both F-1 (or higher) and eligible to be a Serious Youthful Offender should be a public safety bed. This would mean 562 public safety beds under our projections (173 more than now).

These 173 beds would cause an additional \$8.40 million to be held by DYS (assuming \$133 per day), and therefore not distributed to counties. The remaining 119 beds (our original 292 minus the 173 additional public safety beds) would come out of the money allocated to counties, reducing the amount available for local programs.

### **111 Increase the RECLAIM Pot**

How can the total number of public safety beds be increased, without reducing the amount distributed to counties and watering down incentives built into the system?

Under approach #1, where the additional juveniles would be housed in existing and planned facilities, the amount added to the RECLAIM pool would be the number of juveniles times the marginal cost of each juvenile (about \$17/day). This works out to just under \$1.9 million. In order to make this work, the RECLAIM formula would have to be adjusted to take into account a lower per day cost to house juveniles.

The Commission is recommending an increase in the total amount in the pool available for use in RECLAIM. How much would it take? Assuming the 292 additional beds that we are estimating DYS will need, at \$133 per day, it would take just under \$14.2 million. An appropriation increase of that magnitude would allow DYS to cover the additional public safety beds, the extra beds generated by the Commission's proposal, and keep county distributions at least at current levels. Here is how the Commission staff estimates that the money would be allocated (using FY 1999 as a baseline):

Held by DYS	\$63.9 million
Allocated to Counties	<u>\$86.3 million</u>
Total Appropriation	\$150.2 million

Here is the breakdown of the counties' \$86.3 million:

Charged Back to DYS	\$58.8 million
Distributed to Counties	\$27.5 million

DYS institutions get some of their operating budgets from sources other than RECLAIM. Some of these appropriations would have to be adjusted. For example, they get money from the Ohio Department of Education to cover the cost of their educational efforts. They get some federal children services money and school lunch money. And the central office costs and debt service are funded outside of RECLAIM.

#### **112DYS Estimates Differ**

DYS projects a different impact of the plan. They estimate an increase in the DYS population of 391, from a baseline of 2,221 to 2,612. As with the Commission staff estimates, the bulk of the additional bed-years come from juveniles who would no longer be transferred under the plan.

Beyond that, DYS is concerned about the impact of extended jurisdiction on the overall population. The issue is housing juveniles who are over age 21 (and the potential for them mixing with younger juveniles).

In addition, DYS points out the uncertainty associated with the change in the periods of court control under the proposal. The expanded ranges of both extended and traditional jurisdiction give judges much more control over how long a juvenile spends in DYS. Without the pressures of institutional management, DYS argues, judges will hold the average juvenile longer than now. It does not take much of a difference in average length of stay to skew the population dramatically. For example, DYS says, a one month change in average length of stay would mean a population increase of 196. This would be above the increase from those no longer required to be bound over.

DYS also differs regarding implementation strategies. DYS advocates construction of new facilities to cover all of the projected additional youths, with the goal of working toward keeping the population below the system's rated capacity.

DYS estimates that construction of a facility large enough to handle the additional 400 juveniles would cost \$50 million, with an annual debt service of \$6.5 million.

As for RECLAIM, DYS recommends funding all of the expected additional juvenile adjudications (who would no longer be transferred) plus an additional amount. DYS contends the added amount would be needed because those no longer

transferred are disproportionately from large counties, while the additional money would be proportionately distributed across all counties.

With all this in mind, DYS has suggested removing extended juvenile jurisdiction ranges from the Commission's proposal.

### **1130 Other Operating Cost Related Issues**

There are other cost related issues in this proposal. Some are a direct result of the plan (e.g., reduced costs to DRC because of fewer bindovers or increased costs for a facility for violent juveniles found incompetent). Others are not a direct result of the Commission's recommendations, but could logically be included as part of the funding package if there is interest in the General Assembly (e.g., the need for additional local detention beds).

**Parole** - Currently, each juvenile is supervised based on the level of risk. Also, generally, each is supervised at least until the end of the "minimum" sentence (the period of court control under the plan). The average time is about 10.4 months. If 131 additional juveniles sent to DYS would serve an average of 10.4 months under supervision, the additional cost (at \$21.67 per day, which includes various treatment services) would be just under \$886,000.

Also, the Commission staff estimates assume that juveniles with an SYO disposition would be supervised on average five months longer than they are currently. The additional cost of supervising these juveniles would be an estimated \$13.95 per day (which does not include additional treatment costs, because they would have already been incurred for these juveniles) for a total of \$927,000. Added to the \$886,000 to supervise those no longer bound over, the additional parole supervision cost would be \$1.81 million.

However, given that some additional juveniles could be absorbed into existing caseloads, that there would be minimal overhead expansion, and that longer terms of supervision have lower per diem costs at the end of the supervision period, the cost to the juvenile parole system could be considerably less.

**DRC Costs** - Given the fact that an estimated 124 juveniles would no longer be bound over to the adult system annually, one would expect a decrease in DRC's population under this

proposal. Assuming the 124 would have served 24 months on average at DRC, the decrease would be 248 inmate-years.

However, that number would be offset somewhat by juveniles who have SYO adult sentences invoked from DYS institutions and from the community.

So, with the 248 inmate-year decline due to fewer transfers, and the increases due to SYO switches of an estimated 116 inmate-years, the net would be 132 fewer inmate-years served at DRC. At a marginal cost of \$10.55 per day, 132 fewer inmate-years would result in a DRC operating cost decrease of about \$508,000.

**Facility for Those Found Incompetent** - The Commission would like to see a facility available to house juveniles who are found incompetent (and therefore ineligible to go to DYS), but who are dangerous to the community. There are currently no slots available in Ohio's mental health or MR/DD system for these juveniles.

There are many administrative issues to solve before arriving at a firm cost. Should there be one new facility, or several around the State attached to existing facilities? Which entity should run it? Is there a current facility that can be converted for this function? Those questions will be answered in part by how the competency statute comes out of the General Assembly.

The Commission will continue to work with the Departments of Mental Health, MR/DD, DYS, and Human Services, and others, on implementing this proposal.

**Other Competency Cost Issues** - There is a concern among children protective services organizations and advocates that the recommended competency statute would put more, expensive, children into the children services system. The view of the Commission's Competency Committee is that the vast majority of the incompetent children under this proposal who do not need secure placement, would receive similar services from some part of the social services system now, and that the additional cost to the system would be nominal. However, there is a concern that by making a competency procedure available, judges will invoke the dependency system for incompetent children who otherwise would be returned to the family.

**Detention Beds** - Under the Commission's plan, there is the possibility of misdemeanor level delinquents ending up in detention centers for up to 60 days. It is unclear how

often judges would use this option. And since detention centers have relatively fixed capacities, the question is not how many additional beds are needed, but who belongs in the scarce beds that are available.

The Commission's proposal to allow direct placement of misdemeanor level delinquents in detention centers was not necessarily a call for making additional detention beds available. Rather it was a statement about how a local system could choose to use its available beds.

The recommendation is designed to allow local communities to decide who best belongs in their existing facilities, with minimal interference from State law. While additional detention beds could improve the juvenile system, the need is not directly attributable to this proposal.

Nevertheless, the Commission recommends that the General Assembly recognize the general pressures on detention space and provide a capital appropriation for additional beds.

**Jury Trials** - One of the most talked about costs associated with the Commission's proposal is jury trials for juveniles facing a serious youthful offender disposition.

Assuming 3.5% (the percent of adult felonies that end in a jury trial) of the estimated number of SYO (443) cases get resolved by jury trial, there would be an estimated 16 jury trials. At \$1,434 dollars per trial (the estimated cost to the court system, not including prosecution and public defense), the total court operating cost statewide would be \$22,944.



# 16 JUVENILE DISPOSITIONS DRAFT

## 17§2151.01 CONSTRUCTION AND PURPOSES OF CHAPTER 2151

The sections in Chapter 2151. of the Revised Code, with the exception of those sections providing for the criminal prosecution of adults, shall be liberally construed so as to effectuate the following purposes:

(A) **Purposes** To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code;

~~(B) 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;~~

~~(C) To achieve the foregoing purposes, whenever possible, in a family environment, separating the child from its THE CHILD'S parents only when necessary for his THE CHILD'S welfare or in the interests of public safety;~~

~~(D)~~ **Procedures** To provide judicial procedures through which Chapter CHAPTERS 2151. AND 2152. of the Revised Code is ARE executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.

## 18§2151.011 DEFINITIONS

\* \* \*

(B) As used in the Revised Code:

\* \* \*

~~(6)(a)~~ "Child" means a person who is under eighteen years of age, except as otherwise provided in divisions ~~(B)(6)(b) through (f)~~ of this section DIVISION. ~~(b)~~ Subject to division ~~(B)(6)(c)~~ of this section, any ANY person who violates a federal or state law or municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of that person's age at the time the complaint is filed or the hearing on the complaint is held. [This saves jurisdiction over status offenders brought to court after their 18<sup>th</sup> birthday for earlier acts. Strike the rest of (b) and all of (c) - (f). The stricken exceptions deal with delinquencies and bindovers. As such, they move—as amended—to new §2152.02.]

## 19§2151.022 "UNRULY CHILD" DEFINED

As used in this chapter, "unruly child" includes any of the following:

(A) Any child who does not ~~subject himself or herself~~ SUBMIT to the reasonable control of ~~his or her~~ THE CHILD'S parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;

(B) Any child who is an habitual truant from ~~home or~~ school;

(C) Any child who so ~~deports himself or herself~~ BEHAVES IN A MANNER as to injure or endanger ~~his or her~~ THE CHILD'S health or morals or the health or morals of others;

(D) Any child who ~~attempts to enter the marriage relation in any state without the consent of his or her parents, custodian, or legal guardian or other legal authority;~~

~~(E) Any child who is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons;~~

~~(F) Any child who engages in an occupation prohibited by law or is in a situation dangerous to life or limb or injurious to his or her health or morals or the health or morals of others;~~

~~(G) Any child who violates a law, other than division (A) of section 2923.211 of the Revised Code [underage weapons violations], that is applicable only to a child.~~

**20§2151.07 JUVENILE COURT—CREATION AND POWERS**

**21§2151.08 HAMILTON COUNTY JUVENILE COURT**

**22§2151.12 CERTAIN JUDGES AS CLERKS**

[These sections would be amended to make clear that they refer to both Chapter 2151 and new Chapter 2152. No further changes.]

**23§2151.14 JUVENILE PROBATION OFFICERS**

[Amend to change “probation” to “community control” and to refer to dispositions under Ch. 2152.]

**24§2151.23 JUVENILE COURT JURISDICTION**

[Amend to make clear juvenile court has extended jurisdiction until age 25 in certain cases under proposed §2152.11 & 2152.15. Make other technical changes.]

**25§2151.24 SEPARATE ROOM FOR JUVENILE HEARINGS**

The board of county commissioners shall provide a special room not used for the trial of criminal or adult cases, when available, for the hearing of the cases of dependent, neglected, abused, and delinquent children, EXCEPT WHEN THE CASE AGAINST AN ALLEGED DELINQUENT CHILD IS PROSECUTED AS A SERIOUS YOUTHFUL OFFENDER UNDER SECTION 2152.13 OF THE REVISED CODE.

**26§2151.27 COMPLAINT**

[This section could remain substantially the same in Ch. 2151. However, the parts that relate to delinquency and JTO cases, would become §2152.021.]

**27§2151.35 HEARING SETTING**

[Generally allows juvenile courts to proceed informally and requires proceedings separate from adult cases. Amend to except SYO cases, since they involve adult-like processes.]

**28§2151.354 UNRULY DISPOSITIONS**

[These disposition would remain the same, except for the technical change described below.]

(A) If the child is adjudicated an unruly child, the court may:

\* \* \*

(2) Place the child on ~~probation under~~ COMMUNITY CONTROL, SUBJECT TO any SANCTIONS, SERVICES, AND conditions that the court prescribes, INCLUDING, BUT NOT LIMITED TO, THE CONDITIONS LISTED IN DIVISION (A)(3) OF SECTION 2152.19 OF THE REVISED CODE;

\* \* \*

[No further changes except to amend cross-references.]

**29§2151.36 CHILD SUPPORT**

[Amend to make clear the child support law covers commitments under both Chs. 2151 & 2152.]

**30§2141.411 PARENTAL LIABILITY FOR DELINQUENT CHILD**

[Amend to remove school notice. Partially merge into new §2152.61. Also, change “probation” to “community control” and update cross-reference to new chapter.]

**31§2151.48 COMMITTING FEMALES TO PRISON**

[Repeal. It allows juvenile courts to sentence adult females to prison for misdemeanor violations.]

**32§2151.51 50 CENT PER DIEM FOR CERTAIN DEPENDENT CHILDREN**

[Repeal. It allows the court to order the county to pay up to 50 cents per day to maintain a dependent child when the responsible adult is imprisoned under the chapter.]

**33§2151.65 COUNTY SCHOOLS, FORESTRY CAMPS, ETC.**

**34§2151.651 FUNDING FOR COUNTY SCHOOLS, FORESTRY CAMPS, ETC.**

**35§2151.652 FUNDS FOR COUNTY SCHOOLS, FORESTRY CAMPS, ETC.**

[Cross-references would be amended to reflect placing offenders in Ch. 2152.]

**NEW CHAPTER 2152**

[New chapter 2152 would cover juvenile delinquents and traffic offenders. Many concepts are new. And several sections would move from current Ch. 2151.]

**36§2152.01 PURPOSES IN JUVENILE OFFENDER CASES**

(A) **Purposes** THE OVERRIDING PURPOSES FOR DISPOSITIONS UNDER THIS CHAPTER SHALL BE 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.

(B) **Principles** 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 OFFENDER'S CONDUCT AND ITS IMPACT ON THE VICTIM, AND CONSISTENT WITH DISPOSITIONS FOR SIMILAR ACTS COMMITTED BY SIMILAR OFFENDERS. THE COURT SHALL NOT BASE THE DISPOSITION ON THE RACE, ETHNIC BACKGROUND, GENDER, OR RELIGION OF THE OFFENDER.

(C) **Relevance of Ch. 2151** TO THE EXTENT THEY DO NOT CONFLICT WITH THIS CHAPTER, THE PROVISIONS OF CHAPTER 2151. OF THE REVISED CODE APPLY TO PROCEEDINGS UNDER THIS CHAPTER.

**37§2152.02 DEFINITIONS**

[Supersedes parts of §§2151.011, 2151.02, & 2151.021. Mixed cases used to illustrate changes.]

AS USED IN THIS CHAPTER:

(A) “Act charged” means the act ~~that a child allegedly committed and~~ that is identified in a complaint alleging that ~~the A~~ child is a delinquent child ~~as the act that is the basis of the child being a delinquent child.~~ [Moves from §2151.26.]

(B) “ADMITTED TO A DEPARTMENT OF YOUTH SERVICES FACILITY” INCLUDES ADMISSION TO A FACILITY OPERATED, OR CONTRACTED FOR, BY THE DEPARTMENT AND ADMISSION TO A COMPARABLE FACILITY BY ANOTHER STATE OR THE UNITED STATES.

(C) [Supersedes §2151.011(B)(6).]

~~(a)(1)~~ **“Child”** means a person who is under eighteen years of age, except as otherwise provided in divisions ~~(C)(6)(b)(1)(2)~~ through ~~(B)(6)(f)(5)~~ of this section.

~~(b)(2)~~ Subject to division ~~(B)(6)(e)(2)~~ of this section, any person who violates a federal or state law or municipal ordinance prior to attaining eighteen years of age shall be deemed a “child” irrespective of that person’s age at the time the complaint is filed or the hearing on the complaint is held.

~~(e)(3)~~ Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, OR UNTIL AFTER THE PERSON ATTAINS TWENTY-FIVE YEARS OF AGE IF ELIGIBLE FOR EXTENDED JUVENILE JURISDICTION UNDER SECTION 2152.11 OF THE REVISED CODE, is not a child in relation to that act.

~~(d)(4)~~ Any person whose case is transferred for criminal prosecution pursuant to ~~division (B) or (C) of section 2151.26~~ 2152.12 of the Revised Code shall, after the transfer, be deemed not to be a child in the transferred case.

~~(e)(5)~~ ~~Subject to division (B)(6)(f) of this section,~~ any ANY person whose case is transferred for criminal prosecution pursuant to ~~division (B) or (C) of section 2151.26~~ 2152.12 of the Revised Code and who subsequently is convicted of or pleads guilty to a felony in that case shall, after the transfer, be deemed not to be a child in any case in which the person is alleged to have committed prior to or subsequent to the transfer an act that would be an offense if committed by an adult.

ONCE THE PERSON IS DEEMED NOT TO BE A CHILD, THE JUVENILE COURT SHALL, ON THE NEXT COURT DAY UPON VERIFICATION OF THE PRIOR TRANSFER FOR CRIMINAL PROSECUTION AND CONVICTION, TRANSFER TO THE APPROPRIATE COURT ANY OTHER CURRENT OR SUBSEQUENT FELONY OR MISDEMEANOR CHARGE BROUGHT AGAINST THE PERSON, REGARDLESS OF THE PERSON’S AGE.

~~Division (B)(6)(e) of this section~~ THIS DIVISION applies 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. ~~Division (B)(6)(e) of this section~~ THIS DIVISION applies to a case that involves an act committed prior to the transfer only when the prior act alleged in the case has not been disposed of by a juvenile court or trial court.

~~(f) — Notwithstanding division (B)(6)(e) of this section, if a person's case is transferred for criminal prosecution pursuant to division (B) or (C) of section 2151.26 of the Revised Code and if the person subsequently is convicted of or pleads guilty to a felony in that case, thereafter, the person shall be considered a child solely for the following purposes in relation to any act the person subsequently commits that would be an offense if committed by an adult:~~

~~(i) — For purposes of the filing of a complaint alleging that the child is a delinquent child for committing the act that would be an offense if committed by an adult;~~

~~(ii) — For purposes of the juvenile court conducting a hearing under division (B) of section 2151.26 of the Revised Code relative to the complaint described in division (B)(6)(f)(i) of this section to determine whether division (B)(1) of section 2151.26 of the Revised Code applies and requires that the case be transferred for criminal prosecution to the appropriate court having jurisdiction of the offense.~~

~~(D) “COMMUNITY CORRECTIONS FACILITY”, “PUBLIC SAFETY BEDS”, “RELEASE AUTHORITY”, AND “SUPERVISED RELEASE” HAVE THE SAME MEANINGS AS IN SECTION 5139.01 OF THE REVISED CODE.~~

~~(E) [Supersedes §2151.02] As used in this chapter, “delinquent “DELINQUENT child” means any of the following:~~

~~(A)(1) Any child who violates any law of this state or the United States, or any ordinance or regulation of a political subdivision of the state, that would be a crime if committed by an adult, except as provided in section 2151.021 of the Revised Code A JUVENILE TRAFFIC OFFENDER;~~

~~(B)(2) Any child who violates any lawful order of the court made under this chapter OR UNDER CHAPTER 2151. OF THE REVISED CODE;~~

~~(C) Any child who violates division (A) of section 2923.211 of the Revised Code [Underage weapons offenses];~~

~~(D) — Any child who violates division (A)(1) or (2) of section 3730.07 of the Revised Code [Repeals seeking or obtaining a tattoo or body piercing when under age 18; adult penalties would remain].~~

~~(F) “DISCRETIONARY EJJ” MEANS THAT A CASE IS ELIGIBLE FOR AN EXTENDED JUVENILE JURISDICTION DISPOSITION, IN THE COURT’S DISCRETION, UNDER SECTION 2152.15 OF THE REVISED CODE.~~

~~(G) “DISCRETIONARY SYO” MEANS THAT A CASE IS ELIGIBLE FOR A SERIOUS YOUTHFUL OFFENDER DISPOSITION, IN THE JUVENILE COURT’S DISCRETION, UNDER SECTION 2152.13 OF THE REVISED CODE.~~

~~(H) “DISCRETIONARY TRANSFER” MEANS THAT THE JUVENILE COURT HAS DISCRETION TO TRANSFER A CASE FOR CRIMINAL PROSECUTION UNDER DIVISION (C) OF SECTION 2152.12 OF THE REVISED CODE.~~

(I) "DRUG ABUSE OFFENSE", "FELONY DRUG ABUSE OFFENSE", AND "MINOR DRUG POSSESSION OFFENSE" HAVE THE SAME MEANINGS AS IN SECTION 2925.01 OF THE REVISED CODE.

(J) "ELECTRONIC MONITORING DEVICE", "CERTIFIED ELECTRONIC MONITORING DEVICE", "ELECTRONICALLY MONITORED HOUSE ARREST", "ELECTRONIC MONITORING SYSTEM", AND "CERTIFIED ELECTRONIC MONITORING SYSTEM" HAVE THE SAME MEANINGS AS IN SECTION 2929.23 OF THE REVISED CODE.

(K) "ECONOMIC LOSS" MEANS ANY ECONOMIC DETRIMENT SUFFERED BY A VICTIM OF A DELINQUENT ACT AS A RESULT OF THE DELINQUENT ACT AND INCLUDES ANY LOSS OF INCOME DUE TO LOST TIME AT WORK BECAUSE OF ANY INJURY CAUSED TO THE VICTIM AND ANY PROPERTY LOSS, MEDICAL COST, OR FUNERAL EXPENSE INCURRED AS A RESULT OF THE DELINQUENT ACT.

(L) AN ACT CHARGED IS "ENHANCED" IF ANY OF THE FACTORS DESCRIBED IN DIVISION (A)(1), (2), OR (3) OF SECTION 2152.11 OF THE REVISED CODE IS SPECIFIED IN THE COMPLAINT AND PROVEN.

(M) "Firearm" has the same meaning as in section 2923.11 of the Revised Code. [Moves from §2151.26.]

(N) [Supersedes §2151.021. No substantive changes.] A "JUVENILE TRAFFIC OFFENDER" MEANS ANY child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other than a resolution, ordinance, or regulation of a political subdivision of this state the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau pursuant to Chapter 4521. of the Revised Code, ~~shall be designated as a "juvenile traffic offender.~~

(O) "MANDATORY SYO" MEANS THAT A CASE IS REQUIRED TO HAVE A MANDATORY SERIOUS YOUTHFUL OFFENDER DISPOSITION UNDER SECTION 2152.13 OF THE REVISED CODE.

(P) "MANDATORY TRANSFER" MEANS THAT A CASE IS REQUIRED TO BE TRANSFERRED FOR CRIMINAL PROSECUTION UNDER DIVISION (A) OF SECTION 2152.12 OF THE REVISED CODE.

(Q) "MONITORED TIME" AND "REPEAT VIOLENT OFFENDER" HAVE THE SAME MEANING AS IN SECTION 2929.01 OF THE REVISED CODE.

(R) "OFFENSE OF VIOLENCE" HAS THE SAME MEANING AS IN SECTION 2901.01 OF THE REVISED CODE.

(S) "PRESUMED TRANSFER" MEANS THAT THERE IS A REBUTTABLE PRESUMPTION THAT A CASE SHOULD BE TRANSFERRED FOR CRIMINAL PROSECUTION UNDER DIVISION (B) OF SECTION 2152.12 OF THE REVISED CODE.

(T) "PUBLIC RECORD" HAS THE SAME MEANING AS IN SECTION 149.43 OF THE REVISED CODE.

(U) "SEXUALLY ORIENTED OFFENSE" HAS THE SAME MEANING AS IN SECTION 2950.01 OF THE REVISED CODE.

(V) "TRADITIONAL JUVENILE" MEANS THAT A CASE IS NOT ELIGIBLE FOR A DISPOSITION UNDER SECTION 2152.13 OR 2152.15 OF THE REVISED CODE.

(W) "TRANSFER" MEANS THE TRANSFER FOR CRIMINAL PROSECUTION OF A CASE, INVOLVING THE ALLEGED COMMISSION BY A CHILD OF AN ACT THAT WOULD BE AN OFFENSE IF COMMITTED BY AN ADULT, FROM THE JUVENILE COURT TO THE APPROPRIATE COURT THAT HAS JURISDICTION OVER THE OFFENSE.

### **38§2152.021 DELINQUENCY AND JTO COMPLAINTS**

[The law governing complaints in juvenile court would remain in §2151.27. Complaints for delinquency and JTO cases would move here. Two substantive changes: (1) The section recognizes that SYO cases can be brought by indictment (see §2152.13); (2) Rather than allow dual jurisdiction in both the county of residence and the county in which the alleged offense occurred, SYO cases should only be brought in the latter county.]

### **39§2152.03 TRANSFER TO JUVENILE COURT**

[Supersedes §2151.25. This section governs children arrested for felonies and misdemeanors. It would move to the new Chapter. Cross-references would change to the new bindover statute. No further changes.]

### **40§2152.04 DETENTION FOR EVALUATION**

**41**

[Supersedes 1<sup>st</sup> ¶ of §2151.34. Mixed cases are used to show changes] A child who is alleged to be or adjudicated a delinquent child may be confined in a place of juvenile detention PROVIDED UNDER SECTION 2152.41 OF THE REVISED CODE [general detention home law] for a period not to exceed ninety days, during which time a social history may be prepared to include court record, family history, personal history, school and attendance records, and any other pertinent studies and material that will be of assistance to the juvenile court in its disposition of the charges against that juvenile offender.

### **42§2152.11 ELIGIBILITY FOR VARIOUS FELONY DISPOSITIONS**

(A) **Enhancing Factors** THE POTENTIAL PENALTY MAY BE ENHANCED UNDER THIS SECTION, WHEN ONE OR MORE OF THESE FACTORS IS SPECIFIED IN THE COMPLAINT AND PROVEN:

- (1) THE ACT CHARGED IS AN OFFENSE OF VIOLENCE;
- (2) THE CHILD USED, DISPLAYED, BRANDISHED, OR OTHERWISE INDICATED A FIREARM DURING COMMISSION OF THE OFFENSE;
- (3) THE CHILD PREVIOUSLY WAS ADMITTED TO A DEPARTMENT OF YOUTH SERVICES FACILITY FOR A FIRST OR SECOND DEGREE FELONY OR FOR A THIRD DEGREE FELONY OFFENSE OF VIOLENCE.

(B) **Discretionary Transfers** EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY CHILD WHO IS AT LEAST FOURTEEN YEARS OF AGE, WHO IS CHARGED WITH ANY OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT, OTHER THAN A FELONY OF THE FIFTH DEGREE IN WHICH NO ENHANCING FACTOR IN DIVISION (A)(1), (2), OR (3) OF THIS SECTION IS SPECIFIED, IS ELIGIBLE FOR DISCRETIONARY TRANSFER TO THE APPROPRIATE COURT FOR CRIMINAL PROSECUTION.

**(C) Aggravated Murders & Murders** A CHILD ACCUSED OF, OR ADJUDICATED DELINQUENT FOR, COMMITTING AN ACT THAT WOULD BE AGGRAVATED MURDER OR MURDER IF COMMITTED BY AN ADULT IS ELIGIBLE FOR WHICHEVER OF THE FOLLOWING IS APPROPRIATE:

(1) MANDATORY TRANSFER, IF THE ACT WAS ACTUALLY OR ALLEGEDLY COMMITTED WHEN THE CHILD WAS SIXTEEN OR SEVENTEEN YEARS OF AGE;

(2) PRESUMED TRANSFER, IF THE ACT WAS ACTUALLY OR ALLEGEDLY COMMITTED WHEN THE CHILD WAS FOURTEEN OR FIFTEEN YEARS OF AGE, IF THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(2) OR (3) OF THIS SECTION.

(3) MANDATORY SYO, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS TEN THROUGH THIRTEEN YEARS OF AGE, IF THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(2) OR (3) OF THIS SECTION;

(4) MANDATORY SYO, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS FOURTEEN OR FIFTEEN YEARS OF AGE, IF THE ACT WAS NOT ENHANCED AS PROVIDED IN DIVISION (A)(2) OR (3) OF THIS SECTION;

(5) DISCRETIONARY SYO, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS TEN THROUGH THIRTEEN YEARS OF AGE, IF THE ACT WAS NOT ENHANCED AS PROVIDED IN DIVISION (A)(2) OR (3) OF THIS SECTION.

**(D) Attempted Aggravated Murders & Attempted Murders** A CHILD ACCUSED OF, OR ADJUDICATED DELINQUENT FOR, COMMITTING AN ACT THAT WOULD BE ATTEMPTED AGGRAVATED MURDER OR ATTEMPTED MURDER IF COMMITTED BY AN ADULT IS ELIGIBLE FOR WHICHEVER OF THE FOLLOWING IS APPROPRIATE:

(1) PRESUMED TRANSFER, IF THE ACT WAS ACTUALLY OR ALLEGEDLY COMMITTED WHEN THE CHILD WAS SIXTEEN OR SEVENTEEN YEARS OF AGE, IF THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(2) OR (3) OF THIS SECTION;

(2) EXCEPT AS PROVIDED IN DIVISION (D)(1) OF THIS SECTION, DISCRETIONARY SYO.

**(E) First Degree Felonies** A CHILD ACCUSED OF, OR ADJUDICATED DELINQUENT FOR, COMMITTING AN ACT THAT WOULD BE A FELONY OF THE FIRST DEGREE, OTHER THAN ATTEMPTED AGGRAVATED MURDER OR ATTEMPTED MURDER, IF COMMITTED BY AN ADULT, IS ELIGIBLE FOR WHICHEVER OF THE FOLLOWING IS APPROPRIATE:

(1) PRESUMED TRANSFER, IF THE ACT WAS ACTUALLY OR ALLEGEDLY COMMITTED WHEN THE CHILD WAS SIXTEEN OR SEVENTEEN YEARS OF AGE, IF THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(1) AND EITHER DIVISION (A)(2) OR (3) OF THIS SECTION;

(2) DISCRETIONARY SYO, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS TWELVE THROUGH FIFTEEN YEARS OF AGE, IF THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(1) AND EITHER DIVISION (A)(2) OR (3) OF THIS SECTION;

(3) DISCRETIONARY EJJ, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS TEN OR ELEVEN YEARS OF AGE, IF THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(1), IF DIVISION (A)(2) OR (3) OF THIS SECTION;

(4) DISCRETIONARY SYO, IF ACT WAS COMMITTED WHEN THE CHILD WAS FOURTEEN, FIFTEEN, SIXTEEN, OR SEVENTEEN YEARS OF AGE, IF DIVISION (E)(1) OR (2) OF THIS SECTION DOES NOT APPLY;

(5) DISCRETIONARY EJJ, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS TWELVE OR THIRTEEN YEARS OF AGE, AND THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(1), (2), OR (3) OF THIS SECTION, AND IF DIVISION (E)(2) OF THIS SECTION DOES NOT APPLY;

(6) TRADITIONAL JUVENILE IF DIVISION (E)(1), (2), (3), (4), OR (5) OF THIS SECTION DOES NOT APPLY.

**(F) Second Degree Felonies** A CHILD ADJUDICATED DELINQUENT FOR COMMITTING AN ACT THAT WOULD BE A FELONY OF THE SECOND DEGREE IF COMMITTED BY AN ADULT, IS ELIGIBLE FOR WHICHEVER OF THE FOLLOWING IS APPROPRIATE:

(1) DISCRETIONARY SYO, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS FOURTEEN, FIFTEEN, SIXTEEN, OR SEVENTEEN YEARS OF AGE;

(2) DISCRETIONARY EJJ, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS TWELVE OR THIRTEEN YEARS OF AGE, AND THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(1), (2), OR (3) OF THIS SECTION;

(3) TRADITIONAL JUVENILE, IF DIVISION (E)(1) OR (2) OF THIS SECTION DOES NOT APPLY.

**(G) Third Degree Felonies** A CHILD ADJUDICATED DELINQUENT FOR COMMITTING AN ACT THAT WOULD BE A FELONY OF THE THIRD DEGREE IF COMMITTED BY AN ADULT, IS ELIGIBLE FOR WHICHEVER OF THE FOLLOWING IS APPROPRIATE:

(1) DISCRETIONARY SYO, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS SIXTEEN OR SEVENTEEN YEARS OF AGE, AND THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(1), (2), OR (3) OF THIS SECTION;

(2) DISCRETIONARY EJJ, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS FOURTEEN OR FIFTEEN YEARS OF AGE, AND THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(1), (2), OR (3) OF THIS SECTION;

(3) DISCRETIONARY EJJ, IF THE ACT WAS COMMITTED WHEN THE CHILD WAS SIXTEEN OR SEVENTEEN YEARS OF AGE, AND THE ACT WAS NOT ENHANCED AS PROVIDED IN DIVISION (A)(1), (2), OR (3) OF THIS SECTION;

(4) TRADITIONAL JUVENILE, IF DIVISION (G)(1), (2), OR (3) OF THIS SECTION DOES NOT APPLY.

**(H) Fourth & Fifth Degree Felonies** A CHILD WHO IS ADJUDICATED DELINQUENT FOR COMMITTING AN ACT THAT WOULD BE A FELONY OF THE FOURTH OR FIFTH DEGREE IF COMMITTED BY AN ADULT, IS ELIGIBLE FOR WHICHEVER OF THE FOLLOWING DISPOSITIONS IS APPROPRIATE:

(1) DISCRETIONARY SYO, IF THE CHILD COMMITTED THE ACT WHILE SIXTEEN OR SEVENTEEN YEARS OF AGE, AND THE ACT WAS ENHANCED AS PROVIDED IN DIVISION (A)(1), (2), OR (3) OF THIS SECTION;

(2) TRADITIONAL JUVENILE, IF DIVISION (H)(1) OF THIS SECTION DOES NOT APPLY.

(L) **Lesser Included Dispositions**

(1) IF A CHILD IS ELIGIBLE FOR A PRESUMED TRANSFER AND THE CASE IS NOT TRANSFERRED, THE CHILD SHALL BE SENTENCED AS A MANDATORY SYO.

(2) WHENEVER A SERIOUS YOUTHFUL OFFENDER DISPOSITION IS IMPOSED, THE OFFENDER SHALL BE GIVEN AN EXTENDED JUVENILE JURISDICTION DISPOSITION AS THE JUVENILE PART OF THE SENTENCE.

(3) IF AN OFFENDER IS ELIGIBLE FOR A DISCRETIONARY SYO TERM, THE COURT HAS DISCRETION TO IMPOSE EXTENDED JUVENILE JURISDICTION ALONE OR A TRADITIONAL JUVENILE DISPOSITION. IF THE OFFENDER IS ELIGIBLE FOR AN EJJ DISPOSITION, THE COURT HAS DISCRETION INSTEAD TO IMPOSE A TRADITIONAL JUVENILE DISPOSITION.

[Attempts and conspiracies to commit F-1s through F-5s would continue to drop one degree.]

(J) **ELIGIBILITY TABLE**

Designation in each box shows the maximum disposition available by offense and age.

<b>OFFENSE CATEGORY</b>	<b>AGE</b>	<b>17 &amp; 16</b>	<b>15 &amp; 14</b>	<b>13 &amp; 12</b>	<b>11 &amp; 10</b>
<b>Murder/Agg Murder, Enhanced</b>		MT	PT	MSYO	MSYO
<b>Murder/Agg Murder</b>		MT	MSYO	DSYO	DSYO
<b>Attempted Murder, Enhanced</b>		PT	DSYO	DSYO	DSYO
<b>Attempted Murder</b>		DSYO	DSYO	DSYO	DSYO
<b>F-1V, Enhanced</b>		PT	DSYO	DSYO	DEJJ
<b>F-1V and F-1, Enhanced</b>		DSYO	DSYO	DEJJ	TJ
<b>F-1</b>		DSYO	DSYO	TJ	TJ
<b>F-2, Enhanced</b>		DSYO	DSYO	DEJJ	TJ
<b>F-2</b>		DSYO	DSYO	TJ	TJ
<b>F-3, Enhanced</b>		DSYO	DEJJ	TJ	TJ
<b>F-3</b>		DEJJ	TJ	TJ	TJ
<b>F-4, Enhanced</b>		DSYO	TJ	TJ	TJ
<b>F-4</b>		TJ	TJ	TJ	TJ
<b>F-5, Enhanced</b>		DSYO	TJ	TJ	TJ
<b>F-5</b>		TJ	TJ	TJ	TJ

Discretionary transfer is available under §2152.12(C) for any offense and offender above and to the left of the bold line.

(K) **Key:**

“MT” means the case must be transferred under §2152.12(A).

“PT” means it is presumed that the case should be transferred under §2152.12(B).

“MSYO” means the offender must be given an SYO disposition under §2152.13.

“DSYO” means the offender is eligible for a discretionary SYO disposition under §2152.13.

“**DEJJ**” means the offender is eligible for extended juvenile jurisdiction under §2152.15.  
“**TJ**” means the offender falls under traditional juvenile jurisdiction and is not required to be treated as, or eligible for disposition as, an MT, PT, MSYO, DSYO, or DEJJ.

“**F-1**” means an act that would be a felony of the first degree if committed by an adult.  
“**F-2**” means an act that would be a felony of the second degree if committed by an adult.  
“**F-3**” means an act that would be a felony of the third degree if committed by an adult.  
“**F-4**” means an act that would be a felony of the fourth degree if committed by an adult.  
“**F-5**” means an act that would be a felony of the fifth degree if committed by an adult.

“**Enhanced**” means either of the following:

- (A) Except as provided in (B), a felony is “enhanced” if it is any of the following:
- (1) An offense of violence as defined in §2901.01;
  - (2) Committed while using, displaying, brandishing, or otherwise indicating a firearm;
  - (3) Committed after having been admitted to a DYS facility for a prior F-1 or F-2, or for a prior F-3 offense of violence.
- (B) Aggravated murder, murder, attempted aggravated murder, attempted murder, or a violent F-1 is “enhanced” as provided in (A)(2) or (A)(3) only.
- “**Agg**” means aggravated.  
“**V**” means offense of violence as defined in §2901.01.

#### **43§2152.12 TRANSFER TO ADULT COURT (“BINDOVER”)**

[Supersedes §2151.26. Mixed cases used to show changes.]

- (A) ~~As used in this section:~~
- (1) ~~“Category one offense” means any of the following:~~
    - ~~(a) A violation of section 2903.01 or 2903.02 of the Revised Code;~~
    - ~~(b) A violation of section 2923.02 of the Revised Code involving an attempt to commit aggravated murder or murder. [Repealed as unnecessary.]~~
  - (2) ~~“Category two offense” means any of the following:~~
    - ~~(a) A violation of section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the Revised Code;~~
    - ~~(b) A violation of section 2903.04 of the Revised Code that is a felony of the first degree;~~
    - ~~(c) A violation of section 2907.12 of the Revised Code as it existed prior to September 2, 1996. [Repealed as unnecessary.]~~
  - (3) ~~“Firearm” has the same meaning as in section 2923.11 of the Revised Code. [This definition moves to §2152.01(M).]~~
  - (4) ~~“Act charged” means the act that a child allegedly committed and that is identified in a complaint alleging that the A child is a delinquent child as the act that is the basis of the child being a delinquent child. [This definition moves to §2152.01(A).]~~

#### **Mandatory Transfers** [Supersedes §2151.26(B)]

- (1) 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~~ AGGRAVATED MURDER OR MURDER, the JUVENILE court at a hearing shall transfer the case ~~for criminal prosecution to the appropriate court having jurisdiction of the offense~~ if the child was ~~fourteen~~ SIXTEEN OR SEVENTEEN years of age ~~or older~~ at the time of the act charged, if there is probable cause to believe the child committed the act charged, ~~and if one or more of the following applies to the child or the act charged:~~

THE COURT ALSO SHALL TRANSFER A CASE IF EITHER OF THE FOLLOWING APPLY [These preserve automatic bindovers for: (1) those previously bound over and

convicted (it's tied to bindover eligibility to eliminate bindovers for subsequent misdemeanors); and (2) out-of-state majority in a felony case.]:

~~(a) A complaint IS FILED AGAINST A CHILD WHO IS ELIGIBLE FOR A PRESUMED OR DISCRETIONARY TRANSFER UNDER THIS SECTION AND WHO 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 division (B) or (C) of this section for criminal prosecution to the appropriate court having jurisdiction of the offense, and the child was convicted of or pleaded guilty to a felony in that A case THAT WAS TRANSFERRED TO A CRIMINAL COURT.~~

~~(b) The child A FELONY COMPLAINT IS FILED AGAINST A CHILD WHO 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 act charged is a category one offense, and either or both of the following apply:~~

~~(a) The child was sixteen 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 the department of youth services upon the basis of that adjudication.~~

~~(4) The act charged is 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 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 the department of youth services 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.~~

**(B) Presumed Transfer** WHEN IT IS PRESUMED UNDER SECTION 2152.11 OF THE REVISED CODE THAT A CASE SHALL BE TRANSFERRED, UPON A MOTION BY THE PROSECUTING ATTORNEY, THE COURT AT A HEARING SHALL TRANSFER THE CASE IF TRANSFER IS CONSISTENT WITH THE OVERRIDING PURPOSES SET FORTH IN SECTION 2152.01 OF THE REVISED CODE AND IF IT FINDS ALL OF THE FOLLOWING ON THE RECORD:

(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 FAILED TO DEMONSTRATE BY A PREPONDERANCE OF THE EVIDENCE THAT THE CHILD IS AMENABLE TO CARE OR REHABILITATION WITHIN THE JUVENILE SYSTEM AND THE SAFETY OF THE COMMUNITY DOES NOT REQUIRE THAT THE CHILD BE PLACED UNDER LEGAL RESTRAINT, INCLUDING,

IF NECESSARY, FOR A PERIOD BEYOND THE CHILD'S MAJORITY. IN MAKING THIS DECISION, THE COURT SHALL FIND WHETHER THE APPLICABLE FACTORS INDICATING THE CHILD SHOULD BE TRANSFERRED UNDER DIVISION (E) OF THIS SECTION OUTWEIGH APPLICABLE FACTORS INDICATING THAT THE CHILD SHOULD NOT BE TRANSFERRED UNDER DIVISION (E) OF THIS SECTION. THE RECORD SHALL INDICATE WHICH SPECIFIC FACTORS WERE APPLICABLE AND WEIGHED.

~~(C)(4)~~ **Discretionary Transfer** [Supersedes §2151.26(C)(1)] Except as provided in division (A) OR (B) of this section ~~and subject to division (C)(4) 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, OTHER THAN A FELONY OF THE FIFTH DEGREE THAT IS NOT ENHANCED AS PROVIDED IN DIVISION (A)(1), (2), OR (3) OF SECTION 2152.11 OF THE REVISED CODE, the JUVENILE court at a hearing may transfer the case for criminal prosecution to the appropriate court having jurisdiction of the offense, ~~after considering the factors specified in division (C)(2) of this section and after making~~ IF TRANSFER IS CONSISTENT WITH THE OVERRIDING PURPOSES SET FORTH IN SECTION 2152.01 OF THE REVISED CODE AND IF IT FINDS all of the following ON THE RECORD determinations:

~~(a)(1)~~ The child was fourteen years of age or older at the time of the act charged;

~~(b)(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 PLACED UNDER LEGAL RESTRAINT, INCLUDING, IF NECESSARY, FOR A PERIOD BEYOND THE CHILD'S MAJORITY. IN MAKING THIS DECISION, THE COURT SHALL FIND WHETHER THE APPLICABLE FACTORS INDICATING THE CHILD SHOULD BE TRANSFERRED UNDER DIVISION (E) OF THIS SECTION OUTWEIGH THE APPLICABLE FACTORS INDICATING THAT THE CHILD SHOULD NOT BE TRANSFERRED UNDER DIVISION (E) OF THIS SECTION.

~~(c)(D)~~ **Examination** [Supersedes part of §2151.26(C)(1)(c) & (C)(3)] After BEFORE CONSIDERING A TRANSFER UNDER DIVISION (B) OR (C) OF THIS SECTION, THE COURT SHALL ORDER an investigation, including a mental examination of the child made by a public or private agency or a person qualified to make the examination, ~~and after consideration of all relevant information and factors, including any factor required to be considered by division (C)(2) of this section, that there are reasonable grounds to believe that both of the following criteria are satisfied:~~

~~(i)~~ [Moved to (C)(3) above] 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;

~~(ii)~~ [Moved to (C)(3) above] 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.

(2) Subject to division (C)(4) of this section, when determining whether to order the transfer of a case for criminal prosecution to the appropriate court having jurisdiction of the offense pursuant to division (C)(1) of this section, the court shall consider all of the following factors in favor of ordering the transfer of the case:

(a) 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 the victim;

(b) 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.

~~(c) The act charged is not a violation of section 2923.12 of the Revised Code, and the child is alleged to have had a firearm 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.~~

~~(d) The child has a history indicating a failure to be rehabilitated following one or more commitments pursuant to division (A)(3), (4), (5), (6), or (7) of section 2151.355 of the Revised Code.~~

~~(e) A victim of the act charged was sixty-five years of age or older or permanently or 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.~~

~~(3) A THE child whose case is being considered for possible transfer for criminal prosecution to the appropriate court having jurisdiction of the offense under division (C)(1) of this section may waive the examination required by THIS division (C)(1)(c) of this section, if the court finds the waiver is competently and intelligently made. Refusal to submit to a mental and physical examination by the child constitutes a waiver of the examination.~~

**(E) Factors Favoring Transfer** [Together with (F), these supersede §2151.26(C)(1)(c)(i) & (ii) and (C)(2)(a) - (e).] THE COURT SHALL CONSIDER THE FOLLOWING RELEVANT FACTORS, AND ANY OTHER RELEVANT FACTORS, IN FAVOR OF TRANSFER UNDER THIS SECTION:

(1) THE VICTIM OF THE OFFENSE SUFFERED PHYSICAL OR PSYCHOLOGICAL HARM, OR SERIOUS ECONOMIC HARM, AS A RESULT OF THE ALLEGED OFFENSE;

(2) THE PHYSICAL OR MENTAL INJURY SUFFERED BY THE VICTIM DUE TO THE ALLEGED CONDUCT OF THE OFFENDER WAS EXACERBATED BECAUSE OF THE PHYSICAL OR MENTAL VULNERABILITY OR AGE OF THE VICTIM;

(3) THE CHILD'S RELATIONSHIP WITH THE VICTIM FACILITATED THE ALLEGED OFFENSE;

(4) THE CHILD ALLEGEDLY COMMITTED THE OFFENSE FOR HIRE OR AS A PART OF A GANG OR OTHER ORGANIZED CRIMINAL ACTIVITY;

(5) THE CHILD HAD A FIREARM ON OR ABOUT HIS OR HER PERSON OR UNDER HIS OR HER CONTROL AT THE TIME OF AN ALLEGED OFFENSE, OTHER THAN A VIOLATION OF SECTION 2923.12 OF THE REVISED CODE, AND THE FIREARM WAS ALLEGEDLY DISPLAYED, BRANDISHED, INDICATED, OR USED IN THE COMMISSION OF THE OFFENSE;

(6) THE CHILD WAS ALLEGEDLY MOTIVATED BY PREJUDICE BASED ON RACE, ETHNIC BACKGROUND, GENDER, SEXUAL ORIENTATION, OR RELIGION;

(7) AT THE TIME OF THE ALLEGED OFFENSE, THE CHILD WAS AWAITING ADJUDICATION OR DISPOSITION, UNDER A COMMUNITY SANCTION, OR ON PAROLE FOR AN EARLIER OFFENSE;

(8) THE RESULTS OF PREVIOUS JUVENILE SANCTIONS AND PROGRAMS MAKE REHABILITATION OF THE CHILD UNLIKELY IN THE JUVENILE SYSTEM;

(9) THE CHILD IS EMOTIONALLY, PHYSICALLY, OR PSYCHOLOGICALLY MATURE ENOUGH FOR THE TRANSFER;

(10) THERE IS NOT SUFFICIENT TIME TO REHABILITATE THE CHILD WITHIN THE JUVENILE SYSTEM.

**(F) Factors Against Transfer** THE COURT SHALL CONSIDER THE FOLLOWING RELEVANT FACTORS, AND ANY OTHER RELEVANT FACTORS, AGAINST TRANSFER UNDER THIS SECTION:

(1) THE VICTIM INDUCED OR FACILITATED THE ALLEGED OFFENSE;

(2) THE CHILD ACTED UNDER PROVOCATION IN COMMITTING THE ALLEGED OFFENSE;

(3) THE CHILD WAS NOT THE PRINCIPAL OFFENDER OR WAS UNDER THE NEGATIVE INFLUENCE OR COERCION OF ANOTHER;

(4) THE CHILD DID NOT CAUSE PHYSICAL HARM TO ANY PERSON OR PROPERTY, OR HAVE REASONABLE CAUSE TO BELIEVE SUCH HARM WOULD OCCUR, IN COMMITTING THE ALLEGED OFFENSE;

(5) THE CHILD HAS NOT PREVIOUSLY BEEN ADJUDICATED DELINQUENT;

(6) THE CHILD IS NOT EMOTIONALLY, PHYSICALLY, OR PSYCHOLOGICALLY MATURE ENOUGH FOR THE TRANSFER;

(7) THERE IS SUFFICIENT TIME TO REHABILITATE THE CHILD WITHIN THE JUVENILE SYSTEM AND THE LEVEL OF SECURITY AVAILABLE GIVE A REASONABLE ASSURANCE OF PUBLIC SAFETY.

**(4)(G) Multiple Counts** [Supersedes §2151.26(C)(4)] 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 filed or made alleging that division ~~(B)(2), (3), or (4)~~ (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for criminal prosecution to the appropriate court having jurisdiction over the offense, and if a motion also is filed or made requesting that the case or cases involving one or more of the acts charged be transferred for criminal prosecution to the appropriate court having jurisdiction of the offense pursuant to division (B) OR (C)(1) of this section, the court, in deciding the motions, shall proceed in the following manner:

~~(a)(1)~~ Initially, the court shall decide the motion alleging that division ~~(B)(2), (3), or (4)~~ (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for criminal prosecution to the appropriate court having jurisdiction over the offense.

~~(b)(2)~~ If, pursuant to division ~~(C)(4)(a)~~ of this section, the court determines that division ~~(B)(2), (3), or (4)~~ (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for criminal prosecution to the appropriate court having jurisdiction over the offense, the court shall consider the case or cases in accordance with the applicable UNDER THAT division. After the transfer pursuant to division ~~(B)(2), (3), or (4)~~ (A) of this section, the court shall decide, in accordance with division (B) OR (C)(4)(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 for criminal prosecution to the appropriate court having jurisdiction of the

~~offense if the act charged in the case would be a felony if committed by an adult, if the child was fourteen years of age or older at the time of the act charged, and if there is probable cause to believe that the child committed the act charged UNDER EITHER OF THOSE DIVISIONS. Notwithstanding divisions (B) AND (C)(1) to (3) of this section, prior to transferring a case pursuant to division (C)(4)(b) (A) of this section, the court is not required to consider any factor specified in division (C)(2) (E) OR (E) of this section or to conduct an investigation or make a determination of the type described in UNDER division (C)(1)(e) (D) of this section.~~

~~(e)(3) If the court determines pursuant to division (C)(4)(a) of this section, that divisions DIVISION (B)(2), (3), and (4) (A) of this section do DOES not apply and that none of those divisions requires REQUIRE that the case or cases involving one or more of the acts charged be transferred for criminal prosecution to the appropriate court having jurisdiction over the offense, the court shall decide in accordance with divisions (B) OR (C)(1) to (3) of this section whether to grant the motion requesting that the case or cases be transferred for criminal prosecution to the appropriate court having jurisdiction of the offense pursuant to division (C)(1) of this section EITHER OF THOSE DIVISIONS.~~

~~(D)(H) Notice~~ [Supersedes §2151.26(D)] The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (A), (B), or (C) 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.

~~(E)(I) Limitation~~ [Supersedes §2151.26(E)] 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), (B), or (C) of this section or unless division (G)(K) 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.

~~(F)(J) Effect of Transfer~~ [Supersedes §2151.26(F)] Upon the transfer of a case for criminal prosecution to the appropriate court having jurisdiction of the offense under division (A), (B), or (C) of this section, the juvenile court shall state the reasons for the transfer ON THE RECORD and 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.

~~(G)(K) Persons Apprehended Over Age 21~~ [Supersedes §2151.26(G)] 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, AND IF THE PERSON IS NOT ELIGIBLE FOR EXTENDED JUVENILE JURISDICTION UNDER SECTION 2152.11 OF THE REVISED CODE, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act, AND divisions (A), (B), and (C) of this section do not apply regarding that act, ~~the~~ THE case charging the person with committing that 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 that act, ~~all~~ ALL proceedings pertaining to that act shall be within the jurisdiction of ~~the~~ THAT

~~court having jurisdiction of the offense, and the THAT court having jurisdiction of the offense~~ has all the authority and duties in the case as it has in other criminal cases commenced in that court. IF THE PERSON IS ELIGIBLE FOR EXTENDED JUVENILE JURISDICTION, THE JUVENILE COURT MAY TRANSFER THE CASE OF AN ELIGIBLE PERSON UNDER THIS SECTION OR MAY RETAIN JURISDICTION AND IMPOSE A DISPOSITION UNDER SECTION 2152.15 OF THE REVISED CODE.

**(L) State's Appeal on Presumption**

(1) IN ADDITION TO ANY OTHER RIGHT OF APPEAL, THE PROSECUTING ATTORNEY MAY APPEAL, AS A MATTER OF RIGHT UNDER SECTION 2945.67 OF THE REVISED CODE, A DECISION NOT TO TRANSFER A CASE UNDER DIVISION **(B)** OF THIS SECTION. [§2945.67 should be amended to add overriding a presumed transfer to the list of decisions that the prosecutor can appeal of right before a final verdict.]

(2) THE RECORD TO BE REVIEWED IN ANY APPEAL UNDER THIS DIVISION SHALL INCLUDE ALL OF THE FOLLOWING, AS APPLICABLE:

(a) THE TRANSCRIPT OF THE PROCEEDINGS;

(b) ANY MENTAL EXAMINATION OR OTHER INVESTIGATIVE REPORT THAT WAS PREPARED UNDER JUVENILE RULE 30, DIVISION **(D)** OF THIS SECTION, OR ANOTHER PROVISION AND SUBMITTED TO THE COURT IN WRITING BEFORE THE DECISION NOT TO TRANSFER. THE APPELLATE COURT'S USE OF ANY REPORT IN CONNECTION WITH AN APPEAL UNDER THIS SECTION DOES NOT AFFECT THE OTHERWISE CONFIDENTIAL CHARACTER OF THE CONTENTS OF THE REPORT AND DOES NOT CAUSE THE REPORT TO BECOME A PUBLIC RECORD, FOLLOWING THE APPELLATE COURT'S USE OF THE REPORT.

(c) THE JUDGMENT ENTRY, INCLUDING THE SPECIFIC FACTORS UNDER DIVISIONS **(E)** AND **(F)** OF THIS SECTION THAT WERE WEIGHED BY THE COURT IN REACHING ITS CONCLUSION.

(d) ANY OTHER ORAL OR WRITTEN STATEMENT MADE TO OR BY THE COURT AT THE TRANSFER HEARING.

**44§2152.13 SERIOUS YOUTHFUL OFFENDERS**

**(A) Procedure**

(1) **Notice** EXCEPT AS PROVIDED IN DIVISION **(A)(2)** OF THIS SECTION, IF THE PROSECUTING ATTORNEY INTENDS TO SEEK A SERIOUS YOUTHFUL OFFENDER DISPOSITION IN A CASE, HE OR SHE SHALL FILE A WRITTEN NOTICE OF THE INTENT WITH THE COURT WITHIN TWENTY DAYS AFTER THE DATE OF ARRAIGNMENT, OR WITHIN TWENTY DAYS AFTER THE COURT'S RULING AGAINST A TRANSFER UNDER SECTION 2152.12 OF THE REVISED CODE, WHICHEVER IS LATER, UNLESS THE PERIOD IS EXTENDED BY THE COURT FOR GOOD CAUSE SHOWN.

UPON ITS FILING, THE COURT SHALL SERVE A COPY OF THE NOTICE ON THE DEFENDANT AND BRING THE DEFENDANT BEFORE THE COURT TO ADVISE THE DEFENDANT OF THE PROSECUTING ATTORNEY'S INTENT.

IF THE PROSECUTING ATTORNEY DOES NOT FILE A NOTICE UNDER THIS SECTION IN A SITUATION OTHER THAN THOSE DESCRIBED IN DIVISION (A)(2) OF THIS SECTION, THE JUVENILE COURT HAS DISCRETION NOT TO ORDER A SERIOUS YOUTHFUL OFFENDER DISPOSITION UNDER THIS SECTION.

(2) **By Default or By Indictment** THE NOTICE UNDER DIVISION (A)(1) OF THIS SECTION IS NOT REQUIRED IF CONSIDERATION AS A SERIOUS YOUTHFUL OFFENDER IS MANDATORY AFTER A PRESUMPTION IN FAVOR OF TRANSFER UNDER DIVISION (C) OF SECTION 2152.12 OF THE REVISED CODE IS OVERRIDDEN, IF THE PROSECUTING ATTORNEY'S ORIGINAL COMPLAINT SPECIFIES THAT THE CASE IS BEING TREATED UNDER THIS SECTION, OR IF THE CHILD IS INDICTED AS A SERIOUS YOUTHFUL OFFENDER. [Technical changes should be made to include the possibility of initiating a case by indictment in the Ch. 2151 sections that refer to initiating delinquency actions by complaint.]

(B) **Court Review** IF THE JUVENILE IS NOT INDICTED AND A NOTICE OR COMPLAINT INDICATES THAT THE PROSECUTING ATTORNEY INTENDS TO PURSUE A SERIOUS YOUTHFUL OFFENDER DISPOSITION, THE COURT SHALL HOLD A HEARING TO DETERMINE IF THERE IS PROBABLE CAUSE THAT THE CHILD COMMITTED THE ACT CHARGED AND IS BY AGE ELIGIBLE FOR, OR REQUIRED TO RECEIVE, A SERIOUS YOUTHFUL OFFENDER DISPOSITION UNDER SECTION 2152.11 OF THE REVISED CODE.

(C) **Rights** A CHILD ACCUSED OF BEING A SERIOUS YOUTHFUL OFFENDER HAS THE RIGHT TO A GRAND JURY DETERMINATION OF PROBABLE CAUSE THAT THE CHILD COMMITTED THE ACT CHARGED AND IS ELIGIBLE BY AGE FOR A SERIOUS YOUTHFUL OFFENDER DISPOSITION UNDER SECTION 2152.11 OF THE REVISED CODE. THE PROSECUTING ATTORNEY HAS AUTHORITY UNDER THIS SECTION TO PRESENT THE CASE FOR INDICTMENT BY A GRAND JURY. THE GRAND JURY MAY BE ONE IMPANELED BY THE COMMON PLEAS COURT OR THE JUVENILE COURT.

ONCE A CHILD IS INDICTED OR THE CHILD'S ELIGIBILITY FOR A SERIOUS YOUTHFUL OFFENDER SENTENCE IS DETERMINED, THE CHILD IS ENTITLED TO BE REPRESENTED BY COUNSEL AT AN OPEN, SPEEDY, PUBLIC TRIAL BY JURY IN JUVENILE COURT, AND TO BE PROVIDED WITH A TRANSCRIPT OF THE PROCEEDINGS. IF DETAINED AWAITING ADJUDICATION, THE CHILD HAS THE SAME RIGHT TO BAIL AS AN ADULT CHARGED WITH THE SAME OFFENSE. THE COURT SHALL CONDUCT HEARINGS AND PROCEDURES IN ACCORDANCE WITH TITLE XXIX OF THE REVISED CODE AND THE CRIMINAL RULES. [Also amend §2151.35, which now says the juvenile court hears cases without a jury.]

(D) **The Disposition/Sentence**

(1) **Mandatory SYO** WHEN A CHILD IS ADJUDICATED DELINQUENT FOR THE OFFENSE UNDER CIRCUMSTANCES THAT REQUIRE IMPOSITION OF A SERIOUS YOUTHFUL OFFENDER SENTENCE UNDER SECTION 2152.11 OF THE REVISED CODE, THE COURT SHALL IMPOSE A SENTENCE, AS IF THE CHILD WERE AN ADULT, UNDER CHAPTER 2929. OF THE REVISED CODE, EXCEPT THE CHILD IS NOT ELIGIBLE FOR A SENTENCE OF DEATH OR LIFE WITHOUT PAROLE UNDER THAT CHAPTER.

THE COURT ALSO SHALL IMPOSE AN EXTENDED JUVENILE JURISDICTION DISPOSITION UNDER SECTION 2152.15 OF THE REVISED CODE.

THE COURT SHALL STAY THE ADULT SENTENCE PENDING SUCCESSFUL COMPLETION OF THE JUVENILE DISPOSITION. ANY EXTENDED OR TRADITIONAL

JUVENILE DISPOSITION IMPOSED MAY BE SUSPENDED IN FAVOR OF A COMMUNITY SANCTION OR SANCTIONS.

THE OFFENDER HAS A RIGHT TO APPEAL THE ADULT SENTENCE WHEN APPLICABLE UNDER DIVISION (A)(1), (3), (4), OR (5) OF SECTION 2953.08 OF THE REVISED CODE. ANY APPEAL OF THE ADULT SENTENCE UNDER THAT SECTION SHALL BE BROUGHT AND CONSIDERED AS IF THE ADULT SENTENCE WERE NOT STAYED.

(2) **Discretionary SYO** WHEN A CHILD IS ADJUDICATED DELINQUENT FOR THE OFFENSE UNDER CIRCUMSTANCES THAT ALLOW, BUT DO NOT REQUIRE, IMPOSITION OF A SERIOUS YOUTHFUL OFFENDER SENTENCE UNDER SECTION 2152.11 OF THE REVISED CODE, THE COURT MAY IMPOSE A SENTENCE THAT WOULD BE AVAILABLE FOR THE OFFENSE, IF THE CHILD WERE AN ADULT, UNDER CHAPTER 2929. OF THE REVISED CODE, IF THE COURT MAKES THE FOLLOWING FINDING ON THE RECORD:

GIVEN THE NATURE AND CIRCUMSTANCES OF THE OFFENSE AND THE HISTORY OF THE OFFENDER, THE LENGTH OF TIME, LEVEL OF SECURITY, AND TYPES OF PROGRAMMING AND RESOURCES AVAILABLE IN THE JUVENILE SYSTEM ALONE ARE NOT ADEQUATE TO PROVIDE THE COURT WITH A REASONABLE EXPECTATION THAT THE PURPOSES SET FORTH IN SECTION 2152.01 OF THE REVISED CODE WILL BE MET.

IF AN ADULT SENTENCE IS IMPOSED, THE COURT ALSO SHALL IMPOSE AN EXTENDED JUVENILE JURISDICTION DISPOSITION, IF SUCH A DISPOSITION IS AVAILABLE UNDER SECTION 2152.15 OF THE REVISED CODE.

THE COURT SHALL STAY THE ADULT SENTENCE PENDING SUCCESSFUL COMPLETION OF THE JUVENILE DISPOSITION. THE OFFENDER HAS A RIGHT TO APPEAL THE ADULT SENTENCE WHEN APPLICABLE UNDER DIVISION (A)(1), (3), (4), OR (5) OF SECTION 2953.08 OF THE REVISED CODE. ANY APPEAL OF THE ADULT SENTENCE UNDER THAT SECTION SHALL BE BROUGHT AND CONSIDERED AS IF THE ADULT SENTENCE WERE NOT STAYED. ANY EXTENDED OR TRADITIONAL JUVENILE DISPOSITION IMPOSED MAY BE SUSPENDED IN FAVOR OF A COMMUNITY SANCTION OR SANCTIONS.

(3) **DSYO for F-4s & F-5s** WHEN A CHILD IS ADJUDICATED DELINQUENT FOR AN ACT THAT WOULD BE A FELONY OF THE FOURTH OR FIFTH DEGREE IF COMMITTED BY AN ADULT UNDER CIRCUMSTANCES THAT ALLOW, BUT DO NOT REQUIRE, IMPOSITION OF A SERIOUS YOUTHFUL OFFENDER SENTENCE UNDER SECTION 2152.11 OF THE REVISED CODE, THE COURT MAY IMPOSE A SENTENCE AS PROVIDED IN DIVISION (D)(2) OF THIS SECTION, EXCEPT THAT, INSTEAD OF EXTENDED JURISDICTION, THE JUVENILE COURT SHALL IMPOSE ANY TRADITIONAL JUVENILE DISPOSITIONS AVAILABLE UNDER SECTIONS 2152.16, 2152.19, AND 2152.20 OF THE REVISED CODE.

(4) **Other Options** IF THE COURT DOES NOT FIND THAT A SERIOUS YOUTHFUL OFFENDER SENTENCE SHOULD BE IMPOSED UNDER DIVISIONS (D)(1) OR (2) OF THIS SECTION, THE COURT MAY IMPOSE EXTENDED JUVENILE JURISDICTION ALONE OR ANY OTHER DISPOSITION UNDER THIS CHAPTER.

(E) **Community Notice Hearing for Sex Offenders** BEFORE THE JUVENILE PORTION OF A SERIOUS YOUTHFUL OFFENDER SENTENCE ENDS, THE COURT ON ITS OWN MOTION, OR ON A MOTION BY THE DEPARTMENT OF YOUTH SERVICES, A PROBATION

DEPARTMENT, A PROSECUTING ATTORNEY, OR A DEFENSE ATTORNEY, SHALL DETERMINE WHETHER AND TO WHAT EXTENT THE DELINQUENT CHILD MUST ABIDE BY THE COMMUNITY NOTIFICATION REQUIREMENTS SET FORTH IN 2950.11 OF THE REVISED CODE.

**45§2152.14 INVOKING THE ADULT PORTION OF AN SYO SENTENCE**

(A) **Invoking the Adult Sentence from DYS** IF A PERSON AT LEAST FOURTEEN YEARS OF AGE IS IN THE INSTITUTIONAL CUSTODY, OR AN ESCAPEE FROM THE CUSTODY, OF THE DEPARTMENT OF YOUTH SERVICES AS A SERIOUS YOUTHFUL OFFENDER, THE DIRECTOR OF YOUTH SERVICES MAY REQUEST THE PROSECUTING ATTORNEY OF THE COUNTY FROM WHICH THE PERSON WAS COMMITTED TO FILE A MOTION WITH THE COMMITTING JUVENILE COURT TO IMPOSE THE SUSPENDED ADULT PORTION OF THE SENTENCE. THE MOTION SHALL STATE THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT EITHER OF THE FOLLOWING MISCONDUCT OCCURRED, INCLUDING AT LEAST ONE INCIDENT AFTER THE OFFENDER REACHED FOURTEEN YEARS OF AGE:

- (1) THE PERSON VIOLATED INSTITUTIONAL RULES IN A MANNER THAT COULD BE CHARGED AS A FELONY, OR AS A FIRST DEGREE MISDEMEANOR OFFENSE OF VIOLENCE, IF COMMITTED BY AN ADULT;
- (2) THE PERSON EXHIBITS BEHAVIORS OR ENGAGES IN ACTIVITIES THAT CREATE A SUBSTANTIAL RISK TO INSTITUTIONAL, COMMUNITY, OR VICTIM SAFETY OR SECURITY, OR THAT SERIOUSLY JEOPARDIZE THE PROGRAMMING AND TREATMENT OF OTHER YOUTH.

(B) **Invoking the Adult Sentence from the Community** IF A SERIOUS YOUTHFUL OFFENDER IS AT LEAST FOURTEEN YEARS OF AGE AND IS ON PAROLE OR AFTERCARE FROM A DEPARTMENT OF YOUTH SERVICES FACILITY, OR ON COMMUNITY CONTROL OR PROBATION, THE DIRECTOR OF YOUTH SERVICES, JUVENILE COURT, OR THE SUPERVISING PROBATION DEPARTMENT MAY REQUEST THE PROSECUTING ATTORNEY OF THE COUNTY FROM WHICH THE PERSON WAS COMMITTED TO FILE A MOTION WITH THE COMMITTING JUVENILE COURT TO IMPOSE THE ADULT PORTION OF THE SENTENCE. THE PROSECUTING ATTORNEY MAY FILE SUCH A MOTION EVEN IF NO REQUEST IS MADE. THE MOTION SHALL STATE THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT EITHER OF THE FOLLOWING MISCONDUCT OCCURRED:

- (1) THE PERSON VIOLATED CONDITIONS OF SUPERVISION IN A MANNER THAT COULD BE CHARGED AS A FELONY, OR AS A FIRST DEGREE MISDEMEANOR OFFENSE OF VIOLENCE, IF COMMITTED BY AN ADULT;
- (2) THE PERSON EXHIBITS BEHAVIORS OR ENGAGES IN RULE VIOLATIONS THAT CREATE A SUBSTANTIAL RISK TO COMMUNITY OR VICTIM SAFETY IF THE SUSPENDED ADULT SENTENCE WERE NOT IMPOSED, OR THE COURT MAY HOLD THE HEARING ON ITS OWN MOTION.

(C) **DYS or Probation Officer Motion** IF THE PROSECUTING ATTORNEY DECLINES A REQUEST TO FILE A MOTION UNDER DIVISION (A) OR (B) OF THIS SECTION, THE DEPARTMENT OF YOUTH SERVICES OR PROBATION OFFICER MAY FILE A MOTION WITH THE COMMITTING JUVENILE COURT TO INVOKE THE ADULT PORTION OF THE SENTENCE.

(D) **Adult Sentence Hearing** THE COURT SHALL NOT INVOKE THE ADULT PORTION OF A SERIOUS YOUTHFUL OFFENDER SENTENCE WITHOUT A HEARING. AT THE HEARING, THE PERSON HAS THE RIGHT TO BE PRESENT, TO RECEIVE NOTICE OF

THE GROUNDS ALLEGED, TO BE REPRESENTED BY COUNSEL, INCLUDING APPOINTED COUNSEL UNDER JUVENILE RULE 4(A), AND TO BE ADVISED ON THE PROCEDURES AND PROTECTIONS SET FORTH IN THE JUVENILE RULES. [Request that the Supreme Court revise rules to mesh with these and other statutory changes.]

**(E) Standards for the Court** THE COURT MAY INVOKE THE ADULT PORTION OF A SERIOUS YOUTHFUL OFFENDER SENTENCE IF IT FINDS ALL OF THE FOLLOWING ON THE RECORD BY CLEAR AND CONVINCING EVIDENCE:

- (1) THE PERSON IS UNDER A SERIOUS YOUTHFUL OFFENDER DISPOSITION;
- (2) THE PERSON IS AT LEAST FOURTEEN YEARS OF AGE AND HAS BEEN ADMITTED TO A DEPARTMENT OF YOUTH SERVICES' FACILITY, OR THE PERSON HAS CHARGES PENDING AGAINST HIM OR HER IN CRIMINAL COURT;
- (3) THE PERSON ENGAGED IN THE BEHAVIORS OR ACTS CHARGED UNDER DIVISION (A)(1) OR (2) OR (B)(1) OR (2) OF THIS SECTION AND THE PERSON'S CONDUCT DEMONSTRATES THAT THE POSSIBILITY OF REHABILITATION IS UNLIKELY DURING THE REMAINING PERIOD OF JUVENILE JURISDICTION.

**(E) Upon Invoking the Adult Term** UPON FILING A JUDGMENT ENTRY INVOKING THE ADULT TERM UNDER THIS SECTION, THE COURT SHALL DIVEST ITSELF OF JURISDICTION OVER THE CASE. ONCE THE ADULT TERM IS INVOKED, THE OFFENDER BECOMES AN ADULT FOR PURPOSES OF SANCTIONS AND SUPERVISION. ANY COMMUNITY CONTROL IMPOSED AS PART OF THE ADULT SENTENCE, OR UPON A JUDICIAL RELEASE FROM PRISON, SHALL BE UNDER THE SUPERVISION OF THE ENTITY THAT PROVIDES ADULT PROBATION SERVICES IN THE COUNTY. ANY POST-RELEASE CONTROL IMPOSED AFTER THE OFFENDER IS OTHERWISE RELEASED FROM PRISON SHALL BE SUPERVISED BY THE ADULT PAROLE AUTHORITY.

**(G) Credit for Time Served** THE COURT INVOKING AN ADULT SENTENCE UNDER THIS SECTION SHALL STATE IN ITS ORDER THE TOTAL NUMBER OF DAYS THAT THE CHILD HAS BEEN HELD IN A FACILITY OPERATED, OR CONTRACTED FOR, BY THE DEPARTMENT OF YOUTH SERVICES OR IN DETENTION FOR THE OFFENSE OR OFFENSES THAT LED TO THE INITIAL SERIOUS YOUTHFUL OFFENDER DISPOSITION. IF THE COURT INVOKES A PRISON TERM AS PART OF THE ADULT SENTENCE, THE DEPARTMENT OF REHABILITATION AND CORRECTION SHALL REDUCE THE TIME SERVED ON THE ADULT PORTION OF A STATED PRISON TERM INVOKED UNDER THIS SECTION BY THE TOTAL NUMBER OF DAYS SPECIFIED IN THE ORDER PLUS ANY ADDITIONAL DAYS THE OFFENDER IS HELD IN SUCH A FACILITY BEFORE TRANSFER TO THE DEPARTMENT OF REHABILITATION AND CORRECTION.

#### **46§2152.15 EXTENDED JUVENILE JURISDICTION**

**(A) Standards** IF AN OFFENDER IS ELIGIBLE FOR AN EXTENDED JUVENILE JURISDICTION DISPOSITION UNDER SECTION 2152.11 OF THE REVISED CODE, UPON MOTION OF THE PROSECUTING ATTORNEY, THE COURT MAY IMPOSE EXTENDED JURISDICTION IF THE COURT MAKES THE FOLLOWING FINDING ON THE RECORD:

GIVEN THE NATURE AND CIRCUMSTANCES OF THE OFFENSE AND THE HISTORY OF THE OFFENDER, THE LENGTH OF TIME AND TYPES OF PROGRAMMING AND RESOURCES AVAILABLE UNDER TRADITIONAL JUVENILE DISPOSITIONS UNDER SECTIONS 2152.16, 2152.19, AND 2152.20 OF THE REVISED CODE ARE NOT ADEQUATE TO PROVIDE THE COURT WITH A REASONABLE EXPECTATION THAT THE PURPOSES SET FORTH IN SECTION 2152.01 OF THE REVISED CODE WILL BE MET.

IF THE COURT DOES NOT FIND THAT EXTENDED JUVENILE JURISDICTION SHOULD BE IMPOSED, THE COURT MAY IMPOSE ANY AVAILABLE TRADITIONAL JUVENILE DISPOSITION UNDER SECTION 2152.16, 2152.19, AND 2152.20 OF THE REVISED CODE.

**(B) Ranges: Period of Court Control** IF A CHILD IS ADJUDICATED A DELINQUENT CHILD FOR COMMITTING AN ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT AND IS ELIGIBLE FOR EXTENDED JUVENILE JURISDICTION UNDER THIS SECTION, THE COURT MAY COMMIT THE CHILD TO THE LEGAL CUSTODY OF THE DEPARTMENT OF YOUTH SERVICES FOR SECURE CONFINEMENT.

FOR AGGRAVATED MURDER AND MURDER, THE COMMITMENT, IF MADE, SHALL BE UNTIL THE OFFENDER REACHES AGE TWENTY-FIVE. THE COURT SHALL RETAIN CONTROL OVER THE COMMITMENT UNTIL THE OFFENDER REACHES THAT AGE.

OTHERWISE, THE COURT SHALL SELECT A SPECIFIC MINIMUM PERIOD OF MONTHS OF COMMITMENT, DURING WHICH IT RETAINS CONTROL OVER THE COMMITMENT, FROM THE FOLLOWING RANGES:

- (1) FOR A FELONY OF THE FIRST DEGREE, FROM TWELVE TO SIXTY MONTHS;
- (2) FOR A FELONY OF THE SECOND DEGREE, FROM TWELVE TO FORTY-EIGHT MONTHS;
- (3) FOR A FELONY OF THE THIRD DEGREE, FROM TWELVE TO THIRTY MONTHS.

IN EACH CASE, AS PART OF THE DISPOSITION UNDER THIS SECTION, THE COURT SHALL SET THE MAXIMUM PERIOD OF CONFINEMENT AS THE OFFENDER'S ATTAINMENT OF TWENTY-FIVE YEARS OF AGE.

THE COURT RETAINS CONTROL OVER THE COMMITMENT FOR THE SPECIFIC PERIOD SELECTED FROM THE RANGES IN DIVISION (B)(1) THROUGH (3) OF THIS SECTION. DURING THE PERIOD OF COURT CONTROL, THE DEPARTMENT OF YOUTH SERVICES SHALL NOT MOVE THE OFFENDER TO A NON-SECURE SETTING WITHOUT THE PERMISSION OF THE COURT THAT IMPOSED THE DISPOSITION.

**(C) DYS Control** IF A CHILD IS COMMITTED TO THE DEPARTMENT UNDER THIS SECTION, THE DEPARTMENT MAY RELEASE THE CHILD AT ANY TIME AFTER THE PERIOD OF COURT CONTROL IMPOSED UNDER DIVISION (A) OF THIS SECTION ENDS. THE MAXIMUM PERIOD OF CONFINEMENT FOR ANY CHILD COMMITTED TO THE DEPARTMENT UNDER THIS SECTION SHALL BE THE OFFENDER'S ATTAINMENT OF TWENTY-FIVE YEARS OF AGE.

#### **47§2152.16 DYS TERMS IN TRADITIONAL JUVENILE CASES**

[Supersedes §2151.355(A)(4) & (5)(c)]

**(A) Ranges: Period of Court Control** IF A CHILD IS ADJUDICATED A DELINQUENT CHILD FOR COMMITTING AN ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT AND EXTENDED JUVENILE JURISDICTION IS NOT IMPOSED, THE JUVENILE COURT MAY COMMIT THE CHILD TO THE LEGAL CUSTODY OF THE DEPARTMENT OF YOUTH SERVICES FOR SECURE CONFINEMENT.

THE COURT SHALL SELECT A SPECIFIC MINIMUM PERIOD OF MONTHS OF CONFINEMENT FROM THE FOLLOWING RANGES:

- (1) FOR AGGRAVATED MURDER AND MURDER, THE COMMITMENT, IF MADE, SHALL BE UNTIL THE OFFENDER REACHES AGE TWENTY-ONE [carries over current §2151.355(A)(6)]. THE COURT SHALL RETAIN CONTROL OVER THE COMMITMENT UNTIL THE OFFENDER REACHES THAT AGE;
- (2) FOR A FELONY OF THE FIRST DEGREE, FROM SIX TO SIXTY MONTHS;
- (3) FOR A FELONY OF THE SECOND DEGREE, FROM SIX TO FORTY-EIGHT MONTHS;
- (4) FOR A FELONY OF THE THIRD DEGREE, FROM SIX TO THIRTY MONTHS;
- (5) FOR A FELONY OF THE FOURTH DEGREE, FROM SIX TO EIGHTEEN MONTHS;
- (6) FOR A FELONY OF THE FIFTH DEGREE, FROM SIX TO TWELVE MONTHS.

IN EACH CASE, AS PART OF THE DISPOSITION UNDER THIS SECTION, THE COURT SHALL SET THE MAXIMUM PERIOD OF CONFINEMENT AS THE OFFENDER'S ATTAINMENT OF TWENTY-ONE YEARS OF AGE.

THE COURT RETAINS CONTROL OVER THE COMMITMENT FOR THE SPECIFIC PERIOD SELECTED FROM THE RANGES IN DIVISION (A)(1)(a) THROUGH (e) OF THIS SECTION. DURING THE PERIOD OF COURT CONTROL, THE DEPARTMENT OF YOUTH SERVICES SHALL NOT MOVE THE OFFENDER TO A NON-SECURE SETTING WITHOUT THE PERMISSION OF THE COURT THAT IMPOSED THE DISPOSITION.

**(B) DYS Control** IF A CHILD IS COMMITTED TO THE DEPARTMENT UNDER THIS SECTION, THE DEPARTMENT MAY RELEASE THE CHILD AT ANY TIME AFTER THE PERIOD OF COURT CONTROL IMPOSED UNDER DIVISION (A) OF THIS SECTION ENDS. THE MAXIMUM PERIOD OF CONFINEMENT FOR ANY CHILD COMMITTED TO THE DEPARTMENT UNDER DIVISION (A)(1) OF THIS SECTION SHALL BE THE OFFENDER'S ATTAINMENT OF TWENTY-ONE YEARS OF AGE.

[§2151.355(A)(5)(a)'s 1-3 year minimum for Category 2 offenses and §2151.355(A)(5)(b)'s 6 or 7 year minimum for attempted aggravated murder and attempted murder would be repealed. The offenses would instead be eligible for blended sentences under this plan.]

#### **48§2152.17 SURPENALTIES AND CONSECUTIVE TERMS**

[Supersedes §2151.355(A)(7) & (G)(2). Mixed cases are used to show changes.]

~~(7)(a)(A)~~

**(1) Gun Specs** [Supersedes §2151.355(A)(7)(a)] ~~If the~~ DIVISION (B) OF THIS SECTION APPLIES IF BOTH OF THE FOLLOWING OCCUR:

**(a)** A child is adjudicated a delinquent child for committing an act, other than a violation of section 2923.12 [CCW] of the Revised Code, that would be a felony if committed by an adult ~~and is committed to the legal custody of the department of youth services pursuant to division (A)(4), (5), or (6) of this section and if the;~~

**(b)** THE court determines that the child, if the child was an adult, would be guilty of a specification of the type set forth in section 2941.141, 2941.144, 2941.145, or 2941.146 of the Revised Code ~~in relation to the act for which the child was adjudicated a delinquent child, the court may commit the child to the legal custody of the department of youth services for institutionalization in a secure facility for the following period of time, subject to division (A)(7)(c) of this section;~~

(2) DIVISION (B)(2) AND (3) OF THIS SECTION APPLIES TO AN ACCOMPLICE, WHO DID NOT POSSESS THE FIREARM CONTAINED IN THE SPECIFICATION, IF THE COURT DETERMINES THAT THE CHILD KNEW THAT THE PRINCIPAL OFFENDER POSSESSED THE FIREARM. IF THE ACCOMPLICE KNEW THE FIREARM WAS POSSESSED UNDER THE CIRCUMSTANCES DESCRIBED IN THE SPECIFICATION, THE ACCOMPLICE SHALL RECEIVE THE SAME DISPOSITION AS THE PRINCIPAL OFFENDER. OTHERWISE, THE ACCOMPLICE SHALL RECEIVE THE DISPOSITION UNDER DIVISION (B)(1) OF THIS SECTION.

(B) **Gun Spec Penalties** THE COURT MAY OR, WHEN REQUIRED, SHALL COMMIT THE CHILD TO THE DEPARTMENT OF YOUTH SERVICES FOR INSTITUTIONALIZATION IN A SECURE FACILITY AS PROVIDED IN DIVISIONS (B)(1) THROUGH (3) OF THIS SECTION. THE COMMITMENT SHALL BE IN ADDITION TO THE COMMITMENT THAT SHALL BE ORDERED FOR THE UNDERLYING OFFENSE.

~~(i)~~(1) IF THE CHILD WOULD BE GUILTY OF A SPECIFICATION OF THE TYPE SET FORTH IN SECTION 2941.141 OF THE REVISED CODE [the possession spec], THE COURT MAY COMMIT THE OFFENDER FOR A DEFINITE period of UP TO one year;

~~(ii)~~(2) IF THE CHILD WOULD BE GUILTY OF A SPECIFICATION OF THE TYPE SET FORTH IN SECTION ~~2941.144, 2941.145~~ [the display, indicate, use, or facilitate spec], ~~or 2941.146~~ OF THE REVISED CODE, THE COURT SHALL COMMIT THE OFFENDER FOR A DEFINITE period of ONE TO three years;

(3) IF THE CHILD WOULD BE GUILTY OF A SPECIFICATION OF THE TYPE SET FORTH IN SECTION 2941.144 [the automatic or silencer spec] OR 2941.146 [the drive-by shooting spec] OF THE REVISED CODE, THE COURT SHALL COMMIT THE OFFENDER FOR A DEFINITE PERIOD OF ONE TO FIVE YEARS. A CHILD COMMITTED UNDER THIS DIVISION IS NOT ELIGIBLE FOR COMMITMENT UNDER DIVISION (A)(1) OR (2) OF THIS SECTION FOR THE SAME OFFENSE.

[The gun spec sections should be amended to refer to dispositions under this section.]

~~(b)~~(C) **Gang Spec & Penalties** [Supersedes §2151.355(A)(7)(b)] If the child is adjudicated a delinquent child for committing ~~a category one offense or a category two offense~~ AGGRAVATED MURDER, MURDER, OR AN ACT THAT WOULD BE A FIRST, SECOND, OR THIRD DEGREE FELONY OFFENSE OF VIOLENCE IF COMMITTED BY AN ADULT and ~~is committed to the legal custody of the department of youth services pursuant to division (A)(5) or (6) of this section~~ and if the court determines that the child, if the child was an adult, would be guilty of a specification of the type set forth in section 2941.142 of the Revised Code in relation to the act for which the child was adjudicated a delinquent child, the court shall commit the child to the legal custody of the department of youth services for institutionalization in a secure facility for a period of not less than one year or more than three years, subject to division ~~(A)(7)(c)~~(D) of this section.

~~(e)~~(D) **Limit** [Supersedes §2151.355(A)(7)(c). Changes the 3 yr. cap to a 5 yr. cap and allows surpenalties in EJJ cases to go to age 25. It also clarifies the order in which the penalties would be served.] The court shall not commit a child to the legal custody of the department of youth services pursuant to division ~~(A)(7)(a) or (b)~~ (B) of this section for a period ~~of time~~ that exceeds ~~three~~ FIVE years FOR ONE OFFENSE. The period of commitment imposed pursuant to division ~~(A)(7)(a) or (b)~~ (B) of this section shall be in addition to, and shall be served consecutively with and prior to, a period of commitment ordered pursuant to division ~~(A)(4), (5), or (6)~~ OF UNDER this section CHAPTER FOR THE UNDERLYING OFFENSE. IF A COMMITMENT IS IMPOSED UNDER DIVISIONS (A) AND (B) OF THIS SECTION, THE PERIOD IMPOSED UNDER DIVISION (A) SHALL BE SERVED PRIOR TO THE PERIOD IMPOSED UNDER DIVISION (B).

~~provided that the~~ THE total of all the periods of commitment shall not exceed the child's attainment of twenty-one years of age, UNLESS THE CHILD RECEIVES AN EXTENDED JUVENILE JURISDICTION DISPOSITION, IN WHICH CASE THE TOTAL OF ALL PERIODS OF COMMITMENT SHALL NOT EXCEED THE OFFENDER'S ATTAINMENT OF TWENTY-FIVE YEARS OF AGE.

~~(E)(2)~~ **Consecutive Terms, Generally** [Currently, this is §2151.355(B)(2).] 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 entering the delinquent child adjudication orders the commitment of the child, for two or more of those acts, to the legal custody of the department of youth services for institutionalization or institutionalization in a secure facility pursuant to ~~division (A)(4), (5), or (6) of this section~~ 2152.13 [SYOs], 2152.15 [EJJs], OR 2152.16 [TJs] OF THE REVISED CODE, the court may order that all of the periods of commitment imposed under those divisions for those acts be served consecutively in the legal custody of the department of youth services and, if applicable, be in addition to and commence immediately following the expiration of a period of commitment that the court imposes pursuant to ~~division (A)(7) of this section~~ [for gun & gang specs]. A court shall not commit a delinquent child to the legal custody of the department of youth services under THIS division ~~(B)(2) of this section~~ for a period that exceeds the child's attainment of twenty-one years of age, OR, IF THE CHILD IS ELIGIBLE FOR EXTENDED JURISDICTION UNDER THIS CHAPTER, TWENTY-FIVE YEARS OF AGE.

~~(G)(2)(F)~~ **RVO Finding** [Supersedes §2151.355(G)(2)] If a child is adjudicated a delinquent child for committing an act that, if committed by an adult, would be aggravated murder, murder, rape, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, involuntary manslaughter, a felony of the first or second degree resulting in the death of or physical harm to a person, complicity in or an attempt to commit any of those offenses, or an offense under an existing or former law of this state that is or was substantially equivalent to any of those offenses and if the court in its order of disposition for that act commits the child to the custody of the department of youth services, ~~the court may make a specific finding that the adjudication should~~ SHALL be considered a conviction for purposes of a determination in the future, pursuant to Chapter 2929. of the Revised Code, as to whether the child is a repeat violent offender ~~as defined in section 2929.01 of the Revised Code. If the court makes a specific finding as described in this division, it shall include the specific finding in its order of disposition and in the record in the case.~~

#### **49§2152.18 DUTIES UPON DELINQUENCY DISPOSITIONS**

[Supersedes §2151.355(F)(1) through (6) & (K)]

~~(F)(4)(A)~~ **No Designation** [Supersedes §2151.355(F)(1)] When a juvenile court commits a delinquent child to the custody of the department of youth services pursuant to this ~~section~~ CHAPTER, the court shall not designate the specific institution in which the department is to place the child but instead shall specify that the child is to be institutionalized or that the institutionalization is to be in a secure facility ~~if that is required by division (A) of this section.~~

~~(6)(B)~~ **Detention Time Credit** [Supersedes §2151.355(F)(6)] When a juvenile court commits a delinquent child to the custody of the department of youth services ~~pursuant to division (A)(4) or (5) of this section~~, the court shall state in the order of commitment the total number of days that the child has been held, ~~as of the date of the issuance of the order~~, in detention in connection with the delinquent child complaint upon which the order of commitment is based. The department shall reduce the minimum period of institutionalization or minimum period of institutionalization in a secure facility THAT WAS ORDERED ~~specified in division (A)(4) or (5) of this section~~ by both the total number of days that the child has been so held in detention as stated by the court in the order of commitment and the total number of any additional days that

the child has been held in detention subsequent to the order of commitment but prior to the transfer of physical custody of the child to the department.

~~(2)~~(C) **Records to DYS** [Supersedes §2151.355(F)(2)]

(1) When a juvenile court commits a delinquent child to the custody of the department of youth services, the court shall provide the department with the child's medical records, a copy of the report of any mental examination of the child ordered by the court, the section or sections of the Revised Code violated by the child and the degree of the violation, the warrant to convey the child to the department, a copy of the court's journal entry ordering the commitment of the child to the legal custody of the department, a copy of the arrest record pertaining to the act for which the child was adjudicated a delinquent child, a copy of any victim impact statement pertaining to the act, and any other information concerning the child that the department reasonably requests. The court also shall complete the form for the standard disposition investigation report that is ~~developed and~~ furnished by the department of youth services pursuant to section 5139.04 of the Revised Code and provide the department with the completed form. The department may refuse to accept physical custody of a delinquent child who is committed to the legal custody of the department until the court provides to the department the documents specified in ~~division (F)(2) of this section~~ DIVISION. No officer or employee of the department who refuses to accept physical custody of a delinquent child who is committed to the legal custody of the department shall be subject to prosecution or contempt of court for the refusal if the court fails to provide the documents specified in ~~division (F)(2) of this section~~ at the time the court transfers the physical custody of the child to the department.

~~(3)~~(2) [Supersedes §2151.355(F)(3)] Within twenty working days after the department of youth services receives physical custody of a delinquent child from a juvenile court, the court shall provide the department with a certified copy of the child's birth certificate ~~or~~ AND the child's social security number, or, if the court made all reasonable efforts to obtain the information but was unsuccessful, the court shall provide the department with documentation of the efforts it made to obtain the information.

(D) **School Information** [To be harmonized with the "Safe Schools Act"]

~~(K)~~(1) **Notice to School of Certain Acts** [Supersedes §2151.355(K)] Within ten days after completion of the adjudication, the court shall give written notice of an adjudication that a child is a delinquent child to the superintendent of a city, local, exempted village, or joint vocational school district if the basis of the adjudication was the commission of an act that would be a criminal offense if committed by an adult and that was committed by the delinquent child when the child was sixteen years of age or older and if the act is any of the following:

~~(1)~~(a) A violation of section 2923.122 of the Revised Code [bringing a weapon to school] that relates to property owned or controlled by, or to an activity held under the auspices of, the board of education of that school district;

~~(2)~~(b) A violation of section 2923.12 of the Revised Code [CCW] or of a substantially similar municipal ordinance that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district;

~~(3)~~(c) A violation of division (A) of section 2925.03 [drug trafficking] or 2925.11 [drug possession] of the Revised Code that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district and that is not a minor drug possession offense ~~as defined in section 2925.01 of the Revised Code;~~

~~(4)~~(d) A violation of section 2903.01 [aggravated murder], 2903.02 [murder], 2903.03 [voluntary manslaughter], 2903.04 [involuntary manslaughter], 2903.11 [felonious assault], 2903.12 [aggravated assault], 2907.02 [rape], or 2907.05 [gross sexual imposition] of the Revised Code, or a violation of former section 2907.12 [felonious sexual penetration, now rape] of the Revised Code, that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, if the victim at the time of the commission of the act was an employee of the board of education of that school district;

~~(5)~~(e) Complicity in any violation described in division ~~(K)~~(D)(1), (2), (3), or (4) of this section that was alleged to have been committed in the manner described in division ~~(K)~~(D)(1), (2), (3), or (4) of this section, regardless of whether the act of complicity was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district.]

~~(4)~~(2) **Notice to School of DYS Commitment** [Supersedes §2151.355(F)(4)] ~~When a juvenile court commits~~ WITHIN FOURTEEN DAYS OF COMMITTING a delinquent child to the custody of the department of youth services, the court shall give notice to the school attended by the child of the child's commitment by sending to that school a copy of the court's journal entry ordering the commitment. As soon as possible after receipt of the notice described in this division, the school shall provide the department with the child's school transcript. However, the department shall not refuse to accept a child committed to it, and a child committed to it shall not be held in a county or district detention home, because of a school's failure to provide the school transcript that it is required to provide under ~~division (F)(4)~~ of this section.

~~(5)~~(3) **Updated Records to School** [Supersedes §2151.355(F)(5)] ~~The~~ WITHIN FOURTEEN DAYS OF RELEASE FROM AN INSTITUTION UNDER ITS CONTROL, THE department of youth services shall provide the court and the school with an updated copy of the child's school transcript and shall provide the court with a summary of the institutional record of the child when it releases the child from institutional care. The department also shall provide the court with a copy of any portion of the child's institutional record that the court specifically requests within five working days of the request.

## **50§2152.19 COMMUNITY DISPOSITIONS**

[Supersedes parts of §2151.355 on non-DYS dispositions, & divisions (H) & (L)]

(A) If a child is adjudicated a delinquent child FOR AN ACT THAT WOULD BE A FELONY OR A MISDEMEANOR IF COMMITTED BY AN ADULT, the court may make any of the following orders of disposition, IN ADDITION TO ANY OTHER DISPOSITION AUTHORIZED BY THIS CHAPTER:

(1) **Foster Care, Etc.** Any order that is authorized by section 2151.353 of the Revised Code FOR ABUSED, NEGLECTED, OR DEPENDENT CHILDREN [including Children Services, foster care, etc. placements];

~~(3)~~(2) **School, Camp, Etc.** Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children by the county, by a district organized under section 2151.34 or 2151.65 of the Revised Code, or by a private agency or organization, within or without the state, that is authorized and qualified to provide the care, treatment, or placement required;

~~(2)(3)~~ **Community Control** Place the child on ~~probation~~ COMMUNITY CONTROL under any SANCTIONS, SERVICES, AND conditions that the court prescribes;

[The next ¶, dealing with restitution, would be repealed. Part of it is unnecessary and the rest largely duplicates current division (A)(8)(b), which moves to proposed §2152.20.]

~~**Minimum Condition** If the child is adjudicated a delinquent child for violating a law of this state or the United States, or an ordinance or regulation of a political subdivision of this state, that would be a crime if committed by an adult or for violating division (A) of section 2923.211 of the Revised Code AS A CONDITION OF COMMUNITY CONTROL IN EVERY CASE, the court, in addition to all ANY other required or permissive conditions of probation that the court imposes upon the delinquent child pursuant to division (A)(2) of this section, shall require the child as a condition of the child's probation to abide by the law during the period of probation COMMUNITY CONTROL, including, but not limited to, complying with the provisions of Chapter 2923. of the Revised Code relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance, as defined in section 2923.11 of the Revised Code.~~

A COURT MAY MAKE ANY ORDER OF COMMUNITY CONTROL INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING SANCTIONS AND CONDITIONS:

~~(16)(a)~~ **Basic Probation Supervision** ~~Impose a~~ A period of basic PROBATION supervision, in which the child is required to maintain contact with a person appointed to supervise the child in accordance with sanctions imposed by the court;

~~(15)(b)~~ **Intensive Probation Supervision** ~~Impose a~~ A period of intensive PROBATION supervision, in which the child is required to maintain frequent contact with a person appointed by the court to supervise the child while the child is seeking or maintaining employment and participating in training, education, and treatment programs as the order of disposition;

~~(14)(c)~~ **Day Reporting** ~~Impose a~~ A period of day reporting in which the child is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center;

~~(13)(d)~~ **Community Service** ~~Impose a~~ A period of community service of up to five hundred hours FOR A FELONY OR A FIRST DEGREE MISDEMEANOR DELINQUENT ACT, UP TO TWO HUNDRED HOURS FOR A SECOND, THIRD, OR FOURTH DEGREE MISDEMEANOR DELINQUENT ACT, OR UP TO THIRTY HOURS FOR A MINOR MISDEMEANOR DELINQUENT ACT;

~~(19)(e)~~ **Education** ~~Require~~ A REQUIREMENT THAT the child to obtain a high school diploma, a certificate of high school equivalency, VOCATIONAL TRAINING, or employment;

~~(17)(f)~~ **Drug/Alcohol Monitoring** ~~Impose a~~ A period of drug and alcohol use monitoring;

~~(14)(g)~~ **Treatment** ~~Impose~~ ALCOHOL OR DRUG ASSESSMENT, COUNSELING, OR a period in an alcohol or drug treatment program with a level of security for the child as determined necessary by the court;

~~(18)(h)~~ **Curfew** ~~Impose a~~ A period in which the court orders the child to observe a curfew that may involve daytime or evening hours;

~~(j)~~ **Monitored Time** A PERIOD OF MONITORED TIME;

~~(12)(i)~~ **House Arrest** ~~Impose a~~ A period of ~~electronically monitored~~ house arrest in accordance with ~~division (l) of this section~~ WITH OR WITHOUT ELECTRONIC MONITORING;

~~(10)(k)~~ **Electronic Monitoring** If the child is adjudicated a delinquent child for committing an act that, if committed by an adult, would be a criminal offense that would qualify the adult as an eligible offender pursuant to division (A)(3) of section 2929.23 of the Revised Code, ~~impose a~~ A period of ELECTRONIC MONITORING WITHOUT HOUSE ARREST OR electronically monitored house detention in accordance with ~~division (l) of this section~~ ARREST that does not exceed the maximum sentence of imprisonment that could be imposed upon an adult who commits the same act;

~~(J)(1)~~ As used in this section: (a) "Electronic monitoring device," "certified electronic monitoring device," "electronic monitoring system," and "certified electronic monitoring system" have the same meanings as in section 2929.23 of the Revised Code.

~~(b)~~ [This long definition was stricken as unnecessary after adding "electronically-monitored house arrest" to the prior division.]

~~(2)~~ A juvenile court, pursuant to division (A)(10) of this section, may impose a period of electronically monitored house detention upon a child who is adjudicated a delinquent child for committing an act that, if committed by an adult, would be a criminal offense that would qualify the adult as an eligible offender pursuant to division (A)(3) of section 2929.23 of the Revised Code. The court may impose a period of electronically monitored house detention in addition to or in lieu of any other dispositional order imposed upon the child, except that any ANY period of electronically monitored house detention ARREST shall not extend beyond the child's eighteenth TWENTY-FIRST birthday, OR, IF THE CHILD IS SUBJECT TO EXTENDED JUVENILE JURISDICTION UNDER THIS CHAPTER, BEYOND THE CHILD'S TWENTY-FIFTH BIRTHDAY.

If a court imposes a period of electronically monitored house ~~detention~~ ARREST upon a child, it shall require the child: to wear, otherwise have attached to the child's person, or otherwise be subject to monitoring by a certified electronic monitoring device or to participate in the operation of and monitoring by a certified electronic monitoring system; to remain in the child's home or other specified premises for the entire period of electronically monitored house ~~detention~~ ARREST except when the court permits the child to leave those premises to go to school or to other specified premises; to be monitored by a central system that monitors the certified electronic monitoring device that is attached to the child's person or that otherwise is being used to monitor the child and that can monitor and determine the child's location at any time or at a designated point in time or to be monitored by the certified electronic monitoring system TIMES; to report periodically to a person designated by the court; and, in return for receiving a dispositional order of

~~electronically monitored house detention ARREST~~, to enter into a written contract with the court agreeing to comply with all ~~restrictions and~~ requirements imposed by the court, agreeing to pay any fee imposed by the court for the costs of the electronically monitored house ~~detention ARREST imposed by the court pursuant to division (E) of section 2929.23 of the Revised Code~~, and agreeing to waive the right to receive credit for any time served on electronically monitored house ~~detention ARREST~~ toward the period of any other dispositional order imposed upon the child ~~for the act for which the dispositional order of electronically monitored house detention was imposed~~ if the child violates any of the ~~restrictions or~~ requirements of the dispositional order of electronically monitored house ~~detention ARREST~~. The court also may impose other reasonable ~~restrictions and~~ requirements upon the child.

~~(3) If a child violates any of the restrictions or requirements imposed upon the child as part of the child's dispositional order of electronically monitored house detention, the UNLESS ORDERED BY THE COURT, THE child shall not receive credit for any time served on electronically monitored house detention ARREST toward any other dispositional order imposed upon the child for the act for which the dispositional order of electronically monitored house detention ARREST was imposed.~~

**(l) Detention for Misdemeanor Delinquency** IF A CHILD IS ADJUDICATED A DELINQUENT CHILD FOR COMMITTING AN ACT THAT WOULD BE A MISDEMEANOR, OTHER THAN A MINOR MISDEMEANOR, IF COMMITTED BY AN ADULT, THE COURT MAY COMMIT THE CHILD TO THE LEGAL CUSTODY OF THE DETENTION CENTER THAT SERVES THE COUNTY FOR UP TO SIXTY DAYS, IN ADDITION TO ANY OTHER DISPOSITION AUTHORIZED BY THIS CHAPTER.

IF THE CHILD WAS HELD IN DETENTION UNDER SECTION 2152.04 OF THE REVISED CODE [the detention for up to 90 days for evaluation] IN RELATION TO THE CHARGE, THE COURT SHALL CREDIT THE TIME SPENT FOR EVALUATION AGAINST ANY TIME IMPOSED UNDER THIS DIVISION. IF THE EVALUATION TIME WAS ORDERED AFTER THE DETENTION UNDER THIS DIVISION, THE TIME SPENT IN DETENTION UNDER THIS DIVISION SHALL BE CREDITED AGAINST THE EVALUATION PERIOD.

~~(9)(m) Optional License Suspension~~ ~~Subject to division (D) of this section, suspend~~ SUSPEND ~~or revoke~~ the driver's license, probationary driver's license, or temporary instruction permit issued to the child or suspend ~~or revoke~~ the registration of all motor vehicles registered in the name of the child. A child whose license or permit is so suspended ~~or revoked~~ is ineligible for issuance of a license or permit during the period of suspension or revocation. At the end of the period of suspension ~~or revocation~~, the child shall not be reissued a license or permit until the child has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.

**(n) Mandatory License Suspensions** THE COURT SHALL SUSPEND THE TEMPORARY INSTRUCTION PERMIT, RESTRICTED LICENSE, PROBATIONARY DRIVER'S LICENSE, OR NONRESIDENT OPERATING PRIVILEGE, OR SUSPEND THE ABILITY TO OBTAIN SUCH A PERMIT OR LICENSE, IN THE FOLLOWING SITUATIONS, DURING WHICH RESTRICTED DRIVING PRIVILEGES MAY BE GRANTED BY THE COURT:

~~(D)(i)~~ **Weapon in School** [Current division (D)] If a child is adjudicated a delinquent child for violating section 2923.122 of the Revised Code [bringing a weapon to school], the court, in addition to any order of disposition it makes for the child under division (A), (B), or (C) of this section, shall revoke the temporary instruction permit and deny the child the issuance of another temporary instruction permit in accordance with division (E)(1)(b) (a) THROUGH (e) of section 2923.122 of the Revised Code or shall suspend the probationary driver's license, restricted license, or nonresident operating privilege of the child or deny the child the issuance of a probationary driver's license, restricted license, or temporary instruction permit in accordance with division (E)(1)(a), (c), (d), or (e) of section 2923.122 of the Revised Code.

**Drug Offender License Suspension** [This is current (C)]

~~(C)(ii)~~ If a child is adjudicated a delinquent child for committing an act that, if committed by an adult, would be a drug abuse offense, as defined in section 2925.01 of the Revised Code, or for violating division (B) of section 2917.11 [drunken disorderly conduct] of the Revised Code, in addition to imposing in its discretion any other order of disposition authorized by this section, the court shall do both of the following:

~~(1)~~ Require the child to participate in a drug abuse or alcohol abuse counseling program; [Since this is not truly mandatory and only for limited offenses, it is merged into treatment options above.]

~~(2)~~ Suspend or revoke the temporary instruction permit, probationary driver's license, or driver's license issued to the child THE SUSPENSION SHALL BE for a period of time prescribed by the court or, at the discretion of the court, until the child attends and satisfactorily completes, a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. During the time the child is attending the program, the court shall retain any temporary instruction permit, probationary driver's license, or driver's license issued to the child, and the court shall return the permit or license when the child satisfactorily completes the program.

~~(24)(4)~~ **Court's Custody** Commit the child to the temporary or permanent custody of the court;

~~(22)(5)~~ **Other Options** Make any further disposition that the court finds proper, except that the child shall not be placed in any state correctional institution, county, multicounty, or municipal jail or workhouse, or other place in which an adult convicted of a crime, under arrest, or charged with a crime is held.

~~(B)(4)~~ **Victim-Offender Mediation** [Current (B)(1) deals with forfeitures. It moves to proposed §2152.20. This comes from current (A)(20)] ~~(20)~~ THE COURT MAY ESTABLISH A VICTIM-OFFENDER MEDIATION PROGRAM IN WHICH VICTIMS AND THEIR OFFENDERS MEET TO DISCUSS THE OFFENSE AND SUGGEST POSSIBLE RESTITUTION. If the court obtains the assent of the victim of the criminal act committed by the child, IT MAY require the child to participate in a reconciliation or mediation THE program that includes a meeting in which the child and the victim may discuss the criminal act, discuss restitution, and consider other sanctions for the criminal act;.

~~(2)~~ [Current division (B)(2), dealing with consecutive DYS terms, would move, substantially unchanged, to proposed §2152.17.]

**(C) Sex Offender Registration, Etc.**

(1) IF A CHILD IS ADJUDICATED A DELINQUENT CHILD FOR COMMITTING A SEXUALLY ORIENTED OFFENSE UNDER SECTION 2950.01 OF THE REVISED CODE, IN ADDITION TO ANY ORDER OF DISPOSITION IT MAKES FOR THE CHILD UNDER THIS CHAPTER, THE COURT MAY MAKE ANY DETERMINATION, ADJUDICATION, OR ORDER AUTHORIZED UNDER CHAPTER 2950 OF THE REVISED CODE. HOWEVER, THE COURT SHALL NOT SUBJECT THE CHILD TO THE NOTIFICATION PROVISIONS SET FORTH IN SECTION 2950.11 OF THE REVISED CODE UNLESS THE CHILD IS ADJUDICATED AS A SERIOUS YOUTHFUL OFFENDER UNDER SECTION 2152.13 OF THE REVISED CODE AND THE COURT DETERMINES AT A LATER HEARING THAT COMMUNITY NOTIFICATION IS WARRANTED.

(2) IF, AT A DISPOSITIONAL HEARING FOR A SEX OFFENSE HELD UNDER THIS CHAPTER, A DETERMINATION IS MADE REGARDING THE STATUS OF THE CHILD UNDER CHAPTER 2950 OF THE REVISED CODE, THE COURT SHALL ADVISE THE CHILD, AT THE DISPOSITIONAL HEARING, OF THE CHILD'S DUTY TO REGISTER UNDER SECTION 2950.03 OF THE REVISED CODE, AND OF THE CHILD'S REGISTRATION REQUIREMENTS UNDER SECTIONS 2950.04, 2950.05, 2950.06, AND 2950.07 OF THE REVISED CODE.

[The mandatory license suspension in current (D) would move to new (A)(4), above. Divisions (E)(1) & (2) would be repealed as unnecessary. One guides judges in favor of a DYS term when certain victims are harmed. The other tells judges to consider prior DYS terms in sentencing. Neither controls the judge's discretion. Current (F) would move, without significant amendments, to new §2152.16, governing DYS terms. The provision governing victims' notice re certain recoveries would move, without significant changes, to §2152.82.]

~~(H)(D)~~ **Victim Impact Statements** [Supersedes §2151.355(H)]

(1) If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the child caused, attempted to cause, threatened to cause, or created the risk of physical harm to the victim of the act, the court, prior to issuing an order of disposition under this section, shall order the preparation of a victim impact statement by the probation department of the county in which the victim of the act resides, by the court's own probation department, or by a victim assistance program that is operated by the state, a county, a municipal corporation, or another governmental entity. The court shall consider the victim impact statement in determining the order of disposition to issue for the child.

(2) Each victim impact statement shall identify the victim of the act for which the child was adjudicated a delinquent child, itemize any economic loss suffered by the victim as a result of the act, identify any physical injury suffered by the victim as a result of the act and the seriousness and permanence of the injury, identify any change in the victim's personal welfare or familial relationships as a result of the act and any psychological impact experienced by the victim or the victim's family as a result of the act, and contain any other information related to the impact of the act upon the victim that the court requires.

(3) A victim impact statement shall be kept confidential and is not a public record, ~~as defined in section 149.43 of the Revised Code~~. However, the court may furnish copies of the statement to the department of youth services ~~pursuant to division (F)(3) of this section~~ IF THE DELINQUENT CHILD IS COMMITTED TO THE DEPARTMENT or to both the adjudicated delinquent child or the adjudicated delinquent child's counsel

and the prosecuting attorney. The copy of a victim impact statement furnished by the court to the department pursuant to ~~division (F)(3) of this section~~ shall be kept confidential and is not a public record, ~~as defined in section 149.43 of the Revised Code~~. The copies of a victim impact statement that are made available to the adjudicated delinquent child or the adjudicated delinquent child's counsel and the prosecuting attorney pursuant to THIS division ~~(H)(3) of this section~~ shall be returned to the court by the person to whom they were made available immediately following the imposition of an order of disposition for the child under this section.

(4) THE DEPARTMENT OF YOUTH SERVICES SHALL WORK WITH LOCAL PROBATION DEPARTMENTS AND VICTIM ASSISTANCE PROGRAMS TO DEVELOP A STANDARD VICTIM IMPACT STATEMENT.

[§2151.355(I), governing drug offense forfeitures, would move to proposed §2152.20. §2151.355(J), governing electronic monitoring, would meld into (A)(5), above. §2151.355(K), governing certain notices to school, moves to §2152.18(C)(1), without significant amendments.]

~~(L)~~(E)

(1) **Probation Officers' Powers** [Supersedes §2151.355(L)] During the period of a delinquent child's ~~probation~~ COMMUNITY CONTROL granted under ~~division (A)(2) of this section~~, authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the person of the delinquent child, the place of residence of the delinquent child, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the delinquent child has a right, title, or interest or for which the delinquent child has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess if the probation officers have reasonable grounds to believe that the delinquent child is not abiding by the law or otherwise is not complying with the conditions of the delinquent child's ~~probation~~ COMMUNITY CONTROL. The court that places a delinquent child on ~~probation~~ COMMUNITY CONTROL under ~~division (A)(2) of this section~~ shall provide the delinquent child with a written notice that informs the delinquent child that authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may conduct those types of searches during the period of ~~probation~~ COMMUNITY CONTROL if they have reasonable grounds to believe that the delinquent child is not abiding by the law or otherwise is not complying with the conditions of the delinquent child's ~~probation~~ COMMUNITY CONTROL. The court also shall provide the written notice described in division (C)(2)(b) of section 2151.411 of the Revised Code to each parent, guardian, or custodian of the delinquent child who is described in division (C)(2)(a) of that section.

(2) **Notice to Parents** [From current §2151.411(C)(2)(b). The rest of that section would be repealed. Its surety language would be merged into the parental responsibility statute.] ~~(b) The court that places the child on probation COMMUNITY CONTROL shall provide the appropriate individuals described in division (C)(2)(a) of this section CHILD'S PARENTS, GUARDIAN, OR OTHER CUSTODIAN with a written notice that informs them that authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may conduct searches as described in PURSUANT TO THIS division (L) of section 2151.355 of the Revised Code during the period of probation if they have reasonable grounds to believe that the child is not abiding by the law or otherwise is not complying with the conditions of the child's probation. The notice shall specifically state that a permissible search might extend to a motor vehicle, another item of tangible or intangible personal property, or a place of residence or other real property in which a notified parent, guardian, or custodian has a right, title, or interest and that the parent, guardian, or custodian expressly or impliedly permits the child to use, occupy, or possess.~~

**51§2152.20 FINANCIAL DISPOSITIONS FOR DELINQUENTS AND JTOs**

[Supersedes §§2151.3512 & 2151.355(A)(2), (B), & (I)]

If a child is adjudicated a delinquent child or is adjudicated a juvenile traffic offender, the court may make an order ANY of disposition of the child under division (A)(8)(a) of section 2151.355 or under division (A)(1) of section 2151.356 of the Revised Code, whichever is applicable, by imposing THE FOLLOWING DISPOSITIONS:

(A) **Fines** [Supersedes §2151.3512] IMPOSE a fine and costs in accordance with the following schedule:

~~(A)(1)~~ If the child was adjudicated a delinquent child or a juvenile traffic offender for committing FOR an act that would be a minor misdemeanor or an unclassified misdemeanor if committed by an adult, a fine not to exceed fifty dollars and costs;

~~(B)(2)~~ If the child was adjudicated a delinquent child or a juvenile traffic offender for committing an FOR act that would be a misdemeanor of the fourth degree if committed by an adult, a fine not to exceed ~~seventy-five~~ ONE HUNDRED dollars and costs;

~~(C)(3)~~ If the child was adjudicated a delinquent child or a juvenile traffic offender for committing FOR an act that would be a misdemeanor of the third degree if committed by an adult, a fine not to exceed one hundred ~~twenty-five~~ FIFTY dollars and costs;

~~(D)(4)~~ If the child was adjudicated a delinquent child or a juvenile traffic offender for committing FOR an act that would be a misdemeanor of the second degree if committed by an adult, a fine not to exceed ~~one~~ TWO hundred ~~seventy-five~~ dollars and costs;

~~(E)(5)~~ If the child was adjudicated a delinquent child or a juvenile traffic offender for committing FOR an act that would be a misdemeanor of the first degree if committed by an adult, a fine not to exceed two hundred ~~twenty-five~~ FIFTY dollars and costs;

~~(F)(6)~~ If the child was adjudicated a delinquent child or a juvenile traffic offender for committing FOR an act that would be a felony of the fifth degree or an unclassified felony if committed by an adult, a fine not to exceed three hundred dollars and costs;

~~(G)(7)~~ If the child was adjudicated a delinquent child or a juvenile traffic offender for committing FOR an act that would be a felony of the fourth degree if committed by an adult, a fine not to exceed four hundred dollars and costs;

~~(H)(8)~~ If the child was adjudicated a delinquent child or a juvenile traffic offender for committing FOR an act that would be a felony of the third degree if committed by an adult, a fine not to exceed ~~seven~~ FIVE hundred ~~fifty~~ dollars and costs;

~~(I)(9)~~ If the child was adjudicated a delinquent child or a juvenile traffic offender for committing FOR an act that would be a felony of the second degree if committed by an adult, a fine not to exceed one thousand dollars and costs;

~~(J)(10)~~ If the child was adjudicated a delinquent child or a juvenile traffic offender for committing FOR an act that would be a felony of the first degree if committed by an adult, a fine not to exceed ~~one~~ ONE thousand ~~four~~ FIVE hundred ~~fifty~~ dollars and costs;

~~(K)(11) If the child was adjudicated a delinquent child for committing FOR an act that would be aggravated murder or murder if committed by an adult, a fine not to exceed one TWO thousand eight hundred dollars and costs.~~

**(B) Costs** [Supersedes §2151.3512] ORDER THE CHILD TO PAY COSTS.

**(C) Restitution** [Current §2151.355(A)(2) “requires” restitution in vandalism, criminal damaging, and criminal mischief cases “if restitution is appropriate”. It “allows” restitution in any other delinquency case. Current (A)(8)(b) echoes the latter language. This draft would eliminate pseudo-mandatory restitution, merge the redundant provisions, and move them into this section. Mixed cases are used to show changes in (A)(8)(b).] Require the child to make restitution TO THE VICTIM ~~for all or part of the property damage caused by the child's delinquent act and for all or part of the value of the property that was the subject of any delinquent act the child committed that would be a theft offense, as defined in division (K) of section 2913.01 of the Revised Code, if committed by an adult~~ IN AN AMOUNT BASED ON THE VICTIM'S ECONOMIC LOSS [defined to include loss of income, property loss, medical expenses, funeral expenses, etc.].

~~If the court determines that the victim of the child's delinquent act was sixty-five years of age or older or permanently and totally disabled at the time of the commission of the act, the court, regardless of whether or not the child knew the age of the victim, shall consider that fact in favor of imposing restitution, but that fact shall not control the decision of the court.~~

RESTITUTION SHALL BE MADE DIRECTLY TO THE VICTIM IN OPEN COURT OR TO THE PROBATION DEPARTMENT THAT SERVES THE JURISDICTION OR THE CLERK OF COURTS ON BEHALF OF THE VICTIM. IT MAY INCLUDE REIMBURSEMENT TO THIRD PARTIES, OTHER THAN THE DEFENDANT'S INSURER, FOR AMOUNTS PAID TO THE VICTIM OR TO ANY SURVIVOR OF THE VICTIM FOR ECONOMIC LOSS RESULTING FROM THE OFFENSE. IF REIMBURSEMENT TO A THIRD PARTY IS REQUIRED, IT SHALL BE MADE TO ANY GOVERNMENTAL AGENCY TO REPAY ANY AMOUNTS PAID BY THE AGENCY TO THE VICTIM OR SURVIVOR BEFORE ANY REIMBURSEMENT IS MADE TO ANY OTHER PERSON. [The new language here and below comes from the Commission's proposals for adult courts.]

The restitution may be in the form of a cash reimbursement paid in a lump sum or in installments, the performance of repair work to restore any damaged property to its original condition, the performance of a reasonable amount of labor for the victim, the performance of community service ~~or community work~~, any other form of restitution devised by the court, or any combination of the previously described forms of restitution.

THE COURT MAY BASE RESTITUTION ON AN AMOUNT RECOMMENDED BY THE VICTIM, THE DEFENDANT, A PRESENTENCE INVESTIGATION REPORT, ESTIMATES OR RECEIPTS INDICATING THE COST OF REPAIRING OR REPLACING PROPERTY, AND OTHER INFORMATION. A HEARING SHALL BE HELD ON RESTITUTION IF THE AMOUNT IS DISPUTED BY THE DEFENDANT OR VICTIM.

THE JUDGE SHALL DETERMINE, OR ORDER DETERMINED, THE AMOUNT OF RESTITUTION TO BE PAID BY THE OFFENDER. ALL RESTITUTION PAYMENTS SHALL BE CREDITED AGAINST ANY RECOVERY OF ECONOMIC LOSS IN A CIVIL ACTION BROUGHT BY OR ON BEHALF OF THE VICTIM AGAINST THE CHILD OR CHILD'S PARENT, GUARDIAN, OR OTHER CUSTODIAN.

THE JUDGE MAY ORDER THAT THE OFFENDER PAY A SURCHARGE, OF UP TO FIVE PER CENT OF THE AMOUNT OF RESTITUTION OTHERWISE ORDERED, TO THE ENTITY RESPONSIBLE FOR COLLECTING AND PROCESSING RESTITUTION PAYMENTS.

THE VICTIM MAY REQUEST THAT THE PROSECUTING ATTORNEY FILE A MOTION, OR THE CHILD MAY FILE A MOTION, FOR MODIFICATION OF THE PAYMENT TERMS OF ANY RESTITUTION ORDERED BASED ON A SUBSTANTIAL CHANGE IN THE OFFENDER'S ABILITY TO PAY.

AS USED IN THIS DIVISION, "ECONOMIC LOSS" HAS THE SAME MEANING AS IN SECTION 2929.01 OF THE REVISED CODE.

**(D) Reimbursement** REQUIRE THE CHILD TO REIMBURSE ANY OR ALL OF THE COSTS OF SERVICES OR SANCTIONS INCURRED, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

(1) **For Sanctions** ALL OR PART OF THE COSTS OF IMPLEMENTING ANY COMMUNITY CONTROL SANCTION, INCLUDING A SUPERVISION FEE;

(2) **For Confinement** ALL OR PART OF THE COSTS OF CONFINEMENT IN A RESIDENTIAL FACILITY, INCLUDING, BUT NOT LIMITED TO, A PER DIEM FEE FOR ROOM AND BOARD, THE COSTS OF MEDICAL AND DENTAL TREATMENT, AND THE COSTS OF REPAIRING PROPERTY DAMAGED BY THE OFFENDER WHILE CONFINED. THE AMOUNT OF REIMBURSEMENT ORDERED UNDER THIS SECTION SHALL NOT EXCEED TEN THOUSAND DOLLARS PER YEAR OR THE TOTAL AMOUNT OF REIMBURSEMENT THE OFFENDER IS ABLE TO PAY.

ANY AMOUNT ORDERED UNDER THIS DIVISION MAY BE COLLECTED BY THE COURT. IF THE COURT DOES NOT ORDER REIMBURSEMENT, CONFINEMENT COSTS MAY BE ASSESSED PURSUANT TO A REPAYMENT POLICY ADOPTED UNDER SECTION 2929.71 OF THE REVISED CODE.

**(B)(E) Forfeitures** [Supersedes §2151.355(B)]

(1) **Corrupt Activity** If a child is adjudicated a delinquent child for violating section 2923.32 [corrupt activity] of the Revised Code, the court, ~~in addition to any order of disposition it makes for the child under division (A) of this section,~~ shall enter an order of criminal forfeiture against the child in accordance with divisions (B)(3), (4), (5), and (6) and (C) to (F) of section 2923.32 of the Revised Code.

~~(1)(2)~~ **Drug Offenses** [Supersedes §2151.355(I)]

~~(a)~~ As used in ~~division (1)(2)~~ of this section, "felony drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code.

~~(2)~~ Sections 2925.41 to 2925.45 of the Revised Code [forfeitures in drug cases] apply to children who are adjudicated or could be adjudicated by a juvenile court to be delinquent children for an act that, if committed by an adult, would be a felony drug abuse offense. Subject to division (B) of section 2925.42 and division (E) of section 2925.43 of the Revised Code, a delinquent child of that nature loses any right to the possession of, and forfeits to the state any right, title, and interest that the delinquent child may have in, property as defined in section 2925.41 and further described in section 2925.42 or 2925.43 of the Revised Code.

(3) **Gang Activity** Sections 2923.44 to 2923.47 of the Revised Code [gang forfeitures] apply to children who are adjudicated or could be adjudicated by a juvenile court to be delinquent children for an act in violation of section 2923.42 of the Revised Code. Subject to division (B) of section 2923.44 and division (E) of section 2923.45 of

the Revised Code, a delinquent child of that nature loses any right to the possession of, and forfeits to the state any right, title, and interest that the delinquent child may have in, property as defined in section 2923.41 of the Revised Code and further described in section 2923.44 or 2923.45 of the Revised Code.

(F) **Ability to Pay Hearing** THE COURT MAY HOLD A HEARING IF NECESSARY TO DETERMINE WHETHER THE CHILD IS ABLE TO PAY THE SANCTION.

(G) **Community Service Options** IF THE CHILD IS INDIGENT, THE COURT SHALL CONSIDER IMPOSING A TERM OF COMMUNITY SERVICE, UNDER DIVISION (A) OF SECTION 2152.19 OF THE REVISED CODE, IN LIEU OF IMPOSING A FINANCIAL SANCTION. IF THE CHILD IS NOT INDIGENT, THE COURT MAY IMPOSE A TERM OF COMMUNITY SERVICE, IN LIEU OF, OR IN ADDITION TO, IMPOSING A FINANCIAL SANCTION UNDER THIS SECTION. THE COURT MAY ORDER COMMUNITY SERVICE FOR A MINOR MISDEMEANOR.

IF A CHILD FAILS TO PAY A FINANCIAL SANCTION, THE COURT MAY ORDER COMMUNITY SERVICE IN LIEU OF THE SANCTION.

(H) **Collection of Financial Sanctions** THE CLERK, OR ANOTHER PERSON AUTHORIZED BY LAW OR THE COURT TO COLLECT A FINANCIAL SANCTION, MAY DO THE FOLLOWING [felony law should parallel this]:

(1) ENTER INTO CONTRACTS WITH ONE OR MORE PUBLIC AGENCIES OR PRIVATE VENDORS FOR THE COLLECTION OF AMOUNTS DUE UNDER THE SANCTION;

(2) PERMIT PAYMENT OF ALL OR ANY PORTION OF THE SANCTION IN INSTALLMENTS, BY CREDIT OR DEBIT CARD, BY ANOTHER ELECTRONIC TRANSFER, OR BY ANY OTHER REASONABLE METHOD, IN ANY TIME, AND ON ANY TERMS THAT THE COURT CONSIDERS JUST, EXCEPT THAT THE MAXIMUM TIME PERMITTED FOR PAYMENT SHALL NOT EXCEED FIVE YEARS. THE CLERK MAY PAY ANY FEE ASSOCIATED WITH PROCESSING AN ELECTRONIC TRANSFER OUT OF PUBLIC MONEY, OR THE FEE MAY BE CHARGED TO THE OFFENDER.

(3) **Payment Plan Fee** TO DEFRAY ADMINISTRATIVE COSTS, CHARGE A REASONABLE FEE TO A CHILD WHO ELECTS A PAYMENT PLAN RATHER THAN LUMP SUM PAYMENT OF ANY FINANCIAL SANCTION.

## 52§2152.21 JUVENILE TRAFFIC OFFENDERS

[Supersedes §2151.356]

(A) **Options** Unless division (C) of this section applies, if a child is adjudicated a juvenile traffic offender, the court may make any of the following orders of disposition:

(1) **Fine** Impose a fine and costs in accordance with the schedule set forth in section ~~2151.3512~~ 2152.20 of the Revised Code;

(2) **Suspension** ~~Suspend~~ IMPOSE A CLASS FIVE SUSPENSION OF the child's driver's license, probationary driver's license, or temporary instruction permit or the registration of all motor vehicles registered in the name of the child ~~for the period that the court prescribes~~ UNDER DIVISION (A) OF SECTION 4510.02 OF THE REVISED CODE [the template proposed in the Commission's traffic report; Class 5 is consistent with 1<sup>st</sup> offense adult OVI]. A child whose license or permit is so suspended is ineligible

for issuance of a license or permit during the period of suspension. At the end of the period of suspension, the child shall not be reissued a license or permit until the child has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement. [§4510.31, in the Commission's Traffic Report, would apply. It would tie a BMV suspension to a juvenile's earning 6 points within 2 years.]

~~(3) Revoke the child's driver's license, probationary driver's license, or temporary instruction permit or the registration of all motor vehicles registered in the name of the child. A child whose license or permit is so revoked is ineligible for issuance of a license or permit during the period of revocation. At the end of the period of revocation, the child shall not be reissued a license or permit until the child has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.~~

~~(4)~~ **Community Control** Place the child on ~~probation~~ COMMUNITY CONTROL;

~~(5)~~**(4) Restitution** Require the child to make restitution for all damages caused by the child's traffic violation or any part of the damages;

~~(6)~~**(5) Detention for OVI** If the child is adjudicated a juvenile traffic offender for committing a violation of division (A) of section 4511.19 [OVI] of the Revised Code or of a municipal ordinance that is substantially ~~comparable~~ EQUIVALENT to that division, THE COURT MAY commit the child, for not longer than five days, to EITHER OF THE FOLLOWING:

~~(a)~~ TO the temporary custody of a detention home or district detention home established under section ~~2451.34~~ 2152.41, of the Revised Code, PROVIDED THE CHILD IS KEPT SEPARATE AND APART FROM ALLEGED DELINQUENT CHILDREN [the new language comes from the 3<sup>rd</sup> ¶ of current §2151.34, which otherwise could be repealed]; ~~or to~~

~~(b)~~ TO the temporary custody of any school, camp, institution, or other facility for children . . .

If an order of disposition committing a child to the temporary custody of a home, school, camp, institution, or other facility of that nature is made under THIS division ~~(A)(6) of this section~~, the length of the commitment shall not be reduced or diminished as a credit for any time that the child was held in a place of detention or shelter care, or otherwise was detained, prior to entry of the order of disposition.

~~(7)~~**(6) Detention, Etc. for Violations** If, after making a disposition under divisions (A)(1) to ~~(6)~~**(5)** of this section, the court finds upon further hearing that the child has failed to comply with the orders of the court and the child's operation of a motor vehicle constitutes a danger to the child and to others, the court may make any APPROPRIATE disposition authorized by ~~divisions (A)(1), (A)(2), (A)(7) to (A)(10), and (A)(21) of section 2451.355~~ SECTIONS 2152.16, 2152.19, AND 2152.20 of the Revised Code, except that the child may not be committed to or placed in secure correctional facility unless authorized by division (A)(6) of this section, and commitment to or placement in a detention home may not exceed twenty-four hours.

**(B) Other OVI Penalties** If a child is adjudicated a juvenile traffic offender for violating division (A) of section 4511.19 of the Revised Code, the court shall suspend or revoke the temporary instruction permit, probationary driver's license, or driver's license issued to the child for a period of time prescribed by the court or, at the discretion of the court, until the child attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. . . . If a child is adjudicated a juvenile traffic offender

for violating division (B) of section 4511.19 of the Revised Code, the court shall ~~suspend~~ IMPOSE A CLASS FIVE SUSPENSION OF the CHILD'S temporary instruction permit, probationary driver's license, or driver's license issued to the child for a period of not less than ~~sixty days nor more than two years~~ [The Class 5 range is from 90 days to 2 years].

(C) **Seat Belt Violations** [No changes in the fines for seat belt law violations (§4513.263)]

(D) **FR Law Applies** A juvenile traffic offender is subject to sections 4509.01 to 4509.78 of the Revised Code [financial responsibility law].

[The bill should ask the Supreme Court to amend these rules:

- Traffic Rule 2 to delete "juvenile court" from the definition of "court". This would make the Traffic Rules inapplicable to juvenile courts (under Traf.R. 1(A)) eliminating confusion. Only the Juvenile Rules would apply in juvenile court, including JTO cases.
- Traffic Rule 13 to authorize juvenile courts to create violations bureaus for payment of tickets, but only for first offense minor misdemeanor traffic offenses that did not result in an accident.
- Juvenile Rule 29(C) to permit no contest pleas in JTO and non-traffic cases, with the consent of the juvenile court (similar to Criminal Rule 11 for adult courts). However, juveniles paying fines to juvenile traffic bureaus must admit guilt, with parental knowledge.]

### 53§2152.22 JUDICIAL RELEASE FROM DYS

[Supersedes §2151.38]

(A) **The Court's Jurisdiction After DYS Commitment** When a child is committed to the legal custody of the department of youth services, the jurisdiction of the juvenile court with respect to the child so committed shall ~~cease and~~ terminate at the time of commitment, except as provided in divisions (B), (C), and (G) of this section. Subject to divisions (B) and (C) of this section, sections 2151.353 [dispositions for abuse, neglect, & dependency] and 2151.411 to 2151.421 of the Revised Code [parental liability, case plans, permanent custody motion, dispositional orders after temporary custody, persons required to report, etc.], and any other provision of law that specifies a different duration for a dispositional order, all other dispositional orders made by the court shall be temporary and shall 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 EITHER twenty-one years of age OR, IF THE CHILD IS COMMITTED FOR EXTENDED JUVENILE JURISDICTION, UNTIL THE CHILD REACHES TWENTY-FIVE YEARS OF AGE.

The release authority of the department shall not release the child from ~~institutional care or institutional care in~~ a secure facility and as a result shall not discharge the child or order the child's release on supervised release prior to the expiration of the ~~prescribed minimum period of institutionalization or institutionalization in a secure facility~~ PERIOD OF COURT CONTROL or prior to the child's attainment of twenty-one OR TWENTY-FIVE years of age, whichever is applicable under the order of commitment, except upon the order of a court pursuant to division (B) or (C) of this section or in accordance with section 5139.54 [medical discharge] of the Revised Code.

(B) **Judicial Release to Court Supervision**

(1) **Timing** THE COURT THAT COMMITS AN OFFENDER TO THE DEPARTMENT MAY GRANT JUDICIAL RELEASE TO COURT SUPERVISION UNDER THIS DIVISION DURING THE FOLLOWING PERIODS:

(a) DURING THE FIRST NINETY DAYS OF THE PERIOD OF COURT CONTROL OVER A PERSON GIVEN A TRADITIONAL JUVENILE DISPOSITION UNDER SECTION 2152.16 OF THE REVISED CODE;

(b) DURING THE FIRST ONE HUNDRED EIGHTY DAYS OF THE PERIOD OF COURT CONTROL OVER A PERSON GIVEN EXTENDED JUVENILE JURISDICTION UNDER SECTION 2152.13 OR 2152.15 OF THE REVISED CODE, OR BOTH;

(c) DURING THE FIRST HALF OF THE PRESCRIBED PERIOD OF COMMITMENT IF THE CHILD WAS COMMITTED FOR AGGRAVATED MURDER OR MURDER UNTIL THE CHILD ATTAINS TWENTY-ONE OR TWENTY-FIVE YEARS OF AGE.

(2) **Procedure** If the department of youth services desires to release a child during ~~the first half of the prescribed minimum term for which the child was committed to the department or, if the child was committed to the department until the child attains twenty-one years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty-first birthday~~ A PERIOD SPECIFIED IN DIVISION (B)(1) OF THIS SECTION, it shall request the court that committed the child ~~to the department for a judicial release of the child from institutional care or institutional care in a secure facility~~ TO COURT SUPERVISION. During ~~the first half of that prescribed minimum term or of that prescribed period of commitment,~~ whichever of those periods is applicable, the child or the parents of the child also may request that court to grant a judicial release of the child ~~from institutional care or institutional care in a secure facility~~ TO COURT SUPERVISION.

**Court's Options** Upon receipt of a request for a judicial release TO COURT SUPERVISION from the department, the child, or the child's parent, or upon its own motion, the court that committed the child shall DO ONE OF THE FOLLOWING: approve the ~~judicial release from institutional care or institutional care in a secure facility~~ by journal entry, ~~shall~~; schedule within ~~twenty~~ THIRTY days after the request is received a time for a hearing on whether the child is to be released ~~under a judicial release,~~ or ~~shall~~ reject the request by journal entry without conducting a hearing.

**2<sup>nd</sup> Request** If the court rejects an initial request for a ~~judicial~~ release UNDER THIS DIVISION by the child or the child's parent, the child or the child's parent may make one additional request for a judicial release within ~~the first half of the applicable prescribed minimum term or prescribed period of commitment.~~ The ~~child or the child's parent may make the~~ additional request MAY BE MADE no earlier than thirty days after the filing of the prior request for a judicial release. Upon the filing ~~by the child or the child's parent~~ of a second request for a judicial release, the court shall either approve or disapprove the ~~judicial~~ release by journal entry or schedule within ~~twenty~~ THIRTY days after the request is received a time for a hearing on whether the child is to be released ~~under a judicial release.~~

~~(2)(3)~~ **If There is a Hearing** If a court schedules a hearing under division (B)~~(4)~~(2) of this section ~~to determine whether a child should be granted a judicial release,~~ it may order the department to deliver the child to the court on the date set for the hearing and may order the department to present to the court a report on the child's progress in the institution to which the child was committed and recommendations for ~~terms and~~ conditions of supervision of the child by the court after release. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted a judicial release ~~from institutionalization or institutionalization in a secure facility~~ TO COURT SUPERVISION.

**If Release is Approved** If the court approves the ~~judicial~~ release, the court shall order its staff to prepare a written treatment and rehabilitation plan for the child that may

include any ~~terms and~~ conditions of the child's release that were recommended by the department and approved by the court. The committing court shall send the juvenile court of the county in which the child is placed a copy of the recommended plan ~~and the terms and conditions set by the committing court.~~ The court of the county in which the child is placed may adopt the recommended ~~terms and~~ conditions set by the committing court as an order of the court and may add any additional consistent ~~terms and~~ conditions it considers appropriate. If a child is granted a judicial release TO COURT SUPERVISION, the ~~judicial~~ release discharges the child from the custody of the department of youth services.

(C) **Judicial Release to DYS Supervision**

(1) **Timing** THE COURT THAT COMMITS AN OFFENDER TO THE DEPARTMENT MAY GRANT JUDICIAL RELEASE TO SUPERVISION BY THE DEPARTMENT UNDER THIS DIVISION DURING THE FOLLOWING PERIODS:

(a) ANY TIME DURING THE PERIOD OF COURT CONTROL OVER A PERSON GIVEN A TRADITIONAL JUVENILE DISPOSITION UNDER SECTION 2152.16 OF THE REVISED CODE, PROVIDED AT LEAST NINETY DAYS HAVE PASSED;

(b) ANY TIME DURING THE PERIOD OF COURT CONTROL OVER A PERSON GIVEN EXTENDED JUVENILE JURISDICTION UNDER SECTION 2152.13 OR 2152.15 OF THE REVISED CODE, OR BOTH, PROVIDED AT LEAST ONE HUNDRED EIGHTY DAYS HAVE PASSED;

(c) ANY TIME DURING THE SECOND HALF OF THE PRESCRIBED PERIOD OF COMMITMENT IF THE CHILD WAS COMMITTED FOR AGGRAVATED MURDER OR MURDER UNTIL THE CHILD ATTAINS TWENTY-ONE OR TWENTY-FIVE YEARS OF AGE.

(2) **Procedure** ~~If a child is committed to the department of youth services and has been in institutional care or institutional care in a secure facility for more than one-half of the prescribed minimum term for which the child was committed or, if the child was committed to the department until the child attains twenty one years of age, for more than one-half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's twenty first birthday, if the prescribed minimum period of institutionalization or other statutorily required period of institutionalization has not expired, and if the department of youth services desires to release the~~ A child from institutional care or institutional care in a secure facility DURING A PERIOD SPECIFIED IN DIVISION (C)(1) OF THIS SECTION, it shall request the court that committed the child for an ~~early~~ A JUDICIAL release from institutional care or institutional care in a secure facility TO DEPARTMENT SUPERVISION. During the ~~applicable period commencing upon the expiration of the first half of that prescribed minimum term~~ WHICHEVER period IS APPLICABLE of commitment and ending upon the expiration of the ~~required minimum or other period of institutionalization or institutionalization in a secure facility,~~ the child or the child's parent also may request the court that committed the child to grant an ~~early~~ A JUDICIAL release TO DEPARTMENT SUPERVISION.

**Court's Options** Upon the receipt of a request FOR JUDICIAL RELEASE TO DEPARTMENT SUPERVISION from the department, the child, or the child's parent or upon its own motion at any time during that period, the court shall DO ONE OF THE FOLLOWING: approve the ~~early~~ release by journal entry; ~~shall~~ schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released; ~~or shall~~ reject the request by journal entry without conducting a hearing.

**2<sup>nd</sup> Request** If the court rejects an initial request for early release UNDER THIS DIVISION by the child or the child's parents PARENT, ~~within the period prescribed in division (C)(1) of this section,~~ the child or the child's parent may make one or more subsequent requests for early release WITHIN THE APPLICABLE PERIOD<sub>1</sub>, but may make no more than one SUCH request ~~for early release~~ during each period of ninety days that the child is ~~institutionalized or institutionalized~~ in a secure facility after the filing of a prior request for early release. Upon the filing of a request for early release subsequent to an initial request, the court shall either approve or disapprove the early release by journal entry or schedule a time within thirty days after receipt of the request for a hearing on whether the child is to be released.

~~(2)(3)~~ **If There is a Hearing** If a court schedules a hearing under division (C)(4)(2) of this section ~~to determine whether a child committed to the department should be granted an early release,~~ it may order the department to deliver the child to the court on the date set for the hearing and shall order the department to present to the court at that time a treatment plan for the child's post-institutional care. The court may conduct the hearing without the child being present. The court shall determine at the hearing whether the child should be granted ~~an early~~ A JUDICIAL release ~~from institutionalization or institutionalization in a secure facility~~ TO DEPARTMENT SUPERVISION.

**If Release is Approved** If the court approves the early release, the department shall prepare a written treatment and rehabilitation plan for the child pursuant to division (E) of this section that shall include the ~~terms and~~ conditions of the child's release. It shall send the committing court and the juvenile court of the county in which the child is placed a copy of the plan ~~and the terms and conditions that it fixed.~~ The court of the county in which the child is placed may adopt the ~~terms and~~ conditions set by the department as an order of the court and may add any additional consistent ~~terms and~~ conditions it considers appropriate, provided that the court may not add any ~~term or~~ condition that decreases the level or degree of supervision specified by the department in its plan, that substantially increases the financial burden of supervision that will be experienced by the department, or that alters the placement specified by the department in its plan. If the court of the county in which the child is placed adds to the department's plan any additional ~~terms and~~ conditions, it shall enter those additional ~~terms and~~ conditions in its journal and shall send to the department a copy of the journal entry of the additional ~~terms and~~ conditions.

~~(3)~~ If the court approves ~~or grants an early~~ THE release for a child under division (C)(1) ~~or (2) of this section,~~ the actual date on which the department of youth services shall release the child ~~from institutional care or institutional care in a secure facility~~ is contingent upon the department finding a suitable placement for the child. If the child is to be returned to the child's home, the department shall return the child ~~to the home~~ on the date that the court schedules for the child's release or shall bear the expense of any additional time that the child remains in ~~institutional care or institutional care~~ in a secure facility. If the child is unable to return to the child's home, the department shall exercise reasonable diligence in finding a suitable placement for the child, and the child shall remain in ~~institutional care or institutional care~~ in a secure facility while the department finds the suitable placement.

(D) **Violations** If a child is released under division (B) or (C) of this section and the court of the county in which the child is placed has reason to believe that the child's department is not in accordance with the ~~post-release terms and~~ conditions of the child's judicial release ~~or early release,~~ the court of the county in which the child is placed shall schedule a time for a hearing to determine whether the child violated any of the post-release ~~terms and~~ conditions, and, if the

child was released under division (C) of this section, divisions (A) to (E) of section 5139.52 of the Revised Code [procedure for violations when supervised by DYS] apply regarding the child.

If that court determines at the hearing that the child violated any of the post-release ~~terms and conditions~~, the court, if it determines that the violation ~~of the terms and conditions~~ was a serious violation, may order the child to be returned to the department for institutionalization ~~or institutionalization in a secure facility~~, consistent with the original order of commitment of the child, or in any case may make any other disposition of the child authorized by law that the court considers proper. If the court of the county in which the child is placed orders the child to be returned to a department of youth services institution, the time during which the child was ~~institutionalized or institutionalized~~ HELD in a secure facility prior to the child's judicial release ~~or early release~~ shall be considered as time served in fulfilling the prescribed ~~minimum period or prescribed period of institutionalization or institutionalization in a secure facility~~ that is applicable to the child under the child's original order of commitment. If the court orders the child returned to a department of youth services institution, the child shall remain in institutional care for a minimum ~~period~~ of three months or until the child successfully completes a revocation program of a duration of not less than thirty days operated either by the department or by an entity with whom the department has contracted to provide a revocation program.

(E) **DYS' Pre-Release Duties** The department of youth services, prior to the release of a child pursuant to division (C) of this section, shall do all of the following:

- (1) After reviewing the child's rehabilitative progress history and medical and educational records, prepare a written treatment and rehabilitation plan for the child that shall include ~~terms and~~ conditions of the release;
- (2) Completely discuss the ~~terms and~~ conditions of the plan prepared pursuant to division (E)(1) of this section and the possible penalties for violation of the plan with the child and the child's parents, guardian, or legal custodian;
- (3) Have the plan prepared pursuant to division (E)(1) of this section signed by the child, the child's parents, legal guardian, or custodian, and any authority or person that is to supervise, control, and provide supportive assistance to the child at the time of the child's release pursuant to division (C) of this section;
- (4) File a copy of the treatment plan prepared pursuant to division (E)(1) of this section, prior to the child's release, with the committing court and the juvenile court of the county in which the child is to be placed.

(F) **DYS' Progress Reports** The department of youth services shall file a written progress report with the committing court regarding each child released pursuant to division (C) of this section, at least once every thirty days unless specifically directed otherwise by the court. The report shall indicate the treatment and rehabilitative progress of the child and the child's family, if applicable, and shall include any suggestions ~~and recommendations~~ for ~~alteration of~~ ALTERING the program, custody, living arrangements, or treatment. The department shall retain legal custody of a child so released until it discharges the child or until the custody is terminated as otherwise provided by law.

(G)

- (1) As used in division (G)(2) of this section, "release authority" and "supervised release" have the same meanings as in section 5139.01 of the Revised Code.
- (2) When a child is committed to the legal custody of the department of youth services, the court retains jurisdiction to perform the functions specified in section 5139.51 of the Revised Code with respect to the granting of supervised release by the

release authority and to perform the functions specified in section 5139.52 of the Revised Code with respect to violations of the ~~terms and~~ conditions of supervised release granted by the release authority and to the revocation of supervised release granted by the release authority.

#### **54§2152.26 PLACES OF DETENTION**

[Relevant parts of §2151.312 move to here with cross-references to the new chapter.]

#### **55§§2152.31, et seq. RECORDS AND CONFIDENTIALITY**

[Awaits recommendations of the Commission.]

#### **56§2152.41 DETENTION FACILITIES**

[Supercedes §2151.34, 2<sup>nd</sup>-4<sup>th</sup> ¶s & §2151.346]

[Was §2151.34, 1<sup>st</sup> ¶. It moves to proposed §2152.04.] ~~A child who is alleged to be or adjudicated a delinquent child may be confined in a place of juvenile detention for a period not to exceed ninety days, during which time a social history may be prepared to include court record, family history, personal history, school and attendance records, and any other pertinent studies and material that will be of assistance to the juvenile court in its disposition of the charges against that juvenile offender.~~

**(A) Establishing County Detention Facilities** [Was §2151.34, 2<sup>nd</sup> ¶, 1<sup>st</sup> sentence] Upon the ~~advice and~~ recommendation of the judge, the board of county commissioners shall provide, by purchase, lease, construction, or otherwise, a ~~place to be known as a~~ detention home FACILITY that shall be within a convenient distance of the juvenile court ~~and~~. THE FACILITY shall not be used for the confinement of adults charged with criminal offenses ~~and in which~~. THE FACILITY MAY BE USED TO DETAIN ALLEGED delinquent children ~~may be detained~~ until final disposition. FOR EVALUATION PURSUANT TO SECTION 2152.04 OF THE REVISED CODE [90 day evaluations], FOR CHILDREN ADJUDICATED DELINQUENT UNDER DIVISION (A)(3)(I) OF SECTION 2152.19 OF THE REVISED CODE [misdemeanants], AND FOR JUVENILE TRAFFIC OFFENDERS [when OVI] UNDER DIVISION (A)(5) OR (6) OF SECTION 2152.21 OF THE REVISED CODE.

**(B) Establishing District Detention Facilities** [Was §2151.34, 2<sup>nd</sup> ¶, 2<sup>nd</sup> sentence] Upon the joint ~~advice and~~ recommendation of the juvenile judges of two or more ~~adjoining or~~ neighboring counties, the boards of county commissioners of the counties shall form themselves into a joint board and proceed to organize a district for the establishment and support of a detention home FACILITY for the use of the juvenile courts of those counties, in which delinquent children may be detained ~~until final disposition~~ AS PROVIDED IN DIVISION (A) OF THIS SECTION, by using a site or buildings already established in one of the counties or by providing for the purchase of a site and the erection of the necessary buildings on the site.

[Was §2151.346] ~~District~~ EXCEPT AS OTHERWISE PROVIDED BY LAW, DISTRICT detention homes FACILITIES shall be established, operated, maintained, and managed in the same manner so far as applicable as county detention homes FACILITIES.

[Was §2151.34, 3<sup>rd</sup> ¶. Superseded by (A), above, and the JTO dispositions section (proposed §2152.21). Separation from alleged delinquents repealed.] ~~A child who is adjudicated to be a juvenile traffic offender for having committed a violation of division (A) of section 4511.19 of the Revised Code or of a municipal ordinance that is substantially comparable to that division may be confined in a detention home or district detention home pursuant to division (A)(6) of section~~

~~2151.356 of the Revised Code, provided the child is kept separate and apart from alleged delinquent children.~~

[Was §2151.3415] Members of the board of county commissioners who meet by appointment to consider the organization of a district detention ~~home~~ FACILITY shall, upon presentation of properly certified accounts, be paid their necessary expenses upon a warrant drawn by the county auditor of their county.

[Was §2151.3414] The county auditor of the county having the greatest population, or, with the unanimous concurrence of the county auditors of the counties composing a district, the auditor of the county wherein the detention ~~home~~ FACILITY is located, shall be the fiscal officer of a THE detention ~~home~~ FACILITY district ~~or a combined district organized under sections 2151.34 and 2151.65 of the Revised Code.~~ The county auditors of the several counties composing a detention ~~home~~ FACILITY district shall meet at the district detention-~~home~~ FACILITY, not less than once in six months, to review accounts and to transact such other duties in connection with the institution as pertain to the business of their office.

**(C) County's Duty if No Facility** [Was §2151.34, 4<sup>th</sup> ¶. Streamlined.] ~~The county or district detention home shall be maintained as provided in sections 2151.01 to 2151.54 of the Revised Code.~~ In any county in which there is no detention ~~home~~ FACILITY or that is not served by a district detention ~~home~~ FACILITY, the JUVENILE COURT MAY ENTER A CONTRACT, SUBJECT TO THE APPROVAL OF THE BOARD OF COUNTY COMMISSIONERS, WITH ANOTHER JUVENILE COURT, ANOTHER COUNTY'S DETENTION FACILITY, OR A JOINT COUNTY DETENTION FACILITY. ALTERNATELY, THE board of county commissioners shall provide funds for the boarding of ~~such children,~~ WHO WOULD BE ELIGIBLE FOR DETENTION UNDER DIVISION (A) OF THIS SECTION, temporarily in private homes. ~~Children who are alleged to be or have been adjudicated delinquent children may be detained after a complaint is filed in the detention home until final disposition of their cases or in certified family foster homes or in any other home approved by the court, if any are available, for a period not exceeding sixty days or until final disposition of their cases, whichever comes first. The court also may arrange with any public children services agency or private child placing agency to receive, or private noncustodial agency for temporary care of, the children within the jurisdiction of the court. A district detention home approved for such purpose by the department of youth services under section 5139.281 of the Revised Code may receive children committed to its temporary custody under section 2151.355 of the Revised Code and provide the care, treatment, and training required.~~ [This sentence would be repealed because it does not seem to add anything to the law in light of proposed (B), above, and proposed §2152.43, below.]

[Was §2151.34, last ¶] If the court arranges for the board of children EITHER temporarily detained in family foster homes or ~~arranges for the board of those children~~ through any private child placing agency, THE COUNTY SHALL PAY a reasonable sum to be fixed by the court for the board of those children ~~shall be paid by the county.~~ In order to have family foster homes available for service, an agreed monthly subsidy may be paid and a fixed rate per day for care of children actually residing in the family foster home.

**(D) Withdrawal from a District Facility** [Was §2151.3413, 1<sup>st</sup> ¶.] The board of county commissioners of any county within a detention ~~home~~ FACILITY district may, upon the recommendation of the juvenile court of such county, withdraw from such district and ~~dispose of its interest in such home by selling or leasing~~ SELL OR LEASE its right, title, and interest in the site, buildings, furniture, and equipment OF THE FACILITY to any counties in the district, at such price and upon such terms as are agreed upon among the boards of county commissioners of the counties concerned. Section 307.10 of the Revised Code does not apply to this section. The net proceeds of any such sale or lease shall be paid into the treasury of the withdrawing county.

[Was §2151.3413, 3<sup>rd</sup> ¶.] Members of the board of trustees of a district detention ~~home~~ FACILITY who are residents of a county withdrawing from such district are deemed to have resigned their positions upon the completion of the withdrawal procedure provided by this section. Vacancies then created shall be filled ~~according to sections 2151.343 and 2151.349 of the Revised Code~~ AS PROVIDED IN THIS SECTION.

(E) **Judge Controls Care** [Was §2151.345, 4<sup>th</sup> ¶.] The children to be admitted for care in ~~such home~~ A COUNTY OR DISTRICT DETENTION FACILITY ESTABLISHED UNDER THIS SECTION, the period during which they shall be cared for in ~~such home~~ THE FACILITY, and the removal and transfer of children from ~~such home~~ THE FACILITY shall be determined by the juvenile ~~courts of the respective counties~~ COURT THAT ORDERED THE CHILD'S DETENTION.

## **57§2152.42 DETENTION FACILITY EMPLOYEES**

(A) **Superintendent & Employees** [Was §2151.34, 5<sup>th</sup> ¶.] ~~If a ANY detention home is FACILITY established as an agency of the court or a district detention home is established by the courts of several counties as provided in~~ UNDER this section, ~~it 2152.41 OF THE REVISED CODE shall be furnished and carried on, as far as possible, as a family home in charge UNDER THE DIRECTION of a superintendent or matron in a nonpunitive neutral atmosphere. The SUPERINTENDENT SHALL BE APPOINTED BY, AND UNDER THE DIRECTION OF, THE judge OR JUDGES, or, FOR A DISTRICT FACILITY, the directing board OF TRUSTEES of a district detention home~~ THE FACILITY, ~~may appoint a superintendent, a matron, and, THE SUPERINTENDENT SERVES AT THE PLEASURE OF THE JUVENILE COURT OR, IN A DISTRICT FACILITY, AT THE PLEASURE OF THE BOARD OF TRUSTEES.~~

[Was §2151.345, 1<sup>st</sup> ¶.] ~~The board of trustees of a district detention home shall appoint the superintendent thereof. Before entering upon his duties such COMMENCING WORK AS superintendent, THE PERSON shall give OBTAIN A bond to the board, in such sum as it fixes, with sufficient surety, conditioned upon the full and faithful accounting of the funds and properties coming into his hands UNDER THE SUPERINTENDENT'S CONTROL. [Today the bonding requirement only applies to multi-county superintendents.]~~

[Was §2151.345, 3<sup>rd</sup> ¶.] ~~The superintendent under the supervision and subject to the rules and regulations of the board, shall control, manage, operate, and have general charge of the home FACILITY, and shall have the custody of its property, files, and records. [Today, this only applies to district superintendents. Here it would apply to county superintendents, too.]~~

(B) [Was §2151.345, 2<sup>nd</sup> ¶] ~~The~~ IN A COUNTY FACILITY, THE superintendent shall appoint all employees, WHO SHALL BE UNCLASSIFIED [current law]. ~~In the case of a county detention home the,~~ THE salaries shall be paid ~~in the same manner~~ as is provided by section 2151.13 of the Revised Code for other employees of the court, and the necessary expenses incurred in maintaining the detention ~~home~~ FACILITY shall be paid by the county.

~~The~~ IN A DISTRICT FACILITY, THE ~~board may~~ SUPERINTENDENT SHALL appoint other necessary employees ~~for the home~~ and fix their salaries COMPENSATION, SUBJECT TO APPROVAL OF THE BOARD OF TRUSTEES. EMPLOYEES OF A DISTRICT FACILITY ~~who,~~ except for the superintendent, shall be in the classified civil service.

[Was §2151.34 5<sup>th</sup> ¶, repealed as unnecessary.] ~~In the case of a district detention home, the salaries and the necessary expenses incurred in maintaining the district detention home shall be paid as provided in sections 2151.341 to 2151.3415 of the Revised Code.~~

[Was part of §2151.34, 5<sup>th</sup> ¶.] During the school year, when possible, a comparable educational program with competent and trained staff shall be provided for ~~these~~ children of

school age. A sufficient number of trained recreational personnel shall be included among the staff ~~to assure wholesome and profitable leisure-time activities.~~ Medical and mental health services shall be made available ~~to ensure the courts all possible treatment facilities shall be given to these children placed under their care.~~

#### **58§2152.43 DETENTION FACILITY FUNDING**

(A) **From DYS** [Was §2151.341, 1<sup>st</sup> sentence] A board of county commissioners that provides a detention ~~home~~ FACILITY and the board of trustees of a district detention ~~home~~ FACILITY may ~~make application~~ APPLY to the department of youth services under section 5139.281 of the Revised Code for ~~financial~~ assistance in defraying the cost of operating and maintaining the ~~home~~ FACILITY. Such application shall be made on forms prescribed and furnished by the department.

[Was §2151.3416] The board of county commissioners of each county which participates in ~~the establishment of~~ a district detention ~~home~~ FACILITY may apply to the department of youth services for financial assistance to defray the county's share of the cost of acquisition or construction of such ~~home~~ FACILITY, as provided in section 5139.271 of the Revised Code. Application shall be made in accordance with rules adopted by the department. No county shall be reimbursed for expenses incurred in the acquisition or construction of a district detention ~~home~~ FACILITY which serves a district having a population of less than one hundred thousand.

#### **(B) Taxes and Other Funds for District Facilities**

(1) **Multicounty Tax** [Was §2151.341, 2<sup>nd</sup> sentence] The joint boards of county commissioners of district detention ~~homes~~ FACILITIES shall ~~make annual assessments of taxes sufficient to support and~~ defray all necessary expenses of such ~~home~~ THE FACILITY not paid from funds ~~made~~ available under section 5139.281 of the Revised Code, THROUGH ANNUAL ASSESSMENTS OF TAXES, GIFTS, OR OTHER MEANS.

[Was §2151.3413, 2<sup>nd</sup> ¶.] ~~Any IF ANY county withdrawing~~ WITHDRAWS from such A district ~~or from a combined district organized under sections 2151.34 and 2151.65~~ UNDER DIVISION (D) OF SECTION 2152.41 of the Revised Code, IT shall continue to have levied against its tax duplicate any tax levied by the district during the period in which the county was a member of the district for current operating expenses, permanent improvements, or the retirement of bonded indebtedness. Such levy shall continue to be a levy against such duplicate of the county until such time that it expires or is renewed.

(2) [Was §2151.3412, 3<sup>rd</sup> sentence.] The current expenses of maintaining the ~~home~~ FACILITY not paid from funds made available under section 5139.281 of the Revised Code OR DIVISION (C) OF THIS SECTION, and the cost of ordinary repairs thereto shall be paid by each such county in accordance with one of the following methods as approved by the joint board of county commissioners:

~~(A)~~(a) In proportion to the number of children from such county who are maintained in the ~~home~~ FACILITY during the year;

~~(B)~~(b) By a levy submitted by the joint board of county commissioners under division (A) of section 5705.19 of the Revised Code and approved by the electors of the district;

~~(C)~~(c) In proportion to the taxable property of each county, as shown by its tax duplicate;

~~(D)~~(d) In any combination of the methods for payment described in division (A), (B)(1), (2), or ~~(C)~~ (3) of this section.

(C) Gifts [Was §2151.342. *Expanded to allow single county detention facilities to accept gifts.*] When any person donates or bequeaths his ANY real or personal ~~estate or any part thereof~~, PROPERTY to the use and benefit of a COUNTY OR district detention ~~home~~ FACILITY, the JUVENILE COURT OR THE ~~board~~ of trustees of the ~~home~~ FACILITY may accept and use ~~such donation or bequest as they deem for~~ THE GIFT, CONSISTENT WITH the best interests of the institution, and ~~consistent with the conditions of such bequest~~ THE GIFT.

#### **59§2152.44 DISTRICT DETENTION FACILITY TRUSTEES**

(A) District Trustees [Was all but last sentence of §2151.343] ~~Immediately upon~~ AS SOON AS PRACTICAL AFTER the organization of the joint board of county commissioners as provided by section ~~2151.34~~ 2152.41 of the Revised Code, ~~or so soon thereafter as practicable,~~ ~~such~~ THE joint board of ~~county commissioners~~ shall appoint a board of not less than five trustees, ~~which~~ WHO shall hold office ~~and perform its duties~~ until the first annual meeting after the choice of an established site and buildings, or after the selection and purchase of a building site, ~~at which.~~ AT THAT time ~~such.~~ THE joint board of county commissioners shall appoint a board of not less than five trustees, one of whom shall hold office for a term of one year, one for ~~the~~ A term of two years, one for ~~the~~ A term of three years, half of the remaining number for ~~the~~ A term of four years, and the remainder for ~~the~~ A term of five years. Annually thereafter, the joint board of county commissioners shall appoint one or more trustees, each of whom shall hold office for ~~the~~ A term of five years, to succeed the trustee or trustees whose term of office ~~shall expire~~ EXPIRES. A trustee may be appointed to ~~succeed himself upon such board of trustees, and all appointments to such board of~~ SUCCESSIVE TERMS. ALL PERSONS APPOINTED AS trustees shall be ~~made from persons who are~~ recommended and approved by the juvenile court judge or judges of the county of which such person is ~~resident~~ RESIDES.

[Was §2151.348] ~~Each~~ AT LEAST ONE TRUSTEE SHALL RESIDE IN EACH county in the district, ~~organized under section 2151.34 of the Revised Code, shall be entitled to one trustee, and in~~ IN districts composed of ~~but~~ two counties, each county shall be entitled to not less than two trustees. In districts composed of more than four counties, the number of trustees shall be sufficiently increased ~~so,~~ PROVIDED that there shall always be an uneven number of trustees ~~constituting such~~ ON THE board. The county in which a district detention ~~home~~ FACILITY is located shall have not less than two trustees, who, in the interim period between the regular meetings of the ~~board~~ of trustees, shall act as an executive committee in the discharge of all business pertaining to the ~~home~~ FACILITY.

[Was §2151.349] The joint board of county commissioners ~~organized under section 2151.34 of the Revised Code~~ may remove any trustee appointed under section ~~2151.343 of the Revised Code, but no such removal shall be made on account of the religious or political opinion of such trustee~~ FOR GOOD CAUSE. The trustee appointed to fill any vacancy shall hold his office for the unexpired term of ~~his~~ THE predecessor TRUSTEE.

(B) Meetings [Was last sentence of §2151.343] The annual meeting of the board of trustees shall be held on the first Tuesday in May each year.

[Was §2151.344] A majority of the board of ~~trustees appointed under section 2151.343 of the Revised Code~~ constitutes a quorum. ~~Board~~ OTHER BOARD meetings shall be held at least quarterly. The juvenile court judge of each of the counties of the district ~~organized pursuant to section 2151.34 of the Revised Code,~~ OR THE JUDGE'S DESIGNEE, shall attend ~~such~~ THE meetings, or shall designate a member of his staff to do ~~so~~. The members of the board shall receive no compensation for their services, except their actual AND NECESSARY ~~traveling~~ expenses, which, when properly certified, shall be ~~allowed and~~ paid by the treasurer.

(C) **Facility Siting** [Was §2151.347] When the board of trustees ~~appointed under section 2151.343 of the Revised Code~~ does not choose an established institution in one of the counties of ~~this~~ THE district, it may select a suitable site for the erection of a district detention ~~home~~ FACILITY. ~~Such~~ THE site must be easily accessible, ~~and when, in the judgment of the board, it is equally conducive to health, economy in purchasing or in building~~ COST-EFFECTIVE TO PURCHASE OR BUILD, ~~and to~~ GOOD FOR the general interest of the ~~home~~ FACILITY and ~~inmates~~ ITS RESIDENTS, ~~such site shall be~~ AND BE as near as practicable to the geographical center of the district. When only two counties form such district the site shall be as near as practicable to the dividing line between such counties.

[Was §2151.3410] In the interim, between the selection and purchase of a site, and the erection and occupancy of the district detention ~~home~~ FACILITY, the joint board of county commissioners provided by section ~~2151.34~~ 2152.41 of the Revised Code may delegate to the board of trustees ~~appointed under section 2151.343 of the Revised Code~~, such powers and duties as, in its judgment, will be of general interest or aid to the institution. ~~Such~~ THE joint board of county commissioners may appropriate a trustees' fund, to be expended by the ~~board~~ ef trustees ~~in payment of such~~ FOR contracts, purchases, or other NECESSARY expenses ~~necessary to the wants or requirements of the home FACILITY, which are not otherwise provided for.~~ The ~~board of~~ trustees shall make a complete settlement with the joint board of county commissioners once each six months, or quarterly if required, and shall make a full report of the condition of the ~~home~~ FACILITY and ~~inmates~~ RESIDENTS, to the board of county commissioners and to the juvenile court of each of the counties.

(D) **Using Established Site** [Was §2151.3411] The choice of an established site and buildings, or the purchase of a site, stock, implements, and general farm equipment, should there be a farm, the erection of buildings, and the completion and furnishing of the district detention ~~home~~ FACILITY for occupancy, shall be in the hands of the joint board of county commissioners organized under section ~~2151.34~~ 2152.41 of the Revised Code. ~~Such~~ THE joint board of county commissioners may delegate all or a portion of these duties to the board of trustees ~~provided for under section 2151.343 of the Revised Code~~, under such restrictions ~~and regulations~~ as the joint board of county commissioners imposes.

[Was §2151.3412, 1<sup>st</sup> 2 sentences] When an established site and buildings are used for a district detention ~~home~~ FACILITY, the joint board of county commissioners ~~organized under section 2151.34 of the Revised Code~~ shall cause the value of such site and buildings to be properly appraised. This appraisal value, or in case of the purchase of a site, the purchase price and the cost of all ~~betterments and additions thereto~~ IMPROVEMENTS, shall be paid by the counties comprising the district, in proportion to the taxable property of each county, as shown by its tax duplicate.

(E) ONCE A DISTRICT FACILITY IS ESTABLISHED, THE TRUSTEES SHALL OPERATE, MAINTAIN, AND MANAGE THE FACILITY AS PROVIDED IN SECTIONS 2152.41 THROUGH 2152.43 OF THE REVISED CODE.

## **60§2152.51 JUVENILE COMPETENCY**

(A) **Standard** A JUVENILE IS PRESUMED TO BE COMPETENT TO PROCEED IN A PROCEEDING UNDER THIS CHAPTER UNLESS THE JUDGE FINDS THE JUVENILE IS NOT COMPETENT UNDER SECTIONS 2152.51 TO 2152.53 OF THE REVISED CODE. A JUDGE SHALL FIND A JUVENILE INCOMPETENT TO PROCEED IF THE DEFENSE SHOWS BY A PREPONDERANCE OF THE EVIDENCE THAT THE JUVENILE DOES NOT HAVE SUFFICIENT ABILITY TO DO BOTH OF THE FOLLOWING:

- (1) CONSULT WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING WITH THE JUVENILE'S COUNSEL;
- (2) APPROPRIATELY UNDERSTAND THE PROCEEDINGS OR REASONABLY PARTICIPATE IN THE JUVENILE'S DEFENSE.

**(B) Considerations** IN MAKING A DECISION BASED ON THE STANDARD IN DIVISION (A) OF THIS SECTION, THE JUDGE SHALL CONSIDER THE JUVENILE'S CAPACITY TO DO ALL OF THE FOLLOWING:

- (1) APPRECIATE THE CHARGES OR ALLEGATIONS AGAINST THE JUVENILE;
- (2) APPRECIATE THE RANGE AND NATURE OF POSSIBLE PENALTIES THAT MAY BE IMPOSED IN THE PROCEEDINGS AGAINST THE JUVENILE, IF APPLICABLE;
- (3) UNDERSTAND THE ADVERSARIAL NATURE OF THE LEGAL PROCESS;
- (4) DISCLOSE TO COUNSEL FACTS PERTINENT TO THE PROCEEDINGS AT ISSUE;
- (5) DISPLAY APPROPRIATE COURTROOM BEHAVIOR;
- (6) TESTIFY RELEVANTLY, BY BEING CAPABLE OF RECEIVING AND COMMUNICATING ACCURATE IMPRESSIONS OF THE FACTS, AND RELATING THEM TRULY.

**(C) Raising the Issue** IN A DELINQUENCY CASE, OR IN A CASE SUBJECT TO A PRESUMED OR DISCRETIONARY TRANSFER TO ADULT COURT UNDER SECTION 2152.12 OF THE REVISED CODE, IN A JUVENILE COURT, ANY PARTY, OR THE COURT ON ITS OWN MOTION, MAY RAISE THE ISSUE OF THE JUVENILE'S COMPETENCE TO PROCEED WITH THE ADJUDICATORY HEARING OR TRANSFER PROCEEDING. IF THE ISSUE IS RAISED BEFORE AN ADJUDICATORY OR TRANSFER HEARING, AND THE JUVENILE COURT JUDGE FINDS A REASONABLE BASIS TO CONDUCT A COMPETENCY EVALUATION, THE JUDGE SHALL STAY ALL PROCEEDINGS AND HOLD A HEARING ON THE ISSUE AS PROVIDED IN THIS SECTION. IF THE ISSUE IS RAISED AFTER THE ADJUDICATORY HEARING COMMENCES, THE JUDGE SHALL HOLD A HEARING ON THE ISSUE ONLY FOR GOOD CAUSE SHOWN. THE ISSUE SHALL NOT BE RAISED IN JUVENILE COURT WHEN THE JUVENILE IS SUBJECT TO A MANDATORY TRANSFER UNDER SECTION 2152.12 OF THE REVISED CODE.

THE JUVENILE SHALL BE REPRESENTED BY COUNSEL AT ANY HEARING CONDUCTED UNDER SECTIONS 2152.51 TO 2152.53 OF THE REVISED CODE. IF THE JUVENILE IS UNABLE TO OBTAIN COUNSEL, THE JUDGE SHALL APPOINT COUNSEL PURSUANT TO CHAPTER 120. OF THE REVISED CODE.

**(D) Hearing** ALL DETERMINATIONS OF COMPETENCY SHALL BE MADE AT A HEARING BY A JUVENILE COURT JUDGE, NOT A MAGISTRATE, BASED ON AN EVALUATION OF THE JUVENILE BY AN EXAMINER AND ON THE STANDARDS IN DIVISION (A) OF THIS SECTION. THE JUDGE SHALL MAKE A FINDING UNDER THIS SECTION IN WRITING.

**(E) If MH Patient or MR Resident** THE JUDGE SHALL NOT FIND A JUVENILE INCOMPETENT TO PROCEED SOLELY BECAUSE THE JUVENILE IS RECEIVING OR HAS RECEIVED TREATMENT AS A VOLUNTARY OR INVOLUNTARY MENTALLY ILL PATIENT UNDER CHAPTER 5122. OF THE REVISED CODE OR A VOLUNTARY OR INVOLUNTARY MENTALLY RETARDED RESIDENT UNDER CHAPTER 5123. OF THE REVISED CODE OR BECAUSE THE JUVENILE IS RECEIVING OR HAS RECEIVED PSYCHOTROPIC DRUGS OR OTHER MEDICATION, EVEN IF THE JUVENILE MIGHT BECOME INCOMPETENT TO PROCEED WITHOUT THE DRUGS OR MEDICATION.

**61§2152.52 EXAMINATION FOR COMPETENCY**

(A) **Examiner** IF THE JUDGE FINDS A REASONABLE BASIS TO CONDUCT A COMPETENCY EVALUATION, THE JUDGE SHALL APPOINT ONE OR MORE EXAMINERS TO EVALUATE THE JUVENILE'S COMPETENCY TO PROCEED AND SHALL ESTABLISH AN APPROPRIATE TIME AND PLACE FOR THE EVALUATION. THE JUVENILE MAY BE HELD IN A DETENTION CENTER PENDING THE EVALUATION. FOR GOOD CAUSE SHOWN, THE JUDGE MAY ORDER AN ADDITIONAL EXAMINATION AT THE REQUEST OF THE PROSECUTING ATTORNEY OR THE JUVENILE.

BY ORDER OF THE COURT, THE EXAMINER SHALL HAVE ACCESS TO ALL RELEVANT PRIVATE AND PUBLIC RECORDS RELATED TO THE JUVENILE.

(B) **Report Distribution** COPIES OF THE INITIAL COURT ORDERED EXAMINER'S REPORT SHALL BE PROVIDED TO THE JUDGE, THE PROSECUTING ATTORNEY, THE JUVENILE'S ATTORNEY, AND ANY OTHER PERSON AS ORDERED BY THE COURT. IF A PROSECUTOR OR JUVENILE INTENDS TO HAVE AN EXAMINER OR OTHER EXPERT WHO HAS EXAMINED THE JUVENILE TESTIFY, WITHIN A REASONABLE TIME BEFORE THE HEARING, THE PROSECUTOR OR JUVENILE SHALL PROVIDE A WRITTEN REPORT PURSUANT TO DIVISION (C) OF THIS SECTION TO THE OTHER PARTY.

(C) **Report** THE EXAMINER SHALL HAVE THIRTY DAYS FROM THE TIME OF APPOINTMENT TO SUBMIT A REPORT TO THE COURT. THE REPORT SHALL INCLUDE:

(1) THE EXAMINER'S OPINION AS TO WHETHER THE JUVENILE IS COMPETENT TO PROCEED BASED ON THE STANDARD IN DIVISION (A) OF SECTION 2152.51 OF THE REVISED CODE AND THE FACTORS IN DIVISION (B) OF THAT SECTION. THE REPORT SHALL NOT INCLUDE THE EXAMINER'S OPINION AS TO THE JUVENILE'S SANITY AT THE TIME OF THE ALLEGED OFFENSE OR DETAILS OF THE OFFENSE AS REPORTED BY THE JUVENILE.

(2) IF THE EXAMINER'S OPINION IS THAT THE JUVENILE IS INCAPABLE OF MEETING THE STANDARD IN DIVISION (A) OF SECTION 2151.51 OF THE REVISED CODE, THE REPORT SHALL INCLUDE ALL OF THE FOLLOWING:

(a) THE SPECIFIC BASIS FOR THE OPINION IN TERMS OF WHETHER THE JUVENILE IS MENTALLY ILL AS DEFINED IN SECTION 5122.01 OF THE REVISED CODE, MENTALLY RETARDED, OR INCOMPETENT DUE TO ANY OTHER FACTOR;

(b) AN ASSESSMENT OF THE LIKELIHOOD THAT THE JUVENILE WILL BE ABLE TO ATTAIN COMPETENCY WITHIN ONE YEAR;

(c) TREATMENT OR EDUCATION RECOMMENDATIONS FOR COMPETENCY ATTAINMENT, INCLUDING AN ASSESSMENT OF WHAT RESOURCES FOR COMPETENCY ATTAINMENT ARE AVAILABLE IN THE COMMUNITY;

(d) AN ASSESSMENT OF THE NEED FOR MEDICATION FOR ATTAINING COMPETENCY;

(e) A RECOMMENDATION OF THE LEAST RESTRICTIVE SETTING FOR COMPETENCY ATTAINMENT TO TAKE PLACE THAT IS CONSISTENT WITH THE JUVENILE'S NEED FOR COMPETENCY AND WITH THE SAFETY OF THE COMMUNITY, INCLUDING A RECOMMENDATION ON THE NEED FOR A

RESIDENTIAL OR NONRESIDENTIAL SETTING FOR COMPETENCY ATTAINMENT.

(D) **2nd Exam if MR/DD** IF THE INITIAL EXAMINATION IS DONE BY AN EXAMINER DEFINED IN DIVISION (E)(1) OR (2) OF THIS SECTION, AND IF THE EXAMINER'S REPORT INDICATES THAT THE JUVENILE MAY BE INCOMPETENT AND HAS MENTAL RETARDATION OR A DEVELOPMENTAL DISABILITY AS DEFINED IN SECTION 5123.01 OF THE REVISED CODE, THE COURT SHALL ORDER THE JUVENILE TO UNDERGO A SEPARATE MENTAL RETARDATION OR DEVELOPMENTAL DISABILITY EXAMINATION CONDUCTED BY AN EXAMINER DEFINED IN DIVISION (E)(3) OF THIS SECTION.

(E) **Definition** AS USED IN THIS SECTION, "EXAMINER" MEANS ANY OF THE FOLLOWING:

(1) FOR THE EXAMINATION OF A JUVENILE, FIFTEEN YEARS OR OLDER, A PSYCHIATRIST OR A LICENSED CLINICAL PSYCHOLOGIST WHO SATISFIES THE CRITERIA OF DIVISION (I)(1) OF SECTION 5122.01 OF THE REVISED CODE OR IS EMPLOYED BY A CERTIFIED FORENSIC CENTER DESIGNATED BY THE DEPARTMENT OF MENTAL HEALTH TO CONDUCT EVALUATIONS.

(2) FOR THE EXAMINATION OF A JUVENILE, UNDER AGE FIFTEEN, A PSYCHIATRIST WHO HAS COMPLETED A FELLOWSHIP IN CHILD PSYCHIATRY OR A LICENSED CLINICAL PSYCHOLOGIST WHO SATISFIES THE CRITERIA OF DIVISION (I)(1) OF SECTION 5122.01 OF THE REVISED CODE AND HAS SPECIALIZED EDUCATION, TRAINING, AND EXPERIENCE IN THE EVALUATION OF CHILDREN AND EARLY ADOLESCENTS.

(3) FOR THE EXAMINATION OF A JUVENILE WHO MAY HAVE MENTAL RETARDATION, A PSYCHOLOGIST APPROVED BY THE DIRECTOR OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES.

**62§2152.53 FINDING AND PROCEDURE FOR ATTAINMENT**

(A) **If Found Competent** IF THE JUDGE FINDS THAT A JUVENILE IS COMPETENT TO PROCEED, THE JUVENILE'S CASE SHALL MOVE FORWARD AS OTHERWISE PROVIDED BY LAW. THE JUDGE MAY ORDER APPROPRIATE TREATMENT UPON THE RECOMMENDATION OF APPROPRIATE MEDICAL PERSONNEL, INCLUDING THE MANDATORY USE OF PSYCHOTROPIC DRUGS OR OTHER MEDICATIONS, IN ORDER TO MAINTAIN THE JUVENILE'S COMPETENCE .

(B) **If Found Incompetent** IF THE JUDGE FINDS THAT A JUVENILE IS INCOMPETENT TO PROCEED, THE JUDGE SHALL DECIDE THE NATURE OF THE INCOMPETENCY, MAKE FINDINGS IN WRITING, AND NOTIFY THE APPROPRIATE ENTITY.

ALL COURT ORDERS DETERMINING INCOMPETENCY SHALL INCLUDE SPECIFIC WRITTEN FINDINGS BY THE JUDGE AS TO THE NATURE OF THE INCOMPETENCY AND AS TO WHETHER THE JUVENILE REQUIRES A SECURE OR NONSECURE SETTING.

(1) **If Misdemeanor or Traffic Offender** IF THE ACTION IS FOR AN OFFENSE THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT OR FOR A JUVENILE TRAFFIC OFFENSE, AND THE JUVENILE IS FOUND INCOMPETENT TO PROCEED, THE ACTION MAY BE DISMISSED. UPON DISMISSAL, THE COURT MAY INITIATE A DEPENDENCY COMPLAINT IN ACCORDANCE WITH LAW. IF THE CASE IS NOT DISMISSED, THE COURT SHALL PROCEED UNDER DIVISION (C) OF THIS SECTION.

(2) **If Felony** IF THE ACTION IS FOR AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT, AND THE JUVENILE IS FOUND INCOMPETENT TO PROCEED, THE COURT SHALL PROCEED UNDER DIVISION (C) OF THIS SECTION.

(3) **If Unattainable** IF THE COURT FINDS THE JUVENILE INCOMPETENT TO PROCEED AND THAT THE JUVENILE CANNOT ATTAIN COMPETENCY, THE ACTION MAY BE DISMISSED. UPON DISMISSAL, THE COURT MAY INITIATE A DEPENDENCY COMPLAINT IN ACCORDANCE WITH LAW.

(4) **Court Jurisdiction** THE COURT MAY RETAIN JURISDICTION OF THE JUVENILE FOR UP TO TWO YEARS AFTER THE DATE OF THE ORDER OF INCOMPETENCY OR UNTIL THE JUVENILE'S EIGHTEENTH BIRTHDAY, WHICHEVER IS LATER.

(C) **Placement in an Appropriate Setting** BASED ON THE FINDINGS REGARDING INCOMPETENCY, THE JUDGE SHALL PLACE THE JUVENILE WITH AN APPROPRIATE ENTITY AND IN AN APPROPRIATE SETTING FOR ACHIEVING COMPETENCY, FOR A PERIOD NOT TO EXCEED ONE YEAR, AS FOLLOWS:

(1) **If Mental Illness** EXCEPT AS PROVIDED IN DIVISION (C)(4) OF THIS SECTION, IF INCOMPETENCY IS DUE PRIMARILY TO MENTAL ILLNESS AS DEFINED IN DIVISION (A) OF SECTION 5122.01 OF THE REVISED CODE, THE JUDGE SHALL COMMIT THE JUVENILE TO THE MENTAL HEALTH BOARD IN THE COUNTY WHERE THE JUVENILE'S PARENT, GUARDIAN, OR CUSTODIAN RESIDES, OR TO AN AGENCY DESIGNATED BY THE BOARD, FOR COMPETENCY ATTAINMENT, INCLUDING POSSIBLE HOSPITALIZATION. [The General Assembly is considering changes in the rules about when someone can be placed outside the county of residence. If that law changes, this draft would have to be modified.]

(2) **If Mental Retardation** EXCEPT AS PROVIDED IN DIVISION (C)(4) OF THIS SECTION, IF INCOMPETENCY IS DUE PRIMARILY TO MENTAL RETARDATION OR A DEVELOPMENTAL DISABILITY AS DEFINED IN SECTION 5123.01 OF THE REVISED CODE, THE JUDGE SHALL COMMIT THE JUVENILE TO THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITY BOARD IN THE COUNTY WHERE THE JUVENILE'S PARENT, GUARDIAN, OR CUSTODIAN RESIDES, OR TO AN AGENCY DESIGNATED BY THE BOARD FOR COMPETENCY ATTAINMENT.

(3) **If Other Conditions (Including Immaturity)** IN ALL OTHER CASES WHERE A JUVENILE IS FOUND INCOMPETENT, THE JUDGE MAY BEGIN A DEPENDENCY ACTION REGARDING THE JUVENILE IN THE APPROPRIATE COURT.

(4) **Assignment to Parents** IN LIEU OF ASSIGNING THE JUVENILE PURSUANT TO (C)(1), (2), OR (3) OF THIS SECTION, THE JUDGE MAY ASSIGN THE JUVENILE TO A PARENT, GUARDIAN, OR CUSTODIAN FOR PURPOSES OF COMPETENCY ATTAINMENT. THE COURT SHALL HOLD THE PARENT, GUARDIAN, OR CUSTODIAN RESPONSIBLE FOR ENSURING THAT THE JUVENILE RECEIVES NEEDED TREATMENT AS IDENTIFIED IN THE CASE PLAN, AND FOR PROVIDING PROGRESS REPORTS TO THE COURT AT AGREED TIME INTERVALS.

(D) **Attainment Plan** WITHIN THIRTY DAYS AFTER PLACEMENT OF THE JUVENILE, THE APPROPRIATE ENTITY SHALL SUBMIT TO THE COURT A PLAN FOR THE JUVENILE'S COMPETENCY ATTAINMENT. THE PLAN SHALL INCLUDE RECOMMENDATIONS ABOUT

THE USE OF MEDICATIONS, IF APPROPRIATE. DURING THIS PERIOD, THE ENTITY SHALL PROVIDE SERVICES AND KEEP THE COURT APPRISED OF THE SERVICES.

(E) **Approval of Plan** THE JUDGE SHALL HOLD A HEARING IN WHICH THE PLAN IS PRESENTED BEFORE THE JUVENILE, THE JUVENILE'S PARENTS, GUARDIAN, OR CUSTODIAN, THE PROSECUTING ATTORNEY, AND THE JUVENILE'S ATTORNEY. IF THE JUDGE APPROVES THE PLAN, THE COURT SHALL JOURNALIZE IT. IF THE JUDGE DOES NOT APPROVE THE PLAN, THE JUDGE SHALL DETERMINE THE PLAN FOR ATTAINING COMPETENCY AT THE HEARING.

**Detailed Plan and Reports** THE RESPONSIBLE ENTITY SHALL WITHIN SIX DAYS OF JOURNALIZATION SUBMIT TO THE COURT A DETAILED PLAN FOR THE JUVENILE TO ATTAIN COMPETENCY. THE ENTITY SHALL ALSO PROVIDE WRITTEN PROGRESS REPORTS TO THE COURT EVERY THREE MONTHS.

(E) **Attaining Competency** THE ENTITY RESPONSIBLE FOR THE ATTAINMENT PLAN SHALL FILE WRITTEN REPORTS EVERY THREE MONTHS WITH THE COURT UNTIL IT IS DETERMINED THAT THE JUVENILE HAS ATTAINED COMPETENCY.

IF THE ENTITY RESPONSIBLE FOR SUPERVISING COMPETENCY ATTAINMENT BELIEVES THE JUVENILE HAS ATTAINED COMPETENCY, THE ENTITY SHALL NOTIFY THE COURT, WHICH SHALL THEN TRANSFER THE JUVENILE BACK TO THE COURT TO DETERMINE WHETHER THE JUVENILE HAS ATTAINED COMPETENCY.

IF, BASED ON THE REPORTS OF THE RESPONSIBLE ENTITY, THE JUDGE FINDS THAT THE JUVENILE HAS ATTAINED COMPETENCY, THE COURT SHALL PROCEED WITH THE CASE. THE COURT SHALL RETAIN THE AUTHORITY TO ORDER CONTINUED TREATMENT AS APPROPRIATE AND NECESSARY TO MAINTAIN THE CHILD'S COMPETENCY, INCLUDING THE USE OF MEDICATIONS UNDER MEDICAL SUPERVISION.

(G) **Secure Placement** IF, BASED ON THE EXAMINER'S REPORT AND TREATMENT PLAN, THE JUDGE FINDS THAT A JUVENILE IS NOT COMPETENT, THE JUDGE SHALL DETERMINE WHETHER THE JUVENILE REQUIRES SECURE PLACEMENT.

(1) **Finding** BEFORE A JUVENILE IS PLACED IN A SECURE FACILITY UNDER THIS DIVISION, THE JUDGE MUST FIND BY CLEAR AND CONVINCING EVIDENCE EITHER OF THE FOLLOWING:

(a) **Threat** THERE IS A SUBSTANTIAL LIKELIHOOD THAT THE CHILD WILL INFLICT SERIOUS PHYSICAL HARM ON HIMSELF OR HERSELF OR OTHERS;

(b) **No Other Less Restrictive Options** ALL AVAILABLE LESS RESTRICTIVE ALTERNATIVES, INCLUDING NON-SECURE COMMUNITY RESIDENTIAL FACILITIES OR COMMUNITY SETTINGS THAT OFFER OPPORTUNITIES FOR COMPETENCY ATTAINMENT, ARE INAPPROPRIATE.

(2) **Separate From Adults** ANY JUVENILE WHO IS LESS THAN EIGHTEEN YEARS OLD PLACED IN A SECURE FACILITY SHALL BE HELD WITH SIGHT AND SOUND SEPARATION FROM ADULTS HOUSED IN THE SAME FACILITY.

(3) **Period** IF THE JUDGE FINDS THAT COMMITMENT TO A SECURE FACILITY IS NECESSARY, THE INITIAL COMMITMENT SHALL BE FOR A PERIOD OF NO MORE THAN SIX MONTHS IN THE CASE OF A FELONY, OR SIXTY DAYS IN THE CASE OF A MISDEMEANOR. IF THE JUDGE, AFTER CONSIDERING ALL INFORMATION RECEIVED FROM APPROPRIATE SOURCES, FINDS PURSUANT TO

DIVISION (G)(1) OF THIS SECTION THAT THE JUVENILE NEEDS TO REMAIN IN THE FACILITY, THE JUDGE MAY EXTEND THE COMMITMENT IN THREE MONTH INCREMENTS IN THE CASE OF A FELONY. HOWEVER, IN NO EVENT SHALL THE JUVENILE BE COMMITTED TO A SECURE FACILITY FOR A PERIOD LONGER THAN ONE YEAR.

(4) **Credit for Time** ANY JUVENILE HELD IN A SECURE FACILITY UNDER THIS SECTION SHALL BE CREDITED FOR THE TIME SPENT THERE AGAINST ANY DEPARTMENT OF YOUTH SERVICES DISPOSITION.

(5) **Transfer to Less Secure Facility** IF AT ANY TIME THE PERSON IMPLEMENTING THE ATTAINMENT PLAN WITHIN THE SECURE FACILITY DETERMINES THAT THE CHILD NO LONGER MEETS THE CRITERIA FOR SECURE PLACEMENT IN DIVISION (G)(1) OF THIS SECTION, THAT PERSON SHALL REPORT THIS MATTER TO THE COURT. THE JUDGE SHALL HOLD A HEARING. IF THE CHILD IS DETERMINED TO BE INCOMPETENT TO PROCEED, BUT DOES NOT MEET THE CRITERIA STATED IN DIVISION (G)(1) FOR PLACEMENT IN A SECURE FACILITY, THE JUDGE SHALL ORDER THE JUVENILE INTO AN APPROPRIATE SETTING IN THE COMMUNITY.

(6) **Juvenile is Subject to Escape** A JUVENILE IN A SECURE SETTING UNDER SECTIONS 2152.51 TO 2152.53 OF THE REVISED CODE IS IN DETENTION FOR PURPOSES OF SECTION 2921.34 [escape] OF THE REVISED CODE.

(H) **If Secure Setting is Unnecessary** IF THE JUVENILE IS DETERMINED TO BE INCOMPETENT, BUT DOES NOT MEET THE CRITERIA STATED IN DIVISION (G)(1) FOR PLACEMENT IN A SECURE FACILITY, BASED ON THE RECOMMENDATION OF THE PEOPLE INVOLVED IN THE ATTAINMENT PLAN, THE JUDGE SHALL ORDER THE JUVENILE INTO AN APPROPRIATE SETTING IN THE COMMUNITY.

(I) **If Not Attainable Within a Year**

(1) **Report** IF THE PERSON RESPONSIBLE FOR THE JUVENILE'S COMPETENCY ATTAINMENT FILES A REPORT WITH THE COURT INFORMING THE COURT THAT IN THAT PERSON'S ASSESSMENT THE JUVENILE WILL NOT BECOME COMPETENT TO PROCEED, THE PERSON SHALL DEVELOP A DISCHARGE PLAN FOR THE JUVENILE PRIOR TO ANY HEARING TO DETERMINE WHETHER THE JUVENILE COULD EVER BECOME COMPETENT TO PROCEED.

ANY TREATMENT BEING PROVIDED AT THE TIME SHALL CONTINUE UNTIL THE JUDGE ISSUES AN ORDER FINDING THAT THE JUVENILE CANNOT ATTAIN COMPETENCY. UPON MAKING THE FINDING, THE JUDGE MAY DISMISS THE DELINQUENCY PETITION. UPON DISMISSAL, THE COURT MAY INITIATE A DEPENDENCY COMPLAINT IN ACCORDANCE WITH LAW.

(2) **Unattainable** IF AT THE END OF ONE YEAR FOLLOWING THE ORDER OF INCOMPETENCY, THE JUVENILE HAS NOT ATTAINED COMPETENCY, AND THERE IS NO EVIDENCE THAT THE JUVENILE WILL ATTAIN COMPETENCY, THE JUDGE SHALL DISMISS THE DELINQUENCY PETITION. UPON DISMISSAL, THE COURT MAY INITIATE A DEPENDENCY COMPLAINT IN ACCORDANCE WITH LAW.

(J) **Definition of Secure Placement** AS USED IN SECTIONS 2151.51 TO 2152.53 OF THE REVISED CODE, "SECURE PLACEMENT" MEANS ANY COMMITMENT TO ANY FACILITY USED FOR COMPETENCY ATTAINMENT OF JUVENILES THAT HAS ALL OF THE FOLLOWING FEATURES:

- (1) IS LOCKED AND DESIGNATED FOR COMPETENCY ATTAINMENT;
- (2) HAS NO EJECT OR REJECT POLICY;
- (3) HAS A STAFF TRAINED IN APPROPRIATE MENTAL HEALTH, MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES, AND COMPETENCY ATTAINMENT STRATEGIES;
- (4) PROVIDES SUPERVISION BY APPROPRIATE MEDICAL STAFF;
- (5) CREDITS THE TIME SERVED AGAINST ANY OTHER SECURE JUVENILE DISPOSITION.

(K) **Copies** COPIES OF PLANS UNDER DIVISIONS (D), (E), AND (I)(1) OF THIS SECTION AND REPORTS UNDER DIVISION (F) OF THIS SECTION SHALL BE PROVIDED TO THE PROSECUTING ATTORNEY, THE JUVENILE'S ATTORNEY, AND ANY OTHER PERSON AS ORDERED BY THE COURT.

**63§2152.61 PARENTAL ORDERS**

[(A)(1) and (2) was §2151.359. Mixed cases are used to show changes. (B) is new. Current §2151.359 would continue to exist for cases not switched to new Ch. 2152. The bond order language at the end of (A) supersedes current §2151.411.]

(A) In any proceeding ~~wherein~~ IN WHICH a child has been adjudged delinquent, ~~unruly, abused, neglected, or dependent,~~ on the application of a party, or the court's own motion, the court may make an order restraining or otherwise controlling the conduct of any parent, guardian, or other custodian ~~in the relationship of such individual to the child~~ if the court finds that such an order is necessary to:

- (A)(1) Control any conduct or relationship that will be detrimental or harmful to the child;
- (B)(2) ~~Where such~~ CONTROL conduct or relationship THAT will tend to defeat the execution of the order of disposition made or to be made.

Due notice of the application or motion and the grounds therefor, and an opportunity to be heard shall be given to the person against whom such order is directed.

THE ORDER MAY INCLUDE A REQUIREMENT THAT THE CHILD'S PARENT, GUARDIAN, OR OTHER CUSTODIAN ENTER INTO A RECOGNIZANCE WITH SUFFICIENT SURETY, CONDITIONED UPON THE FAITHFUL DISCHARGE OF ANY CONDITIONS OR CONTROL REQUIRED BY THE COURT. [The Committee recommends this language in lieu of seldom used §2151.411. That cumbersome section defines parents, tells them they must exercise control over their children, and allows courts to order that the parent post a bond of up to \$500 to assure compliance with probation if the court finds at a hearing "that the parent has failed or neglected to subject the child to reasonable parental control and authority and that that parent's failure or neglect is the proximate cause of the act or acts of the child upon which the delinquent child adjudication is based". The bond is only jeopardized by a second delinquency adjudication.]

(B) FAILURE TO COMPLY WITH ANY ORDER MADE BY THE COURT UNDER THIS SECTION IS CONTEMPT OF COURT UNDER CHAPTER 2705. OF THE REVISED CODE.

[Revisions to the contributing law appear below (§2919.24). The penalty for failure to send a child to school would increase to an M-4 (§§3321.38 & 3321.99).]

**64§2152.65 EXPENSE OF EXTRADITION**

[Supersedes §2151.45]

**65§2152.66 BAIL**

[Supersedes §2151.46]

**66§2152.67 JURY TRIAL**

[Supersedes §2151.47]

[These “adult” sections would move, with minor amendments, to this chapter.]

**67§2152.71 RECORDS, TRAFFIC DOCKET, & DELINQUENCY REPORTS**

[Supersedes §2151.18]

[This moves with only technical amendments to the new chapter. It deals with certain records that must be kept by the court, including a separate docket for traffic cases, statistics on some delinquency cases (involving violent offenses, aged or disabled victims, delinquency adjudications generally, theft offenses, and certain placements), and annual reports.]

**68§2152.72 INFORMATION TO FOSTER CAREGIVERS  
WHO RECEIVE CERTAIN DELINQUENTS**

[Supersedes §2151.62. This requires entities to provide gobs of information before placing certain delinquents in foster homes. It would not change, except for renumbering and changing cross-references.]

**69§2151.73 DELINQUENCY PREVENTION**

[Supersedes §2151.11. Authorizes juvenile courts to participate with others in delinquency prevention programs. Allows the court to accept gifts. No changes, except for renumbering.]

**70§2152.74 DNA TESTING OF CERTAIN DELINQUENTS**

[Supersedes §2151.315. This requires DNA testing of certain delinquents. It would not change, except for renumbering and changing cross-references.]

**71§2152.75 LIMITS ON EMPLOYERS**

[Supersedes §2151.211. This section prohibits an employer from punishing an employee for time lost for attendance at a delinquency proceeding under subpoena. It would not change, except for renumbering.]

**72§2152.81 CHILD SEX OFFENSE VICTIMS**

[Supersedes §2151.3511. This section allows the testimony of child sex offenses victims by deposition, and affords other protections. It would not change, except for renumbering and to recognize SYO indictments.]

**73§2152.82 VICTIMS' NOTICE OF POSSIBLE RECOVERY**

[Supersedes §2151.355(G)(1)]

~~(C)~~(1) At any hearing at which a child is adjudicated a delinquent child or as soon as possible after the hearing, the court shall notify all victims of the delinquent act, who may be entitled to a recovery under any of the following sections, of the right of the victims to recover, pursuant to section 3109.09 of the Revised Code, compensatory damages from the child's parents; of the right of the victims to recover, pursuant to section 3109.10 of the Revised Code, compensatory damages from the child's parents for willful and malicious assaults committed by the child; and of the right of the victims to recover an award of reparations pursuant to sections 2743.51 to 2743.72 of the Revised Code.

#### **74§2152.99 PENALTIES**

[The minor misdemeanor penalty for not providing foster caregivers information about certain delinquents would move from §2151.99(C), to accompany the move of §2151.62 to this chapter.]

#### **75§2301.03 COMMON PLEAS JUDGES' TERMS**

[Add cross-references to new Ch. 2152.]

#### **76§2919.24 CONTRIBUTING TO UNRULINESS OR DELINQUENCY**

(A) No person, INCLUDING A PARENT OR GUARDIAN, OR OTHER CUSTODIAN, shall do either of the following [Although the definition of "person" is broad enough to include parents, etc., practice has been to apply this statute to persons other than parents. The draft is designed to make clear that parents are covered]:

(1) Aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming an unruly child, as defined in section 2151.022 of the Revised Code, or a delinquent child, as defined in section ~~2454.02~~ 2152.02 of the Revised Code;

(2) Act in a way tending to cause a child or a ward of the juvenile court to become an unruly child, as defined in section 2151.022 of the Revised Code, or a delinquent child, as defined in section ~~2454.02~~ 2152.02 of the Revised Code.

(B) Whoever violates this section is guilty of contributing to the unruliness or delinquency of a child, misdemeanor of the first degree. Each day of violation of this section is a separate offense.

#### **77§2923.211 UNDERAGE WEAPONS VIOLATIONS**

[Supersedes part of §2151.355(A)(4). Allows the repeal of part of §2151.355(A)(4). It classifies division (A) as an F-4, instead of broadly lumping it with F-3s, 4s, & 5s as in current law.]

(A) No person under eighteen years of age shall purchase or attempt to purchase a firearm.

(B) No person under twenty-one years of age shall purchase or attempt to purchase a handgun, provided that this division does not apply to the purchase or attempted purchase of a handgun by a person eighteen years of age or older and under twenty-one years of age if the person eighteen years of age or older and under twenty-one years of age is a law enforcement officer who is properly appointed or employed as a law enforcement officer and has received firearms training approved by the Ohio peace officer training council or equivalent firearms training.

(C) Whoever violates division (A) of this section is guilty of underage purchase of a firearm, is a delinquent child, and is subject to an order of disposition as provided in section 2151.355 of the Revised Code ACT THAT WOULD BE A FELONY OF THE FOURTH DEGREE IF IT COULD BE COMMITTED BY AN ADULT. Whoever violates division (B) of this section is guilty of underage purchase of a handgun, a misdemeanor of the second degree.

**78§2929.01 CRIMINAL CODE DEFINITIONS**

[Some technical amendments are needed to harmonize definitions. Also:]

\* \* \*

(EE) (2) **Repeat Violent Offenders**

(b) The person previously was adjudicated a delinquent child for committing an act that if committed by an adult would have been an offense listed in division (EE)(2)(a)(i) or (ii) of this section, AND the person was committed to the department of youth services for that delinquent act, and the juvenile court in which the person was adjudicated a delinquent child made a specific finding that the adjudication should be considered a conviction for purposes of a determination in the future pursuant to this chapter as to whether the person is a repeat violent offender.

**79§2929.23 ELECTRONIC MONITORING**

(A)

(1) "Electronic monitoring device means either ANY of the following [makes the electronic monitoring law more flexible by recognizing new technologies, in adult and juvenile cases]:

\* \* \*

(c) ANY TECHNOLOGY THAT CAN ADEQUATELY TRACK OR DETERMINE THE LOCATION OF AN OFFENDER THAT IS APPROVED BY THE DIRECTOR OF REHABILITATION AND CORRECTION, INCLUDING, BUT NOT LIMITED TO ANY SATELLITE TECHNOLOGY, VOICE TRACKING SYSTEM, AND RETINAL SCANNING SYSTEM.

**80§2941.141 FIREARM POSSESSION SPECIFICATION**

**81§2941.142 GANG SPECIFICATION**

**82§2941.144 AUTOMATIC OR SILENCED WEAPON SPECIFICATION**

**83§2941.145 FIREARM USE OR INDICATED SPECIFICATION**

**84§2941.146 DRIVE-BY SHOOTING SPECIFICATION**

[Make clear these apply to juveniles under §2152.17.]

**85§2950.01 SEX OFFENDER REGISTRATION LAW DEFINITIONS**

[This section contains several key definitions. It would be amended as provided in pending S.B. 148 to include delinquent children among the offenders listed. Definitions include:

- "Habitual sex offender", which would include children adjudicated delinquent for a "sexually oriented offense" who have a prior adjudication for at least one such offense (div. (B));
- "Sexually oriented offense" means (div. (D)):
  - (1) Rape, sexual battery, gross sexual imposition, and FSP;
  - (2) Any of the following offenses involving a minor: kidnapping, abduction, unlawful restraint, criminal child enticement, or corruption of a minor; compelling prostitution, pandering obscenity or pandering sexually oriented matter involving a minor, or illegal use of a minor in nudity-oriented material or performance.

- (3) Regardless of the age of the victim, aggravated murder, murder, involuntary manslaughter in committing a felony, felonious assault, or kidnapping committed with a purpose to gratify the sexual needs or desires of the offender;
  - (4) A sexually violent offense;
  - (5) A violation of any substantially equivalent former law of this state;
  - (6) A violation of any substantially equivalent existing or former municipal ordinance, law of another state, or Federal law;
  - (7) An attempt, conspiracy, or complicity involving any of the above offenses.
- "Sexual predator" would include a delinquent who committed a sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses (div. (E)).
  - "Adjudicated as being a sexual predator" would include a "sexually oriented offense" committed after the bill's effective date when the judge determines that the offender is a "sexual predator" (div. (G)(3)).
  - "Sexually violent predator specification" and "sexually violent offense" would have the same meanings as in §2971.01 of the Revised Code.]

**86§2950.02 LEGISLATIVE PURPOSE & FINDINGS**

[This sets forth the General Assembly's findings underlying the law, including protecting public safety and welfare. It sets the policy of maintaining information on sex offenders and to authorize release as a means of assuring public protection, rather than for punitive purposes. S.B. 148 would add juveniles. The Commission proposes no changes from S.B. 148.]

**87§2950.03 NOTICE OF DUTY TO REGISTER, ETC.**

[Requires various officials to notify each person found guilty of a sexually oriented offense of a duty to register, etc. S.B. 148 would require the juvenile court to provide the notice to delinquents and parents, etc. The Commission proposes no changes from S.B. 148.]

**88§2950.04 DUTY TO REGISTER AND MANNER**

[This section provides both the duty to register and the manner in which one must register. It would track S.B. 148, which parallels adult law, with one exception. Under division (F) in S.B. 148, offenders must register for the periods specified in §2950.07. Under this proposal, the registration periods would be discretionary up to the period stated in §2950.07.]

\* \* \*

(F) An offender who is required to register pursuant to divisions (A) and (B) of this section shall register pursuant to this section for the period of time specified in section 2950.07 of the Revised Code. THE JUVENILE COURT MAY REQUIRE A DELINQUENT CHILD WHO IS REQUIRED TO REGISTER PURSUANT TO DIVISIONS (A) AND (B) OF THIS SECTION TO REGISTER FOR A DEFINITE PERIOD THAT DOES NOT EXCEED THE TIME SPECIFIED IN SECTION 2950.07 OF THE REVISED CODE.

**89§2950.05 NOTICE TO SHERIFF OF ADDRESS CHANGE**

[This statute outlines the offender's duty to notify the sheriff of a change of address and lays out what the sheriff must do with the information. S.B. 148 would add juveniles. The Commission proposes no changes from S.B. 148.]

**90§2950.06 ADDRESS VERIFICATION**

[This statute outlines what the offender must do to verify his or her current address. S.B. 148 would add juveniles. The Commission proposes no changes from S.B. 148.]

**91§2950.07 REGISTRATION PERIODS**

[Division (B) provides the periods of registration for each of the three types of offenders. Sexually Oriented Offenders must register annually for 10 years. Habitual Sexual Offenders must register annually for 20 years. Sexual Predators must register with the local sheriff every 90 days for life, unless a judge makes a determination that the offender is no longer a sexual predator (under §2950.09(D)). In such a case, the offender may be given a registration period akin to a Habitual Sexual Offender or a Sexually Oriented Offender.

S.B. 148 brings juvenile offenders into this statute. In SB 148, these registration periods apply wholesale to adults and juveniles alike. Rather than insert juveniles in divisions (B)(1), (2), or (3), as in S.B. 148, the Commission instead proposes a new division (B)(4), which would authorize registration "that does not exceed" the times required for adults. The actual period would be in the juvenile court's discretion.]

(A) [Same as S.B. 148]

\* \* \*

(B) The duty of an offender who is convicted of or pleads guilty to, or has been convicted of or pleads guilty to, OR A DELINQUENT CHILD WHO IS ADJUDICATED A DELINQUENT CHILD FOR COMMITTING a sexually oriented offense to comply with sections 2950.04, 2950.05, and 2950.06 of the Revised Code continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the offender has been adjudicated as being a sexual predator relative to the sexually oriented offense, the offender's duty to comply with those sections continues until the offender's death. If the judge who sentenced the offender or that judge's successor in office subsequently enters a determination pursuant to division (D) of section 2950.09 of the Revised Code that the offender no longer is a sexual predator, the offender's duty to comply with those sections continues for the period of time that otherwise would have been applicable to the offender under division (B)(2) or (3) of this section.

(2) If the judge who sentenced the offender for the sexually oriented offense determined pursuant to division (E) of section 2950.09 of the Revised Code that the offender is a habitual sex offender, the offender's duty to comply with those sections continues for twenty years.

(3) If neither division (B)(1) nor (B)(2) of this section applies, the offender's duty to comply with those sections continues for ten years.

(4) THE DUTY OF A CHILD WHO HAS BEEN ADJUDICATED DELINQUENT FOR A SEXUALLY ORIENTED OFFENSE TO COMPLY WITH SECTIONS 2950.04, 2950.05, AND 2950.06 OF THE REVISED CODE CONTINUES FOR A DEFINITE PERIOD THAT DOES NOT EXCEED THE REGISTRATION PERIOD PROVIDED IN DIVISIONS (B)(1), (2), AND (3) OF THIS SECTION FOR THE TYPE OF OFFENDER DESCRIBED IN EACH OF THOSE SECTIONS. THE JUVENILE COURT SHALL DETERMINE THE APPROPRIATE DEFINITE PERIOD AND SHALL INFORM THE DELINQUENT CHILD OF THE REGISTRATION PERIOD AT THE DISPOSITIONAL HEARING.

(C) [Same as in S.B. 148]

\* \* \*

**92§2950.08 CONFIDENTIALITY OF REGISTRATION MATERIALS**

The statements, information, photographs, and fingerprints required by sections 2950.04, 2950.05, and 2950.06 of the Revised Code and provided by a person who registers . . . and that are in the possession of the bureau of criminal identification and investigation and the information in the possession of the bureau that was received by the bureau pursuant to section 2950.14 of the Revised Code shall not be open to inspection by the public or by any person other than the following persons:

- (A) A regularly employed peace officer or other law enforcement officer;
- (B) An authorized employee of the bureau of criminal identification and investigation for the purpose of providing information to a board, administrator, or person pursuant to division (F) or (G) of section 109.57 of the Revised Code;
- (C) THE SUPERINTENDENT OF EACH BOARD OF EDUCATION OF A SCHOOL DISTRICT OR THE APPOINTING OR HIRING OFFICER OF EACH CHARTERED NONPUBLIC SCHOOL IN WHICH A CHILD WHO HAS BEEN ADJUDICATED DELINQUENT FOR A SEXUALLY ORIENTED OFFENSE IS ENROLLED.

**93§2950.09 SEXUAL PREDATOR CLASSIFICATION**

[This section labels certain offenders “sexual predators”. S.B. 148 includes those found delinquent for the acts that warrant the label among adults and uses the adult timeframes for reviewing one’s status as a sexual predator. No changes from S.B. 148.]

**94§2950.10 NOTICE TO VICTIMS**

[This statute provides notices to victims regarding sex offenders, if requested by the victims. S.B. 148 adds notice to juvenile sex offender victims. No changes from S.B. 148.]

**95§2950.11 COMMUNITY NOTICE**

[This statute outlines the “community notification” aspects of sex offender registration. The Commission would give juvenile judges the option of ordering community notice for juveniles sentenced as serious youthful offenders (i.e., the adult portion of these blended sentences would include all aspects of the adult sentence, including community notice).]

Divisions (A) through (E), dealing with the sheriff’s duties, would not change.

\* \* \*

- (F)
  - (1) The notification provisions of this section do not apply regarding a person who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense, who has not been adjudicated as being a sexual predator relative to that sexually oriented offense, and who is determined pursuant to division (F) of section 2950.09 of the Revised Code to be a habitual sex offender unless the sentencing court imposes a requirement in the offender’s sentence and in the judgment of conviction that contains the sentence that subjects the offender to the provisions of this section.

(2) THE NOTIFICATION PROVISIONS OF THIS SECTION DO NOT APPLY TO THE RECORDS OF DELINQUENT CHILDREN, EXCEPT TO A CHILD WHO WAS ADJUDICATED DELINQUENT FOR A SEXUALLY ORIENTED OFFENSE AND SENTENCED AS A SERIOUS YOUTHFUL OFFENDER UNDER SECTION 2152.13 OF THE REVISED CODE, WHEN, AT A HEARING CONDUCTED BEFORE THE END OF THE JUVENILE PART OF THE SENTENCE, THE JUVENILE COURT DETERMINES THAT THIS SECTION SHALL APPLY.

(G) [No further changes]

**96§2950.12 IMMUNITY**

[This statute holds persons who act under the authority of Ch. 2950 immune from civil liability. S.B. 148 adds to the list “a supervising officer and an officer or employee” of DYS. No changes from S.B. 148.]

**97§2950.13 STATE REGISTRY OF SEX OFFENDERS**

[This statute outlines the duties of the AG in establishing and maintaining a state registry of sex offenders at BCI&I. S.B. 148 would add juvenile sex offenders. No changes from S.B. 148.]

**98§2950.14 DYS INFORMATION TO THE STATE REGISTRY**

[This statute mandates the sharing of information between DRC and BCI&I prior to the offender’s release from prison. SB 148 applies this provision to delinquents housed in a DYS facility. Prior to releasing the child from the custody of DYS, DYS must provide BCI&I with the child’s name, anticipated future residence, history of delinquency, and other relevant factors. BCI&I must enter it into a state registry of sexual offenders. No changes from S.B. 148.]

**99§2950.99 PENALTY FOR FAILING TO REGISTER**

[S.B. 148 would make the penalty for failure to register the same for juveniles as adults (F-5 for underlying felony; M-1 for underlying misdemeanor). No changes from S.B. 148.]

**100§3321.99 FAILURE TO SEND A CHILD TO SCHOOL**

[§3321.38, through reference to §3321.04 and other provisions, requires a parent, guardian, or other person having care of a child of compulsory school age to send the child to school. (§3321.04 excuses home schoolers.) A violator may have to give a \$100 bond, conditioned on having the child attend and remain in school. In addition to the bond, there is this criminal penalty.]

Whoever violates division (A) of section 3321.38 of the Revised Code ~~shall be fined not less than five nor more than twenty dollars~~ IS GUILTY OF FAILURE TO SEND A CHILD TO SCHOOL, A MISDEMEANOR OF THE FOURTH DEGREE.

**101§5139.01 DYS CHAPTER DEFINITIONS**

[Update cross-references to new Ch. 2152 here, and throughout Ch. 5139, and insert EJJ references, as needed.]

(A) \* \* \*

(13) “Public safety beds” means all of the following:

(a) Felony delinquents who have been committed to the department of youth services for the commission of an act, ~~other than a violation of section 2911.01 or 2911.11 of the Revised Code that is~~ **WOULD BE a category one offense or a category two offense** **FELONY OF THE FIRST DEGREE IF COMMITTED BY AN ADULT, WHO ARE ELIGIBLE FOR A SERIOUS YOUTHFUL OFFENDER DISPOSITION UNDER SECTION 2152.13 OF THE REVISED CODE,** and who are in the care and custody of an institution or ~~have~~

~~been diverted from care and custody in an institution and placed in a community corrections facility . . . [no further changes]~~

\* \* \*

## 102§5139.05 COMMITMENT TO DYS

(A) **Minimum Age** The juvenile court may commit any child to the department of youth services ~~permanently~~ as authorized in ~~section 2151.355~~ CHAPTER 2152 of the Revised Code, provided that any child so committed shall be at least ~~twelve~~ TEN years of age at the time of the ~~child's commitment~~ OFFENSE.

[Related changes would be made to CCF law. It would help practitioners if these age limits also were placed in Ch. 2152.]

Any order to commit a child to an institution under the control and management of the department shall have the effect of ordering that the child be committed to the department and assigned to an institution as follows:

(1) **Traditional Juveniles & EJJs** For an indefinite term consisting of the ~~prescribed minimum~~ period of ~~time~~ COURT CONTROL SET BY THE COMMITTING COURT and a maximum period not to exceed the child's attainment of twenty-one years of age, if the child was committed pursuant to ~~division (A)(4) or (5) of section 2151.355~~ 2152.16 of the Revised Code, OR TWENTY-FIVE YEARS OF AGE, IF THE CHILD WAS COMMITTED PURSUANT TO SECTION 2152.13 OR 2152.15 OF THE REVISED CODE;

(2) **Agg. Murder & Murder** Until the child's attainment of twenty-one years of age, if the child was committed FOR AGGRAVATED MURDER OR MURDER pursuant to ~~division (A)(6) of that~~ section 2152.16 OF THE REVISED CODE, OR TWENTY-FIVE YEARS OF AGE, IF THE CHILD WAS COMMITTED PURSUANT TO SECTION 2152.13 OR 2152.15 OF THE REVISED CODE;

(3) **Gun Spec Terms** For a period of commitment that shall be in addition to, and shall be served consecutively with and prior to, a period of commitment described in division (A)(1) or (2) of this section, if the child was committed pursuant to ~~division (A)(7) of section 2151.355~~ 2152.17 of the Revised Code;

(4) ~~For any period of commitment imposed under division (A)(7) of section 2151.355 of the Revised Code and for consecutive periods of commitment as described in division (A)(1) or (2) of this section, if the child was the subject of a consecutive periods of commitment order issued by the court pursuant to division (B)(2) of section 2151.355 of the Revised Code.~~

(B) **Who Has Control** The release authority of the department of youth services, in accordance with section 5139.51 of the Revised Code, may ~~grant the~~ release from ~~institutionalization~~ of CUSTODY any child committed to the department AT ANY TIME AFTER THE END OF THE PERIOD OF COURT CONTROL IMPOSED UNDER SECTION 2152.15 OR 2152.16 OF THE REVISED CODE. [Technical amendments will be needed to §5139.51 and other sections.]

The order committing a child to the department of youth services shall state that the child has been adjudicated a delinquent child and ~~that the commitment is permanent~~ STATE THE PERIOD OF COURT CONTROL OVER THE COMMITMENT UNDER SECTION 2152.13, 2152.15, OR 2152.16 OF THE REVISED CODE. The jurisdiction of the court terminates at the ~~time of the commitment~~ END OF THE PERIOD OF COURT CONTROL except in relation to

~~procedures for the judicial release or early release of children from institutionalization or institutionalization in a secure facility and hearings conducted relative to judicial release or early release; except in relation to its authority to add additional consistent terms and conditions regarding early release that are not prohibited under division (C)(2) of section 2151.38 of the Revised Code; except in relation to its authority to add additional terms and conditions regarding judicial release; except in relation to hearings conducted relative to violations of the terms and conditions of a judicial release or early release; except in relation to the functions of the court related to the granting of supervised release, with respect to violations of supervised release, PROCEDURES, SUPERVISION, VIOLATIONS, and with respect to functions of the court related to the revocation of supervised release that are specified in sections 5139.51 and 5139.52 of the Revised Code [technical amendments should be made to these sections]; and except that the department may petition the court for an order terminating its custody.~~

When a child has been committed permanently to the department UNDER SECTION 2152.13, 2152.15, OR 2152.16 OF THE REVISED CODE, the department shall retain legal custody of the child until the time that it terminates its legal custody of the child by discharging DISCHARGES the child to the exclusive management, control, and custody of the child's parent or the guardian of the child's person or, if the child is eighteen years of age or older, by discharging the child, until the committing court, upon its own motion, upon petition of the parent, guardian of the person, or next friend of a child, or upon petition of the department, terminates the department's legal custody of the child, until the committing court grants the child a judicial release under ~~division (B) of section 2151.38~~ 2152.22 of the Revised Code, or until the department's legal custody of the child is terminated automatically by the child attaining twenty-one OR TWENTY-FIVE years of age, WHICHEVER IS RELEVANT.

(C) **Assignment to a Hospital** [This division, which authorizes DYS to assign a child to a hospital for mental, physical, etc. examination or treatment, would not change.]

(D) **Records** [This division, limiting access to records maintained by DYS on children in custody, would not change.]

(E) **Parental Notice** [This division, regarding notice to the parent, guardian, etc. of a child in a DYS facility, would not change.]

(F) **Visitation** [This division, dealing with parental visitation, would not change.]

(G) **Definitions** [No changes, except to update cross-references.]

# APPENDIX

## 103 SURVEY OF JUVENILE COURT JUDGES

By Kyle Timken, Fritz Rauschenberg,  
Katie Aldridge, and Scott Anderson

September 11, 1997

### Introduction & Methodology

This report contains the results of a survey of juvenile court judges conducted in the summer of 1997. The survey format is loosely modeled after studies of general division common pleas judges and misdemeanor judges conducted in 1992 and 1995<sup>2</sup>.

The survey had three parts. First, it asked judges for opinions on various juvenile justice issues. The staff generated the questions with input from Commission members. Second, it asked judges to provide dispositions for a number of behaviors that might get a juvenile into court. Third, judges were asked whether they would bind over certain serious alleged delinquents.

60 out of 103 judges (58.2%) responded to the survey. This percentage is not as high as the response we received from the felony common pleas judges in 1992, but was higher than the response rate from the misdemeanor judges in 1995.

Not all percentages add to 100 due to rounding.

### Issues Questionnaire

The first part of the survey asked judges their opinions on various juvenile issues. This section shows the questions posed to the judges and the percentage who responded to each answer.

#### Bindover Cases

1. The minimum age for discretionary bindovers should

Increase	8.3%
Decrease	1.7%
Stay the same	75.0%
Be eliminated	15.0%
  
2. Should there be any *mandatory* bindovers?

Yes	50.0%	No	50.0%
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<sup>2</sup> For more information on those studies, contact Fritz Rauschenberg at the Sentencing Commission - 614-644-0564.

3. If there are *mandatory* bindovers, the minimum age for which an offender *must* be bound over should

Increase	19.6%
Decrease	8.9%
Stay the same	71.4%

4. If there are mandatory bindovers, the number of offenses subject to *mandatory* bindover provisions (i.e., those designated as Category I and Category II Offenses) should

Increase	13.0%
Decrease	11.1%
Stay the same	75.9%

5. In particular, should the offense of Felonious Assault (R.C. 2903.11) be added as a Category II Offense?

Yes	48.2%	No	51.8%
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#### **Department of Youth Services ("DYS") Issues**

1. The *minimum* age for DYS-held offenders should

Increase	1.7%
Decrease	25.4%
Stay the same	72.9%

2. The *maximum* age for DYS-held offenders should

Increase	27.1%
Decrease	1.7%
Stay the same	71.2%

3. Should DYS dispositions be changed from indefinite ranges of incarceration periods to "determinate sentences"?

Yes	27.1%	No	72.9%
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4. Should the juvenile court judge retain jurisdiction over a juvenile sent to DYS after the minimum term of incarceration has been served?

Yes	82.8%	No	17.2%
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5. Should there be provisions that allow a juvenile committed to DYS to be transferred, if warranted, to the adult prison system at a specific age (e.g., at age 21)?

Yes	94.9%	No	5.1%
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#### **RECLAIM Ohio Issues**

1. Does the potential funding provided under RECLAIM Ohio influence your decision-making regarding dispositions of juvenile offenders?

Yes	67.8%	No	32.2%
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2. Has RECLAIM Ohio ever influenced your decision to bind over a juvenile for trial as an adult?  
 Yes 16.9% No 83.1%

3. The number of "public safety bed" offenses should  
 Increase 50.9%  
 Decrease 0.0%  
 Stay the same 49.1%

4. Since the implementation of RECLAIM Ohio in your county, has your number of admissions to DYS facilities per year  
 Increased 22.6%  
 Decreased 37.7%  
 Stayed the same? 39.6%

5. Since the implementation of RECLAIM Ohio in your county, has your ability to house offenders in non-DYS facilities  
 Become more restricted 19.3%  
 Become less restricted 29.8%  
 Stayed the same? 50.9%

6. Do you believe that the formula for determining the amount of RECLAIM Ohio money "kept" by each county should be changed?  
 Yes 62.3% No 37.7%

7. Is RECLAIM Ohio a good idea?  
 Yes 58.9% No 21.4% Unsure 19.6%

**Delinquency Cases**

1. Should gun specification provisions apply to juvenile offenders?  
 Yes 82.8% No 17.2%

2. Should gun specifications be applied as a definite term of additional punishment (e.g., three years) or as an indefinite term subject to the discretion of judges and/or DYS (e.g., up to three years)?  
 Definite term 21.2%  
 Indefinite term 78.9%

3. Should hearings on delinquency cases be open to the public?  
 Yes, always 20.7%  
 Yes, under certain circumstances 46.6%  
 No 32.8%

4. Should alleged delinquents have the right to bail?  
 Yes 13.6%  
 Yes, but only for certain offenses 15.3%  
 No 71.2%

5. Should alleged delinquent children have the right to plead "no contest" to their delinquency charges?

Yes	22.0%
Yes, but only for certain offenses	11.9%
No	66.1%

6. Should delinquency actions be termed "criminal" actions or remain civil ("quasi-criminal") actions?

Criminal	37.9%
Civil	62.1%

7. Should the delinquency dispositional statute change?

Yes	34.0%	No	66.0%
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### **Unruly Cases**

1. Should unruly children be dealt with somewhere other than juvenile court?

Yes	30.4%	No	69.6%
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2. Is the disposition of foster care an appropriate redress for some unruly offenses?

Yes	91.5%	No	8.5%
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3. Should the statute regarding the disposition of unruly children be changed?

Yes	51.9%	No	48.1%
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4. Have you ever decided an unruly case brought pursuant to R.C. 2151.022(D) in which a juvenile attempted to marry without obtaining proper consent?

Yes	10.0%	No	90.0%
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5. Have you ever decided an unruly case brought pursuant to R.C. 2151.022(E) in which a juvenile was found with immoral persons or in a disreputable place?

Yes	33.3%	No	66.7%
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6. Have you ever decided an unruly case brought pursuant to R.C. 2151.022(F) in which a juvenile was engaged in an unlawful or injurious occupation?

Yes	8.5%	No	91.5%
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7. Ignoring federal funding issues, should local detention be included as a potential disposition of an unruly child?

Yes	90.0%	No	10.0%
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### **Juvenile Traffic Offender Cases**

1. Should the statutes regarding the disposition of juvenile traffic offenders be changed?

Yes	29.8%	No	70.2%
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2. Should the juvenile court be permitted to suspend the operator's license of a juvenile traffic offender who is over 18 years of age, even if the offender's operator's license is no longer a "probationary license"?

Yes 89.8% No 10.2%

3. Should there be a legal distinction between "probationary licenses" and "driver's licenses" for purposes of juvenile traffic offender dispositions?

Yes 29.3% No 70.7%

4. Should juvenile courts continue to hear all JTO cases?

Yes 86.4% No 13.6%

5. Should juvenile courts be permitted to set up violation bureaus, so JTOs could pay for certain offenses without a formal court hearing?

Yes 69.5% No 30.5%

6. Should municipal courts (or other courts dealing with adult traffic offenses) handle juvenile traffic offenders, instead of juvenile courts?

Yes 8.6% No 91.4%

#### **General Issues**

1. What should be the primary purpose of the juvenile justice system in delinquency cases?

Rehabilitation	10.0%
Public safety	1.7%
Both	80.0%
Other	8.3%

2. Should the general rule of confidentiality regarding a juvenile offender's court records be maintained?

Yes 79.3% No 20.7%

3. Should "Truth in Sentencing" principles apply to juvenile court dispositions?

Yes 42.9% No 57.1%

4. Should juvenile courts continue to handle certain cases involving adult offenders (e.g. "contributing" cases)?

Yes 66.7% No 33.3%

5. Should a "family court" be established in Ohio with jurisdiction over cases involving juveniles as offenders, victims, and otherwise affected parties?

Yes 37.7% No 62.3%

6. Should the statutes regarding dispositions of delinquent children, unruly children, and juvenile traffic offenders be simplified and harmonized in the Ohio Revised Code?

Yes 82.5% No 17.5%

7. Should alleged juvenile offenders be given the right to a speedy trial?
- |                                    |       |
|------------------------------------|-------|
| Yes, in all cases                  | 31.0% |
| Yes, but only in delinquency cases | 25.9% |
| No                                 | 43.1% |
8. Should alleged juvenile offenders be given the right to a jury trial?
- |                                    |       |
|------------------------------------|-------|
| Yes, in all cases                  | 0.0%  |
| Yes, but only in some cases        | 7.0%  |
| Yes, but only in delinquency cases | 3.5%  |
| No                                 | 89.5% |
9. Should alleged juvenile offenders be given the right to be charged by an indictment, instead of a complaint?
- |     |      |    |        |
|-----|------|----|--------|
| Yes | 0.0% | No | 100.0% |
|-----|------|----|--------|
10. Should alleged juvenile offenders be given the explicit right, in appropriate cases, to a determination of the juvenile's competency to stand trial?
- |     |       |    |       |
|-----|-------|----|-------|
| Yes | 57.6% | No | 42.4% |
|-----|-------|----|-------|
11. Should alleged juvenile offenders be given the explicit right, in appropriate cases, to enter a plea of Not Guilty by Reason of Insanity?
- |     |       |    |       |
|-----|-------|----|-------|
| Yes | 45.8% | No | 54.2% |
|-----|-------|----|-------|
12. Should the offense of Obstructing Justice [R.C. 2921.32(A)] be changed to specifically proscribe the assistance of another in benefiting from a *juvenile offense* as well as in benefiting from a "crime"?
- |     |       |    |       |
|-----|-------|----|-------|
| Yes | 82.5% | No | 17.5% |
|-----|-------|----|-------|
13. Should there be a limitation placed on the age at which juveniles may be charged with certain "statutory" sex offenses (e.g., a rape involving consensual sex between a 13-year-old and a 12-year-old)?
- |     |       |    |       |
|-----|-------|----|-------|
| Yes | 70.2% | No | 29.8% |
|-----|-------|----|-------|
14. Should the statute proscribing Contributing to the Unruliness or Delinquency of a Minor [R.C. 2919.24(A)(1)] be abolished in favor of specific Complicity offenses under R.C. 2923.03 (e.g., Complicity to Underage Consumption)?
- |     |       |    |       |
|-----|-------|----|-------|
| Yes | 26.3% | No | 73.7% |
|-----|-------|----|-------|
15. Should there be a juvenile court system separate and apart from the general common pleas court system?
- |     |       |    |       |
|-----|-------|----|-------|
| Yes | 47.4% | No | 52.6% |
|-----|-------|----|-------|
16. Should venue continue to be properly asserted both in the county in which the offender resides and the county in which the offense took place?
- |     |       |    |      |
|-----|-------|----|------|
| Yes | 96.7% | No | 3.3% |
|-----|-------|----|------|

17. Should community detention facilities be required to house arrested persons over age 18 who also fall under the definition of "child" [R.C. 2151.011] by virtue of their having committed a juvenile offense prior to their 18<sup>th</sup> birthday?

Yes 50.8% No 49.2%

18. Should the adult "children" mentioned in question 17 be housed in the local (adult) jail?

Yes 86.7% No 13.3%

19. Should the rationale that the offender presents a "danger to the community" be returned to the statute governing the "arrest" and/or "detention" of juveniles [R.C. 2151.31(A)(6); Juv.R. 6 and 7]?

Yes 89.8% No 10.2%

**Dispositions**

In the second section, we asked judges to give what their disposition would be for 33 juveniles who hypothetically appear before them. We asked each respondent to assume that:

- The judge is *not* bound by the current restrictions on dispositions (§§2151.354, 2151.355, 2151.356);
- Any aggravating or mitigating circumstances that are not mentioned neutralize each other;
- All sanctioning resources are available for purposes of each juvenile's disposition; and
- Each of the offenders is 16 years of age, unless otherwise stated.

The results are presented by showing what percentage of judges chose a particular option as the most restrictive sanction. For example, if a judge chose "Probation" and "Local Detention", only "Local Detention" is reported below.

BURGLARY for breaking into an occupied house to commit a theft offense [R.C. 2911.12(A)(1)]

Options	First Offense	Second Offense
Bindover	3.6%	36.8%
DYS	25.0%	45.6%
Local Detention	51.8%	14.0%
Probation	16.1%	1.8%
Foster Care		
Other	3.6%	1.8%

VANDALISM for spray painting gang graffiti on a local high school building [R.C. 2909.05(B)(2)]

Options	First Offense	Second Offense
Bindover		7.1%
DYS	10.5%	28.6%
Local Detention	56.1%	50.0%
Probation	31.6%	10.7%
Foster Care		1.8%
Other	1.8%	1.8%

THEFT-A 12 year old shoplifts a \$150 jacket [R.C. 2913.02]

Options	First Offense	Second Offense
Bindover		
DYS		3.4%
Local Detention	24.6%	62.1%
Probation	54.4%	31.0%
Foster Care		
Other	21.1%	3.4%

A 17 1/2-year-old CONTRIBUTING TO THE UNRULINESS OF A CHILD by engaging in consensual sexual intercourse with his 16-year-old girlfriend [R.C. 2919.24]

Options	First Offense	Second Offense
Bindover	2.0%	2.1%
DYS		6.4%
Local Detention	23.5%	51.1%
Probation	49.0%	34.0%
Foster Care		
Other	25.5%	6.4%

TRAFFICKING IN MARIJUANA for selling 30 grams to a friend at school [R.C. 2925.03]

Options	First Offense	Second Offense
Bindover	1.8%	14.5%
DYS	10.9%	43.6%
Local Detention	60.0%	34.5%
Probation	23.6%	5.5%
Foster Care		
Other	3.6%	1.8%

BURGLARY for breaking into an unoccupied house to commit a theft offense [R.C. 2911.12(A)(3)]

Options	First Offense	Second Offense
Bindover	1.8%	18.2%
DYS	17.9%	45.5%
Local Detention	57.1%	25.5%
Probation	21.4%	9.1%
Foster Care		

Other	1.8%	1.8%
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AGGRAVATED VEHICULAR HOMICIDE for driving a car while intoxicated and killing a passenger [R.C. 2903.06]

Options	First Offense	Second Offense
Bindover	14.3%	68.5%
DYS	42.9%	24.1%
Local Detention	37.5%	3.7%
Probation	3.6%	1.9%
Foster Care		
Other	1.8%	1.9%

VANDALISM for spray painting gang graffiti on a downtown building [R.C. 2909.05(B)(1)]

Options	First Offense	Second Offense
Bindover		7.7%
DYS	9.3%	23.1%
Local Detention	51.9%	48.1%
Probation	35.2%	17.3%
Foster Care		1.9%
Other	3.7%	1.9%

DISORDERLY CONDUCT for verbally challenging a teacher, slamming a book down, and screaming profanity while leaving the classroom for the principal's office [R.C. 2917.11(A)(2)]

Options	First Offense	Second Offense
Bindover	2.0%	
DYS		3.8%
Local Detention	45.1%	73.6%
Probation	35.3%	17.0%
Foster Care		
Other	17.6%	5.7%

OPERATING A MOTOR VEHICLE WHILE INTOXICATED for testing 0.08 on a BAC [R.C. 4511.19]

Options	First Offense	Second Offense
Bindover		1.9%
DYS		1.9%
Local Detention	54.5%	79.2%
Probation	25.5%	13.2%
Foster Care		
Other	20.0%	3.8%

TRAFFICKING IN CRACK COCAINE for selling one rock to strangers on a street corner [R.C. 2925.03]

Options	First Offense	Second Offense
Bindover	3.7%	35.2%
DYS	29.6%	37.0%
Local Detention	46.3%	22.2%
Probation	20.4%	3.7%
Foster Care		
Other		1.9%

UNDERAGE CONSUMPTION for drinking a beer at a friend's birthday party [R.C. 4301.632]

Options	First Offense	Second Offense
Bindover		
DYS		1.9%
Local Detention	13.2%	50.0%
Probation	49.1%	32.7%
Foster Care	1.9%	
Other	35.8%	15.4%

A 17 1/2-year-old found delinquent of CORRUPTION OF A MINOR for engaging in consensual sexual intercourse with his 13-year-old girlfriend on her 13<sup>th</sup> birthday [R.C. 2907.04]

Options	First Offense	Second Offense
Bindover	2.0%	16.7%
DYS	7.8%	25.0%
Local Detention	52.9%	47.9%
Probation	29.4%	8.3%
Foster Care		
Other	7.8%	2.1%

INVOLUNTARY MANSLAUGHTER--An 11-year-old shoots (and kills) a parent "just to see what would happen" [R.C. 2903.04]

Options	First Offense	Second Offense
Bindover	6.3%	46.8%
DYS	50.0%	27.7%
Local Detention	20.8%	12.8%
Probation	6.3%	4.3%
Foster Care	8.3%	2.1%
Other	8.3%	6.4%

UNDERAGE CONSUMPTION for drinking a beer in a local bar [R.C. 4301.632]

Options	First Offense	Second Offense
Bindover		
DYS	1.9%	

Local Detention	23.1%	57.7%
Probation	40.4%	25.0%
Foster Care		
Other	34.6%	17.3%

CONTEMPT for failing to appear at the last scheduled disposition hearing in this matter [R.C. 2705.02]

Options	First Offense	Second Offense
Bindover		
DYS		2.0%
Local Detention	58.0%	83.7%
Probation	10.0%	2.0%
Foster Care		
Other	32.0%	12.2%

ASSAULT for punching a teacher at school [R.C. 2903.13(A)]

Options	First Offense	Second Offense
Bindover	1.9%	10.0%
DYS	7.7%	28.0%
Local Detention	73.1%	54.0%
Probation	13.5%	4.0%
Foster Care		
Other	3.8%	4.0%

TRAFFICKING IN MARIJUANA for selling 30 grams in the neighborhood as part of a gang operation [R.C. 2925.03]

Options	First Offense	Second Offense
Bindover		43.8%
DYS	41.7%	37.5%
Local Detention	45.8%	14.6%
Probation	10.4%	2.1%
Foster Care		
Other	2.1%	2.1%

NEGLIGENT HOMICIDE--An 11-year-old shoots (and kills) a parent while playing with a gun [R.C. 2903.05]

Options	First Offense	Second Offense
Bindover		7.0%
DYS	10.4%	39.5%
Local Detention	25.0%	20.9%
Probation	54.2%	18.6%
Foster Care	6.3%	4.7%
Other	4.2%	9.3%

THEFT--A 15-year-old shoplifts a \$150 jacket [R.C. 2913.02]

Options	First Offense	Second Offense
Bindover		
DYS		18.0%
Local Detention	33.3%	64.0%
Probation	45.1%	16.0%
Foster Care		
Other	21.6%	2.0%

UNRULY--A 15-year-old runs away to a non-custodial parent [R.C. 2151.022(A)]

Options	First Offense	Second Offense
Bindover		
DYS		
Local Detention	11.1%	34.8%
Probation	48.9%	41.3%
Foster Care	2.2%	2.2%
Other	37.8%	21.7%

UNRULY--A 12 year old misses 20 days of school without an excuse [R.C. 2151.022(B)]

Options	First Offense	Second Offense
Bindover		
DYS		
Local Detention	11.8%	50.0%
Probation	58.8%	35.4%
Foster Care	2.0%	6.3%
Other	27.5%	8.3%

DOMESTIC VIOLENCE for knowingly striking a brother, but without leaving marks [R.C. 2919.25(A)]

Options	First Offense	Second Offense
Bindover		
DYS		2.1%
Local Detention	11.6%	48.9%
Probation	44.2%	40.4%
Foster Care		
Other	44.2%	8.5%

RAPE--A 14-year-old boy engages in consensual sexual intercourse with a 12-year-old girl [R.C. 2907.02(A)(1)(b)]

Options	First Offense	Second Offense
Bindover		8.3%
DYS	4.1%	31.3%
Local Detention	44.9%	41.7%
Probation	40.8%	12.5%
Foster Care		2.1%
Other	10.2%	4.2%

MAKING FALSE ALARMS for pulling a fire alarm at school [R.C. 2917.32(A)(2)]

Options	First Offense	Second Offense
Bindover	1.9%	3.9%
DYS	1.9%	11.8%
Local Detention	45.3%	70.6%
Probation	34.0%	9.8%
Foster Care		2.0%
Other	17.0%	2.0%

UNRULY--A 15-year-old runs away with her boyfriend [R.C. 2151.022(A)]

Options	First Offense	Second Offense
Bindover	2.0%	
DYS		
Local Detention	31.4%	56.3%
Probation	43.1%	33.3%
Foster Care		2.1%
Other	23.5%	8.3%

ASSAULT for punching another student during a fight at school [R.C. 2903.13(A)]

Options	First Offense	Second Offense
Bindover		
DYS		2.1%
Local Detention	28.0%	77.1%
Probation	50.0%	18.8%
Foster Care		
Other	22.0%	2.1%

CURFEW VIOLATION for being out at 2:00 a.m. in his friend's car

Options	First Offense	Second Offense
Bindover		
DYS		

Local Detention	15.2%	43.8%
Probation	39.1%	37.5%
Foster Care		
Other	45.7%	18.8%

DOMESTIC VIOLENCE for knowingly scratching and bruising a brother's arm in a fight over the Nintendo controls [R.C. 2919.25(A)]

Options	First Offense	Second Offense
Bindover		
DYS		
Local Detention	13.6%	48.7%
Probation	29.5%	35.9%
Foster Care		
Other	56.6%	15.4%

UNRULY--A 17-year-old misses 20 days of school without excuse [R.C. 2151.022(B)]

Options	First Offense	Second Offense
Bindover		
DYS		
Local Detention	16.0%	52.1%
Probation	56.0%	33.3%
Foster Care		
Other	28.0%	14.6%

RAPE--A 17-year-old boy engages in consensual sexual intercourse with a 12 year old girl [R.C. 2907.02(A)(1)(b)]

Options	First Offense	Second Offense
Bindover	1.9%	39.2%
DYS	28.8%	41.2%
Local Detention	59.6%	17.6%
Probation	7.7%	2.0%
Foster Care		
Other	1.9%	

AGGRAVATED ROBBERY for using a pistol in holding up a convenience store with his friends [R.C. 2911.01(A)(1)]

Options	First Offense	Second Offense
Bindover	38.2%	90.9%
DYS	45.5%	7.3%
Local Detention	12.7%	1.8%
Probation	3.6%	
Foster Care		

Other		
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MISREPRESENTATION TO OBTAIN BEER OR INTOXICATING LIQUOR for using a fake ID to get a beer at a local bar [R.C. 4301.634]

Options	First Offense	Second Offense
Bindover	1.8%	
DYS		1.9%
Local Detention	27.3%	59.3%
Probation	40.0%	20.4%
Foster Care		
Other	39.9%	18.5%

### Bindover Exercise

In this exercise, judges were asked whether they would bind over the listed juveniles at age 14 or 17. Judges were to assume that:

- The county prosecutor has recommended binding each juvenile over to the adult system;
- There are no legal restrictions or requirements related to bindovers; and
- Any other aggravating or mitigating circumstances cancel each other out.

A. Murdering a police officer while having an extensive record of delinquent felony offenses of violence

17 year old offender	Yes	98.2%	No	1.8%
14 year old offender	Yes	86.0%	No	14.0%

B. Forcibly raping a 14 year old

17 year old offender	Yes	92.9%	No	7.1%
14 year old offender	Yes	36.8%	No	63.2%

C. Holding up a convenience store with a gun

17 year old offender	Yes	89.5%	No	10.5%
14 year old offender	Yes	35.1%	No	64.9%

D. Breaking into senior citizens' house while the home owners are present

17 year old offender	Yes	70.2%	No	29.8%
14 year old offender	Yes	19.3%	No	80.7%

E. Possessing a kilogram of cocaine supplied by a "friend" from New York City

17 year old offender	Yes	52.6%	No	47.4%
14 year old offender	Yes	7.1%	No	92.9%

F. Breaking into a neighbor's garage, while having an extensive record of delinquent felony offenses of violence

17 year old offender	Yes	73.7%	No	26.3%
14 year old offender	Yes	22.8%	No	77.2%

G. Shooting at a house from a moving car intending to scare an occupant who (fortunately) was not home

17 year old offender	Yes	78.9%	No	21.1%
14 year old offender	Yes	33.3%	No	66.7%

H. Setting fire to a neighbor's summer home during the off-season

17 year old offender	Yes	66.1%	No	33.9%
14 year old offender	Yes	25.0%	No	75.0%

I. Shooting a person from across the street during a gang fight, leaving the victim paralyzed from the waist down

17 year old offender	Yes	96.5%	No	3.5%
14 year old offender	Yes	64.9%	No	35.1%

J. After getting drunk with his friends and "borrowing" his father's car, speeding down a back road just in time to strike and kill a 65-year-old woman as she pulls out of her driveway to go to work

17 year old offender	Yes	76.8%	No	23.2%
14 year old offender	Yes	21.1%	No	78.9%

K. Punching another student during a fight on the football field after school which causes the victim to strike his head on the metal bleachers and die after a week in the hospital

17 year old offender	Yes	35.7%	No	64.3%
14 year old offender	Yes	3.6%	No	96.4%

L. After her mother calls the police on her for running away the night before, the offender forces her mother into her boyfriend's waiting car at knife point and holds her in the back seat while her boyfriend drives to the nearest town

17 year old offender	Yes	73.7%	No	26.3%
14 year old offender	Yes	30.4%	No	69.6%

