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*Final Analysis*  
*Legislative Service Commission*

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(As Passed by the General Assembly)

**Sens. Latta, Hottinger, Johnson, Oelslager, Drake, Mumper, Finan**

**Reps. Womer Benjamin, Taylor, Corbin, Aslanides**

**Effective date: \***

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## **ACT SUMMARY**

### **General provisions**

- Enacts new R.C. Chapter 2152. to contain the law pertaining to delinquent children and juvenile traffic offenders and relocates to the new chapter, without substantive change, many provisions of the current Juvenile Code (R.C. Chapter 2151.) that pertain to delinquent children and juvenile traffic offenders.
- Provides that the overriding purposes for dispositions under new R.C. Chapter 2152. are to provide for the care, protection, and mental and physical development of children subject to R.C. Chapter 2152., protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender and provides standards and criteria for achieving those purposes.
- Makes it clear that certain continuing provisions of the current Juvenile Code also will apply in relation to new R.C. Chapter 2152.

### **Definitions**

- Modifies the definition of "child" that applies to the current Juvenile Code so that it includes any person who is under 18 years of age, modifies that definition relative to juvenile court jurisdiction over

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

adjudicated unruly children, and moves to new R.C. Chapter 2152. the provisions of that definition that address delinquent children.

- Moves the definitions of "delinquent child," with a few modifications, and "juvenile traffic offender," without modification, to new R.C. Chapter 2152.
- Removes from the definition of "unruly child" that applies to the Juvenile Code a child who: is persistently truant from home; 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; is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons; or 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, and makes other changes in the definition.
- Consolidates and clarifies the meaning of "juvenile court" that applies throughout the Revised Code.

**Assignment of other judges to act as juvenile judge**

- Revises provisions that govern the assignment of other judges to act as the juvenile judge.

**Taking a child into custody; detention in a place of juvenile detention**

- Authorizes a law enforcement officer or duly authorized officer of the court to take a child into custody, in addition to continuing circumstances, when there are reasonable grounds to believe that the child committed a delinquent act and that taking the child into custody is necessary to protect the public interest and safety, and provides that, in addition to the continuing circumstances in which a child may be confined in a place of juvenile detention, a child alleged to be a delinquent child who is taken into custody may be so confined prior to the implementation of the court's final order of disposition if the confinement is authorized under R.C. 2152.04 (regarding confinement for evaluation) or if the child is alleged to be a serious youthful offender under the act and is not released on bond.

### **Closing of juvenile court hearings**

- Provides that: (1) a juvenile court may exclude the general public from its hearings in a particular case if the court holds a separate hearing to determine whether that exclusion is appropriate, authorizes the court, if exclusion is appropriate, to admit to a particular hearing or all of the hearings relating to a particular case those persons who have a direct interest in the case and those who demonstrate that their need for access outweighs the interest in keeping the hearing closed, and specifies that the hearing-closing provisions do not apply in circumstances in which the act's provisions pertaining to serious youthful offenders provide otherwise, and (2) the provisions regarding the closing of hearings does not limit or affect the Crime Victim's Rights Law.

### **Types of transfers to criminal court**

- Specifies the eligibility criteria for a mandatory or discretionary transfer of an alleged delinquent child for criminal prosecution.
- Specifies the requirements and establishes procedures for mandatory transfers or discretionary transfers for criminal prosecution of delinquent child cases that are eligible for transfer including cases involving multiple delinquent acts and specifies, for purposes of presumed or discretionary transfers, the factors favoring transfer and the factors against transfer.

### **Eligibility for felony dispositions**

- Provides that a delinquent child case is eligible for a particular type of delinquent child disposition if the act charged is enhanced by certain specified factors.
- Specifies the eligibility criteria for a mandatory or discretionary serious youthful offender disposition or a traditional juvenile disposition for adjudicated delinquent children and bases the criteria on the child's age (any age from ten to 17 years) at the time of the act charged, the category of felony offense the act would be if committed by an adult, and whether the act is enhanced by certain factors.
- Illustrates the eligibility criteria for dispositions of delinquent children in an eligibility table codified in the act.

### *Serious youthful offender dispositional sentence*

- Generally authorizes a juvenile court to impose a "dispositional sentence" for certain "serious youthful offenders" that contains a juvenile portion (consisting of a traditional juvenile delinquency disposition) and an adult portion (consisting of a criminal sentence); requires the court to stay the adult portion pending the satisfactory completion of the juvenile portion; and authorizes the court to invoke the adult portion if the child does not satisfactorily complete the juvenile portion because of specified types of conduct of the child.
- Specifies the procedures to be followed in serious youthful offender cases, including providing to the child protections normally afforded to criminal defendants, such as the right to a grand jury determination of probable cause, a preliminary hearing, an open and speedy trial by jury, the right to raise the issue of competency, and bail.
- If a child is adjudicated a delinquent child in a mandatory serious youthful offender case: (1) requires the court to impose on the child a serious youthful offender dispositional sentence that consists of a criminal sentence (the adult portion) and a traditional juvenile disposition (the juvenile portion) and (2) requires the court to stay the adult portion.
- If a child is adjudicated a delinquent child in a discretionary serious youthful offender case and if the court makes certain findings: (1) permits the court to impose on the child a serious youthful offender dispositional sentence that consists of a criminal sentence (the adult portion) and a traditional juvenile disposition (the juvenile portion) and (2) requires the court to stay the adult portion.
- Establishes a procedure by which the Director of Youth Services, the juvenile court that imposed the serious youthful offender dispositional sentence, the probation department supervising the child, and the prosecuting attorney may initiate the process to invoke the adult portion of the serious youthful offender dispositional sentence.
- Permits the juvenile court to invoke the adult portion of a serious youthful offender dispositional sentence if the court finds all of the following by clear and convincing evidence: (1) the child is serving the juvenile portion of a serious youthful offender dispositional sentence, (2) the child is at least 14 years of age and has been admitted to a DYS

facility, or criminal charges are pending against the child, and (3) the child engaged in specified conduct that permit invocation of the adult portion, and the child's conduct demonstrates that the child is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.

- Terminates the juvenile portion of a serious youthful offender dispositional sentence upon the invocation of the adult portion of the dispositional sentence and requires DYS to transfer custody of the involved child to DRC or place the child under another sanction imposed as part of the sentence.

### *Dispositions for delinquent children*

- In a case in which a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, revises procedures regarding the periods of commitment for firearms and gang-related activity specifications and the mechanism for imposing periods of commitment to the Department of Youth Services.
- Reduces the age at which a juvenile court may commit a delinquent child to the Department of Youth Services so that the court also may commit a child who is 10 or 11 years of age at the time of the commitment of the delinquent act if the delinquent act would be aggravated murder, murder, arson, or a first or second degree felony offense of violence if committed by an adult and requires that such a child be assigned to an institution, residential care facility, residential facility, or a specified facility licensed by the Department of Job and Family Services at which the child must be housed separately from children who are 12 years of age or older until the child is released or discharged or until the child attains 12 years of age, whichever occurs first.
- Consolidates, standardizes, and modifies the disposition alternatives, other than a commitment to the Department of Youth Services and other than a financial sanction, that generally are available as a traditional juvenile disposition for a child who is adjudicated a delinquent child; designates some of these alternatives as "community control" sanctions and conditions; and expands the financial sanctions that are available for such a child.
- Includes the former "electronically monitored house detention" for juveniles within the scope of the continuing "electronically monitored

house arrest," and expands the definition of "electronic monitoring device" to also include any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the Director of Rehabilitation and Correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

- In the provision that specifies that, if a person is convicted of a specified serious criminal offense and the criminal court is determining for sentencing purposes whether the offender is a repeat violent offender, the criminal court must consider a prior delinquency adjudication for any of a list of specified serious offenses as a prior criminal conviction, removes the requirement that the juvenile court that made the prior delinquency adjudication must have specifically found that the adjudication is to be considered as a prior conviction in order for it to be so considered.

#### *Juvenile traffic offenders*

- Revises the length of time a juvenile court may suspend a juvenile traffic offender'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 juvenile traffic offender to authorize the court to suspend a license or permit for a definite period not exceeding two years.
- Replaces the former provision authorizing probation as a disposition with a provision authorizing the use of community control as a disposition and replaces the former provision that authorizes the use of a fine and costs as a disposition with a provision authorizing the imposition of costs and any financial sanction included in the act, described below, as a disposition.
- Repeals the juvenile court's authority to revoke the child's driver's license, probationary driver's license, or temporary instruction permit and the registration of all motor vehicles registered in the name of the child.
- Expands the disposition options for a juvenile traffic offender who has failed to comply with the previously issued dispositional orders of the court and the child's operation of a motor vehicle constitutes the child a danger to the child and to others.
- Revises the length of time the juvenile court must suspend the temporary instruction permit, probationary driver's license, or driver's license issued

to a juvenile traffic offender for violating the prohibition against state OMVI or state OMVUAC.

- Encourages the Supreme Court to amend the Juvenile and Traffic Rules in specified manners.

### **Financial sanctions**

- Revises the standardized fines that are available as disposition alternatives for a child who is adjudicated a delinquent child or a juvenile traffic offender, and provides a broader range of financial sanctions for a child who is so adjudicated.
- Permits a juvenile court to collect a financial sanction by: (1) entering into contracts with a vendor for the collection of the amounts due under the sanction, (2) permitting payment in installments, by credit or debit card, by another type of electronic transfer, or by any other reasonable method, up to a five-year maximum, with the maximum time for payment not exceeding five years (the court may pay any processing fee and charge the fee to the delinquent child), or (3) to defray administrative costs, charging a reasonable fee to a child who elects a payment plan rather than a lump sum payment.

### **Release from DYS**

- Regarding the release from the custody of the Department of Youth Services of a delinquent child who has been committed to it, renames "judicial release" as "judicial release to court supervision," renames "early release" as "judicial release to Department of Youth Services supervision," and modifies some of the criteria and procedures that apply regarding those types of releases.

### **Jury trials for adults**

- Repeals, effective on the act's effective date, provisions specifying that an adult has the right to a jury trial when the complaint jointly alleges that a child is an unruly or delinquent child for being an habitual or chronic truant and that a parent, guardian, or other person having care of the child failed to cause the child's attendance at school and amends the criminal right to a jury trial right to provide that there is no right to a jury trial for a person who is the subject of such a complaint.

### *Parental control orders*

- Provides that the order made by a juvenile court restraining or otherwise controlling the conduct of any parent, guardian, or other custodian of an unruly, abused, neglected, dependent, or delinquent child or a juvenile traffic offender 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 controls required by the court, and provides that a person's failure to comply with any court order restraining or otherwise controlling a parent, guardian, or custodian is contempt of court.

### *Underage purchase of a firearm or a handgun*

- Revises the penalty for the offense of underage purchase of a firearm to make the offense a delinquent act that would be a felony of the fourth degree if it could be committed by an adult.

### *Repeals*

- Repeals provisions that: (1) allowed a juvenile judge to commit to the Department of Rehabilitation and Correction a female over 18 years of age who was found guilty of a misdemeanor under the Juvenile Code, and (2) provided that, when an adult was sentenced to imprisonment for the offense of nonsupport of dependents or contributing to the nonsupport of dependents or the offense of endangering children, the county from which the adult person was sentenced, on the order of the juvenile judge, must pay a sum for the maintenance of the dependent children of the prisoner.
- Repeals provisions that dealt with extradition and bail for adults under the Juvenile Code.
- Repeals a provision by which specified relatives of any child affected of an official case brought before a juvenile court were permitted to inspect the records of the case.
- Repeals a provision that dealt with control of the parents of a delinquent child who was placed on probation.
- Repeals a provision that permitted the Department of Youth Services to transfer to a state reformatory any child in its legal custody who was over

16 years of age and was incorrigible or incapable of benefiting by the treatment or training afforded by the Department.

- Repeals prohibitions against: (1) a minor obtaining or attempting to obtain a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun without consent, and (2) a minor knowingly showing or giving false information concerning the minor's name, age, or other identification for the purpose of obtaining a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

#### **Employment protection for witnesses at a juvenile court proceeding**

- Expands a provision that provides employment protections to persons who attend, pursuant to a subpoena, a *delinquency proceeding* so that it applies regarding an employee's attendance at *any proceeding under R.C. Chapter 2151. or 2152.* pursuant to a subpoena.

#### **Contributing to the unruliness or delinquency of a child**

- Specifically includes a parent, guardian, or other custodian of a child in the prohibition against any person doing any of the acts constituting the offense of contributing to the unruliness or delinquency of a child.

#### **Department of Youth Services Release Authority**

- Revises provisions authorizing the Director of Youth Services to appoint an interim member to the Release Authority to authorize the Director to appoint an interim member to fulfill the duties of a member who is on extended leave or disability status for more than 30 work days.
- Specifies the number of members of the Release Authority who are needed to conduct business and prohibits the Release Authority from delegating its authority to make final decisions regarding policy or the release of a child.
- Expressly states that the Release Authority serves as the final and sole authority for making decisions regarding the release and discharge of all children committed to the Department's custody.
- Changes the responsibility for carrying out certain duties regarding the release and discharge of children in the custody of the Department of

Youth Services from the Department proper to the Release Authority within the Department.

- Moves the Office of Victims Services from being within the Department proper to being with the Release Authority within the Department and changes the name of "victims coordinator" to "victims administrator" of the Office of Victims Services.

#### *Detention facilities*

- Relocates in new R.C. Chapter 2152. and consolidates all of the provisions pertaining to detention homes and district detention homes, makes a few changes in those provisions, and renames the homes as "detention facilities" and "district detention facilities."

#### *RECLAIM Ohio funding*

- Regarding the allocation of moneys under the RECLAIM Ohio funding mechanism, specifies that, for Fiscal Year 2002 and Fiscal Year 2003 and only for those two Fiscal Years, the total number of beds available to all counties via public safety beds and county allocations cannot be less than the total beds used by all the counties during Fiscal Year 2000 and funded by care and custody chargebacks (Line Item 401) and as public safety beds.

#### *General Assembly encouragement to the Supreme Court*

- Specifies that the General Assembly encourages the Supreme Court to: (1) amend the Rules for the Government of the Judiciary of Ohio or other appropriate rules, or take other appropriate action, to encourage cooperation between common pleas court divisions to better implement the act, including, but not limited to, the provisions of the act authorizing, in specified circumstances, jury trials in juvenile courts, (2) amend the Juvenile Rules to be consistent with the changes in the Juvenile Laws pertaining to delinquent children, particularly the laws relating to serious youthful offenders and extended juvenile jurisdiction dispositions, (3) amend the Traffic Rules to exclude juvenile courts from the definition of "court" and to authorize juvenile courts to create violations bureaus for the payment of tickets that involve certain first offense minor misdemeanor traffic offenses, and (4) take appropriate action to collect data from Ohio juvenile courts on both the number of alleged delinquent

children for whom a serious youthful dispositional sentence is sought under the act and the number of jury trials held in the juvenile courts annually as a result of serious youthful offender dispositional sentences being sought for alleged delinquent children, and to prepare and submit to the General Assembly a report containing the data so collected.

**Racial Disparity Study**

- Requires the Governor's Council on Juvenile Justice to conduct, or cause to be conducted, an evaluation of the racial composition of delinquent children committed to the Department of Youth Services, focusing on the changes to the Revised Code made by the act as related to recent sentencing trends for delinquent children.

**Statement of future intentions**

- States the General Assembly's future intention to address the issue of competency in juvenile proceedings, to review and continue to support the RECLAIM Ohio program and the alternative schools program; and to review and address the anticipated costs of implementing the act.

**Delayed effective date**

- Specifies that, except for the amendments described above under "**Jury trial procedures**," the act's amendments to the Revised Code are to take effect on January 1, 2002.

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## CONTENT AND OPERATION

### Construction and purposes of the Juvenile Code

#### Prior law

Prior law specified that the Juvenile Code (R.C. Chapter 2151.), with the exception of those sections providing for the criminal prosecution of adults, was to be liberally construed so as to effectuate the following purposes: (1) to provide for the care, protection, and mental and physical development of children subject to the Juvenile Code, (2) 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 therefor a program of supervision, care, and rehabilitation, (3) to achieve the foregoing purposes, whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety, and (4) to provide judicial procedures through which the Juvenile Code is 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 (R.C. 2151.01).

#### Operation of the act

The act repeals as a purpose of Chapter 2151. the provision described in clause (2) of the preceding paragraph and specifies that the provision described in clause (4) of the preceding paragraph applies to both R.C. Chapter 2151. and new R.C. Chapter 2152. (R.C. 2151.01 and 2152.01). The act provides that the overriding purposes for dispositions under R.C. Chapter 2152., which will contain the law pertaining to delinquent children and juvenile traffic offenders, are to provide for the care, protection, and mental and physical development of children subject to R.C. Chapter 2152., protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes must be achieved by a system of graduated sanctions and services. Dispositions under R.C. Chapter 2152. must be reasonably calculated to achieve the overriding purposes of the chapter, commensurate with and not demeaning to the seriousness of the delinquent child's or juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court must not base the disposition on the race, ethnic background, gender, or religion of the delinquent child or juvenile traffic offender. (R.C. 2152.01(A) and (B).)

The act also provides that, to the extent they do not conflict with R.C. Chapter 2152., the provisions of R.C. Chapter 2151. apply to proceedings under R.C. Chapter 2152. (R.C. 2152.01(C)).

**Application of continuing Juvenile Code provisions to new Chapter 2152.**

The act makes it clear that certain continuing provisions of the Juvenile Code also will apply to new R.C. Chapter 2152. The provisions so expanded include the provision relating to a juvenile court's exercise of powers and jurisdiction (R.C. 2151.07), the Hamilton County Juvenile Court's and Cuyahoga County Juvenile Court's exercise of powers and jurisdiction (R.C. 2151.08 and 2153.16), certain common pleas court judges acting as clerk of the juvenile court (R.C. 2151.12), access to juvenile court probation department records (R.C. 2151.14(B)), access to certain fingerprints, photographs, and arrest records of juveniles (R.C. 2151.313(C)(2)(c)(ii)), the right to legal counsel in juvenile court proceedings (R.C. 2151.352), a parent's payment for the education, etc., of a committed child (R.C. 2151.36), the placement of delinquent children in delinquent children facilities (R.C. 2151.65 through 2151.652), the general juvenile court powers of common pleas court judges serving in specified domestic relations or juvenile divisions (R.C. 2301.03), certain powers of appellate court judges (R.C. 2701.03), certain criminal sentencing provisions (R.C. 2929.12), certain provisions regarding trials in magistrate courts (R.C. 2938.02), and child labor (R.C. 4109.08).

**Transfer to R.C. Chapter 2152. and renumbering of sections addressing delinquent children and juvenile traffic offenders**

The act transfers from Chapter 2151. to Chapter 2152. and renumbers several sections of the Revised Code that address delinquent children and juvenile traffic offenders and related topics. It makes conforming changes in cross-references to the relocated sections.

Prior section	Renumbered section	Subject Matter
2151.11	2152.73	Delinquency prevention--authorizes juvenile courts to participate with others in delinquency prevention programs and allows the court to accept gifts.
2151.18	2152.71	Records, Traffic Docket, and Delinquency Reports--deals with certain records that must be kept by the juvenile court (a new version of R.C. 2151.18 is enacted and contains for R.C. Chapter 2151. the provisions of the prior section that do not pertain to delinquent children; the requirement that the juvenile court maintain a cashbook is repealed).

<b>Prior section</b>	<b>Renumbered section</b>	<b>Subject Matter</b>
2151.25	2152.03	Requires that proceedings regarding a child arrested under a charge, complaint, affidavit, or indictment initially be in the juvenile court in accordance with the Juvenile Code and requires the transfer of a case to a juvenile court if proceedings of that nature are held in a court other than a juvenile court.
2151.26	2152.12	Transfer of case to adult court for criminal prosecution.
2151.312	2152.26	Places of detention for alleged and adjudicated delinquent children and juvenile traffic offenders (a new version of R.C. 2151.312 is enacted and lists the places of detention for unruly, neglected, abused, and dependent children).
2151.315	2152.74	DNA testing of certain delinquent children--requires DNA testing of certain delinquent children.
2151.34	2152.41	Detention homes
2151.341	2152.43	Detention homes
2151.343	2152.44	Detention homes
2151.356	2152.21	Dispositions for juvenile traffic offenders
2151.3511	2152.81	Special procedures for taking testimony of child victims of sex offenses or offenses of violence.
2151.47	2152.67	Jury trials for adults under the Juvenile Code.
2151.62	2152.72	Information to foster caregivers who receive certain delinquents - requires entities to provide specified information about an adjudicated delinquent child to the foster care givers before placing the delinquent child in a foster home. The act also moves R.C. 2151.99(C) to new R.C. 2152.99 (penalty for not complying with re-numbered R.C. 2151.62 (2152.72)).

The act also repeals numerous sections of the Revised Code contained in R.C. Chapter 2151. and includes some, or all, of the language of the repealed sections in newly enacted sections contained in R.C. Chapter 2152. Succeeding portions of this analysis address these provisions.

## Definition of "child" in Juvenile Law

### Prior law

Prior law specified that, for purposes of the Juvenile Code (R.C. Chapter 2151.), "child" meant any of the following (R.C. 2151.011(B)(5)):

(1) A person who was under 18 years of age, except as otherwise provided below in paragraphs (2) to (6);

(2) Subject to the provisions described below in paragraph (3), any person who violated a federal or state law or municipal ordinance prior to attaining 18 years of age is deemed a "child" irrespective of that person's age at the time the complaint was filed or the hearing on the complaint was held.

(3) Any person who, while under 18 years of age, committed an act that would be a felony if committed by an adult and who was not taken into custody or apprehended for that act until after the person attained 21 years of age was not a child in relation to that act.

(4) Any person whose case was transferred for criminal prosecution pursuant to the prior "bindover" law was after the transfer deemed not to be a child in the transferred case.

(5) Subject to the provisions described below in paragraph (6), any person whose case was transferred for criminal prosecution pursuant to the prior "bindover" law and who subsequently was convicted of a felony in that case was after the transfer deemed not to be a child in any case in which the person was alleged to have committed prior to or subsequent to the transfer an act that would be an offense if committed by an adult. This provision applied to a case that involved an act committed prior to the transfer only when the prior act alleged in the case had not been disposed of by a juvenile court or trial court.

(6) Notwithstanding the provisions described above in paragraph (5), if a person's case was transferred for criminal prosecution pursuant to the prior "bindover" law and if the person subsequently was convicted of a felony in that case, thereafter, the person was 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: (a) for purposes of the filing of a complaint alleging that the child was a delinquent child for committing the act that would be an offense if committed by an adult, and (b) for purposes of the juvenile court conducting a hearing relative to the complaint described in clause (a) to determine whether the "bindover" law required that the case be transferred for criminal prosecution.

### Operation of the act

The act retains for use in R.C. Chapter 2151. only the portion of the definition of "child" that specifies that a child is a person who is under 18 years of age. The act modifies the provision to also specify that the juvenile court retains jurisdiction over any person who is adjudicated an unruly child prior to attaining age 18 until the child attains age 21, and that, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated an unruly child is deemed to be a "child" until the person attains age 21. (R.C. 2151.011(B)(5).)

It relocates to new R.C. Chapter 2152. for use in that new chapter all of the other portions of the definition of child and modifies some of those portions of the definition. Under the act, the definition of "child" that applies for use in new R.C. Chapter 2152. is as follows (R.C. 2152.02(C)):

(1) Child means a person who is under 18 years of age, except as otherwise provided below in paragraphs (2) to (6);

(2) Subject to paragraph (3), any person who violates a federal or state law or municipal ordinance prior to attaining 18 years of age is deemed a "child" irrespective of that person's age at the time the complaint is filed or the hearing on the complaint is held.

(3) Any person who, while under 18 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 21 years of age is not a child in relation to that act.

(4) Any person whose case is transferred for criminal prosecution pursuant to the act's new "transfer" law is, after the transfer, deemed not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to the act's new "transfer" law and who subsequently is convicted of a felony in that case, and any person who is adjudicated a delinquent child, who has a serious youthful offender dispositional sentence imposed under the act for the delinquent act (see "*Serious youthful offender dispositional sentence*," below), and whose adult portion of the dispositional sentence is imposed under the act, is after the transfer or invocation deemed not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining 18 years of age until the person attains 21 years of age, and for purposes of that jurisdiction related to

that adjudication, a person who is so adjudicated a delinquent child or juvenile traffic offender is deemed a "child" until the person attains 21 years of age.

### **Definition of "delinquent child" in Juvenile Law**

#### **Prior law**

Former R.C. 2151.02 provided that, as used in the Juvenile Code, "delinquent child" included (1) any child who violated any law of Ohio or the United States, or any ordinance or regulation of a political subdivision of Ohio, that would be a crime if committed by an adult, except as provided in the definition of "juvenile traffic offender," (2) any child who violated any lawful order of the court made under the Juvenile Code, (3) any child who violated a prohibition relating to the underage purchase of a firearm, (4) any child who violated prohibitions relating to the tattooing, body piercing, and ear piercing of juveniles, (5) any child who was an habitual truant and who previously was adjudicated an unruly child for being an habitual truant, and (6) any child who was a chronic truant.

#### **Operation of the act**

The act repeals the section in which this definition is currently located, moves the definition to new R.C. 2152.02 with a few modifications, and provides in the definitional section of Chapter 2151. that "delinquent child" has the same meaning as in new R.C. 2152.02. The act defines "delinquent child" for the purposes of new R.C. Chapter 2152. as (1) any child, except a juvenile traffic offender, who violates any law of Ohio or the United States, or any ordinance of an Ohio political subdivision, that would be an offense if committed by an adult, (2) any child who violates any lawful order of the court made under R.C. Chapter 2151. or 2152., (3) any child who violates R.C. 2923.211(A), (4) any child who is an habitual truant and who previously has been adjudicated an unruly child for being an habitual truant, and (5) any child who is a chronic truant. The act does not include the prior definition's reference to R.C. 3730.07(A)(1) or (2) violations; the act repeals those provisions. (R.C. 2151.011(B)(12), 2151.02 (repealed), and 2152.02(F).) The act makes conforming changes in cross-references to the Revised Code section containing the definition.

### **Definition of "juvenile traffic offender" in Juvenile Law**

The act repeals the former section that contains the definition of "juvenile traffic offender," moves the definition without change to the definitional section for new R.C. Chapter 2152., and provides in the definitional section for the current Juvenile Code that juvenile traffic offender has the same meaning as in new R.C. Chapter 2152. (R.C. 2151.011(B)(18), 2151.021 (repealed), and 2152.02(N)).

## Definition of "unruly child" in Juvenile Law

### Prior law

Prior law provided that as used in the Juvenile Code "unruly child" included any child who did or was any of the following (R.C. 2151.022): (1) did not subject the child's self to the reasonable control of his or her parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient, (2) was persistently truant from home, (3) was an habitual truant from school and previously had not been adjudicated an unruly child for being an habitual truant, (4) so deported the child's self as to injure or endanger the child's own health or morals or the health or morals of others, (5) attempted to enter the marriage relation in any state without the consent of the child's parents, custodian, or legal guardian or other legal authority, (6) was found in a disreputable place, visited or patronized a place prohibited by law, or associated with vagrant, vicious, criminal, notorious, or immoral persons, (7) engaged in an occupation prohibited by law or was in a situation dangerous to life or limb or injurious to the child's own health or morals or the health or morals of others, and (8) violated a law, other than R.C. 2923.211(A), regarding underage purchase of a firearm, that was applicable only to a child.

### Operation of the act

The act modifies the definition of "unruly child" that applies in the Juvenile Code as follows (R.C. 2151.022):

(1) It modifies the portion described in paragraph (1) of "Prior law" so that it includes a child who does not *submit* (instead of *subject the child's self*) to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient.

(2) It modifies the portion described in paragraph (4) of "Prior law" so that it includes any child *who behaves in a manner* (and not *who so deport the child's self*) as to injure or endanger the child's own health or morals or the health or morals of others.

(3) It repeals the portions described in paragraphs (2), (5), (6), and (7) of "Prior law."

(4) It retains the portion described in paragraph (8) of "Prior law" without change.

## **Definition of "juvenile court" in Revised Code and Juvenile Law**

### **Prior law**

Prior law provided that, as used in the Revised Code, "juvenile court" meant the division of the court of common pleas or a juvenile court separately and independently created having jurisdiction under the current Juvenile Code (R.C. 2151.011(A)(1)). Related to this, prior law provided that the juvenile court was a court of record and within the division of domestic relations or probate of the court of common pleas, except that the juvenile courts of Cuyahoga County and Hamilton County were separate divisions of the court of common pleas (R.C. 2151.07; also R.C. 2101.022, 2301.03, 2151.08, and Chapter 2153.).

### **Operation of the act**

The act consolidates and clarifies the meaning of the term "juvenile court." It provides that, as used in the Revised Code, "juvenile court" means whichever of the following is applicable that has jurisdiction under R.C. Chapter 2151. and 2152.: (1) the division of the court of common pleas specified in R.C. 2101.022 or 2301.03 as having jurisdiction under R.C. Chapters 2151. and 2152. or as being the juvenile division or the juvenile division combined with one or more other divisions, (2) the juvenile court of Cuyahoga County or Hamilton County that is separately and independently created by R.C. 2151.08 or Chapter 2153. and that has jurisdiction under R.C. Chapters 2151. and 2152., or (3) if clause (1) or (2) does not apply, the probate division of the court of common pleas (R.C. 2151.011(A)(1)). The act also removes from existing R.C. 2151.07, as described above, all language that defines juvenile courts, other than the language that indicates that the juvenile court is a court of record (R.C. 2151.07).

### **Other definitions for existing R.C. Chapter 2151.**

#### **Prior law**

Under prior law, for the purposes of the Juvenile Code, "probation" meant a legal status created by court order following an adjudication that a child was *a delinquent child, a juvenile traffic offender, or an unruly child*, whereby the child was permitted to remain in the parent's, guardian's, or custodian's home subject to supervision, or under the supervision of any agency designated by the court and returned to the court for violation of probation at any time during the period of probation.

"Protective supervision" meant an order of disposition pursuant to which the court permitted an abused, neglected, dependent, unruly, *or delinquent child or a juvenile traffic offender* to remain in the custody of the child's parents, guardian,

or custodian and stay in the child's home, subject to any conditions and limitations upon the child, the child's parents, guardian, or custodian, or any other person that the court prescribed, including supervision as directed by the court for the protection of the child. (R.C. 2151.011(B)(38) and (39).)

### **Operation of the act**

Related to changes it makes in the authorized dispositions for delinquent children and juvenile traffic offenders, the act removes delinquent children and juvenile traffic offenders from the application of these definitions and replaces the term "probation" with "sanction, service, or condition" (R.C. 2151.011(B)(38) and (39)).

### **Other definitions for new R.C. Chapter 2152.**

The act defines the following additional terms for use in new R.C. Chapter 2152. (R.C. 2152.02):

(1) "Act charged" means the act that is identified in a complaint, indictment, or information alleging that a child is a delinquent child.

(2) "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 outside Ohio by another state of the United States.

(3) "Chronic truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or 15 or more school days in a school year.

(4) "Community corrections facility," "public safety beds," "release authority," and "supervised release" have the same meanings as in R.C. Chapter 5139.

(5) "Discretionary serious youthful offender" means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(6) "Discretionary SYO" means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under the act.

(7) "Discretionary transfer" means that the juvenile court has discretion to transfer a case for criminal prosecution (see "**Types of transfer to criminal court--operation of the act**"; "**Discretionary transfer**," below).

(8) "Drug abuse offense," "felony drug abuse offense," and "minor drug possession offense" have the same meanings as in R.C. 2925.01.

(9) "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 R.C. 2929.23.

(10) "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 an injury caused to the victim and any property loss, medical cost, or funeral expense incurred as a result of the delinquent act.

(11) "Firearm" has the same meaning as in R.C. 2923.11.

(12) A "legitimate excuse for absence from the public school the child is supposed to attend" has the same meaning as in R.C. 2151.011.

(13) "Mandatory serious youthful offender" means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(14) "Mandatory SYO" means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under the act.

(15) "Mandatory transfer" means that a case is required to be transferred for criminal prosecution under new R.C. 2152.12(A) (see "**Types of transfer to criminal court--operation of the act**"; "**Mandatory transfer**," below).

(16) "Mental illness" has the same meaning as in R.C. 5122.01.

(17) "Mentally retarded person" has the same meaning as in R.C. 5123.01.

(18) "Monitored time" and "repeat violent offender" have the same meanings as in R.C. 2929.01.

(19) "Of compulsory school age" has the same meaning as in R.C. 3321.01.

(20) "Public record" has the same meaning as in R.C. 149.43.

(21) "Serious youthful offender" means a person who is eligible for a mandatory or discretionary SYO and is not transferred to adult court under a mandatory or discretionary transfer.

(22) "Sexually oriented offense" has the same meaning as in R.C. 2950.01.

(23) "Traditional juvenile" means a case that is *not* transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under R.C. 2152.16, 2152.17, 2152.19, and 2152.20, and that is not eligible for a mandatory or discretionary serious youthful offender disposition.

(24) "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 of the offense.

### **Assignment of another judge to act as juvenile judge**

#### **Prior law**

Under prior law, whenever the juvenile judge of the juvenile court was absent from the county, or was unable to attend court, or the volume of cases pending in court necessitated it, upon the request of that judge, the presiding judge of the court of common pleas was required to assign a judge of the court of common pleas of the county to act in the juvenile judge's place or in conjunction with the juvenile judge. If no judge of the court of common pleas was available for that purpose, the Chief Justice of the Supreme Court was required to assign a judge of the court of common pleas, a juvenile judge, or a probate judge from another county to act in the place of the juvenile judge or in conjunction with the juvenile judge, who then received the compensation and expenses for his or her services as was provided by law for judges assigned to hold court in courts of common pleas. (R.C. 2151.07.)

#### **Operation of the act**

The act modifies this provision to specify that, whenever the juvenile judge of the juvenile court *is sick*, is absent from the county, is unable to attend court, or the volume of cases pending in court necessitates it, *upon the request of the administrative juvenile judge*, the presiding judge of the court of common pleas *pursuant to a continuing procedure in the Common Pleas Court Law* must assign a judge *of any division of the court of common pleas of the county* to act in the juvenile judge's place or in conjunction with the juvenile judge. The act retains provisions relating to circumstances in which no judge of the court of common pleas is available for that purpose. (R.C. 2151.07.)

### **Filing of complaints in juvenile court**

With one exception, the act relocates, to new R.C. 2152.021, all of the provisions relating to the filing of a complaint in juvenile court that pertain to an alleged delinquent child or an alleged j.t.o. The act does not relocate the provision located in former R.C. 2151.27(B) providing that if a child, before becoming 18 years of age, allegedly commits an act for which the child may be adjudicated a delinquent child or a juvenile traffic offender and if the specific complaint alleging the act is not filed or a hearing on that specific complaint is not held until after the child turns 18, the court has jurisdiction to hear and dispose of the complaint as if the complaint were filed and the hearing held before the child turned 18. The treatment of a child in these circumstances is addressed in **"Definition of "child" in Juvenile Law."**

The act also makes conforming changes to other Revised Code sections to reflect the relocation of the provisions relating to filing of a complaint in juvenile court that pertains to an alleged delinquent child or an alleged j.t.o. (R.C. 2151.31 and 2151.314).

The act also provides that, if a child appears to be a delinquent child who is eligible for a serious youthful offender dispositional sentence under the act and if the prosecuting attorney desires to seek a serious youthful offender dispositional sentence regarding that child, the prosecuting attorney of the county in which the alleged delinquency occurs may initiate a case in the juvenile court by presenting the case to a grand jury for indictment, charging the child in a act of information as a serious youthful offender, requesting a serious youthful offender dispositional sentence in the original complaint alleging that the child is a delinquent child, or filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence (see **"Serious youthful offender dispositional sentence,"** below) (R.C. 2152.021(A)).

### **Taking a child into custody**

#### **Prior law**

Prior law provided that a child could be taken into custody in any of the following ways (R.C. 2151.31(A)):

- (1) Pursuant to a court order;
- (2) Pursuant to the laws of arrest;
- (3) By a law enforcement officer or duly authorized officer of the court when specified conditions are present;

(4) By an enforcement official, under specified circumstances;

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

(6) By a law enforcement officer or duly authorized officer of the court when any of the following apply: (a) there are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child, (b) a complaint has been filed with respect to the child, and there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court, or (c) the child is required to appear in court, and there are reasonable grounds to believe that the child will not be brought before the court when required.

Generally, a child taken into custody cannot be held in any state correctional institution, county, multicounty, or municipal jail or workhouse, or any other place where any adult convicted of crime, under arrest, or charged with crime is held. A child taken into custody cannot be confined in a place of juvenile detention or placed in shelter care prior to the implementation of the court's final order of disposition, unless detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm, because the child may abscond or be removed from the jurisdiction of the court, because the child has no parents, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to the Juvenile Law. (R.C. 2151.31(C).)

### **Operation of the act**

The act expands the circumstances in which a law enforcement officer or duly authorized officer of the court may take a child into custody. Under a new provision, such an officer also may take a child into custody when there are reasonable grounds to believe that the child committed a delinquent act and that taking the child into custody is necessary to protect the public interest and safety. In addition, such an officer may take a child into custody when the child has been indicted or charged by information and there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court. (R.C. 2151.31(A)(6)(b) and (d).)

The act also provides a new exception to the limitations on the confinement in a place of juvenile detention of a child who has been taken into custody: a child alleged to be a delinquent child who is taken into custody also may be confined in a place of juvenile detention prior to the implementation of the court's final order

of disposition if the confinement is authorized under R.C. 2152.04 (regarding confinement for evaluation) or if the child is alleged to be a serious youthful offender and is not released on bond. (R.C. 2151.31(C)(2).)

### **Facilities where a child may be held**

Under prior law, R.C. 2151.312 specified the places where a child alleged to be or adjudicated a delinquent, unruly, abused, neglected, or dependent child or a juvenile traffic offender could and could not be held. The act renumbers R.C. 2151.312 as R.C. 2152.26, removes from the renumbered section the references to unruly, neglected, abused, and dependent children so that it applies only to delinquent children and j.t.o.s, and places the provisions dealing with unruly, neglected, abused, and dependent children in a new R.C. 2151.312 (R.C. 2151.312 and 2152.26).

The act also relocates a provision that provides that a child who is alleged to be or who is adjudicated a delinquent child may be confined in a place of juvenile detention for a period of not to exceed 90 days during which time a social history may be prepared. The social history must include the child's 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 the alleged or adjudicated delinquent child (see "**Detention homes (detention facilities)**," below). (R.C. 2152.04, relocated from R.C. 2151.34, which is renumbered R.C. 2152.41.)

### **Separate room for juvenile hearings**

#### **Prior law**

Continuing law requires, for each county, the board of county commissioners to 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 (R.C. 2151.24).

#### **Operation of the act**

The act makes an exception to the provision described above under "**Continuing law**." It specifies that the provision does not apply to the case of an alleged delinquent child when the case is one in which the prosecuting attorney seeks a serious youthful offender disposition (see "**Serious youthful offender dispositional sentence**," below). (R.C. 2151.24(B).)

## **Closing of juvenile court hearings**

### **Prior law**

Prior law provided that the juvenile court could conduct its hearings in an informal manner and could adjourn its hearings from time to time. In the hearing of any case, the general public could be excluded and only those persons so admitted who had a direct interest in the case. (R.C. 2151.35(A).)

### **Operation of the act**

The act modifies this provision to specify that, except as described below or as otherwise provided in the act's provisions pertaining to serious youthful offenders (see below), the juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time. The court may exclude the general public from its hearings in a particular case if the court holds a separate hearing to determine whether that exclusion is appropriate. If the court decides that exclusion of the general public is appropriate, the court still may admit to a particular hearing or all of the hearings relating to a particular case those persons who have a direct interest in the case and those who demonstrate that their need for access outweighs the interest in keeping the hearing closed. The authority of a court to exclude the general public from its hearings that is granted under this provision does not limit or affect any right of a victim of a crime or delinquent act, or of a victim's representative, under the continuing Crime Victim's Rights Law. (R.C. 2151.35(A).)

### **Types of transfer to criminal court--prior law**

Under prior law, a delinquency case was transferred for criminal prosecution from the juvenile court to the appropriate court having jurisdiction of the offense in any of the following situations:

#### **Mandatory bindover**

After a complaint was filed alleging that a child was a delinquent child for committing an act that would be *an offense* if committed by an adult, the juvenile court at a hearing *was required to* transfer the case for criminal prosecution to the appropriate court having jurisdiction of the offense if the child was 14 years of age or older at the time of the *act charged*, if there was probable cause to believe that the child committed the act charged, and if one or more of the following applied to the child or the act charged (R.C. 2151.26(A) and (B)):

(1) A complaint previously was filed in a juvenile court alleging that the child was a delinquent child for committing an act that would be an offense if committed by an adult, the court transferred the case 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 case.

(2) The child was 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 was a *category one offense* (defined as aggravated murder, murder, or an attempt to commit aggravated murder or murder), and either or both of the following applied to the child: (a) the child was 16 years of age or older at the time of the act charged, or (b) the child previously was adjudicated a delinquent child for committing an act that is a category one offense or a *category two offense* (defined as voluntary manslaughter, kidnapping, rape, aggravated arson, aggravated robbery, aggravated burglary, involuntary manslaughter that was a felony of the first degree, or the former offense of felonious sexual penetration) and was committed to the legal custody of the Department of Youth Services (DYS) upon the basis of that adjudication.

(4) The act charged was a *category two offense*, other than kidnapping, the child was 16 years of age or older at the time of the commission of the act charged, and either or both of the following applied to the child: (a) the child previously was adjudicated a delinquent child for committing an act that was a *category one offense* or a *category two offense* and was committed to the legal custody of DHS upon the basis of that adjudication, or (b) the child was 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.

### **Discretionary bindover**

Except as described above in "**Mandatory bindover**" and subject to the provisions described below in "**Multiple delinquent acts**," after a complaint was filed alleging that a child was a delinquent child for committing an act that would have been a *felony* if committed by an adult, the court at a hearing was authorized to transfer the case for criminal prosecution to the appropriate court having jurisdiction of the offense, after considering specified factors (see "**Factors for discretionary bindover**," below) and after making all of the following determinations: (a) the child was 14 years of age or older at the time of the act charged, (b) there was probable cause to believe that the child committed the act charged, and (c) after 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 of the specified factors required to be considered, there were reasonable grounds to believe that both of the following criteria were satisfied: (i) the child is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children, and (ii) the safety of the community may have required that the child be placed under legal restraint, including, if necessary, for the period extending beyond the child's majority. (R.C. 2151.26(C)(1).)

A child whose case was being considered under this provision for possible transfer for criminal prosecution to the appropriate court having jurisdiction of the offense could waive the examination if the court found the waiver was competently and intelligently made. Refusal to submit to a mental and physical examination by the child constituted a waiver of the examination. (R.C. 2151.26(C)(3).)

**Factors for discretionary bindover**

Subject to the provisions described below in **'Multiple delinquent acts,'** when determining whether to order the transfer of a case for criminal prosecution to the appropriate court having jurisdiction of the offense as discussed above in **'Discretionary bindover,'** the court was required to consider all of the following factors in favor of ordering the transfer (R.C. 2151.26(C)(2)):

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

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

(3) The act charged was not the offense of carrying concealed weapons, and the child was 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.

(4) The child had a history indicating a failure to be rehabilitated following one or more commitments, as a delinquency disposition order, to a facility operated for the care of delinquent children or to the legal custody of DYS.

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

### **Multiple delinquent acts**

If one or more complaints were filed alleging a child to be a delinquent child for committing two or more acts that would be offenses if committed by an adult, if a motion was filed or made alleging that the provisions described above in paragraphs (2), (3), or (4) in "**Mandatory bindover**" (hereafter "relevant *mandatory bindover* criteria") applied and required 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 was filed or made requesting that the case or cases be transferred for criminal prosecution pursuant to the provisions described above in "**Discretionary bindover**," the court, in deciding the motions, was required to proceed in the following manner (R.C. 2151.26(C)(4)):

(1) Initially, the court was required to decide the motion alleging that any of the relevant *mandatory bindover* criteria applied and required 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.

(2) If the court so determined, the court was required to transfer the case or cases in accordance with the applicable *mandatory bindover* criteria. After that transfer, the court was required to decide, in accordance with this paragraph, whether to grant the motion requesting that the case or cases be transferred pursuant to the *discretionary bindover* provisions. In making its decision regarding that motion, the court at a hearing could transfer the subject case to the appropriate court having jurisdiction of the offense if the act charged in the case would have been a felony if committed by an adult, if the child was 14 years of age or older at the time of the act charged, and if there was probable cause to believe that the child committed the act charged. Prior to transferring a case pursuant to this paragraph, the court was *not* required to consider any of the factors described above in "**Factors for discretionary bindover**" or to conduct an investigation or make a determination of the type described above in "**Discretionary bindover**."

(3) If the court determined that the relevant *mandatory bindover* criteria did *not* apply and that none of those criteria required that the case or cases involving one or more of the acts charged be transferred for criminal prosecution, the court was required to decide whether to grant the motion requesting that the case or cases be transferred for criminal prosecution pursuant to the *discretionary bindover* provisions.

### **Types of transfer to criminal court--operation of the act**

The act replaces the prior *mandatory bindover* and *discretionary bindover* provisions described above with the following *transfer* provisions in new R.C. 2152.12 (renumbered from R.C. 2151.26), and designates the specific types of transfer of delinquent child cases as *mandatory transfer* and *discretionary transfer*. It retains the *category one offense* and *category two offense* classifications for purposes of the mandatory transfer provisions and redefines *act charged* in the manner described above in "**Other definitions for new R.C. Chapter 2152.**"

#### **Eligibility for mandatory transfer**

Under the act, a child who is alleged to be a delinquent child is eligible for mandatory transfer and must be transferred as provided in R.C. 2152.12 in any of the following circumstances (R.C. 2152.10(A)):

(1) The child is charged with a category one offense and either (a) the child was 16 or 17 years of age at the time of the act charged or (b) the child was 14 or 15 years of age at the time of the act charged and previously was committed to the legal custody of the DYS for committing an act that is a category one or category two offense.

(2) The child is charged with a category two offense other than kidnapping and was 16 or 17 years of age at the time of the commission of the act charged, and either or both of the following apply: (a) the child previously was committed to the legal custody of DYS for committing an act that is a category one or a category two offense or (b) the child is alleged to have displayed a firearm, indicated possession of a firearm, or used a firearm to facilitate the commission of the act charged.

(3) The child is otherwise eligible for a mandatory transfer because the child previously was convicted following a prior transfer.

#### **Mandatory transfer**

Under the act, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be *aggravated murder*, *murder*, *attempted aggravated murder*, or *attempted murder* if committed by an adult (i.e., a category one offense), the juvenile court at a hearing *must* transfer the case if the child was 16 or 17 years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged. The juvenile court also must transfer the case at a hearing if the child is 14 or 15 years of age at the time of the act charged, the child is eligible for mandatory transfer, and there is

probable cause to believe that the child committed the act charged (R.C. 2152.12(A)(1)(a)).

Further, after a complaint has been filed alleging that a child is a delinquent child for committing a category two offense, the juvenile court at a hearing *must* transfer the case if the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged (R.C. 2152.12(A)(1)(b)).

The juvenile court also *must* transfer a case in the circumstances set forth in R.C. 2152.02(C)(5) as described above in paragraph (5) of "*Definition of "child" in Juvenile Law*," or if either of the following applies (R.C. 2152.12(A)(2)):

(1) A complaint is filed against a child who is eligible for a *discretionary transfer* and who previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court.

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

#### *Eligibility for discretionary transfer*

Under the act, unless the child is subject to mandatory transfer, if a child is 14 years of age or older at the time of the act charged and if the child is charged with an act that would be a felony if committed by an adult, the child is eligible for discretionary transfer to the appropriate court for criminal prosecution. In determining whether to transfer the child for criminal prosecution, the juvenile court must follow specified procedures described below. If the court does not transfer the child and if the court adjudicates the child to be a delinquent child for the act charged, the court must issue an order of disposition in accordance with the act's disposition provisions. (R.C. 2152.10(B).)

#### *Discretionary transfer*

Except as described above in "*Mandatory transfer*," after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a *felony* if committed by an adult the juvenile court at a hearing *may* transfer the case if the court finds all of the following (R.C. 2152.12(B)):

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

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

(3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making this decision, the court must consider the applicable factors described below in "**Factors favoring transfer**" indicating that the case should be transferred outweigh the applicable factors described below in "**Factors against transfer**" indicating that the case should not be transferred.

The record must indicate the specific factors that the court weighed in paragraph (3), above.

### **Investigation**

Before considering a *discretionary transfer*, the juvenile court must order an investigation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The child may waive the examination if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination. (R.C. 2152.12(C).)

### **Factors favoring transfer**

In considering whether to transfer a child under the discretionary transfer provisions, the juvenile court must consider the following relevant factors and any other relevant factors, *in favor of a transfer* (R.C. 2152.12(D)):

(1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.

(2) The physical or psychological harm suffered by the victim due to the child's alleged act was exacerbated because of the victim's physical or psychological vulnerability or age.

(3) The child's relationship with the victim facilitated the act charged.

(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.

(5) The child had a firearm on or about the child's person or under the child's control at the time of the commission of the act charged, the act charged is not the offense of carrying concealed weapons, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

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

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

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

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

### **Factors against transfer**

In considering whether to transfer a child under the discretionary transfer provisions, the juvenile court must consider the following relevant factors and any other relevant factors *against a transfer* (R.C. 2152.12(E)):

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

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

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

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

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

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

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

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

### **Multiple delinquent acts**

If one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult,

if a motion is made alleging that the act's *mandatory transfer* provisions apply and require that the case or cases involving one or more of the acts charged be transferred, and if a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to the act's *discretionary transfer* provisions, the juvenile court, in deciding the motions, must proceed in the following manner (R.C. 2152.12(F)):

(1) Initially, the court must decide the motion alleging that the *mandatory transfer* provisions apply and require that the case or cases involving one or more of the acts charged be transferred.

(2) If the court determines that the *mandatory transfer* provisions apply and require that the case or cases be transferred, the court must transfer the case or cases in accordance with those provisions. After that transfer, the court must decide, in accordance with the *discretionary transfer* provisions, whether to grant the motion requesting that the case or cases be transferred pursuant to either of those provisions. Notwithstanding the *discretionary transfer* provisions, prior to transferring a case pursuant to the *mandatory transfer* provisions, the court is *not* required to consider any factor described above in "**Factors favoring transfer**" or "**Factors against transfer**" or to conduct an investigation as described above in "**Investigation**."

(3) If the court determines that the *mandatory transfer* provisions do *not* require that the case or cases involving one or more of the acts charged be transferred, the court must decide in accordance with the *discretionary transfer* provisions whether to grant the motion requesting that the case or cases be transferred pursuant to either of those provisions.

### **Conforming changes**

The act makes a number of conforming changes throughout the Revised Code that are related to the relocation of the transfer provisions (R.C. 2151.141, 2151.23(H) and (I), 2151.311(C)(2), 2151.313(B)(1) and (C)(2)(c), 2152.03, 2152.71(B)(7), 5120.16(B), and 5120.172).

### **Procedures for transfer of delinquent child case**

The act retains essentially all of the procedures for the transfer of delinquent child cases in new R.C. 2152.12 and makes those procedures applicable to *mandatory transfers* and *discretionary transfers* and specifically requires that the reasons for the transfer be stated *on the record*. The act also essentially retains the provision regulating the treatment of persons apprehended at age 21 or over for acts committed as a juvenile. (R.C. 2152.12(G), (H), (I), and (J).)

## **Eligibility for felony dispositions under the act**

### **Generally**

Under the act, a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult is eligible for a particular type of disposition if the child's case was not transferred for criminal prosecution (R.C. 2152.11(A)).

### **Enhancement factors**

If the complaint, indictment, or information charging the act includes one or more of the following factors, the act is considered to be enhanced, and the child is eligible for a more restrictive disposition (R.C. 2152.11(A)):

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

(2) The child used or displayed a firearm, brandished a firearm, or indicated that the child possessed a firearm and actually possessed a firearm, during the commission of the act charged (hereafter, "firearm factor").

(3) The child previously was admitted to a Department of Youth Services facility for the commission of an act that would have been aggravated murder, murder, a felony of the first or second degree if committed by an adult, or an act that would have been a felony of the third degree and an offense of violence if committed by an adult (hereafter, "previous DYS admission factor").

### **Aggravated murder or murder eligibility**

If a child is adjudicated a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult, the child is eligible for whichever of the following is appropriate (R.C. 2152.11(B)):

(1) *Mandatory SYO* (see "**Serious youthful offender dispositional sentence**," below), if the act allegedly was committed when the child was 14 or 15 years of age;

(2) *Discretionary SYO*, if the act was committed when the child was 10, 11, 12, or 13 years of age;

(3) *Traditional juvenile*, if paragraphs (1) and (2) do not apply.

**Attempted aggravated murder or attempted murder eligibility**

If a child is adjudicated a delinquent child for committing an act that would be attempted aggravated murder or attempted murder if committed by an adult, the child is eligible for whichever of the following is appropriate (R.C. 2152.11(C)):

- (1) *Mandatory SYO*, if the act allegedly was committed when the child was 14 or 15 years of age;
- (2) *Discretionary SYO*, if the act was committed when the child was 10, 11, 12, or 13 years of age.
- (3) *Traditional juvenile*, if paragraphs (1) and (2) do not apply.

**First degree felony eligibility**

If a child is adjudicated a delinquent child for committing an act that would be a felony of the first degree if committed by an adult, the child is eligible for whichever of the following is appropriate (R.C. 2152.11(D)):

- (1) *Mandatory SYO*, if the act allegedly was committed when the child was 16 or 17 years of age and the act is enhanced by both the offense of violence factor and either the firearm or previous DYS admission factor;
- (2) *Discretionary SYO*, if: (a) the act was committed when the child was 16 or 17 years of age and paragraph (1) does not apply, (b) the act was committed when the child was 14 or 15 years of age, (c) the act was committed when the child was 12 or 13 years of age and is enhanced by the offense of violence, firearm, or previous DYS admission factor, or (d) the act was committed when the child was 10 or 11 years of age and is enhanced by both the offense of violence factor and either the firearm or previous DYS admission factor;
- (3) *Traditional juvenile*, if paragraphs (1) and (2) do not apply.

**Second degree felony eligibility**

If a child is adjudicated a delinquent child for committing an act that would be a felony of the second degree if committed by an adult, the child is eligible for whichever of the following is appropriate (R.C. 2152.11(E)):

- (1) *Discretionary SYO*, if: (a) the act was committed when the child was 14, 15, 16, or 17 years of age, or (b) if the act was committed when the child was 12 or 13 years of age and is enhanced by the offense of violence, firearm, or previous DYS admission factor;

(2) *Traditional juvenile*, if paragraph (1) does not apply.

**Third degree felony eligibility**

If a child is adjudicated a delinquent child for committing an act that would be a felony of the third degree if committed by an adult, the child is eligible for whichever of the following is appropriate (R.C. 2152.11(F)):

(1) *Discretionary SYO*, if: (a) the act was committed when the child was 16 or 17 years of age, or (b) if the act was committed when the child was 14 or 15 years of age and is enhanced by the offense of violence, firearm, or original previous DYS admission factor;

(2) *Traditional juvenile*, if paragraph (1) does not apply.

**Fourth and fifth degree felony eligibility**

If a child is adjudicated a delinquent child for committing an act that would be a felony of the fourth or fifth degree if committed by an adult, the child is eligible for whichever of the following dispositions is appropriate (R.C. 2152.11(G)):

(1) *Discretionary SYO*, if the act was committed when the child was 16 or 17 years of age and is enhanced by the offense of violence, firearm, or previous DYS admission factor;

(2) *Traditional juvenile*, if paragraph (1) does not apply.

**Eligibility table**

The above described provisions pertaining to the eligibility of adjudicated delinquent children for particular types of dispositions are illustrated in an eligibility table and accompanying key to that table that are included in the act. The act specifies that if the table conflicts with any of the disposition provisions described above, the disposition provision controls over the table. (R.C. 2152.11(H), (I), and (J).)

**Serious youthful offender dispositional sentence under the act**

**Overview**

The act enacts a mechanism pursuant to which a juvenile court may impose a "dispositional sentence" for certain "serious youthful offenders" that contains a juvenile portion consisting of a traditional delinquency disposition and an adult portion that contains a criminal sentence of a type that could have been imposed

on the child had the child's case been transferred for criminal prosecution. The adult portion is stayed pending the satisfactory completion of the juvenile portion of the dispositional sentence. If the child does not satisfactorily complete the juvenile portion because of specified types of conduct, the court may invoke the adult portion of the sentence. If the child satisfactorily completes the juvenile portion, the adult portion of the sentence may not be invoked. (R.C. 2152.13 and 2152.14.)

### **Initiating procedure**

The act specifies that a juvenile court may impose a "serious youthful offender dispositional sentence" on a child only if the prosecuting attorney of the county in which the delinquent act allegedly occurred initiates the process against the child in the manner described below and the child is an alleged delinquent child who is eligible for the sentence (see **Eligibility for felony dispositions**," above). The prosecuting attorney may initiate the process in any of the following ways (R.C. 2152.13(A)):

(1) The child is indicted, or is charged in a act of information, as a serious youthful offender.

(2) The original complaint alleging that the child is a delinquent child requests a serious youthful offender dispositional sentence.

Unless the original complaint includes a notice of intent to seek that type of sentence, the prosecuting attorney must file with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within 20 days after the later of the following, unless the time for filing the notice is extended by the juvenile court for good cause shown: (1) the date of the child's first juvenile court hearing regarding the complaint, or (2) the date the juvenile court determines not to transfer the case to an adult court for prosecution.

After the written notice is filed under this provision, the juvenile court must serve a copy of the notice on the child and advise the child of the prosecuting attorney's intent to seek a serious youthful offender dispositional sentence in the case. (R.C. 2152.13(B).)

### **Procedure in a serious youthful offender case**

If an alleged delinquent child is not indicted or charged by information, as described above, and if a notice or complaint as described above indicates that the prosecuting attorney intends to pursue a serious youthful offender dispositional sentence in the case, the juvenile court must hold a preliminary 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 dispositional sentence.

A child for whom a serious youthful offender dispositional sentence is sought has the right to a grand jury determination of probable cause that the child committed the act charged and that the child is eligible by age for a serious youthful offender dispositional sentence. The court of common pleas or the juvenile court may impanel the grand jury.

Once a child is indicted or charged by information or the juvenile court determines the child to be eligible for a serious youthful offender dispositional sentence, the child is entitled to an open and speedy trial by jury in juvenile court and to be provided with a transcript of the proceedings. The time within which the trial is to be held under R.C. Title 29 commences on whichever of the following dates is applicable: (1) if the child is indicted or charged by information, on the date of the filing of the indictment or information, (2) if the child is charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date of the filing of the complaint, or (3) if the child is not charged by an original complaint that requests a serious youthful offender dispositional sentence, on the date that the prosecuting attorney files the written notice of intent to seek a serious youthful offender dispositional sentence.

If the child is detained awaiting adjudication, upon indictment or being charged by information, the child has the same right to bail as an adult charged with the offense the alleged delinquent act would be if committed by an adult. Except for the hearing to determine whether to invoke the adult portion of the dispositional sentence, all provisions of the Criminal Code (R.C. Title 29) and the Criminal Rules apply in the case and to the child. The juvenile court must afford the child all rights afforded a person who is criminally prosecuted for committing an offense including the right to counsel and the right to raise the issue of competency. The child may not waive the right to counsel. (R.C. 2152.13(C) and (D).)

#### **Mandatory serious youthful offender dispositional sentences**

If a child is adjudicated a delinquent child for committing an act under circumstances that *require* the juvenile court to impose a serious youthful offender dispositional sentence (see "*Eligibility for felony dispositions*," above), all of the following apply (R.C. 2152.13(E)(1)):

(1) The juvenile court must impose a sentence available for the violation (hereafter "adult sentence portion"), as if the child were an adult, under the Criminal Code, except that the juvenile court is prohibited from imposing on the child a sentence of death or life imprisonment without parole.

(2) The juvenile court must impose upon the child one or more traditional juvenile dispositions.

(3) The juvenile court must stay the adult sentence portion pending the successful completion of the traditional juvenile disposition.

The child has a right to appeal under specified circumstances described in R.C. 2953.08 the adult sentence portion when any of those circumstances apply. Any appeal of the adult sentence portion must be brought and considered as if the adult sentence portion were not stayed. (R.C. 2152.13(E)(3).)

**Discretionary serious youthful offender dispositional sentence--generally**

If a child is adjudicated a delinquent child for committing an act under circumstances that *allow, but do not require*, the juvenile court to impose on the child a serious youthful offender dispositional sentence, all of the following apply (R.C. 2152.13(E)(2)(a)):

(1) If the juvenile court on the record makes a finding that, given the nature and circumstances of the violation and the history of the child, 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 juvenile court with a reasonable expectation that the purposes of the Juvenile Delinquency Law will be met, the juvenile court may impose upon the child a criminal sentence available for the violation, as if the child were an adult. But, the juvenile court is prohibited from imposing on the child a sentence of death or life imprisonment without parole.

(2) If a sentence is imposed under paragraph (1), the juvenile court also must impose one or more traditional juvenile dispositions.

(3) The juvenile court must stay the adult sentence portion pending the successful completion of the traditional juvenile disposition.

The child has a right to appeal under specified circumstances described in R.C. 2953.08 the adult sentence portion when any of those circumstances apply. Any appeal of the adult sentence portion must be brought and considered as if the adult sentence portion were not stayed.

If the juvenile court does not find that a sentence should be imposed under paragraph (1), the juvenile court may impose one or more traditional juvenile dispositions under the Juvenile Delinquency Law. (R.C. 2152.13(E)(2)(b) and (3).)

**Initiating procedures to invoke the adult portion of a serious youthful offender dispositional sentence**

**While the person is in DYS institutional custody or an escapee from that custody.** The Director of Youth Services may request the prosecuting attorney of the county in which is located the juvenile court that imposed a serious youthful offender dispositional sentence upon a person to file a motion with that juvenile court to invoke the adult sentence portion if the person: (1) is at least 14 years of age, (2) is in the institutional custody, or an escapee from the custody, of DYS, and (3) is serving the juvenile portion of the serious youthful offender dispositional sentence.

The motion must state that there is reasonable cause to believe that either of the following misconduct has occurred and that at least one incident of that nature occurred after the person reached 14 years of age: (1) the person committed an act that is a violation of the rules of the institution and that could be charged as a felony or as a first degree misdemeanor offense of violence if committed by an adult, or (2) the person has engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim. (R.C. 2152.14(A).)

**While the person is on parole, aftercare, or community control.** If a person is at least 14 years of age, is serving the juvenile portion of a serious youthful offender dispositional sentence, and is on parole or aftercare from a DYS facility, or on community control, the Director of Youth Services, the juvenile court that imposed the serious youthful offender dispositional sentence on the person, or the probation department supervising the person may request the prosecuting attorney of the county in which is located the juvenile court to file a motion with the juvenile court to invoke the adult sentence portion. The prosecuting attorney may file a motion of that type even if no request is made. The motion must state that there is reasonable cause to believe that either the person committed an act that is a violation of the conditions of supervision and that could be charged as a felony or as a first degree misdemeanor offense of violence if committed by an adult or that the person has engaged in conduct that creates a substantial risk to the safety or security of the community or of the victim. (R.C. 2152.14(B).)

**If the prosecuting attorney declines a request to file a motion.** If the prosecuting attorney declines a request to file a motion that was made by DYS or the supervising probation department or fails to act on a request within a reasonable time, DYS or the supervising probation department may file a motion with the juvenile court to invoke the adult sentence portion. If the prosecuting attorney declines a request to file a motion that was made by the juvenile court or fails to act on a request from the court within a reasonable time, the juvenile court

may hold the hearing to determine whether to invoke the adult sentence portion on its own motion. (R.C. 2152.14(C).)

**Procedure to determine whether to invoke the adult portion of a serious youthful offender dispositional sentence**

Upon the filing of the motion as described above, the juvenile court may hold a hearing to determine whether to invoke the adult sentence portion. The juvenile court cannot invoke the adult sentence portion without a hearing. At the hearing the person has the right to be present, to receive notice of the grounds upon which the adult sentence portion is sought to be imposed, to be represented by counsel, including counsel appointed under the Juvenile Rules, to be advised on the procedures and protections set forth in the Juvenile Rules, and to present evidence on the person's own behalf including evidence that the person has a mental illness or is a mentally retarded person. The person may not waive the right to counsel. The hearing must be open to the public. If the person presents evidence that the person has a mental illness or is a mentally retarded person, the juvenile court must consider that evidence in determining whether to invoke the adult sentence portion. (R.C. 2152.14(D).)

The juvenile court may invoke the adult sentence portion if the juvenile court finds all of the following on the record by clear and convincing evidence (R.C. 2152.14(E)):

(1) The person is serving the juvenile portion of a serious youthful offender dispositional sentence.

(2) The person is at least 14 years of age and has been admitted to a DYS facility, or criminal charges are pending against the person.

(3) The person engaged in the conduct or acts charged that are a condition for invoking the adult sentence portion, and the person's conduct demonstrates that the person is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.

**Effect of invoking the adult portion of the serious youthful offender dispositional sentence**

If a juvenile court issues an order invoking the adult sentence portion, the juvenile portion of the dispositional sentence terminates, and DYS must transfer custody of the person to the Department of Rehabilitation and Correction or place the person under another sanction imposed as part of the sentence. The juvenile court must state in its order the total number of days that the person has been held in detention or in a facility operated by, or under contract with, DYS under the

juvenile portion of the dispositional sentence. The time the person must serve on a prison term imposed under the adult sentence portion must be reduced by the total number of days specified in the order plus any additional days the person is held in a juvenile facility or in detention after the order is issued and before the person is transferred to the custody of the Department of Rehabilitation and Correction. In no case may the total prison term as calculated under this provision exceed the maximum prison term available for an adult who is convicted of violating the same criminal prohibitions.

Any community control imposed as part of the adult sentence or as a condition of a judicial release from prison is to be under the supervision of the entity that provides adult probation services in the county. Any post-release control imposed after the offender otherwise is released from prison is to be supervised by Adult Parole Authority. (R.C. 2152.14(F).)

### **Conforming changes**

The act makes a number of conforming changes throughout the Revised Code that are related to the serious youthful offender provisions (R.C. 2151.23, 2151.24(B), 2151.271, 2151.28, 2151.29, 2151.31(A)(6)(b), 2151.313(B) and (C), 2151.314(A) and (C), 2151.35, 2151.358(J), 2152.71(B), 2152.81(A)(2), (C), and (D), 2923.32(B)(4)(a) and (F)(2), 2923.33, 2923.36(A), 2923.44(B)(1)(a), (D)(1), (D)(2), and (F)(1), 2923.45(A), (C)(3), and (D)(1), 2925.42(B)(1)(a), (D)(1), (D)(2), and (F)(1), 2925.43(A), (C)(3), and (D)(1), 3313.66(F)(1), and 5139.05(B)(1)(c) and (B)(2)(e)).

### **Traditional delinquency dispositions**

The act relocates, into new R.C. Chapter 2152., all of the provisions that pertain to the disposition of delinquent children, modifies many of them, and enacts new provisions regarding new types of dispositions.

### **Commitment to DYS for a felony**

As under prior law, under the act, if a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court may commit the child to the legal custody of DYS for secure confinement as follows (R.C. 2152.16(A)(1)): (1) for an act that would be aggravated murder or murder if committed by an adult, until the offender attains 21 years of age, (2) for an act that would be attempted aggravated murder or attempted murder if committed by an adult, a minimum period of six to seven years as prescribed by the court and a maximum period not to exceed the child's attainment of 21 years of age, (3) for committing voluntary manslaughter, kidnapping, aggravated arson, aggravated robbery, involuntary manslaughter by reason of committing a felony,

or rape when the victim was not under 13 and the sexual conduct or insertion involved was consensual and when the victim under 13 was older than the delinquent child, was the same age as the delinquent child, or was less than three years younger than the delinquent child, for an indefinite term consisting of a minimum period of one to three years, as prescribed by the court, and a maximum period not to exceed the child's attainment of 21 years of age, (4) if the child is adjudicated a delinquent child for committing an act that is not described in paragraphs (2) or (3), above, and that would be a felony of the first or second degree if committed by an adult, for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed the child's attainment of 21 years of age, and (5) for committing an act that would be a felony of the third, fourth, or fifth degree if committed by an adult or for the underage purchase of a firearm, for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of 21 years of age. (R.C. 2151.355(A)(4) through (7) (repealed) and R.C. 2152.16(A)(1).)

In each case in which a court makes one of the above dispositions, the court retains control over the commitment for the minimum period specified by the court. During the period of court control, DYS is prohibited from moving the child to a nonsecure setting without the permission of the court that imposed the disposition. (R.C. 2151.38(G)(2) (repealed) and R.C. 5139.35(A) and 2152.16(A)(2) and (B).)

As under prior law, if a child is adjudicated a delinquent child, at the dispositional hearing and prior to making any disposition to DYS, the court must determine whether the delinquent child previously has been adjudicated a delinquent child for a violation of a law or ordinance. If the delinquent child previously has been adjudicated a delinquent child for a violation of a law or ordinance, the court, for purposes of entering an order of disposition of the delinquent child to DYS, must consider the previous delinquent child adjudication as a conviction of a violation of the law or ordinance in determining the degree of the offense the current act would be had it been committed by an adult. This provision also applies in relation to the imposition of any financial sanction, as described below in **"Financial sanctions for delinquent children and juvenile traffic offenders--operation of the act."** (R.C. 2151.355(E)(2) (repealed) and R.C. 2152.16(C).)

#### **Commitment to DYS under a firearms specification**

**Prior law.** Under prior law if the child was adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, other than carrying a concealed weapon, and was committed to DYS's legal custody for that act and if the court determined that the child, if the child was an adult, would be guilty of a firearms specification in relation to the act for which the child was

adjudicated a delinquent child, the court could commit the child to DYS's legal custody for institutionalization in a secure facility for the following period of time, except as described in this paragraph: (a) if the child would be guilty of a specification regarding simple possession of a firearm while committing the act, a period of one year, or (b) if the child would be guilty of an R.C. 2941.144, 2941.145, or 2941.146 specification, a period of three years. The court could not commit a child to DYS's legal custody under this provision for a period of time that exceeded three years. The period of commitment imposed under this provision was in addition to, and was required to be served consecutively with and prior to, a period of commitment ordered for the underlying act, provided that the total of all the periods of commitment could not exceed the child's attainment of 21 years of age (but see "Minimum age for DYS commitment," below).

**Operation of the act.** The act enacts new provisions relative to the commitment of a child to DYS under a firearms term. It specifies that, if a child is adjudicated a delinquent child for committing an act, other than the offense of carrying a concealed weapon, that would be a felony if committed by an adult, if the court determines that, if the child was an adult, the child would be guilty of a firearms specification of the type set forth in R.C. 2941.141, 2941.144, 2941.145, or 2941.146 (see "Minimum age for DYS commitment," below), in addition to any commitment the court imposes for the underlying delinquent act, all of the following apply (R.C. 2152.17(A)):

(1) If the court determines that the child would be guilty of a specification that the child had a firearm on or about the child's person or under the child's control while committing the act, the court *may* commit the child to DYS for the specification for a definite period of up to one year.

(2) If the court determines that the child would be guilty of a specification that the child displayed, brandished, indicated possession of, or used a firearm in committing the act, the court *must* commit the child to DYS for the specification for a definite period of not less than *one* nor more than *three years*, and the court also must commit the child to DYS for the underlying delinquent act.

(3) If the court determines that the child would be guilty of a specification that the child had an automatic firearm or a firearm equipped with a muffler or silencer while committing the act or that the child discharged a firearm from a motor vehicle in specified circumstances, the court *must* commit the child to DYS for the specification for a definite period of not less than *one* nor more than *five years*, and the court also must commit the child to DYS for the underlying delinquent act.

The act specifies that the above-described provisions regarding commitments to DYS for a firearms specification also apply to a child who is an

accomplice to the same extent the firearm specifications would apply to an adult accomplice in a criminal proceeding. (R.C. 2152.17(B).)

The court cannot commit a child to DYS's legal custody for a specification under the above-described firearms specification provisions for a period of time that exceeds five years for any one delinquent act. Any commitment imposed for the specification is in addition to, and must be served consecutively with and prior to, a period of commitment ordered for the underlying delinquent act. Each commitment for a specification is in addition to and must be served consecutively with, any other period of commitment imposed for a firearms specification. If a commitment is imposed under a firearms specification and a commitment also is imposed under a gang-related activity specification (see below), the period imposed under the firearms specification must be served prior to the period imposed under the gang-related specification. The total of all the periods of commitment imposed for any specification and for the underlying offense cannot exceed the child's attainment of 21 years of age. (R.C. 2152.17(D).)

The act makes it clear that the firearms specification set forth in the Criminal Sentencing Law may be used in a delinquent child proceeding, for the purposes described above regarding disposition of a child (R.C. 2941.141, 2941.144, 2941.145, and 2941.146).

#### **Commitment to DYS under a gang-related activity specification**

**Prior law.** Under prior law, if the child was adjudicated a delinquent child for committing a category one or category two offense and was committed to DYS's legal custody for that act and if the court determined that the child, if the child was an adult, would be guilty of a gang specification in relation to the child's delinquent act, the court could commit the child to DYS's legal custody for institutionalization in a secure facility for a period of not less than one year or more than three years, subject to the limitations described above regarding the maximum periods of commitment.

**Operation of the act.** The act provides that, if a child is adjudicated a delinquent child for committing an act that would be aggravated murder, murder, or a first, second, or third degree felony offense of violence if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a specification that the act was a felony offense of violence committed while the child was participating in a criminal gang in relation to the act for which the child was adjudicated a delinquent child, the court must commit the child for the specification to DYS's legal custody for institutionalization in a secure facility for a period of not less than one year and not more than three years, subject to the maximum duration limitations set forth under "**Commitment to DYS under a firearms specification**," above, and the court also must commit the child to DYS

for the underlying delinquent act under the previously described provisions of the act. (R.C. 2952.17(C).)

The act makes it clear that the gang-related activity specification set forth in the Criminal Sentencing Law under R.C. 2941.142 may be used in a delinquent child proceeding, for the purposes described above regarding disposition of a child (R.C. 2941.142).

### **Commitment to DYS for multiple delinquent acts**

**Prior law.** 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 orders the commitment of the child, for two or more of those acts, to DYS's legal custody for institutionalization or institutionalization in a secure facility, the court may order that all of the periods of commitment imposed for those acts be served consecutively in DYS's legal custody *and, if applicable*, be in addition to and commence immediately following the expiration of a period of commitment that the court imposes for a firearms or gang specification. A court cannot commit a delinquent child to DYS's legal custody under this provision for a period that exceeds the child's attainment of 21 years of age. (R.C. 2151.355(B)(3).)

**Operation of the act.** 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 adjudication orders the commitment of the child, for two or more of those acts, to DYS's legal custody for institutionalization in a secure facility pursuant to any provision of the act, the court may order that all of the periods of commitment imposed for those acts be served consecutively in DYS's legal custody, and those periods of commitment *must be* in addition to and commence immediately following the expiration of a period of commitment that the court imposes under a firearms specification or a gang-related activity specification. A court cannot commit a delinquent child to DYS's legal custody under this provision for a period that exceeds the child's attainment of 21 years of age. (R.C. 2152.17(E).)

### **Minimum age for DYS commitment**

Under prior law, a juvenile court could commit a child to DYS only if the child was at least 12 years of age at the time of the child's commitment (R.C. 5139.05(A)).

The act reduces the minimum age at which a juvenile court may commit a child to DYS. Under the act, a juvenile court may commit a child to DYS if the child was at least ten years old at the time of the child's delinquent act, and, if the child is 10 or 11 years of age, the delinquent act would be aggravated murder,

murder, arson, or a first or second degree felony offense of violence if committed by an adult. An order committing a 10 or 11 year old child to an institution under the control and management of DYS has the effect of ordering that the child be committed to DYS and assigned to an institution, a residential care facility, a residential facility, or a facility licensed by the Department of Job and Family Services that DYS considers best designated for the training and rehabilitation of the child and the protection of the public. The child must be housed separately from children who are 12 years of age or older until the child is released or discharged or until the child attains 12 years of age, whichever occurs first. Upon the child's attainment of 12 years of age, if the child has not been released or discharged, DYS is not required to house the child separately. (R.C. 5139.05(A) and (A)(4).)

### **Consideration of delinquency adjudication as a criminal conviction**

The act specifies that, 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 R.C. 2907.12, 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 Ohio law 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 DYS's custody, the adjudication must be considered a conviction for purposes of a determination in the future, pursuant to the state's Criminal Sentencing Law, as to whether the child is a repeat violent offender as defined in R.C. 2929.01. (R.C. 2152.17(F) and 2929.01(DD).) This provision is based on prior law contained in R.C. 2151.355(G)(2) and 2929.01(DD), but differs from it in that prior law did not permit the adjudication to be so considered as a conviction unless the juvenile court that commits the child to DYS made a specific finding that the adjudication should be so considered, and included the finding in its order of disposition and in the record in the case.

### **General rules regarding a DYS commitment**

The act includes a series of provisions, similar to prior law, that provide general rules relative to a DYS commitment. Under the act, when a juvenile court commits a delinquent child to DYS's custody pursuant to new R.C. Chapter 2152., the court cannot designate the specific institution in which DYS is to place the child but instead must specify that the child is to be institutionalized in a secure facility. The court also must state in the commitment order the total number of days that the child was held in detention in connection with the delinquent child complaint upon which the order is based. DYS must reduce the minimum period of institutionalization ordered by both the total number of days that the child has been so held in detention as stated by the court in the commitment order and the

total number of any additional days that the child has been held in detention subsequent to the order but prior to the transfer of physical custody of the child to DYS.

The court also must provide DYS with the child's medical records, a copy of the report of any mental examination of the child ordered by the court, the Revised Code sections the child violated and the degree of each violation, the warrant to convey the child to DYS, a copy of the court's journal entry ordering the commitment of the child to DYS, a copy of the arrest record pertaining to the act for which the child was adjudicated delinquent, a copy of any victim impact statement pertaining to the act, and any other information concerning the child that DYS reasonably requests. The court also must complete the form for the standard predisposition investigation report that DYS furnishes pursuant to law and provide DYS with the completed form. DYS may refuse to accept physical custody of a delinquent child who is committed to its legal custody until the court provides to DYS the documents specified in this paragraph. No DYS officer or employee who refuses to accept physical custody of a delinquent child who is committed to DYS is subject to prosecution or contempt of court for the refusal if the court fails to provide the specified documents at the time the court transfers the physical custody of the child to DYS.

Within 20 working days after DYS receives physical custody of a delinquent child from a juvenile court, the court must provide DYS with a certified copy of the child's birth certificate and the child's social security number, or, if the court made all reasonable efforts to obtain the information but was unsuccessful, with documentation of the efforts it made to obtain the information. (R.C. 2151.355(F) (repealed) and R.C. 2152.18(A) to (C).)

**Notice to schools; provision of school-related information**

Similar to prior law, under the act, within ten days after completion of an adjudication that a child is a delinquent child, the court must give written notice of the adjudication to the superintendent of a city, local, exempted village, or joint vocational school district, and to the principal of the school the child attends, if the basis of the adjudication was the commission of an act that would be a criminal offense if committed by an adult, if the act was committed by the delinquent child when the child was 14 years of age or older, and if the act is any of a list of specified delinquent acts. The acts specified under the act generally are the same as those specified under prior law plus any act that would be a criminal offense if committed by an adult and that results in serious physical harm to persons or to property while the child is at school, on any other property owned or controlled by the board, or at an interscholastic competition, an extracurricular event, or any

other school program or activity, or complicity in any such act.<sup>1</sup> The notice must include the child's name and age at the time the child committed the delinquent act and the violation of law committed by the child.

Also, *within 14 days* (added by the act) after committing a delinquent child to DYS's custody, the court to 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, the school must provide DYS with the child's school transcript. However, DYS cannot refuse to accept a child committed to it, and a child committed to it cannot be held in a county or district detention facility, because of a school's failure to provide the required school transcript. *Within 14 days* (added by the act) after releasing a child from an institution under its control, DYS must provide the court and the school with an updated copy of the child's school transcript and a summary of the child's institutional record. DYS also must 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. (R.C. 2151.355(F) and (K) (repealed) and R.C. 2152.18(D).)

#### **Notice to victims**

Similar to prior law, at any hearing at which a child is adjudicated a delinquent child or as soon as possible after the hearing, the court must notify all victims of the delinquent act, who may be entitled to a recovery under any of the following provisions: (1) the right of victims to recover, under R.C. 3109.09, compensatory damages from the child's parents for property damage or a theft committed by the child, (2) the right of victims to recover, under R.C. 3109.10, compensatory damages from the child's parents for willful and malicious assaults committed by the child, and (3) the right of victims to recover under the Crime Victims Reparations Law. (R.C. 2151.355(G)(1) (repealed) and R.C. 2152.18(E).)

#### **Disposition other than a DYS commitment**

The act provides a court with numerous types of dispositions, other than a commitment to DYS, that it may, and in some cases, must, make of a delinquent child. Many of them are similar to the alternative dispositions available under prior law.

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<sup>1</sup> Violation of R.C. 2907.05 (unlawful sexual conduct with a minor) was not carried over from R.C. 2151.355(K) to R.C. 2152.18, because a person under 18 years of age cannot violate that section.

**Mandatory dispositions.** Under prior law, if a child was adjudicated a delinquent child for committing an act that, if committed by an adult, would be a drug abuse offense or for committing disorderly conduct while voluntarily intoxicated, in addition to imposing in its discretion any other authorized order of disposition, the court was required to: (1) require the child to participate in a drug abuse or alcohol abuse counseling program and (2) suspend or revoke the child's temporary instruction permit, probationary driver's license, or driver's license for a period of time prescribed by the court or, at the discretion of the court, until the child attended and satisfactorily completed, a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. (R.C. 2151.355(C).)

If a child was adjudicated a delinquent child for illegally conveying or possessing a deadly weapon or dangerous ordnance in a school safety zone, the court, in addition to any order of disposition it made for the child under any of the above-described provisions, was required to revoke the child's temporary instruction permit and deny the child the issuance of another temporary instruction permit in accordance with R.C. 2923.122(E)(1)(b) or suspend the child's probationary driver's license, restricted license, or nonresident operating privilege 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 that section (R.C. 2151.355(D)).

Under the act, if a child is adjudicated a delinquent child, the court, in addition to any other disposition made, *must* suspend the child's temporary instruction permit, restricted license, probationary driver's license, or nonresident operating privilege, or suspend the child's ability to obtain such a permit if the child is adjudicated a delinquent child for: (1) illegally conveying or possessing a deadly weapon or dangerous ordnance in a school safety zone in violation of R.C. 2923.122, or (2) for committing an act that, if committed by an adult, would be a drug abuse offense or for committing disorderly conduct while voluntarily intoxicated in violation of R.C. 2917.11(B). The former suspension and denial is for the time specified in R.C. 2923.122, and the latter is for a period until the child attends and satisfactorily completes a court specified drug abuse or alcohol abuse education, intervention, or treatment program. (R.C. 2152.19(B).)

**Permissive dispositions.** Similar to prior law, under the act, if a child is adjudicated a delinquent child, the court *may* make any of the following orders of disposition, in addition to any other disposition authorized or required by new R.C. Chapter 2152. (R.C. 2151.355(A)(1) through (3), (10) through (20), and (22) through (25) (repealed) and R.C. 2152.19(A)):

(1) Any order authorized for an abused, neglected, or dependent child under R.C. 2151.353;

(2) 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, or by a private agency or organization, within or without Ohio, that is authorized and qualified to provide the care, treatment, or placement required;

(3) Place the child on community control under any sanctions, services, and conditions the court prescribes. As a condition of community control in every case and in addition to any other condition it imposes upon the child, the court must require the child to abide by the law during the period of community control. As referred to in this provision, community control includes, but is not limited to, the following sanctions and conditions:

(a) A period of basic probation supervision, in which the child must maintain contact with a person appointed to supervise the child in accordance with sanctions imposed by the court;

(b) A period of intensive probation supervision, in which the child must 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;

(c) A period of day reporting in which the child each day must report to and leave a center or another approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at, or outside, the center;

(d) A period of community service of up to: 500 hours for an act that would be a felony or a misdemeanor of the first degree if committed by an adult; 200 hours for an act that would be a misdemeanor of the second, third, or fourth degree if committed by an adult; or 30 hours for an act that would be a minor misdemeanor if committed by an adult (prior law contained a general authorization of up to 500 hours community service);

(e) A requirement that the child obtain a high school diploma, a certificate of high school equivalence, vocational training, or employment;

(f) A period of drug and alcohol use monitoring;

(g) A requirement of alcohol or drug assessment or counseling (added by the act), or a period in an alcohol or drug treatment program with a level of security determined necessary by the court;

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

(i) A requirement that the child serve monitored time;

(j) A period of house arrest with or without electronic monitoring;

(k) A period of electronic monitoring without house arrest or EMHA that does not exceed the maximum sentence of imprisonment that could be imposed upon an adult who commits the same act. A period of EMHA imposed under this provision cannot extend beyond the child's 21st birthday. If a court imposes a period of EMHA under this provision, as under prior law, it must impose specified requirements and restrictions upon the child, and may impose other reasonable requirements upon the child. Unless ordered by the court, a child cannot receive credit for any time served on EMHA toward any other disposition order imposed upon the child for the act for which was imposed the EMHA order.

(l) A suspension (but not a revocation as under prior law) of the child's driver's license, probationary driver's license, or temporary instruction permit or of the registration of all motor vehicles registered in the child's name. A child whose license or permit is so suspended is ineligible for issuance of a license or permit during the suspension. At the end of the suspension, the child cannot be reissued a license or permit until the child has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.

(4) Commit the child to the custody of the court;

(5) Require the child to not be absent without legitimate excuse from the public school the child is supposed to attend for five or more consecutive days, seven or more school days in one school month, or 12 or more school days in a school year;

(6) If a child is adjudicated a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, require the child to participate in a truancy prevention mediation program and/or make any other authorized order of disposition for a delinquent child, except that the court may not commit the child to any school, camp, institution, or other facility operated for the care of delinquent children unless the court determines that the child violated a lawful order of the court requiring the child not to be absent from school as described in paragraph (5), above, or a similar order issued for an unruly child that is designed to address the child's truancy.

(7) If a child is adjudicated a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school,

require the parent, guardian, or other person to participate in a truancy prevention mediation program and/or require the parent, guardian, or other person to participate in any community service program, preferably a community service program that requires the involvement of the parent, guardian, or other person in the school attended by the child.

(8) Make any further disposition that the court finds proper, except that the child cannot be placed in: (a) a state correctional institution, a county, multicounty, or municipal jail or workhouse, or another place in which an adult convicted of a crime, under arrest, or charged with a crime is held (similar to prior law) or (b) a community corrections facility, if the child would be covered by the definition of public safety beds for purposes of R.C. 5139.41 to 5139.45 if the court exercised its authority to commit the child to DYS's legal custody for institutionalization or institutionalization in a secure facility (added by the act).

The act permits the court to establish a victim-offender mediation program in which victims and their offenders meet to discuss the offense (i.e., delinquent act) and suggest possible restitution. If the court obtains the assent of the victim of the delinquent act committed by the child, the court may require the child to participate in the program. (R.C. 2151.355(A)(21) (repealed) and R.C. 2152.19(C).)

#### **Victim impact statement**

Under the act, similar to prior law, 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 a risk of physical harm to the victim, the court, prior to issuing an order of disposition, must order the preparation of a victim impact statement by the probation department of the county in which the victim resides, by the court's own probation department, or by a government-operated victim assistance program. Under the act, this provision does not apply to misdemeanor offenses of violence, as did the comparable provision in prior law. The court must consider the victim impact statement in determining the order of disposition to issue for the child. Each victim impact statement must identify the victim of the child's delinquent act, itemize any economic loss suffered by the victim, identify any physical injury suffered by the victim and the seriousness and permanence of the injury, identify any change in the victim's personal welfare or familial relationships and any psychological impact experienced by the victim or the victim's family, and contain any other information related to the impact of the act upon the victim that the court requires. The act also requires DYS to work with local probation departments and victim assistance programs to develop a standard victim impact statement.

Under the act, similar to prior law, a victim impact statement must be kept confidential and is not a public record under the Public Records Law. However, the court may furnish copies of the statement to DYS if the delinquent child is committed to DYS or to both the adjudicated delinquent child or the adjudicated delinquent child's counsel and the prosecuting attorney. The copy furnished to DYS must be kept confidential and is not a public record under the Public Records Law, and the copies made available to the adjudicated delinquent child or the adjudicated delinquent child's counsel and the prosecuting attorney must 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. (R.C. 2151.355(H) (repealed) and R.C. 2152.19(D).)

### **Community control-related searches**

Similar to prior law, during the period of a delinquent child's community control granted under the act, as described above, authorized probation officers engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the delinquent child's person or place of residence, 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 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 child is not abiding by the law or otherwise is not complying with the conditions of the child's community control. The court that places a delinquent child on community control must provide the delinquent child with a written notice that informs the child of this right of search. The court also must provide the child's parent, guardian, or other custodian with a written notice that informs them of the right of search, which notice must 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. (R.C. 2152.19(E) and repeal of R.C. 2151.355(L) and 2151.411(C)(2).)

### **Warning to parent, guardian, or other person having care of an habitual or chronic truant**

Similar to prior law, under the act, if a child is adjudicated a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of R.C. 3321.38, in addition to any order of disposition it makes, the court must warn the parent, guardian, or

other person that any subsequent adjudication of the child as an unruly or delinquent child for being an habitual or chronic truant may result in a criminal charge against the parent, guardian, or other person having care of the child (R.C. 2151.355(B)(2) (repealed) and R.C. 2152.19(E)).

### **Consideration of age of victim, in specified circumstances**

The act repeals a provision requiring the court, at the dispositional hearing and prior to making any disposition of a delinquent child, to determine whether a victim of the delinquent act was five years of age or younger at the time the delinquent act was committed, sustained physical harm during the commission of or otherwise as a result of the delinquent act, or was 65 years of age or older or permanently and totally disabled at the time the delinquent act was committed, and whether the delinquent act would have been an offense of violence if committed by an adult. If the victim was five years of age or younger, sustained physical harm, or was 65 years of age or older or permanently and totally disabled, regardless of whether the child knew the age of the victim, and if the act would have been an offense of violence if committed by an adult, the court must consider those facts in favor of imposing commitment to a school, camp, institution, or other facility for delinquent children or to DYS, but those facts do not control the court's decision. (R.C. 2151.355(E)(1) (repealed).)

### **Conforming changes**

The act modifies numerous provisions to conform them to its changes regarding disposition alternatives for adjudicated delinquent children, as described above, and to make related technical changes (R.C. 109.42(A)(13), 109.54(C)(1), 109.573, 2151.14(A) and (D)(1), 2151.35(A), 2151.354(A)(2) and (5), 2151.3510, 2152.21(A)(6), 2152.71(B)(4) and (6), 2152.72(D)(2) and (3), 2152.74, 2744.01, 2744.03, 2923.32(D), 2923.34(M), 2929.23(E)(1), 2930.12(B), 2930.13(A) and (D), 3109.41, 3301.121(B)(3)(a), 3321.19(A), 3321.22(A), 5139.01(A)(3) and (13)(d) and (e), 5139.04, 5139.05, 5139.06, 5139.20(D), 5139.281, 5139.32, 5139.35, and 5139.51(C)).

### **Electronically monitored house arrest**

#### **Prior law**

Prior law authorized the use, in criminal sentencing contexts, of electronically monitored house arrest (R.C. 2929.17, 4507.99, and 4511.99, etc.) and the use, as a disposition for delinquent children, of electronically monitored house detention (R.C. 2151.355). The house arrest or house detention was required to be in accordance with the criteria and procedures set forth in R.C.

2929.23 and was required to utilize an "electronic monitoring device," as defined in that section.

### **Operation of the act**

The act eliminates "electronically monitored house detention" as a separate option available as a disposition for delinquent children and includes that type of disposition within "electronically monitored house arrest" (R.C. 2151.355(A)(11) and (13), (J), and (M) (repealed) and R.C. 2152.19(A)(3)(k) and 2929.23). It also expands the definition of "electronic monitoring device" to also include any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the Director of Rehabilitation and Correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved (R.C. 2929.23(A)(1)(c)).

### **Juvenile traffic offenders--prior law**

Under continuing law relocated under the act, a child who violates any traffic law, traffic ordinance, or traffic regulation of Ohio, the United States, or any political subdivision of Ohio, other than a resolution, ordinance, or regulation of a political subdivision of Ohio the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau, is designated as a "juvenile traffic offender" (R.C. 2151.021).

### **Dispositions available for juvenile traffic offenders--generally**

Generally, if a child is adjudicated a juvenile traffic offender, the court was authorized under prior law to make any of the following orders of disposition (R.C. 2151.356(A)):

(1) Impose a fine and costs in accordance with the schedule set forth in the Juvenile Law;

(2) Suspend 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. A child whose license or permit was so suspended was ineligible for issuance of a license or permit during the period of suspension. At the end of the period of suspension, the child was prohibited from being reissued a license or permit until the child paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.

(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 was revoked was ineligible

for issuance of a license or permit during the period of revocation. At the end of the period of revocation, the child was prohibited from being reissued a license or permit until the child paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.

(4) Place the child on probation;

(5) Require the child to make restitution for all damages caused by the child's traffic violation or any part of the damages;

(6) If the child was adjudicated a juvenile traffic offender for committing a violation of state OMVI or of a municipal ordinance that was substantially comparable to that offense, commit the child, for not longer than five days, to the temporary custody of a detention home or district detention home, or to the temporary custody of any school, camp, institution, or other facility for children operated in whole or in part for the care of juvenile traffic offenders of that nature by the county, by a district, or by a private agency or organization within Ohio that was authorized and qualified to provide the care, treatment, or placement required. If an order of disposition committing a child to the temporary custody of a home, school, camp, institution, or other facility of that nature was made, the length of the commitment was prohibited from being 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) If, after making a disposition under paragraphs (1) to (6), above, the court found upon further hearing that the child failed to comply with the orders of the court and the child's operation of a motor vehicle constituted the child a danger to the child and to others, the court could make any of the following dispositions authorized for delinquent children, except that the child could not be committed to or placed in a secure correctional facility unless authorized by paragraph (6), above, and commitment to or placement in a detention home could not exceed 24 hours:

(a) Any order authorized for a child adjudicated to be an abused, neglected, or dependent child;

(b) Place the child on probation under any conditions that the court prescribed;

(c) If the child was adjudicated a juvenile traffic offender for committing an act that would be a felony if committed by an adult and was committed to the legal custody of the Department of Youth Services (DYS) for that act and if the court determined that the child, if the child was an adult, would be guilty of one of a number of firearms specifications in relation to the act for which the child was

adjudicated a juvenile traffic offender, commit the child to the legal custody of the DYS for institutionalization in a secure facility for a specified period of time that depends on the manner in which the firearm was used in the commission of the act, subject to specified limitations;

(d) If the child was adjudicated a juvenile traffic offender for committing a category one offense or a category two offense and was committed to the legal custody of DYS for that act and if the court determined that the child, if the child was an adult, would be guilty of a "gang activity" specification in relation to the act for which the child was adjudicated a juvenile traffic offender, commit the child to the legal custody of DYS for institutionalization in a secure facility for a period of not less than one year or more than three years, subject to specified limitations.

(e) Impose a fine and costs in accordance with the schedule set forth in the Juvenile Law;

(f) Require the child to make restitution for all or part of the property damage caused by the child's delinquent act;

(g) Subject to specified limitations, 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;

(h) If the child was 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" eligible for a period of electronically monitored house detention, impose a period of electronically monitored house detention that did not exceed the maximum sentence of imprisonment that could be imposed upon an adult who committed the same act;

(i) Commit the child to the temporary or permanent custody of the court.

**Dispositions available for juvenile traffic offenders--other OMVI and OMVUAC dispositions**

If a child was adjudicated a juvenile traffic offender for state OMVI, the court was required to 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 specified drug abuse or alcohol abuse education, intervention, or treatment program. During the time the child attended the program, the court was required to retain any permit or license issued to the child

and was required to return the permit or license when the child satisfactorily completed the program. If a child was adjudicated a juvenile traffic offender for underage OMVI or OMVUAC, the court was required to suspend the temporary instruction permit, probationary driver's license, or driver's license issued to the child for a period of not less than 60 days nor more than two years. (R.C. 2151.356(B).)

### **Juvenile traffic offenders--operation of the act**

#### **Relocation**

The act renumbers R.C. 2151.356 as R.C. 2152.21, and makes a few changes in it, as described below.

#### **Financial sanctions**

The act replaces the provision that authorizes the imposition as a disposition of a fine and costs under R.C. 2151.3512 with a provision that authorizes the imposition of any financial sanction and costs under the act's R.C. 2152.20, as described below in "**Financial sanctions for delinquent children and juvenile traffic offenders--operation of the act**" (R.C. 2152.21(A)(1)).

#### **Driver's licenses--generally**

Rather than suspend the license for the period that the court prescribes, the act authorizes the court to suspend 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 a definite period not exceeding two years. The act repeals the juvenile court's authority to revoke the child's driver's license, probationary driver's license, or temporary instruction permit and the registration of all motor vehicles registered in the name of the child. (R.C. 2152.21(A)(2) and repeal of (A)(3).)

#### **Community control**

The act replaces the prior provision that authorizes probation as a disposition of the child with a provision authorizing the use of community control as a disposition of the child (R.C. 2152.21(A)(3)).

#### **Further dispositions**

The act revises the provision authorizing the court, upon finding that the child has failed to comply with the previously issued dispositional orders of the court and the child's operation of a motor vehicle constitutes the child a danger to the child and to others, to make specified delinquency dispositions. Under the act,

in such circumstances the court may make any disposition authorized for an abused, dependent, or neglected child, place the child on community control as authorized for a delinquent child, commit the child to the custody of the court, or make any further disposition the court finds proper other than one the act prohibits a court from imposing on a delinquent child. (R.C. 2152.21(A)(6) and 2152.19(A)(1), (3), (4), and (7).)

### **OMVI related dispositions**

Under the act, if a child is adjudicated a juvenile traffic offender for state OMVI or state OMVUAC, in addition to any other order of disposition made, the court must suspend the temporary instruction permit, probationary driver's license, or driver's license issued to the child for a definite period of not less than three months or more than two years. (R.C. 2152.21(B).)

The act retains the provision that specifies that a child who is adjudicated a juvenile traffic offender for having committed a state OMVI violation under R.C. 4511.19(A) or a violation of a substantially comparable municipal ordinance may be confined in a detention facility or district detention facility pursuant to the act's R.C. 2152.21(A)(5), relocated from former R.C. 2151.356(A)(6), only if the child is kept separate and apart from alleged delinquent children (R.C. 2152.41(B)).

### **Encouragement for rule changes**

The act includes a provision under which the General Assembly encourages the Ohio Supreme Court to amend Juvenile Rule 29(C) to permit "no contest" pleas in juvenile traffic offender and non-traffic cases with the consent of the juvenile court in a manner similar to Criminal Rule 11. Children paying fines to juvenile traffic violations bureaus should be required to admit guilt, with parental knowledge. (Section 6 of the act.)

The act also includes a provision under which the General Assembly encourages the Ohio Supreme Court to amend Traffic Rule 2 to exclude juvenile courts from the definition of "court" and to amend Traffic Rule 13 to authorize juvenile courts to create violations bureaus for the payment of tickets that involve first offense minor misdemeanor traffic offenses that did not result in an accident. (Section 7 of the act.)

### **Technical changes**

The act makes a number of technical and conforming changes throughout the Revised Code that are related to the above juvenile traffic offenders changes (R.C. 2151.14(D)(1), 2151.27, and 2152.26(C)).

**Financial sanctions for delinquent children and juvenile traffic offenders--prior law**

Prior law provided for financial sanctions that could be imposed upon a child who was adjudicated a delinquent child. One of the sanctions was restitution that could be required in specified circumstances. Another specified that, if a child was adjudicated a delinquent child or was adjudicated a juvenile traffic offender (j.t.o.) for the following specified felony or misdemeanor class or felony, the court could make an order of disposition of the child under the applicable dispositional section by imposing a fine and costs in accordance with the following schedule (R.C. 2151.3512):

- (1) For an act that would be a minor misdemeanor or an unclassified misdemeanor if committed by an adult, a fine not to exceed \$50 and costs;
- (2) For an act that would be a misdemeanor of the fourth degree if committed by an adult, a fine not to exceed \$75 and costs;
- (3) For an act that would be a misdemeanor of the third degree if committed by an adult, a fine not to exceed \$125 and costs;
- (4) For an act that would be a misdemeanor of the second degree if committed by an adult, a fine not to exceed \$125 and costs;
- (5) For an act that would be a misdemeanor of the first degree if committed by an adult, a fine not to exceed \$250 and costs;
- (6) 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 \$300 and costs;
- (7) For an act that would be a felony of the fourth degree if committed by an adult, a fine not to exceed \$400 and costs;
- (8) For an act that would be a felony of the third degree if committed by an adult, a fine not to exceed \$750 and costs;
- (9) For an act that would be a felony of the second degree if committed by an adult, a fine not to exceed \$1,000 and costs;
- (10) For an act that would be a felony of the first degree if committed by an adult, a fine not to exceed \$1,450 and costs;
- (11) For an act that would be aggravated murder or murder if committed by an adult, a fine not to exceed \$1,800 and costs.

**Financial sanctions for delinquent children and juvenile traffic offenders--  
operation of the act**

The act relocates the fine and cost schedule into new R.C. Chapter 2152. and modifies the schedule. It also includes in the new section numerous other provisions that relate to financial sanctions for delinquent children and juvenile traffic offenders.

**Financial sanctions**

Under the act, if a child is adjudicated a delinquent child or a j.t.o., the court may order any of the following dispositions, in addition to any other disposition authorized or required by new Chapter 2152. (R.C. 2151.355(A)(8), 2151.356(A)(1), and 2151.3512 (repealed) and R.C.2152.20(A)(1):

- (1) Impose a fine in accordance with the following schedule:
  - (a) For an act that would be a minor misdemeanor or an unclassified misdemeanor if committed by an adult, a fine not to exceed \$50;
  - (b) For an act that would be a misdemeanor of the fourth degree if committed by an adult, a fine not to exceed \$100;
  - (c) For an act that would be a misdemeanor of the third degree if committed by an adult, a fine not to exceed \$150;
  - (d) For an act that would be a misdemeanor of the second degree if committed by an adult, a fine not to exceed \$200;
  - (e) For an act that would be a misdemeanor of the first degree if committed by an adult, a fine not to exceed \$250;
  - (f) 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 \$300;
  - (g) For an act that would be a felony of the fourth degree if committed by an adult, a fine not to exceed \$400;
  - (h) For an act that would be a felony of the third degree if committed by an adult, a fine not to exceed \$750;
  - (i) For an act that would be a felony of the second degree if committed by an adult, a fine not to exceed \$1,000;
  - (j) For an act that would be a felony of the first degree if committed by an adult, a fine not to exceed \$1,500;

(k) For an act that would be aggravated murder or murder if committed by an adult, a fine not to exceed \$2,000.

(2) Require the child to pay costs R.C. 2151.355(A)(8) and 2151.356(A)(1) (repealed) and R.C. 2152.20(A)(2);

(3) Require the child to make restitution to the victim of the child's delinquent act or, if the victim is deceased, to a survivor of the victim, in an amount based upon the victim's "economic loss" (see "***Other definitions for new R.C. Chapter 2152.***" above) caused by or related to the delinquent act. Restitution required under this provision must 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 delinquent child's insurer, for amounts paid to the victim or to any survivor of the victim for economic loss resulting from the delinquent act. If reimbursement to a third party is required, the reimbursement must be made to any governmental agency to repay any amounts it paid to the victim or any survivor of the victim before any reimbursement is made to any other person.

Restitution required under this provision 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 or survivor of the victim, the performance of community service work, any other form of restitution devised by the court, or any combination of the above types of restitution. The court may base the restitution on an amount recommended by the victim or survivor of the victim, the delinquent child, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and any other information. If the amount of the restitution is disputed by the victim or survivor or by the delinquent child, the court must hold a hearing on the restitution. The court must determine, or order the determination of, the amount of the restitution. All restitution payments must be credited against any recovery of economic loss in a civil action brought by or on behalf of the victim against the delinquent child or the delinquent child's parent, guardian, or other custodian. The court may order that the delinquent child pay a surcharge, in an amount not exceeding 5% of the amount of restitution otherwise ordered under this provision, to the entity responsible for collecting and processing the restitution payments.

The victim or the survivor of the victim may request that the prosecuting authority file a motion, or the delinquent child may file a motion, for modification of the payment terms of any restitution ordered under this provision, based on a substantial change in the delinquent child's ability to pay. (R.C. 2151.355(A)(2) and (9) (repealed) and R.C. 2152.20(A)(2).)

(4) Require the child to reimburse any or all of the costs incurred for services or sanctions provided or imposed, including, but not limited to, the following: (a) all or part of the costs of implementing any community control imposed as a disposition, including a supervision fee or (b) all or part of the costs of confinement in a residential facility or in a DYS institution, including, but not limited to a per diem fee for room and board, the costs of medical and dental treatment provided, and the costs of repairing property the delinquent child damaged while so confined. The amount of reimbursement ordered under clause (b) cannot exceed the total amount of reimbursement the child is able to pay as determined at a hearing and cannot exceed the actual cost of the confinement. Any reimbursement so ordered may be collected by the court. If the court does not order reimbursement under clause (b), confinement costs may be assessed pursuant to a repayment policy adopted under specified provisions of continuing law. (R.C. 2152.20(A)(4).)

**Corrupt activity, felony drug abuse offense, and gang-related activity forfeitures**

As under prior law, if a child is adjudicated a delinquent child for engaging in corrupt activity, the court must enter an order of criminal forfeiture against the child in accordance with the Corrupt Activity Law. Also, as under prior law, the felony drug abuse offense forfeiture provisions apply to children who are or could be adjudicated to be delinquent children for an act that, if committed by an adult, would be a felony drug abuse offense. And, as under prior law, gang-related activity forfeiture provisions apply to children who are or could be adjudicated to be delinquent children for a prohibited gang-related act. (R.C. 2151.355(B)(1) and (I) (repealed) and R.C. 2152.20(B), 2923.32, 2923.44 to 2923.47, and 2925.41 to 2925.45.)

**Hearing regarding ability to pay**

The act specifies that the court may hold a hearing if necessary to determine whether a child is able to pay a financial sanction under the above-described provisions (R.C. 2152.20(C)).

**Community service in lieu of financial sanction**

If an adjudicated delinquent child is indigent, the court must consider imposing a term of community service under R.C. 2152.19(A) in lieu of imposing a financial sanction under the above-described provisions. If an adjudicated delinquent child is not indigent, the court may impose a term of community service under that provision in lieu of, or in addition to, imposing a financial sanction. The court may order community service for an act that, if committed by an adult, would be a minor misdemeanor.

If a child fails to pay a financial sanction imposed under the above-described provisions, the court may impose a term of community service in lieu of the sanction. (R.C. 2152.20(D).)

### **Collection and payment of financial sanctions**

The clerk of the court, or another person authorized by law or by the court to collect a financial sanction imposed under the above-described provisions, may do any of the following (R.C. 2152.20(E)):

(1) Enter into contracts with one or more public agencies or private vendors for the collection of the amounts due under the financial sanction, which amounts may include interest from the date of the imposition of the financial sanction;

(2) Permit payment of all, or any portion of, the financial sanction in installments, by credit or debit card, by another type of electronic transfer, or by any other reasonable method, within any period of time, and on any terms that the court considers just, except that the maximum time permitted for payment cannot exceed five years. The clerk may pay any fee associated with processing an electronic transfer out of public money and may charge the fee to the delinquent child.

(3) To defray administrative costs, charge a reasonable fee to a child who elects a payment plan rather than a lump sum payment of a financial sanction.

### **Release from confinement in a DYS institution**

The act relocates to new Chapter 2152. the procedures regarding the granting of releases from DYS prior to the expiration of the child's prescribed period of commitment, and the related provisions, previously contained in R.C. 2151.38, and modifies some of those procedures.

### **In general**

The act specifies that, as under prior law, when a child is committed to DYS's legal custody, the juvenile court relinquishes control with respect to the child so committed, except in relation to "judicial releases" (note that, as described below, former "early releases" are renamed) and "supervised releases," as described below. Except in relation to judicial releases, as described below, and subject to certain specified R.C. sections and any other provision of law that specifies a different duration for a dispositional order, all other dispositional orders made by the court under new Chapter 2152. are temporary and continue for a period designated by the court in its order, until terminated or modified by the court or until either the child attains 21 years of age. DYS cannot release the child

from a DYS facility and as a result cannot discharge the child or order the child's release on supervised release prior to the expiration of the period of court control over the child or prior to the child's attainment of 21 years of age, except upon the order of a court pursuant to a judicial release, as described below, or in accordance with continuing medical release or discharge provisions. (R.C. 2152.22(A).)

As under prior law, when a child is committed to DYS's legal custody, the court retains jurisdiction to perform specified functions with respect to the granting of supervised release by DYS's Release Authority and with respect to violations of, and the revocation of, supervised release granted by the Release Authority (R.C. 2152.22(G)).

### **Judicial release to court supervision**

The act establishes procedures for a type of release called "judicial release to court supervision," which is most comparable to the prior law's judicial release. The act specifies that the court that commits a delinquent child to DYS may grant *judicial release of the child to court supervision*, as described below, during any of the following periods that are applicable, provided any firearms specification or gang-related activity specification commitment has ended: (1) if the child was given a traditional juvenile disposition for an act that would be a felony of the third, fourth, or fifth degree if committed by an adult, at any time during the first 90 days of the period of court control over the child, (2) if the child was given a serious youthful offender disposition or a traditional juvenile disposition, or both, for an act that would be a felony of the first or second degree if committed by an adult, at any time during the first 180 days of the period of court control over the child, or (3) if the child was committed to DYS until the child attains 21 years of age for an aggravated murder or murder, at any time during the first half of the prescribed period of that commitment.

If DYS desires to release a child during a period specified in the preceding paragraph, it must request the court that committed the child to grant a judicial release of the child to court supervision. During 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 to court supervision. Upon receipt of a request for such a release from DYS, the child, or the child's parent, or upon its own motion, the court that committed the child must do one of the following: (1) approve the release by journal entry, (2) schedule within 30 days after the request is received a time for a hearing on whether the child is to be released, or (3) reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for such a release by the child or the child's parent, the child or parent may make one additional request for a judicial release to court supervision within the applicable period. The additional request

may be made no earlier than 30 days after the filing of the prior request for such a release. Upon the filing of a second request for a judicial release to court supervision, the court must either approve or disapprove the release by journal entry or schedule within 30 days after the request is received a time for a hearing on whether the child is to be released.

If a court schedules a hearing to determine whether to grant a child a judicial release to court supervision, it may order DYS to deliver the child to the court on the date set for the hearing and to present to the court a report on the child's progress in the institution to which the child was committed and recommendations for conditions of supervision of the child by the court after release. The court may conduct the hearing without the child being present. The court must determine at the hearing whether the child should be granted a judicial release to court supervision.

If the court approves the release, it must order its staff to prepare a written treatment and rehabilitation plan for the child that may include any conditions of the child's release that were recommended by DYS and approved by the court. The committing court must send a copy of the recommended plan to the juvenile court of the county in which the child is placed. The court of the county in which the child is placed may adopt the recommended conditions set by the committing court as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is granted a judicial release to court supervision, the release discharges the child from DYS's custody. (R.C. 2152.22(B).)

### **Judicial release to DYS supervision**

The act establishes procedures for a type of release called "judicial release to DYS supervision," which is most comparable to prior law's early release. Under the act, the court that commits a delinquent child to DYS may grant *judicial release of the child to DYS supervision*, as described below, during any of the following periods of time that are applicable provided any commitment imposed for a firearms specification has ended: (1) if the child was given a traditional juvenile disposition for an act that would be a felony of the third, fourth, or fifth degree if committed by an adult, at any time during the period of court control over the child, provided at least 90 days of that period have elapsed, (2) if the child was given a serious youthful offender disposition and a traditional juvenile disposition for an act that would be a felony of the first or second degree if committed by an adult, at any time during the period of court control over the child, provided at least 180 days of that period have elapsed, or (3) if the child was committed to DYS until the child attains 21 years of age for an aggravated murder or murder, at any time during the second half of the prescribed period of that commitment.

If DYS desires to release a child during a period specified in the preceding paragraph, it must request the court that committed the child for a *judicial release to DYS supervision*. During whichever of those periods is applicable, the child or the child's parent also may request the court that committed the child to grant such a release. Upon receipt of a request for judicial release to DYS supervision (*by DYS*), the child, or the child's parent, or upon its own motion at any time during that period, the court must do one of the following: (1) approve the release by journal entry, (2) schedule a time within 30 days after receipt of the request for a hearing on whether the child is to be released, or (3) reject the request by journal entry without conducting a hearing.

If the court rejects an initial request for such a release by the child or the child's parent, the child or parent may make one or more subsequent requests for such a release within the applicable period, but may make no more than one such request during each period of 90 days that the child is in a secure DYS facility after the filing of a prior request for early release. Upon the filing of a request for such a release subsequent to an initial request, the court must either approve or disapprove the release by journal entry or schedule a time within 30 days after receipt of the request for a hearing on whether the child is to be released. (R.C. 2152.22(C)(1) and (2).)

If a court schedules a hearing to determine whether to grant a child a judicial release to DYS supervision, it may order DYS to deliver the child to the court on the date set for the hearing and must order DYS 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 must determine at the hearing whether the child should be granted a judicial release to DYS supervision.

If the court approves the judicial release to DYS supervision, DYS must prepare a written treatment and rehabilitation plan for the child that must include the conditions of the child's release. It must send the committing court and the juvenile court of the county in which the child is placed a copy of the plan. The court of the county in which the child is placed may adopt the conditions set by DYS as an order of the court and may add any additional consistent conditions it considers appropriate, provided that it may not add any condition that decreases the level or degree of supervision DYS specified in its plan, that substantially increases the financial burden of supervision that DYS will experience, or that alters the placement DYS specified in its plan. If the court of the county in which the child is placed adds to DYS's plan any additional conditions, it must enter those additional conditions in its journal and send to DYS a copy of the journal entry of the additional conditions.

If the court approves the judicial release to DYS supervision, the actual date on which DYS must release the child is contingent upon DYS finding a suitable placement for the child. If the child is to be returned to the child's home, DYS must return the child on the date that the court schedules for the child's release or must bear the expense of any additional time that the child remains in a DYS facility. If the child is unable to return to the child's home, DYS must exercise reasonable diligence in finding a suitable placement for the child, and the child must remain in a DYS facility while DYS finds the suitable placement. (R.C. 2152.22(C)(3).)

Prior to the release of a child pursuant to a judicial release to DYS supervision, DYS must 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 must include conditions of the release, (2) completely discuss the conditions of the plan 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 signed by the child, the child's parents, guardian, or legal 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 judicial release to DYS supervision, and (4) file a copy of the treatment plan, 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 (R.C. 2152.22(E)).

DYS must file a written progress report with the committing court regarding each child released pursuant to a judicial release to DYS supervision, at least once every 30 days unless specifically directed otherwise by the court. The report must indicate the treatment and rehabilitative progress of the child and the child's family, if applicable, and must include any suggestions for altering the program, custody, living arrangements, or treatment. DYS retains legal custody of a child so released until it discharges the child or until the custody is terminated as otherwise provided by law. (R.C. 2152.22(F).)

**Violation of judicial release to court supervision or judicial release to DYS supervision; revocation**

If a child is released under a judicial release to court supervision or a judicial release to DYS supervision, as described above, and the court of the county in which the child is placed has reason to believe that the child's deportment is not in accordance with the conditions of the child's judicial release, that court must schedule a time for a hearing to determine whether the child violated any of the post-release conditions, and, if the child was released under a judicial release to DYS supervision, specified additional provisions apply regarding the child.

If that court determines at the hearing that the child violated any of the post-release conditions, the court, if it determines that the violation was a serious violation, may order the child to be returned to DYS for institutionalization, 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 it considers proper. If that court orders the child to be returned to DYS, the time during which the child was held in a secure DYS facility prior to the child's judicial release must be considered as time served in fulfilling the prescribed period of institutionalization applicable to the child under the child's original order of commitment. If the court orders the child returned to DYS, the child must remain in institutional care for a minimum of three months or until the child successfully completes a revocation program of a duration of not less than 30 days operated either by DYS or by an entity with which DYS has contracted to provide a revocation program. (R.C. 2152.22(D).)

### **Supervised release; conforming changes**

The act modifies the procedures that govern supervised release only to conform them to its changes regarding commitment to DYS, its changes regarding judicial release, and its changes regarding extended juvenile jurisdiction, both as described above (R.C. 5139.51(A) and (C), 5139.52, and 5139.53(A)).

The act also modifies numerous provisions to conform them to its changes regarding judicial release and early release, as described above, and to make related technical changes (R.C. 2151.72(D)(3)(a), 5139.01(A)(6), (13), (27), and (28), 5139.05, 5139.06, 5139.07, 5139.11, 5139.18, 5139.20, 5139.50, 5139.51, 5139.52, 5139.53, and 5139.54).

### **Jury trial procedures**

#### **Prior and continuing law**

Prior law provided that the juvenile court must hear and determine all cases of children without a jury, except that R.C. 2151.47 applied in cases involving a complaint that jointly alleged that a child was an unruly or delinquent child for being an habitual or chronic truant and that a parent, guardian, or other person having care of the child failed to cause the child's attendance at school (R.C. 2151.35(A)(1)). Under continuing law, R.C. 2151.47 provides that any adult who is arrested or charged under any provision in R.C. Chapter 2151. and who is charged with a crime may demand a trial by jury, or the juvenile judge upon the judge's own motion may call a jury. Specified provisions of the Criminal Code that relate to the drawing and impaneling of jurors in criminal cases in the court of common pleas, other than in capital cases, apply to the jury trial.

Under prior law, R.C. 2945.17 provided that, at any trial, in any court, for the violation of any Ohio statute, or of any ordinance of any municipal corporation, except in cases in which the penalty involved does not exceed a fine of \$100, the accused has the right to be tried by a jury.

### **Operation of the act**

The act repeals the provision specifying that R.C. 2151.47 applies in cases involving a complaint that jointly alleges that a child is an unruly or delinquent child for being an habitual or chronic truant and that a parent, guardian, or other person having care of the child failed to cause the child's attendance at school (R.C. 2151.35(A)(1) in Section 1 of the act).

The act also amends R.C. 2945.17 to provide that that section does not apply to, and there is no right to a jury trial for, a person who is the subject of a complaint filed under R.C. 2151.27 against both a child and the parent, guardian, or other person having care of the child (Section 1 of the act).

Finally, the act renumbers R.C. 2151.47 as R.C. 2152.67.

### **Parental control orders**

#### **Prior law**

Prior law provided that in any proceeding wherein a child had been adjudged delinquent, unruly, abused, neglected, or dependent, on the application of a party, or the court's own motion, the court could 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 found both of the following:

- (1) An order of that nature was necessary to control any conduct or relationship that would be detrimental or harmful to the child;
- (2) That conduct or relationship would tend to defeat the execution of the order of disposition made or to be made.

The court was required to give due notice of the application or motion, the grounds therefor, and an opportunity to be heard to the person against whom the order is directed. (R.C. 2151.359.)

#### **Operation of the act**

The act limits the application of R.C. 2151.359 to abused, neglected, dependent, and unruly children. It enacts new R.C. 2152.61 and includes in that section comparable provisions regarding the court's authority to issue orders

controlling a parent, guardian, or custodian of a delinquent child or a juvenile traffic offender. For orders under either section, the act enacts language that provides that the order made by the court restraining or otherwise controlling the conduct of any parent, guardian, or other custodian in the relationship of the individual to the child 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 controls required by the court. The act provides that a person's failure to comply with any order made by the court under either provision is contempt of court. (R.C. 2151.359 and 2152.61.)

The act modifies the content of the victims rights pamphlet that continuing law requires the Attorney General to prepare to require the pamphlet to contain a description of R.C. 2151.359 and 2152.61 (R.C. 109.42(A)(2)).

### **Underage purchase of a firearm or a handgun**

#### **Prior and continuing law**

Continuing law prohibits a person under 18 years of age from purchasing or attempting to purchase a firearm. Under prior law, whoever violated that prohibition was guilty of underage purchase of a firearm, was a delinquent child, and was subject to an order of disposition for delinquent children under the Juvenile Law. (R.C. 2923.211, 2151.02(C), and 2151.022(H).)

#### **Operation of the act**

Under the act, underage purchase of a firearm is a delinquent act that would be a felony of the fourth degree if it could be committed by an adult. As a result, dispositions available for a child who commits an act that would be a felony of the fourth degree if committed by an adult will be available for a child who commits underage purchase of a firearm. See "**Traditional delinquency dispositions**" above, for a description of the available delinquency dispositions. (R.C. 2923.211, 2151.022(D), and 2152.01(E).)

### **Parental access to court records**

Under prior law, the parents of any child affected by an official case brought before a juvenile court, if they were living, or the nearest of kin of the child, if the parents were deceased, were expressly authorized to inspect the records of the case, either in person or by counsel during the hours in which the court was open (R.C. 2151.18(A)(1)).

The act repeals this provision (R.C. 2152.71(A)(1)).

**Juvenile court commitment of adult females to Department of Rehabilitation and Correction**

The act repeals a provision that specified that, when any female over 18 years of age was found guilty of a misdemeanor under the Juvenile Code (R.C. Chapter 2151.), the juvenile judge could order the female committed to the Department of Rehabilitation and Correction for the same term for which the female could be committed to a workhouse or jail (Section 2--repeal of R.C. 2151.48).

**Provision for dependent children of person sentenced to a workhouse**

Prior law provided that, when an adult was sentenced to imprisonment for the offense of nonsupport of dependents or contributing to the nonsupport of dependents or the offense of endangering children, the county from which the adult person was sentenced, on the order of the juvenile judge, was required to pay from the general revenue fund 50¢ for each day the prisoner was confined to the juvenile court of that county, for the maintenance of the dependent children of the prisoner. The expenditure was required to be made under the direction of the judge, who was required to designate an employee for that purpose. The board of county commissioners of the county was required to make an appropriation for these cases, and allowances from the appropriation was required to be paid from the county treasury upon the warrant of the county auditor. (R.C. 2151.51.)

The act repeals R.C. 2151.51, as described above (Section 2--repeal of R.C. 2151.51).

**Expense of extradition**

Prior law provided that the board of county commissioners was required to pay all necessary expenses in pursuing and returning a person who was charged with a violation of a provision of the Juvenile Code and had fled to another state or territory if the Governor had issued a requisition for the person (R.C. 2151.45).

The act repeals R.C. 2151.45, as described above (Section 2--repeal of R.C. 2151.45).

**Bail**

Prior law provided that the Revised Code section dealing with bail in criminal cases in the court of common pleas apply to adults committed or held under the Juvenile Code (R.C. 2151.46).

The act repeals R.C. 2151.46, as described above (Section 2--repeal of R.C. 2151.46).

**Parental control and authority over a child; parental control of child on probation**

**Prior law**

Prior law provided that a parent of a child whose marriage to the other parent of the child had not been terminated by divorce, dissolution of marriage, or annulment, the residential parent and legal custodian of the child, a guardian who had custody of a child, or any other custodian of a child was charged with the control of the child and had the power to exercise parental control and authority over the child.

It also specified that, if a child was adjudicated a delinquent child and placed on probation, if a parent of the child whose marriage to the other parent of the child had not been so terminated or the residential parent and legal custodian of the child was notified prior to the adjudication hearing of the provisions described in this paragraph and of the possibility that the provisions could be applied to the parent, and if the court found at the hearing that the parent had failed or neglected to subject the child to reasonable parental control and authority and that that parent's failure or neglect was the proximate cause of the act or acts of the child upon which the delinquency adjudication was based, the court could require that parent to enter into a recognizance with sufficient surety, in an amount of not more than \$500, conditioned upon the faithful discharge of the conditions of probation of the child. If the child then committed a second act and was adjudicated a delinquent child for the commission of the second act or violated the conditions of probation and if the court found at the hearing that the failure or neglect of a parent of the child whose marriage to the other parent of the child had not been terminated or the parent who was the residential parent and legal custodian of the child to subject the child to reasonable parental control and authority or faithfully to discharge the conditions of probation of the child on the part of that parent was the proximate cause of the act or acts of the child upon which the second delinquency adjudication was based or upon which the child was found to have violated the conditions of probation, the court could declare all or a part of the recognizance forfeited. The proceeds of the forfeited recognizance were used to pay any damages caused by the child, and the proceeds of the forfeited recognizance remaining after the payment of any damages were required to be paid into the county treasury. This provision did not apply to foster parents.

Additionally, it specified that, if a child was adjudicated a delinquent child, the court could issue an order requiring either parent or both parents of the child whose marriage to the other parent of the child had not been so terminated, the parent who was the residential parent and legal custodian of the child, or the guardian or other custodian of the child to exercise appropriate and necessary control and authority over the child to ensure that the child complied with the

terms and conditions of probation imposed upon the child, treatment or testing that the child was required to take part in, and the terms of any other order of disposition that the court imposed upon the child. The court was required to give a copy of the order to the child and to the subject parent, guardian, or custodian and was required to notify that parent, guardian, or custodian that a willful failure to comply with the order would be contempt of court. If the court determined that any parent, guardian, or custodian willfully failed to comply with the order, it could punish the parent, guardian, or custodian for contempt of court or take other action that it determined to be necessary to ensure that the child would comply with the terms and conditions of the order of disposition.

Finally, it provided that, if a child was adjudicated a delinquent child and was granted probation, the court that placed the child on probation was required to provide a specified written notice to the each parent of the child whose marriage to the other parent of the child had not been so terminated, to the parent of the child who was the residential parent and legal custodian of the child (and, generally, the other child's other parent), and to the guardian or other custodian of the child. The notice was required to inform the recipients that authorized probation officers engaged within the scope of their supervisory duties or responsibilities could conduct searches during the period of probation in specified circumstances.

The above-described provisions dealing with the failure or neglect of parents to subject a child to reasonable parental control and authority were in addition to and not in substitution for any other provision of the Juvenile Code dealing with the failure or neglect of a person to exercise parental control or authority over a child. (R.C. 2151.411.)

### **Operation of the act**

The act repeals R.C. 2151.411, as described above (Section 2--repeal of R.C. 2151.411). Its provisions dealing with searches by probation officers and notice of that right are relocated in R.C. 2152.19(F)(2). The act enacts provisions that give a juvenile court general authority to issue an order restraining or controlling the conduct of any parent, guardian, or custodian of an adjudicated delinquent child or juvenile traffic offender (R.C. 2152.61, as described above in "**Parental control orders**"). The other provisions of R.C. 2151.411 are not relocated or retained.

### **DYS transfer of incorrigibles to a reformatory**

#### **Prior law**

Prior law provided that, upon the written order of DYS, any child in its legal custody who was over 16 years of age could be transferred to *an appropriate*

*state reformatory for men or women* when the child was incorrigible to the extent that he or she had a detrimental effect on the well-being of other children in DYS's custody, or when the child, because of previous conduct or criminal tendencies, appeared incapable of benefiting by the treatment or training afforded by DYS. Persons so transferred could be paroled or released upon the recommendation of the reformatory's superintendent and with the DYS's approval, but those persons were not subject to state control, either in the reformatory or on parole, after having reached 21 years of age. (R.C. 5139.24.)

Prior law, enacted in 1987, required the Director of Rehabilitation and Correction, by executive order issued on or before December 31, 1988, to eliminate the distinction between penal institutions and reformatory institutions. Notwithstanding any provision of the Revised Code or Administrative Code to the contrary, upon the issuance of the executive order, any distinction between the types of prisoners sentenced to or otherwise assigned to institutions under DRC's control was to be discontinued. (R.C. 5120.03(B).) Former R.C. Chapter 5143., which formerly governed DRC reformatories, was fully repealed by October 10, 1994.

### **Operation of the act**

The act repeals R.C. 5139.24, as described above (Section 2--repeal of R.C. 5139.24).

### **Tattooing, body piercing, or ear piercing for juveniles**

#### **Prior law**

Prior law included several prohibitions related to the provision of tattooing services, body piercing services, and ear piercing services to juveniles. These prohibitions prohibited, among other things (R.C. 3730.07(A)):

(1) Unless a statutorily prescribed consent had been given, an individual under age 18 from obtaining or attempting to obtain a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

(2) An individual under age 18 from knowingly showing or giving false information concerning the individual's name, age, or other identification for the purpose of obtaining a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

A person who violated either prohibition was designated a delinquent child and was subject to an order of disposition as a delinquent child that had to require the child to pay a fine not exceeding \$75 and costs for a violation of the prohibition described in paragraph (1) or a fine not exceeding \$225 and costs for a

violation of the prohibition described in paragraph (2). (R.C. 3730.99(C) and 2151.02.)

### **Operation of the act**

The act repeals both of these prohibitions (R.C. 3730.07(A)(1) and (2) and 3730.99(C)).

### **Employment protection**

#### **Prior law**

Prior law prohibited an employer from discharging or terminating from employment, threatening to discharge or terminate from employment, or otherwise punishing or penalizing any employee because of time lost from regular employment as a result of the employee's attendance *at any proceeding in a delinquency case pursuant to a subpoena*. The provision stated that it generally did not require and could not be construed to require an employer to pay an employee for time lost as a result of attendance at any proceeding in a delinquency case. However, if an employee was subpoenaed to appear *at a proceeding in a delinquency case* and the proceeding pertained to an offense against the employer or an offense involving the employee during the course of his employment, the employer could decrease or withhold the employee's pay for any time lost as a result of compliance with the subpoena. Any employer who knowingly violated this provision was in contempt of court. (R.C. 2151.211.)

#### **Operation of the act**

The act expands the provision to apply regarding an employee's attendance *at any proceeding under R.C. Chapter 2151. or 2152. pursuant to a subpoena*, not just a proceeding in a delinquency case (R.C. 2151.211).

### **Contributing to the unruliness or delinquency of a child**

#### **Continuing law**

Under continuing law, the Criminal Code prohibits *any person* from doing either of the following (R.C. 2919.24(A)):

- (1) Aiding, abetting, inducing, causing, encouraging, or contributing to a child or a ward of the juvenile court becoming an unruly child or a delinquent child;
- (2) Acting in a way tending to cause a child or a ward of the juvenile court to become an unruly child or a delinquent child.

A person who violates any of these prohibitions is guilty of contributing to the unruliness or delinquency of a child, a misdemeanor of the first degree. Each day of violation is a separate offense. (R.C. 2919.24(B).)

### **Operation of the act**

The act specifically includes *a parent, guardian, or other custodian* of a child in the prohibition against any person doing any of the acts that constitute the offense of contributing to the unruliness or delinquency of a child (R.C. 2919.24(A)).

### **Department of Youth Services Release Authority**

#### **Mode of operation**

Under prior law, the director of DYS was permitted to appoint an interim member to the Release Authority to fulfill the duties of a member who was on extended leave or disability status. The act revises this provision to provide that, if a member is on extended leave or disability status for more than 30 work days, the director may appoint an interim member to fulfill the duties of that member.

In addition, for the purposes of transacting the official business of the Release Authority, a majority of the members of the Release Authority constitutes a quorum. A majority vote of the quorum is required to determine the actions of the Release Authority.

The act also prohibits the Release Authority from delegating its authority to make final decisions regarding policy or the release of a child. (R.C. 5139.50(C), (D), and (G).)

#### **Powers and duties**

**Prior law.** Among its various duties, prior law required the Release Authority to do both of the following (R.C. 5139.50(E)(1) and (2)):

(1) Make decisions, in the interests of public safety and the children involved, regarding the release and discharge of all children committed to DYS's legal custody, except children placed on judicial release or early release by a juvenile court, children who had not completed a prescribed minimum period of time or prescribed period of time in a secure facility, or children who were required to remain in a secure facility until they attained 21 years of age;

(2) Establish written policies and procedures for conducting *periodic* reviews of the status of *children* in DYS custody, setting or modifying dates of release and discharge, *communicating to the court* the duration, terms, and

conditions of release to be carried out in supervised release subject to the addition of additional consistent terms and conditions by a court, and giving a child notice of all reviews.

**Operation of the act.** The act revises these duties to require the Release Authority to do both of the following (R.C. 5139.50(E)(1) and (2)):

(1) *Serve as the final and sole authority for making decisions*, in the interests of public safety and the children involved, regarding the release and discharge of all children committed to the legal custody of the Department of Youth Services, except children placed *by a juvenile court on judicial release to court supervision or on judicial release to DYS supervision* ("early release" under prior law), children who have not completed a prescribed minimum period of time or prescribed period of time in a secure facility, or children who are required to remain in a secure facility until they attain 21 years of age;

(2) Establish written policies and procedures for conducting reviews of the status *for all youth* in DYS custody, setting or modifying dates of release and discharge, *specifying* the duration, terms, and conditions of release to be carried out in supervised release subject to the addition of additional consistent terms and conditions by a court, and giving a child notice of all reviews.

The act also makes other conforming changes reflecting the transfer of responsibilities regarding the release and discharge of children in DYS custody from DYS proper to the Release Authority within DYS (R.C. 5139.55(A)(1)).

### **Office of Victims' Services**

Under prior law, the Office of Victims' Services was placed within DYS. In addition, the Office was required to employ a "victims coordinator" to administer the Office's duties. (R.C. 5139.55(A)(1) and (B).)

Under the act, the Office of Victims' Services is relocated to the Release Authority of DYS. The act also changes the title of the "victims coordinator" to "victims administrator." The act makes conforming amendments to reflect these changes. (R.C. 5139.02(A)(1) and 5139.55(A)(1), (B), and (C).)

### **Detention homes (detention facilities)**

The act relocates and consolidates all of the former provisions pertaining to detention homes and district detention homes, and renames the homes as "detention facilities" and "district detention facilities." It generally relocates all of the provisions of R.C. 2151.34 to 2151.3416 into R.C. 2152.41 to 2152.44 and consolidates and re-orders those provisions R.C. 2152.41 to 2152.44, and repeal in Section 2 of R.C. 2151.342 and 2151.344 to 2151.3416. The act also eliminates

the language requiring a detention home to be "furnished and carried on, as far as possible, as a family home" and regarding the possibility of a detention home being under the direction of "a matron in a nonpunitive neutral atmosphere," provides for the appointment of a superintendent and employees for either type of facility and the payment of their salaries, provides for the donation or bequest of property to either type of facility, revises the grounds for removal of a trustee or a joint facility, and reaffirms, in accordance with other provisions of continuing law and the act, that the facilities may be used to detain alleged delinquent children until final disposition, for evaluation of children pursuant to R.C. 2152.04 of the act, for certain children adjudicated delinquent children under R.C. 2152.19(A)(3)(l) of the act, and for adjudicated juvenile traffic offenders under R.C. 2152.21(A)(5) of the act. Under the act, a detention home simply must be under the direction of a superintendent. (R.C. 2152.41.)

The act conforms numerous provisions to its relocation of the Detention Home Law and the renaming of the facilities (R.C. 133.01(L)(8), (MM)(8), and (NN)(6), 181.22, 307.02, 307.022, 329.05, 2151.10, 2151.354(A)(5), 2151.357, 2151.655, 2151.78, 2151.79, 2152.19(A)(3)(l), 2152.21(A)(5), 2152.26(B), 2301.31, 5103.03, 5139.191, 5139.271, 5139.281, 5139.29, 5139.31, 5139.52(D)(2), 5705.01, and 5705.19).

**RECLAIM Ohio funding mechanism--allocation of DYS felony delinquent care and custody appropriation**

**Continuing law**

Continuing law contains a funding mechanism under the DYS Law that commonly is referred to as RECLAIM Ohio. Under that mechanism, on and after January 1, 1995, the appropriation made to DYS for care and custody of felony delinquents must be expended in accordance with a formula that DYS must develop for each year of a biennium. The formula must be consistent with R.C. 5139.41 to 5139.45 and must be developed in accordance with the following guidelines:

(1) DYS must set aside at least 3% but not more than 5% of the appropriation for purposes of funding the contingency program described in R.C. 5139.45 and of use in accordance with that section.

(2) After setting aside the amount described in paragraph (1), DYS must set aside 25% of the remainder of the appropriation and use that amount for the purpose described in paragraph (3) and to pay certain of the operational costs associated with, and to provide cash flow for, the following: (a) institutions, (b) the diagnosis, care, or treatment of felony delinquents at institutions, facilities, or centers pursuant to contracts entered into pursuant to R.C. 5139.08, or (c)

community corrections facilities constructed, reconstructed, improved, or financed as described in R.C. 5139.36 for the purpose of providing alternative placement and services for felony delinquents who have been diverted from care and custody in institutions.

(3) DYS may use a portion of the 25% of the remainder of the appropriation set aside as described above in paragraph (2) for administrative expenses it incurs in connection with the felony delinquent care and custody program described in R.C. 5139.43 and the associated contingency program described in R.C. 5139.45.

(4) After setting aside the amounts described in paragraphs (1) and (2), above, DYS must set aside the amount of the appropriation that is equal to 25% of the amount that is calculated by multiplying the per diem cost for the care and custody of felony delinquents, as determined pursuant to R.C. 5139.42(D), by the number of bed days that DYS projects for occupancy in community corrections facilities described in clause (c) of paragraph (2), above. DYS must use the amount of the appropriation that is set aside pursuant to this provision to pay the percentage of the per diem cost for the care and custody of felony delinquents who are in the care and custody of community corrections facilities described in clause (c) of paragraph (2), above, for which DYS is responsible under R.C. 5139.41 to 5139.45.

(5) After setting aside the amounts described in paragraphs (1) to (4), above, DYS must set aside the amount of the appropriation that is necessary to pay 75% of the per diem cost of "public safety beds" and must use that amount for the purpose of paying that per diem cost.

(6) After setting aside the amounts described in paragraphs (1) to (5), above, DYS must use the remainder of the appropriation in connection with the felony delinquent care and custody program described in R.C. 5139.43.

### **Operation of the act**

The act adds an exception to the provision summarized above in paragraph (6) of "**Continuing law.**" Under the act, that provision reads "after setting aside the amounts described in paragraphs (1) to (5), above, DYS must use the remainder of the appropriation in connection with the felony delinquent care and custody program described in R.C. 5139.43, *except that, for Fiscal Year 2002 and Fiscal Year 2003 and only for those two Fiscal Years, the total number of beds available to all counties via public safety beds and county allocations cannot be less than the total beds used by all the counties during Fiscal Year 2000 funded by care and custody chargebacks (Line Item 401) and as public safety beds.*" (R.C. 5139.41.)

**Encouragement for Supreme Court to take action to encourage common pleas court divisions to cooperate in implementing the act**

The act includes a provision under which the General Assembly encourages the Supreme Court to amend the Rules for the Government of the Judiciary of Ohio or other appropriate rules, or take other appropriate action, to encourage cooperation between divisions of the courts of common pleas to better implement the act, including, but not limited to, the provisions of the act authorizing, in specified circumstances, jury trials in juvenile courts (Section 6).

**Encouragement for Supreme Court to amend the Juvenile Rules to be consistent with the act's provisions regarding delinquent children**

The act includes a provision under which the General Assembly encourages the Supreme Court that the Court amend the Juvenile Rules to be consistent with the changes in the Juvenile Laws pertaining to delinquent children, particularly the laws relating to serious youthful offenders (Section 6).

**Encouragement for Supreme Court to amend the Traffic Rules**

The act includes a provision under which the General Assembly hereby encourages the Supreme Court to amend Traffic Rule 2 to exclude juvenile courts from the definition of "court" and to amend Traffic Rule 13 to authorize juvenile courts to create violations bureaus for the payment of tickets that involve first offense minor misdemeanor traffic offenses that did not result in an accident (Section 4).

**Encouragement for Supreme Court to take action to collect data regarding serious youthful offender dispositional sentences and jury trials in juvenile courts**

The act includes a provision under which the General Assembly encourages the Supreme Court to take appropriate action to collect data from each Ohio juvenile court on both the number of alleged delinquent children for whom a serious youthful dispositional sentence is sought under the act and the number of jury trials held in the juvenile courts annually as a result of serious youthful offender dispositional sentences being sought for alleged delinquent children, and to prepare and submit to the General Assembly a report containing the data so collected (Section 8).

**Racial Disparity Study**

The act includes a provision that requires the Governor's Council on Juvenile Justice to conduct, or cause to be conducted, an evaluation of the racial composition of delinquent children committed to the Department of Youth

Services. The evaluation must focus on the changes to the Revised Code made by the act as related to recent sentencing trends for delinquent children. The evaluation must consider the composition of the institutional population of the Department from the establishment of the RECLAIM Ohio program through four years after the effective date of the act. After concluding the evaluation, the Council must submit a report detailing the results of the evaluation to the Governor, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President of the Senate, the Minority Leader of the Senate, the Chairperson of the Legislative Black Caucus, and the Director of the Department of Youth Services. (Section 9.)

**Statement of future intentions**

The act includes a provision that provides that the General Assembly hereby states its intention to do the following in the remainder of the 123rd General Assembly and in the 124th General Assembly to: address the issue of competency in juvenile proceedings and its various aspects; review and continue to support the RECLAIM Ohio program and the alternative schools program; and review and address the anticipated costs of implementing the act (Section 10).

**Delayed effective date**

Except for the provisions described under "**Jury trial procedures**," above, the act specifies that its amendments to the Revised Code are to take effect on January 1, 2002 (Section 5). The provisions described under "**Jury trial procedures**," above, and the uncodified provisions take effect upon the normal effective date of the act (Sections 1 and 2).

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	08-24-99	pp. 950-951
Reported, S. Judiciary	03-22-00	p. 1499
Passed Senate (22-11)	03-22-00	pp. 1503-1518
Reported, H. Criminal Justice	11-08-00	pp. 2310-2311
Passed House (62-34)	11-09-00	pp. 2320-2323
Senate concurred in House amendments (20-13)	11-15-00	pp. 2243-2244

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