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***Bill Analysis***  
*Legislative Service Commission*

## **S.B. 179**

123rd General Assembly  
(As Introduced)

**Sens. Latta, Hottinger, Johnson**

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### **BILL SUMMARY**

#### **General provisions**

- Relocates to new R.C. Chapter 2152., 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 protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender.
- Makes it clear that certain existing provisions of the current Juvenile Code also will apply in relation to new R.C. Chapter 2152.

#### **Definitions**

- Modifies the existing definition of "child" for the purposes of the current Juvenile Code to include any person who is under 18 years of age and moves to new R.C. Chapter 2152. the provisions of that definition that solely address delinquent children.
- Moves the definitions of "delinquent child" and "juvenile traffic offender" to new R.C. Chapter 2152.
- Removes from the definition of "unruly child" that applies to the Juvenile Code a child who: is an habitual 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.

**Eligibility for transfer for criminal prosecution and specified types of dispositions**

- Provides that a delinquent child case is eligible for a particular type of transfer to criminal court or 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*, a *discretionary extended juvenile jurisdiction 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 enhancement factors.
- Illustrates the eligibility criteria for transfers or dispositions of delinquent children in an eligibility table codified in the bill.

**Transfer for criminal prosecution**

- Specifies the eligibility criteria for a *mandatory transfer, presumed transfer, or discretionary transfer* of a delinquent child case for criminal prosecution in a criminal court 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 enhancement factors.
- Specifies the requirements and establishes procedures for mandatory transfers, presumed transfers, or discretionary transfers for criminal prosecution of delinquent child cases, including cases involving multiple delinquent acts, and specifies, for purposes of presumed or discretionary transfers, the factors favoring transfer and the factors against transfer.
- Authorizes a prosecuting attorney to appeal as a matter of right any juvenile court decision not to transfer a delinquent child case pursuant to the presumed transfer provisions in the bill and requires the record on appeal to contain certain documents.

### *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 or extended juvenile jurisdiction 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.
- Generally requires a prosecuting attorney seeking a serious youthful offender dispositional sentence to timely file written notice of that intent, request such a disposition in the prosecuting attorney's original complaint, or obtain a grand jury indictment of the child as a serious youthful offender.
- Specifies the procedures to be followed in serious youthful offender cases, including providing to the child protections normally afforded to criminal defendants.
- 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 an extended juvenile jurisdiction disposition (the juvenile portion), (2) requires the court to stay the adult portion, and (3) permits the court to suspend any disposition imposed under the juvenile portion in favor of a community control sanction or sanctions.
- Except as described in the following dot point, 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 an extended juvenile jurisdiction disposition (the juvenile portion), (2) requires the court to stay the adult portion, and (3) permits the court to suspend any disposition imposed under the juvenile portion in favor of a community control sanction or sanctions.

- If a child is adjudicated a delinquent child for committing an act that if committed by an adult would be a fourth or fifth degree felony 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), (2) requires the court to stay the adult portion, and (3) permits the court to suspend any disposition imposed under the juvenile portion in favor of a community control sanction or sanctions.
- 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 behaviors or acts, or the child's conduct demonstrates that the child is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.
- Upon the invocation of the adult portion of a serious youthful offender dispositional sentence, terminates the juvenile portion of the dispositional sentence and requires DYS to transfer custody of the child to DRC.

**Extended juvenile jurisdiction dispositions**

- Permits a juvenile court in specified circumstances to impose an extended juvenile jurisdiction disposition on a child adjudicated to be a delinquent child for committing an act that would be a felony if committed by an adult.
- Authorizes a juvenile court to commit a child subject to an extended juvenile jurisdiction disposition to the custody of DYS for a period of time that, at a maximum, cannot exceed the child's attainment of 25 years of

age; the minimum period of time depends on the act or acts for which the extended juvenile jurisdiction disposition was imposed on the child.

- Apportions control over the commitment between the juvenile court and DYS, depending on the act or acts for which the extended juvenile jurisdiction disposition was imposed on the child.

### **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, is not given a blended sentence, and is not subjected to extended juvenile jurisdiction, modifies the periods of commitment that are available to the Department of Youth Services, and also modifies the periods of commitment that are available regarding firearms specifications and the mechanism for imposing those periods of commitment.
- 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 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 current "electronically monitored house detention" for juveniles within the scope of the current "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.

### **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 of not less than three months to two years.

- 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 underage OMVI.
- Expressly specifies that a juvenile court may hear without a jury cases involving alleged juvenile traffic offenders accused of committing acts that would be minor misdemeanors if committed by adults.
- Requests the Supreme Court to amend the Juvenile and Traffic Rules in specified manners.

### **Financial sanctions**

- Standardizes 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 or 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 of a delinquent child who has been committed to the Department of Youth Services from the custody of the Department, 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 procedures that apply regarding those types of releases.
- Provides that the order made by a juvenile court restraining or otherwise controlling the conduct of any parent, guardian, or other custodian 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 existing provisions that: (1) allow a juvenile judge to commit to the Department of Rehabilitation and Correction a female over 18 years of age who is found guilty of a misdemeanor under the Juvenile Code, and (2) provides that, when an adult is sentenced to imprisonment for the offense of nonsupport of dependents or contributing to the nonsupport of dependents under R.C. 2919.21 or the offense of endangering children under R.C. 2919.22, the county from which the adult person is sentenced, on the order of the juvenile judge, must pay a sum for the maintenance of the dependent children of the prisoner.
- Repeals existing provisions dealing with extradition, bail for adults, and adult jury trials under the Juvenile Code.

#### **Miscellaneous provisions**

- 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.
- Designates certain violations of the Compulsory School Age Law as a fourth degree misdemeanor offense of failure to send a child to school.

### *Detention homes*

- Relocates in new R.C. Chapter 2152. and consolidates all of the existing provisions pertaining to detention homes and district detention homes.

### *Sex Offender Registration and Notification Law*

- Generally extends the Sex Offender Registration and Notification Law to children adjudicated delinquent children for committing sexually oriented offenses.
- Specifically authorizes a juvenile court that finds a child to be a delinquent child for committing a sexually oriented offense to make any determination, adjudication, or order authorized by the Sex Offender Registration and Notification Law and requires that court in a case of that type to make any determination, adjudication, or order required by that Law.
- Requires a delinquent child who is adjudicated a delinquent child for committing a sexually oriented offense to register with the appropriate sheriff of the county in which the child resides or is temporarily domiciled (in accordance with the same procedures used for adults under existing law).
- Requires a delinquent child who is adjudicated a delinquent child for committing a sexually oriented offense and who registers with a sheriff to give that sheriff notice of changes in the child's residence and to register the new residence with the appropriate sheriff and to periodically verify the child's residence address (in accordance with the same procedures used for adults under existing law).
- Adds an additional category to whom specified Sex Offender Registration and Notification Law records are open: the superintendent of each board of education of a school district or the appointing or hiring officer of each

chartered nonpublic school in which a child who has been adjudicated a delinquent child for a sexually oriented offense is enrolled.

- Requires a sheriff with whom a delinquent child who has committed a sexually oriented offense has registered to give the victim of the offense notice that the child has registered with the sheriff and of the child's residence address if the court that adjudicated the child a delinquent child determines that the child is an habitual sex offender and specifically makes the child subject to victim notification and if the victim has requested that type of notice (in accordance with the same procedures used for adults under existing law).
- Specifically provides that the provisions of the Sex Offender Registration and Notification Law related to neighborhood notification apply to delinquent children only if the delinquent child is the subject of a serious youthful offender dispositional sentence and the court determines that the Sex Offender Registration and Notification Law apply and only to the extent ordered by the juvenile court.
- Extends to a supervising officer and an officer or employee of the Department of Youth Services the existing civil immunity for acts and omissions in connection with a power, duty, responsibility, or authorization under the Sex Offender Registration and Notification Law.
- Requires the Attorney General to include in the existing State Registry of Sex Offenders all registration, change of residence address, and verification information that the Bureau of Criminal Identification and Investigation receives under the Sex Offender Registration and Notification Law and that relates to children who are adjudicated delinquent children for committing sexually oriented offenses.
- Requires the Department of Youth Services to provide specified information to the Bureau of Criminal Identification and Investigation before releasing a delinquent child who is in the custody of the Department and has been adjudicated a delinquent child for committing a sexually oriented offense.

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## CONTENT AND OPERATION

### *Construction and purposes of the Juvenile Code*

#### *Existing law*

Existing law specifies that the Juvenile Code (R.C. Chapter 2151.), with the exception of those sections providing for the criminal prosecution of adults, is 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 bill**

The bill relocates to new Chapter 2152., and modifies, 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). The bill provides that the overriding purposes for dispositions under R.C. Chapter 2152. are to protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes 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 with and not demeaning to the seriousness of the delinquent child's or the juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court 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 bill also provides that, to the extent they do not conflict with R.C. Chapter 2152., the provisions of R.C. Chapter 2151. apply to R.C. Chapter 2152. (R.C. 2152.01(C)).

### **Application of existing Juvenile Code provisions to new Chapter 2152.**

The bill makes it clear that certain existing provisions of the Juvenile Code also will apply in relation to new R.C. Chapter 2152. The existing 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), a parent's payment for the education, etc., of a

committed child (R.C. 2151.36), the placement of delinquent children in schools, forestry camps, or other 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 to Chapter 2152.**

The bill 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.

| <b>Existing section</b> | <b>Renumbered section</b> | <b>Subject Matter</b>   |
|-------------------------|---------------------------|---|
| 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.  |
| <b>Existing section</b> | <b>Renumbered section</b> | <b>Subject Matter</b>   |
| 2151.211                | 2152.75                   | Limits on employers--prohibits an employer from punishing an employee for time lost for attendance at a delinquency proceeding under subpoena.  |
| 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.   |

|                         |                           |   |
|-------------------------|---------------------------|---|
| 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                | 2152.42                   | Detention homes   |
| 2151.343                | 2152.44                   | Detention homes   |
| 2151.345                | 2152.43                   | Detention homes   |
| 2151.346                | 2152.50                   | Detention homes   |
| 2151.347                | 2152.45                   | Detention homes   |
| 2151.3411               | 2152.46                   | Detention homes   |
| 2151.3412               | 2152.47                   | Detention homes   |
| 2151.3413               | 2152.48                   | Detention homes   |
| 2151.3414               | 2152.49                   | Detention homes   |
| 2151.356                | 2152.21                   | Dispositions for juvenile traffic offenders   |
| 2151.359                | 2152.61                   | Control of parent, guardian, or custodian of child before the juvenile court.   |
| 2151.3511               | 2152.81                   | Special procedures for taking testimony of child victims of sex offenses.   |
| <b>Existing section</b> | <b>Renumbered section</b> | <b>Subject Matter</b>   |
| 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. |

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

**Existing law**

Existing law specifies that, for purposes of the Juvenile Code (R.C. Chapter 2151.), "child" means any of the following (R.C. 2151.011(A)(6)):

(1) A person who is 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 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 existing "bindover" law contained in R.C. 2151.26(B) and (C) is 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 is transferred for criminal prosecution pursuant to the existing "bindover" law contained in R.C. 2151.26(B) and (C) and who subsequently is convicted of a felony in that case is after the transfer deemed not to be a child in any case in which the person is alleged to have committed prior to or subsequent to the transfer an act that would be an offense if committed by an adult. This provision applies to a case regardless of whether the prior or subsequent act that is alleged in the case and that would be an offense if committed by an adult allegedly was committed in the same county in which the case was transferred or in another county and regardless of whether the complaint in the case involved was filed in the same county in which the case was transferred or in another county. This provision applies to a case that involves an act committed prior to the transfer only when the prior act alleged in the case has not been disposed of by a juvenile court or trial court.

(6) Notwithstanding the provisions described above in paragraph (5), if a person's case is transferred for criminal prosecution pursuant to the existing "bindover" law contained in R.C. 2151.26(B) and (C) and if the person subsequently is convicted of a felony in that case, thereafter, the person is 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 is 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 under R.C. 2151.26(B) relative to the complaint described in clause (a) to determine whether R.C. 2151.26(B)(1) applies and requires that the case be transferred for criminal prosecution to the appropriate court having jurisdiction of the offense.

### *Operation of the bill*

The bill retains for use in R.C. Chapter 2151. only the portion of the existing definition of child that specifies that a child is a person who is under 18 years of age (R.C. 2151.011(A)(6)). It relocates to new R.C. Chapter 2152. for use in that new chapter all of the other portions of the existing definition of child and modifies some of those portions of the definition. Under the bill, the definition of "child" that applies for use in new R.C. Chapter 2152. is as follows (R.C. 2152.02(C)):

(1) A person who is under 18 years of age, except as otherwise provided below in paragraphs (2) to (5);

(2) Subject to the provisions described below in 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 bill's new "transfer" law contained in R.C. 2152.12 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 bill's new "transfer" law contained in R.C. 2152.12 and who subsequently is convicted of a felony in that case is after the transfer deemed not to be a child in any case in which the person is alleged to have committed prior to or subsequent to the transfer an act that would be an offense if committed by an adult. After a person is deemed pursuant to this provision not to be a child, a juvenile court in which is pending a current complaint alleging that the child committed a delinquent act that would be an offense if committed by an adult or in which is subsequently filed a complaint alleging that the child committed a delinquent act that would be an offense if committed by an adult, on the next day after verification of the prior transfer and the prior criminal prosecution and conviction, must transfer to the appropriate court the case involving the pending or subsequently filed complaint alleging that the person committed an act that would be an offense if committed by an adult, regardless of the person's age. This provision applies to a case regardless of whether the prior or subsequent act that is alleged in the case and that would be an offense if committed by an adult allegedly was committed in the same county in which the case was transferred or in another

county and regardless of whether the complaint in the case involved was filed in the same county in which the case was transferred or in another county. This provision applies to a case that involves an act committed prior to the transfer only when the prior act alleged in the case has not been disposed of by a juvenile court or trial court.

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

#### **Existing law**

Existing law provides that, as used in the current Juvenile Code, "delinquent child" includes (1) any child who violates any law of this state or the United States, or any ordinance or regulation of a political subdivision of the state, that would be a crime if committed by an adult, except as provided in the definition of "juvenile traffic offender," (2) any child who violates any lawful order of the court made under the current Juvenile Code, (3) any child who violates R.C. 2923.211(A), and (4) any child who violates R.C. 3730.07(A)(1) or (2).

#### **Operation of the bill**

The bill repeals the section in which this definition is currently located, moves the definition to new R.C. 2152.02, and provides in the definitional section of the current Juvenile Code that "delinquent child" has the same meaning as in new R.C. 2152.02. The bill 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 this state or the United States, or any ordinance of a political subdivision of the state, 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., and (3) any child who violates R.C. 2923.211(A). (R.C. 2151.011(B)(12), 2151.02 (repealed), and 2152.02(E).)

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

#### **Existing law**

Existing law provides that, as used in the current Juvenile Code, "juvenile traffic offender" means a child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other than a resolution, ordinance, or regulation of a political subdivision of this state the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau (R.C. 2151.021).

### **Operation of the bill**

The bill repeals the existing section that contains this definition, moves the definition 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**

#### **Existing law**

Existing law provides that as used in the current Juvenile Code "unruly child" includes any child who does or is any of the following (R.C. 2151.022): (1) does not subject himself or herself to the reasonable control of his or her parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient, (2) is an habitual truant from home or school, (3) so departs himself or herself as to injure or endanger his or her health or morals or the health or morals of others, (4) 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, (5) is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons, (6) 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 (7) violates a law, other than R.C. 2923.211(A), regarding underage purchase of a firearm, that is applicable only to a child.

#### **Operation of the bill**

The bill 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 "**Existing law**" so that it includes children who do not *submit* (instead of *subject themselves*) to the reasonable control of his or her parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient.

(2) It modifies the portion described in paragraph (2) of "**Existing law**" so that it includes only children who are habitual truants *from school* (not *from home*).

(3) It modifies the portion described in paragraph (3) of "**Existing law**" so that it includes any children *who behave in a manner* (and not *who so depart*

themselves) as to injure or endanger their own health or morals or the health or morals of others.

(4) It repeals the portions described in paragraphs (4), (5), and (6) of "Existing law."

(5) It retains the portion described in paragraph (7) of "Existing law" without change.

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

The bill defines the following 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 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 this state by another state of the United States.

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

(4) "Discretionary EJJ" means that a case is eligible for an extended juvenile jurisdiction disposition, in the juvenile court's discretion.

(5) "Discretionary SYO" means that a case is eligible for a serious youthful offender disposition, in the juvenile court's discretion.

(6) "Discretionary transfer" means that the juvenile court has discretion to transfer a case for criminal prosecution under new R.C. 2152.12(C) (see "Types of transfer to criminal court--operation of the bill"; "Discretionary transfer," below).

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

(8) "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.

(9) "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, medical cost, or funeral expense incurred as a result of the delinquent act.

(10) An act charged is "enhanced" if any of the factors described in R.C. 2152.11(A)(1), (2), or (3) (see "Enhancement factors," below) is specified in the complaint and proven.

(11) "Firearm" has the same meaning as in R.C. 2923.11 (see **COMMENT 2**).

(12) "Mandatory SYO" means that a case is required to have a mandatory serious youthful offender.

(13) "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 bill"; "Mandatory transfer," below).

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

(15) "Offense of violence" has the same meaning as in R.C. 2901.01 (see **COMMENT 1**).

(16) "Presumed transfer" means that there is a rebuttable presumption that a case should be transferred for criminal prosecution under new R.C. 2152.12(B) (see "Types of transfer to criminal court--operation of the bill"; "Presumed transfer," below).

(17) "Public record" has the same meaning as in R.C. 149.43 (see **COMMENT 6**).

(18) "Traditional juvenile" means that a case is *not* eligible for a disposition under R.C. 2152.13 (mandatory SYO or discretionary SYO) or R.C. 2152.15 (discretionary EJJ).

(19) "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.

## Filing of complaints in juvenile court

### Existing law

Under existing law, any person with knowledge of a child who appears to be a juvenile traffic offender (a j.t.o.) or to be a delinquent, unruly, abused, neglected, or dependent child may file a sworn complaint with respect to that child in the juvenile court of the county in which the child resides or has a legal settlement or in which the traffic offense, delinquency, unruliness, abuse, neglect, or dependency allegedly occurred. If an alleged abused, neglected, or dependent child is taken into custody pursuant to an ex parte emergency order or without the filing of a complaint and placed into shelter care, a sworn complaint must be filed with respect to the child before the end of the next day after the day on which the child was taken into custody. The sworn complaint may be upon information and belief, and, in addition to the allegation that the child is a delinquent, unruly, abused, neglected, or dependent child or a j.t.o., the complaint must allege the particular facts upon which the allegation that the child is a delinquent, unruly, abused, neglected, or dependent child or a j.t.o. is based. (R.C. 2151.27(A).)

If a child, before arriving at the age of 18 years, allegedly commits an act for which the child may be adjudicated a delinquent child, an unruly child, or a j.t.o. and if the complaint alleging the act is not filed or a hearing on that specific complaint is not held until after the child arrives at the age of 18 years, the court has jurisdiction to hear and dispose of the complaint as if the complaint were filed and the hearing held before the child arrived at the age of 18 years.

If the complainant in a case in which a child is alleged to be an abused, neglected, or dependent child desires permanent custody of the child, temporary custody of the child, whether as the preferred or an alternative disposition, or the placement of the child in a planned permanent living arrangement, the complaint must contain a prayer specifically requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement. (R.C. 2151.27(B) and (C).)

For purposes of the record to be maintained by the clerk, when a complaint is filed that alleges that a child is a delinquent child, the court must determine if the victim of the alleged delinquent act was 65 years of age or older or permanently and totally disabled at the time of the alleged commission of the act.

Any person with standing under applicable law may file a complaint for the determination of any other matter over which the juvenile court is given jurisdiction. The complaint must be filed in the county in which the child who is the subject of the complaint is found or was last known to be found. (R.C. 2151.27(D) and (E).)

Within ten days after the filing of a complaint, the court must give written notice of the filing and of the substance of the complaint to the superintendent of a city, local, exempted village, or joint vocational school district if the complaint alleges that a child committed an act that would be a criminal offense if committed by an adult, that the child was 16 years of age or older at the time of the commission of the alleged act, and that the alleged act is any of the following: (1) illegal conveyance or possession of deadly weapons or dangerous ordnance on school premises that relates to property owned or controlled by, or to an activity held under the auspices of, the board of education of that school district, (2) carrying concealed weapons or a drug trafficking offense that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, (3) a drug possession offense that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, other than a minor drug possession offense, (4) aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, rape, or gross sexual imposition that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, if the victim at the time of the commission of the alleged act was an employee of the board of education of that school district, or (5) complicity in any violation described in clause (1) to (4) that was alleged to have been committed in the manner described in clause (1) to (4), regardless of whether the act of complicity was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district. (R.C. 2151.27(F).)

A public children services agency, acting pursuant to a complaint or an action on a complaint filed under the above-described provisions, is not subject to the requirements of R.C. 3109.27 (R.C. 2151.27(G)).

### **Operation of the bill**

The bill relocates, to new R.C. 2152.021, all of the existing provisions relating to the filing of a complaint in juvenile court, as described above, that pertain to an alleged delinquent child or an alleged j.t.o. It does not change or relocate the existing provisions relating to the filing of a complaint in juvenile court that pertain to an alleged abused, neglected, dependent, or unruly child. (R.C. 2151.27 and 2152.021.) The bill also makes conforming changes to existing 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. 2151.314).

The bill also provides that if a child appears to be a delinquent child who is eligible for a serious youthful offender dispositional sentence under the bill and if

the prosecuting attorney desires to seek a serious youthful offender dispositional sentence under the bill, the prosecuting attorney of the county in which the child has a legal residence or legal settlement or in which the alleged delinquency occurs may initiate a case in the juvenile court by presenting the case to a grand jury for indictment under the bill (see "*Serious youthful offender dispositional sentence*," below) (R.C. 2152.021(A)).

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

#### *Existing law*

Except as provided below, a child alleged to be or adjudicated a delinquent child, an unruly child, or a juvenile traffic offender may be held only in a certified family foster home or a home approved by the court, a facility operated by a certified child welfare agency, or any other suitable place designated by the court. In addition to those places, a child alleged to be or adjudicated a delinquent child may be held in a detention home or center for delinquent children that is under the direction or supervision of the court or other public authority or of a private agency and approved by the court. (R.C. 2151.312(A) and (B).)

Except as provided below or in the juvenile traffic offender disposition section, a child alleged to be or adjudicated a neglected child, an abused child, a dependent child, an unruly child, or a juvenile traffic offender may not be held in a state correctional institution, county, multicounty, or municipal jail or workhouse, or other place in which an adult convicted of crime, under arrest, or charged with a crime is held or in a secure correctional facility. Generally, a child alleged to be or adjudicated an unruly child or a juvenile traffic offender may not be held for more than 24 hours in a detention home. A child alleged to be or adjudicated a neglected child, an abused child, or a dependent child shall not be held in a detention home. A child who is alleged to be or who is adjudicated an unruly child and who is taken into custody on a Saturday, Sunday, or legal holiday may be held in a detention home until the next succeeding day that is not a Saturday, Sunday, or legal holiday. (R.C. 2151.312(C).)

Except as otherwise provided, a child who is alleged to be or is adjudicated a delinquent child may not be held in a state correctional institution, county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held. Unless the detention is pursuant to the above provisions or certain other specified provisions, the official in charge of the institution, jail, workhouse, or other facility must inform the court immediately when a child, who is or appears to be under the age of 18, is received at the facility and must deliver the child to the court upon request or transfer the child to a detention facility designated by the court.

If a case is transferred to another court for criminal prosecution, the child may be transferred for detention pending the criminal prosecution in a jail or other facility in accordance with the law governing the detention of persons charged with crime. Any child so held must be confined in a manner that keeps the child beyond the range of touch of all adult detainees. The child must be supervised at all times during the detention. (R.C. 2151.312(D) to (F).)

### **Operation of the bill**

The bill renumbers R.C. 2151.312 as R.C. 2152.26, removes from the renumbered section the references to unruly, neglected, abused, and dependent children, 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 bill also provides that a child who is alleged to be or who is adjudicated a delinquent child may be confined in a county or district detention home 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--existing law**," below). (R.C. 2152.04, relocated from R.C. 2151.34, which is renumbered R.C. 2152.41.)

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

#### **Existing law**

Existing 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 bill**

The bill makes an exception to the existing provision described above under "**Existing law**." It specifies that the existing 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 under the bill (see "**Serious youthful offender dispositional sentence**," below). (R.C. 2151.24(B).)

## Eligibility for transfer or felony dispositions

### Enhancement factors

Under the bill, a case involving a child alleged to be or adjudicated a delinquent child is eligible for a particular type of *transfer* or disposition if the *act charged* is *enhanced* by one or more of the following factors specified in the complaint and proven by proof beyond a reasonable doubt (R.C. 2152.11(A)):

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

(2) The child used or displayed a *firearm* (see **COMMENT 2**), or brandished a firearm, indicating that the child 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 a felony of the first or second degree, 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").

### Eligibility for discretionary transfer

Except as otherwise provided in the bill, any delinquent child case is eligible for *discretionary transfer* to the appropriate court for criminal prosecution if: (a) the complaint does *not* specify any enhancing factor as described above, (b) the case involves a child who is charged with the commission of an act that would be a felony if committed by an adult, other than a felony of the fifth degree, and (c) the child was 14 years of age or older at the time of the commission of the alleged act. (R.C. 2152.11(B).)

### Aggravated murder or murder

Subject to any applicable provision described below in "Lesser included dispositions," any case involving a child alleged to be or adjudicated a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult is eligible for whichever of the following is appropriate (R.C. 2152.11(C)):

(1) *Mandatory transfer*, if the act allegedly or actually was committed when the child was 16 or 17 years of age;

(2) *Presumed transfer*, if the act allegedly or actually was committed when the child was 14 or 15 years of age and is enhanced by either the firearm factor or the previous DYS admission factor;

(3) *Mandatory SYO* (see "*Serious youthful offender dispositional sentence*," below), if: (a) the act was committed when the child was 10, 11, 12, or 13 years of age and is enhanced by either the firearm factor or the previous DYS admission factor, or (b) the act was committed when the child was 14 or 15 years of age and is *not* enhanced by either the firearm factor or the previous DYS admission factor;

(4) *Discretionary SYO*, if the act was committed when the child was 10, 11, 12, or 13 years of age and is *not* enhanced by either the firearm factor or the previous DYS admission factor.

#### *Attempted aggravated murder or attempted murder*

Subject to any applicable provision described below in "*Lesser included dispositions*," any case involving a child alleged to be or adjudicated a delinquent child for committing an act that would be attempted aggravated murder or attempted murder if committed by an adult is eligible for whichever of the following is appropriate, subject to eligibility for *discretionary transfer* as discussed above (R.C. 2152.11(D)):

(1) *Presumed transfer*, if the act allegedly or actually was committed when the child was 16 or 17 years of age and is enhanced by either the firearm factor or the previous DYS admission factor;

(2) *Discretionary SYO*, if: (a) the act was committed when the child was 16 or 17 years of age and is *not* enhanced by either the firearm factor or the previous DYS admission factor, or (b) the act was committed when the child was 10, 11, 12, 13, 14, or 15 years of age.

#### *First degree felony*

Subject to any applicable provision described below in "*Lesser included dispositions*," any case involving a child alleged to be or adjudicated a delinquent child for committing an act that would be a felony of the first degree if committed by an adult is eligible for whichever of the following is appropriate, subject to eligibility for *discretionary transfer* as discussed above (R.C. 2152.11(E)):

(1) *Presumed transfer*, if the act allegedly or actually was committed when the child was 16 or 17 years of age and is enhanced by both the offense of violence factor and either the firearm factor or the previous DYS admission factor;

(2) *Discretionary SYO*, if: (a) the act was committed when the child was 16 or 17 years of age and is *not* enhanced by both the offense of violence factor and either the firearm factor or the previous DYS admission factor, (b) the act was committed when the child was 14 or 15 years of age, or (c) the act was committed when the child was 12 or 13 years of age and is enhanced by both the offense of violence factor and either the firearm factor or the previous DYS admission factor;

(3) *Discretionary EJJ* (see "*Extended juvenile jurisdiction dispositions*," below), if: (a) 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 factor or the previous DYS admission factor, or (b) the act was committed when the child was 12 or 13 years of age, the act is enhanced by the offense of violence factor, the firearm factor, *or* the previous DYS admission factor, but is *not* enhanced by both the offense of violence factor *and* either the firearm factor or the previous DYS admission factor;

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

### *Second degree felony*

Subject to any applicable provision described below in "*Lesser included dispositions*," any case involving a child adjudicated a delinquent child for committing an act that would be a felony of the second degree if committed by an adult is eligible for whichever of the following is appropriate, subject to eligibility for *discretionary transfer* as discussed above (R.C. 2152.11(F)):

(1) *Discretionary SYO*, if the act was committed when the child was 14, 15, 16, or 17 years of age;

(2) *Discretionary EJJ*, if the act was committed when the child was 12 or 13 years of age and is enhanced by the offense of violence factor, the firearm factor, or the previous DYS admission factor;

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

### *Third degree felony*

Subject to any applicable provision described below in "*Lesser included dispositions*," any case involving a child adjudicated a delinquent child for committing an act that would be a felony of the third degree if committed by an adult is eligible for whichever of the following is appropriate, subject to eligibility for *discretionary transfer* as discussed above (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 factor, the firearm factor, or the previous DYS admission factor;

(2) *Discretionary EJJ*, if: (a) the act was committed when the child was 14 or 15 years of age and is enhanced by the offense of violence factor, the firearm factor, or the previous DYS admission factor, or (b) the act was committed when the child was 16 or 17 years of age and is *not* enhanced by the offense of violence factor, the firearm factor, or the previous DYS admission factor;

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

#### **Fourth and fifth degree felonies**

Subject to any applicable provision described below in "**Lesser included dispositions**," any case involving a child adjudicated a delinquent child for committing an act that would be a felony of the fourth or fifth degree if committed by an adult is eligible for whichever of the following dispositions is appropriate, subject to eligibility for *discretionary transfer* for a felony of the fourth degree as discussed above (R.C. 2152.11(H)):

(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 factor, the firearm factor, or the previous DYS admission factor;

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

#### **Lesser included dispositions**

The bill sets forth the following general provisions pertaining to certain types of transfers or dispositions of delinquent child cases (R.C. 2152.11(I)):

(1) If a case involving a child alleged to be a delinquent child is eligible for a *presumed transfer* and the case is not so transferred, the court must order a *mandatory SYO* disposition of the case if the child is adjudicated a delinquent child.

(2) Whenever a court orders a serious youthful offender disposition, the court also must order an extended juvenile jurisdiction disposition as the juvenile part of the sentence.

(3) If an adjudicated delinquent child is eligible for a *discretionary SYO* disposition, the court has discretion to order an extended juvenile jurisdiction disposition alone or a traditional juvenile disposition.

(4) If an adjudicated delinquent child is eligible for a *discretionary EJJ* disposition, the court has discretion to order a traditional juvenile disposition instead of an extended juvenile jurisdiction disposition.

**Eligibility table**

The bill provides that the above described provisions pertaining to the eligibility of alleged or adjudicated delinquent children for particular types of transfers or dispositions are illustrated in the *eligibility table* and the accompanying *notes* and *key* as follows (R.C. 2152.11(J), (K), and (L)):

| <b>OFFENSE CATEGORY</b>                      | <b>AGE<br/>16 &amp; 17</b> | <b>AGE<br/>14 &amp; 15</b> | <b>AGE<br/>12 &amp; 13</b> | <b>AGE<br/>10 &amp; 11</b> |
|--|----------------------------|----------------------------|----------------------------|----------------------------|
| Murder/Aggravated Murder, Enhanced           | MT                         | PT                         | MSYO                       | MSYO                       |
| Murder/Aggravated Murder                     | MT                         | MSYO                       | DSYO                       | DSYO                       |
| Attempted Murder/Aggravated Murder, Enhanced | PT                         | DSYO                       | DSYO                       | DSYO                       |
| Attempted Murder/Aggravated Murder           | DSYO                       | DSYO                       | DSYO                       | DSYO                       |
| F1-V, Enhanced                               | PT                         | DSYO                       | DSYO                       | DEJJ                       |
| F1-V   | DSYO                       | DSYO                       | DEJJ                       | TJ                         |
| F1, Enhanced                                 | DSYO                       | DSYO                       | DEJJ                       | TJ                         |
| F1   | DSYO                       | DSYO                       | TJ                         | TJ                         |
| F2, Enhanced                                 | DSYO                       | DSYO                       | DEJJ                       | TJ                         |
| F2   | DSYO                       | DSYO                       | TJ                         | TJ                         |
| F3, Enhanced                                 | DSYO                       | DEJJ                       | TJ                         | TJ                         |
| F3   | DEJJ                       | TJ                         | TJ                         | TJ                         |
| F4, Enhanced                                 | DSYO                       | TJ                         | TJ                         | TJ                         |
| F4   | TJ                         | TJ                         | TJ                         | TJ                         |

|              |      |    |    |    |
|--------------|------|----|----|----|
| F5, Enhanced | DSYO | TJ | TJ | TJ |
| F5           | TJ   | TJ | TJ | TJ |

Notes for eligibility table:

(1) Each designation in the table for a particular row and column shows the maximum disposition available for the offense or level of the offense specified in that row and the age of the involved child specified in that column.

(2) Discretionary transfer is available under R.C. 2152.12(C) for any offense other than an F5 that is not enhanced if the age of the child is 14, 15, 16, or 17 (all of the rows in the column under age 16 and 17 and under the column age 14 and 15 except the bottom row).

(3) If a presumed transfer is overridden, the juvenile court must order a mandatory SYO disposition if the child is adjudicated a delinquent child.

Key for eligibility table:

(1) "AGG" refers to aggravated. (See **COMMENT 3**.)

(2) "DEJJ" refers to discretionary EJJ.

(3) "DSYO" refers to discretionary SYO.

(4) "EJJ" refers to extended juvenile jurisdiction.

(5) "Enhanced," for purposes of the eligibility table, refers to either of the following:

(a) Aggravated murder, murder, attempted aggravated murder, attempted murder, or a felony of the first degree that is an offense of violence, if any of those offenses is enhanced by either the firearm factor or the previous DYS admission factor;

(b) Any felony that is not described above in (5)(a) (see **COMMENT 4**) and that is enhanced by the offense of violence factor, the firearm factor, or the previous DYS admission factor.

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

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

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

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

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

(11) "MSYO" refers to mandatory SYO.

(12) "MT" refers to mandatory transfer.

(13) "PT" refers to presumed transfer.

(14) "SYO" refers to serious youthful offender disposition.

(15) "TJ" refers to traditional juvenile.

(16) "V" refers to an offense of violence.

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

Under existing law, a delinquency case is 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 is filed alleging that a child is a delinquent child for committing an act that would be an *offense* if committed by an adult, the juvenile court at a hearing *must* transfer the case for criminal prosecution 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* (defined as the act that a child allegedly committed and that is identified in a complaint alleging that the child is a delinquent child as the act that is the basis of the child being a delinquent child), if there is probable cause to believe that the child committed the act charged, and if one or more of the following applies 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 is domiciled in another state, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

(3) The act charged is a *category one offense* (defined as aggravated murder, murder, or an attempt to commit aggravated murder or murder), and either or both of the following apply to the child: (a) the child was 16 years of age or older at the time of the act charged, 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 is a felony of the first degree, or the former offense of felonious sexual penetration) and was committed to the legal custody of DYS upon the basis of that adjudication.

(4) The act charged is a *category two offense*, other than kidnapping, the child was 16 years of age or older at the time of the commission of the act charged, and either or both of the following apply to the child: (a) the child previously was adjudicated a delinquent child for committing an act that is a *category one offense* or a *category two offense* and was committed to the legal custody of DYS upon the basis of that adjudication, or (b) the child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed 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 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 court at a hearing *may* 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 is 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 are reasonable grounds to believe that both of the following criteria are 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 require 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 is being considered for possible transfer for criminal prosecution to the appropriate court having jurisdiction of the offense may waive the examination if the court finds the waiver is competently and intelligently made. Refusal to submit to a mental and physical examination by the child constitutes a waiver of the examination. (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 must 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 who is alleged to have committed that act knew the age of that victim.

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

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

(4) The child has 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 who is alleged to have committed that act knew the age of that victim.

**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 filed or made alleging that the provisions described above in paragraphs (2), (3), or (4) in "**Mandatory bindover**" (hereafter "relevant *mandatory bindover* criteria") apply and require that the case or cases involving one or more of the acts charged be transferred for criminal prosecution to the appropriate court having jurisdiction over the offense, and if a motion also is 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, must proceed in the following manner (R.C. 2151.26(C)(4)):

(1) Initially, the court must decide the motion alleging that any of the relevant *mandatory bindover* criteria applies and requires that the case or cases involving one or more of the acts charged be transferred for criminal prosecution to the appropriate court having jurisdiction over the offense.

(2) If the court so determines, the court must transfer the case or cases in accordance with the applicable *mandatory bindover* criteria. After that transfer, the court must 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 may transfer the subject case to the appropriate court having jurisdiction of the offense if the act charged in the case would be a felony if committed by an adult, if the child was 14 years of age or older at the time of the act charged, and if there is probable cause to believe that the child committed the act charged. Prior to transferring a case pursuant to this paragraph, the court is *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 determines that the relevant *mandatory bindover* criteria do *not* apply and that none of those criteria requires that the case or cases involving one or more of the acts charged be transferred for criminal prosecution, the court must 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 bill**

The bill replaces the existing *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*, *presumed transfer*, and *discretionary transfer*. The bill repeals the *category one offense* and *category two offense* classifications for purposes of existing law's transfer provisions and redefines *act charged* in the manner described above in "**Other definitions for new R.C. Chapter 2152.**"

#### **Mandatory transfer**

Under the bill, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be *aggravated murder or murder* if committed by an adult, the juvenile court at a hearing *must* transfer the case if the child was 16 or 17 years of age at the time of the act charged and if there is probable cause to believe that the child committed the act charged (R.C. 2151.12(A)(1)).

The juvenile court also *must* transfer a case 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 *presumed transfer* or *discretionary transfer* under the bill 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.

#### **Presumed transfer**

If a case is eligible for a *presumed transfer* as discussed above in "**Eligibility for transfer or felony dispositions**," the juvenile court at a hearing *must* transfer the case if the transfer is consistent with the overriding purposes for dispositions in delinquent child cases as described in "**Construction and purposes of the Juvenile Code**," above, and if the court finds all of the following on the record (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 failed to demonstrate, by a preponderance of the evidence, that the applicable factors described below in "**Factors against transfer**" indicating that the case should not be transferred outweigh the applicable factors described below in "**Factors favoring transfer**" indicating that the case should be transferred. The record must indicate the specific factors that were applicable and that the court weighed.

### **Discretionary transfer**

Except as described above in "**Mandatory transfer**" or "**Presumed 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, other than a felony of the fifth degree in which the complaint does *not* specify any enhancing factor as described above in "**Enhancement factors**," the juvenile court at a hearing may transfer the case if the transfer is consistent with the overriding purposes for dispositions in delinquent child cases as described in "**Construction and purposes of the Juvenile Code**," above, and if the court finds all of the following on the record (R.C. 2152.12(C)):

(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 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 were applicable and that the court weighed.

### **Investigation**

The bill provides that before considering a *presumed transfer* or *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 and physical examination by the child constitutes a waiver of the examination. (R.C. 2152.12(D).)

### *Factors favoring transfer*

The bill requires the juvenile court to consider the following relevant factors and any other relevant factors, *in favor of a transfer* under the bill (R.C. 2152.12(E)):

(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 allegedly used or displayed the firearm, or brandished the firearm, indicating that the child possessed a firearm, during the commission of the act charged.

(6) The child was allegedly motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(7) At the time of the commission 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.

(8) The child is not amenable to juvenile dispositional options.

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

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

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

### **Factors against transfer**

The bill requires the juvenile court to consider the following relevant factors and any other relevant factors *against a transfer* under the bill (R.C. 2152.12(F)):

(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 commission of the act charged, or 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 committing the act charged.

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

(6) The child is amenable to juvenile dispositional options.

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

(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**

The bill substitutes the following provisions for the existing provisions pertaining to 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 bill'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 bill's *presumed transfer* or *discretionary transfer* provisions, the juvenile court, in deciding the motions, must proceed in the following manner (R.C. 2152.12(G)):

(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 *presumed transfer* provisions or 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 *presumed transfer* or *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 *presumed transfer* provisions or the *discretionary transfer* provisions whether to grant the motion requesting that the case or cases be transferred pursuant to either of those provisions.

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

#### **Existing law**

Existing law requires the juvenile court to give notice in writing of the time, place, and purpose of any hearing held pursuant to the provisions described above in "**Mandatory bindover**" or "**Discretionary bindover,**" to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing (R.C. 2151.26(D)).

The law prevents any person, either before or after reaching 18 years of age, from being prosecuted as an adult for an offense committed prior to becoming 18 years of age, unless the person has been transferred as described above in "**Mandatory bindover**" or "**Discretionary bindover,**" or unless the person allegedly committed an act that would be a felony if committed by an adult when the person was under 18 years of age and was not taken into custody or apprehended until the person attained 21 years of age. Any prosecution that occurs in a criminal court on the mistaken belief that the person who is the subject of the case was 18 years of age or older at the time of the commission of the offense is deemed a nullity, and the person cannot be considered to have been in jeopardy on the offense. (R.C. 2151.26(E).)

Upon the transfer of a case for criminal prosecution to the appropriate court having jurisdiction of the offense, the juvenile court must state the reasons for the transfer and order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition

that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and upon the transfer, all further proceedings pertaining to the act charged must be discontinued in the juvenile court. The case then comes within the jurisdiction of the court to which it is transferred. (R.C. 2151.26(F).)

### **Operation of the bill**

The bill retains essentially all of the above-described procedures in existing law for the transfer of delinquent child cases and relocates them to new R.C. 2152.12. The bill makes those procedures applicable to *mandatory transfers*, *presumed transfers*, and *discretionary transfers* under the bill and specifically requires that the reasons for the transfer be stated *on the record*. (R.C. 2152.12 (H), (I), and (J).)

### **Persons apprehended at age 21 or over**

#### **Existing law**

Existing law provides that if a person under 18 years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains 21 years of age: (a) the juvenile court does *not* have jurisdiction to hear or determine any portion of the case charging the person with committing that act, (b) the provisions described above in "**Mandatory bindover**" or "**Discretionary bindover**" do not apply regarding that act, (c) the case charging the person with committing that act must be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been 18 years of age or older when the person committed that act, (d) all proceedings pertaining to that act are within the jurisdiction of the court having jurisdiction of the offense, and (e) that court has all the authority and duties in the case as it has in other criminal cases *commenced* in that court. (R.C. 2151.26(G).)

#### **Operation of the bill**

Under the bill, if a person under 18 years of age allegedly commits an act that would be a felony if committed by an adult, if the person is not taken into custody or apprehended for that act until after the person attains 21 years of age, *and if the case is not eligible for discretionary EJJ disposition as described above in "**Eligibility for transfer or felony dispositions**"* (added by the bill), the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, the bill's provisions pertaining to *mandatory transfer*, *presumed transfer*, or *discretionary*

*transfer* do not apply regarding the act, and the case charging the person with committing the act must be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been 18 years of age or older when the person committed the act. All proceedings pertaining to the act are within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case as it has in other *criminal cases in that court*, instead of other criminal cases *commenced* in that court. (R.C. 2152.12(K)(1).)

The bill additionally provides that if a person under 18 years of age allegedly commits an act that would be a felony if committed by an adult, if the person is not taken into custody or apprehended for that act until after the person attains 21 years of age, and if the case is eligible for *discretionary EJJ* disposition, the juvenile court may transfer the case under the bill's transfer provisions or may retain jurisdiction and impose an *extended juvenile jurisdiction* disposition under the bill (see "*Extended juvenile jurisdiction dispositions*," below) (R.C. 2152.12(K)(2)).

### *State's appeal of transfer decision*

#### *Existing law*

Under existing law, a prosecuting attorney, village solicitor, city director of law, or the Attorney General may appeal *as a matter of right* any decision of a trial court in a criminal case, or *any decision of a juvenile court in a delinquency case*, if the decision: (a) grants a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return of seized property or (b) grants post-conviction relief pursuant to law. A prosecuting attorney, village solicitor, city director of law, or the Attorney General may appeal *by leave of the court* to which the appeal is taken any other decision, except the final verdict, of the trial court in a criminal case or of the juvenile court in a delinquency case. (R.C. 2945.67(A).)

#### *Operation of the bill*

The bill specifically authorizes a prosecuting attorney to appeal *as a matter of right* any decision of a juvenile court in a delinquent child case that denies a motion to transfer the case from the juvenile court to the appropriate court having jurisdiction of the offense as provided in the bill's *presumed transfer* provisions. The bill provides that this right to appeal a juvenile court's decision not to transfer a case is in addition to any other right of appeal of the prosecuting attorney. (R.C. 2152.12(L)(1) and 2945.67(A).)

The record that is reviewed in any appeal of the juvenile court's decision not to transfer the case pursuant to the bill's *presumed transfer* provisions must include all of the following, as applicable (R.C. 2152.12(L)(2)):

(1) The transcript of the proceedings;

(2) Any mental examination or other investigative report that was prepared under the bill as described above in "*Investigation*," Juvenile Rule 30 (see **COMMENT 5**), or any other provision of law and submitted to the juvenile court in writing before the court made its decision not to transfer the case. The appellate court's use of any report in connection with an appeal under the bill does not affect the otherwise confidential character of the contents of the report and does not cause the report to become a *public record* (see **COMMENT 6**) following the appellate court's use of the report.

(3) The judgment entry, including the specific factors as described above in "*Factors favoring transfer*" and "*Factors against transfer*," that the court considered and weighed in reaching its decision not to transfer the case;

(4) Any other oral or written statement made to or by the court at the transfer hearing.

### *Serious youthful offender dispositional sentence*

#### *Overview*

Under existing law, a juvenile court may bind a child alleged to have violated a section of the Revised Code over for trial as an adult in specified circumstances. In other circumstances, the juvenile court is required to bind the child over. (See the discussion of existing law above in "*Types of transfer to criminal court--existing law*." ) If the juvenile court does not bind the child over, the court may impose specified delinquency dispositions under the Juvenile Law, but the jurisdiction of the court ends when the child reaches 21 years of age. If the child is committed to the custody of the Department of Youth Services (DYS), DHS must release the child when the child reaches 21 years of age. (R.C. 2151.26 and 2151.355.)

The bill authorizes a juvenile court to impose a "dispositional sentence" for certain "serious youthful offenders" that contains a juvenile portion consisting of a traditional or extended juvenile jurisdiction 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 been bound over. 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, 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.

### **Initiating procedure**

The bill authorizes a prosecuting attorney to seek a "serious youthful offender dispositional sentence" in a case involving an alleged delinquent child who is eligible for a serious youthful offender dispositional sentence (see "**Eligibility for transfer or felony dispositions**," above). Generally, if a prosecuting attorney intends to seek a serious youthful offender dispositional sentence in a case involving an alleged delinquent child, the prosecuting attorney must file a written notice of that intent with the juvenile court within ten 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, the juvenile court must serve a copy of the notice on the child, bring the child before the juvenile court, and advise the child of the prosecuting attorney's intent to seek a serious youthful offender dispositional sentence in the case. Generally, if the prosecuting attorney does not timely file the written notice, the juvenile court is prohibited from ordering a serious youthful offender dispositional sentence in the case. (R.C. 2152.13(A)(1)(a).)

The prosecuting attorney of the county in which the child has a legal residence or legal settlement or in which the alleged delinquent act occurs also may initiate a case in which a child is alleged to be a delinquent child and in which the prosecuting attorney seeks a serious youthful offender dispositional sentence by presenting the case to a grand jury for indictment. The grand jury may be impaneled by the court of common pleas or the juvenile court. (R.C. 2152.021(A) and 2152.13(A), (B), and (C).)

The prosecuting attorney is not required to file a written notice if any of the following apply (R.C. 2152.13(A)(2)):

(1) The case is subject to a presumed transfer, the presumption is overcome, and, as a result, the case is required to be considered as a serious youthful offender case if the presumption is overcome.

(2) The prosecuting attorney's original complaint requests a serious youthful offender dispositional sentence in the case.

(3) The child is indicted as a serious youthful offender.

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

If a notice, indictment, or complaint 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.

Once a child is indicted or the juvenile court determines the child to be eligible for a serious youthful offender dispositional sentence, the child is entitled to be represented by counsel at an open and speedy trial by jury in juvenile court and to be provided with a transcript of the proceedings. If the child is detained awaiting adjudication, 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, if the child is eligible for a serious youthful offender dispositional sentence, the juvenile court must conduct all hearings and proceedings in the case in accordance with the Criminal Code and Procedure and the Criminal Rules. The juvenile court must afford the child all rights afforded a person who is criminally prosecuted for committing an offense. (R.C. 2152.13(B) and (C).)

### **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 upon the child a serious youthful offender dispositional sentence (see "**Eligibility for transfer or felony dispositions**," above), all of the following apply (R.C. 2152.13(D)(1)(a)):<sup>1</sup>

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<sup>1</sup> *A serious youthful offender dispositional sentence is required if the child is subject to a presumed transfer and the presumption is overcome, if the child is alleged or is adjudicated a delinquent child for committing in certain circumstances an act that would be murder or aggravated murder if committed by an adult, and if the child is alleged or is adjudicated a delinquent child for committing in certain circumstances an act that would be attempted murder or attempted aggravated murder if committed by an adult (R.C. 2152.11).*

(1) The juvenile court must impose upon the child a sentence available for the violation, 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 an extended juvenile jurisdiction disposition (see "*Extended juvenile jurisdiction dispositions*" below).

(3) The juvenile court must stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the extended juvenile jurisdiction disposition.

(4) The juvenile court may suspend any disposition imposed under the extended juvenile jurisdiction disposition in favor of a community control sanction or sanctions.

The child has a right to appeal under specified circumstances the adult portion of the serious youthful offender dispositional sentence imposed upon the child when any of those circumstances apply. Any appeal of the adult portion must be brought and considered as if the adult portion were not stayed. (R.C. 2152.13(D)(1)(b).)

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

Subject to "*Discretionary serious youthful offender dispositional sentence for certain fourth and fifth degree felonies*," below, 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. 2152.11(I)(3) and 2152.13(D)(2)(a)):<sup>2</sup>

(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

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<sup>2</sup> *The juvenile court may impose on the child a serious youthful offender dispositional sentence if the child is alleged to be or is adjudicated a delinquent child for committing in certain circumstances an act that would be attempted murder, attempted aggravated murder, or a felony.*

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 upon the child an extended juvenile jurisdiction disposition (see "*Extended juvenile jurisdiction dispositions*" below).

(3) The juvenile court must stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the extended juvenile jurisdiction disposition.

(4) The juvenile court may suspend any disposition imposed under the extended juvenile jurisdiction disposition in favor of a community control sanction or sanctions.

The child has a right to appeal under specified circumstances the adult portion of the serious youthful offender dispositional sentence imposed upon the child when any of those circumstances apply. Any appeal of the adult portion must be brought and considered as if the adult 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 an extended juvenile jurisdiction disposition alone or any other disposition under the Juvenile Delinquency Law. (R.C. 2152.11(I)(3) and 2152.13(D)(2)(b) and (c).)

***Discretionary serious youthful offender dispositional sentence for certain fourth and fifth degree felonies***

If a child is adjudicated a delinquent child for committing an act that if committed by an adult would be a felony of the fourth or fifth degree under circumstances that allow, but do not require, a juvenile court to impose on the child a serious youthful offender dispositional sentence, all of the following apply (R.C. 2152.11(I)(3) and 2152.13(D)(3)(a)):

(1) If the juvenile court on the record finds 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 set forth in the Juvenile Delinquency Law will be met, the juvenile court may impose upon the child a criminal sentence as if the child were an adult.

(2) If a sentence is imposed under paragraph (1), the juvenile court also must impose upon the child any traditional juvenile dispositions available under

the Juvenile Delinquency Law. Note: an extended juvenile jurisdiction disposition is *not* imposed.

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

(4) The juvenile court may suspend any traditional juvenile disposition in favor of a community control sanction or sanctions.

The child has a right to appeal under specified circumstances the adult portion of the serious youthful offender dispositional sentence imposed upon the child when any of those circumstances apply. Any appeal of the adult portion must be brought and considered as if the adult 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 a traditional juvenile disposition under the Juvenile Delinquency Law. (R.C. 2152.11(I)(3) and 2152.13(D)(3)(b) and (c).)

#### **Application of the Sex Offender Registration and Notification Law**

If a child subject to a serious youthful offender dispositional sentence is adjudicated a delinquent child for committing an act that would be a sexually oriented offense if committed by an adult, before the juvenile portion of the serious youthful offender dispositional sentence ends, the juvenile court, on motion, must determine whether and to what extent the child must abide by the community notification requirements set forth in the Sex Offender Registration and Notification Law. The motion may be by the court's own motion or on a motion by the DYS, the probation department supervising the child, the prosecuting attorney, or child's attorney. (See "Overview of Sex Offender Registration and Notification Law," and succeeding portions below, and COMMENT 7.) (R.C. 2152.13(E).)

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

The Director of Youth Services may request the prosecuting attorney of the county containing 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 portion of the dispositional sentence if all of the following apply to the person: (1) the person is at least 14 years of age, (2) the person is in the institutional custody, or an escapee from the custody, of DYS, and (3) the person 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 must state that at least one incident of misconduct 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 a first degree misdemeanor offense of violence if committed by an adult, or (2) the person exhibits behaviors or engages in activities that create a clear and present danger to the safety or security of the institution, the community, or the victim or that seriously jeopardize the programming and treatment of other persons in institutional custody.

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 containing the juvenile court to file a motion with the juvenile court to invoke the adult portion of the dispositional sentence. 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 of the following occurred: (1) the person committed an act that is a violation of the conditions of supervision and that could be charged as a felony or a first degree misdemeanor offense of violence if committed by an adult, or (2) the person exhibits behaviors or engages in activities that create a clear and present danger to the community or the safety of the victim if the adult sentence is not invoked.

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 portion of the serious youthful offender dispositional sentence. 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 portion of the serious youthful offender dispositional sentence on its own motion. (R.C. 2152.14(A), (B), and (C).)

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

Upon the filing of the motion, the juvenile court may hold a hearing to determine whether to invoke the adult portion of a person's serious juvenile offender dispositional sentence. The juvenile court is prohibited from invoking the adult portion of the dispositional sentence without a hearing. At the hearing the person who is the subject of the serious youthful offender disposition 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, and to be advised on the procedures and protections set forth in the Juvenile Rules. The hearing must be open to the public. (R.C. 2152.14(D).)

The juvenile court may invoke the adult portion of a person's serious youthful offender dispositional sentence 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 behaviors or acts charged, or 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 portion of a serious youthful offender dispositional sentence, the juvenile portion of the dispositional sentence terminates, and DYS must transfer custody of the person to the Department of Rehabilitation and Correction. 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 portion of the dispositional sentence 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. (R.C. 2152.14(F).)

**Conforming changes**

The bill makes a number of conforming changes throughout the Revised Code that are related to the serious youthful offender provisions (R.C. 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), 2152.41, 2152.71(B), 2152.81(A)(2), (C), and (D), 2923.32(B)(4)(a)(ii), 2923.33(A), 2923.36(A), 2923.44(B)(1)(a), (D)(1), (D)(2), and (F)(1), 2923.45(A) 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)(d) and (B)(2)(e)).

**Delinquency dispositions--existing law**

**In general**

Under existing law, if a child is adjudicated a delinquent child, the court may make any of the following orders of disposition (R.C. 2151.355(A)):

(1) Any order authorized as a disposition for an abused, neglected, or dependent child;

(2) Place the child on probation under any conditions that the court prescribes. In specified circumstances, the court must require the child to make restitution for the property damage caused by the violation as a condition of probation (if the delinquent act was vandalism, criminal damaging or endangering, or criminal mischief and if restitution is appropriate) and in all other cases, the court may require the child as a condition of probation to make restitution for the property damage caused by violation and for the value of the property that was the subject of the violation if it would be a theft offense if committed by an adult. The restitution may be in the form of a cash reimbursement paid in a lump sum or in installments, the performance of repair work to restore damaged property to its original condition, the performance of a reasonable amount of labor for the victim approximately equal to the value of the property damage caused by the violation or to the value of the property that is the subject of the violation if it would be a theft offense, the performance of community service or community work, any other form of restitution devised by the court, or any combination thereof. Also, in specified circumstances, the court, in addition to all other conditions of probation it imposes, must require the child as a condition of probation to abide by the law during the probation, including, but not limited to, complying with state's laws relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance.

(3) 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;

(4) If the child is adjudicated a delinquent child 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 under R.C. 2923.211(A), commit the child

to the legal custody of the Department of Youth Services (DYS) for institutionalization for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of 21 years of age;

(5) If the child is adjudicated a delinquent child for committing voluntary manslaughter, kidnapping, aggravated arson, aggravated robbery, involuntary manslaughter by reason of committing a felony or for 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, commit the child to DYS's legal custody for institutionalization in a secure facility for an indefinite term consisting of a minimum period of one to three years, as prescribed by the court, and a maximum period not to exceed the child's attainment of 21 years of age;

(6) If the child is adjudicated a delinquent child for an attempt to commit aggravated murder or murder, commit the child to DYS's legal custody for institutionalization in a secure facility for an indefinite term consisting of a minimum period of six to seven years, as prescribed by the court, and a maximum period not to exceed the child's attainment of 21 years of age;

(7) If the child is adjudicated a delinquent child for committing an act not described in paragraph (5) or (6), above, that would be a felony of the first or second degree if committed by an adult, commit the child to DYS's legal custody for institutionalization in a secure facility for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed the child's attainment of 21 years of age.

(8) If the child is adjudicated a delinquent child for committing an aggravated murder or murder, commit the child to DYS's legal custody for institutionalization in a secure facility until the child's attainment of 21 years of age;

(9) If the child is 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 is committed to DYS's legal custody under the provisions described above in paragraphs (4) to (8) and if the court determines 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, 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 cannot commit a child to DYS's legal custody under this provision for a period of time that exceeds three years. The period of commitment imposed under this provision is in addition to, and must be served consecutively with and prior to, a period of commitment ordered pursuant to provisions described above in paragraphs (4) to (8), provided that the total of all the periods of commitment cannot exceed the child's attainment of 21 years of age.

(10) If the child is adjudicated a delinquent child for committing a category one or category two offense and is committed to DYS's legal custody under the provisions described above in paragraphs (4) to (8) and if the court determines that the child, if the child was an adult, would be guilty of a gang specification of the type set forth in R.C. section 2941.142 in relation to the child's delinquent act, 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 in the last two sentences of the preceding paragraph;

(11) Impose a fine and costs in accordance with the schedule set forth in R.C. 2151.3512 (see "*Financial sanctions for delinquent children and juvenile traffic offenders--existing law*," below);

(12) Require the child to make restitution for all or part of the property damage caused by the child's delinquent act and for all or part of the value of the property that was the subject of any delinquent act the child committed that would be a theft offense if committed by an adult. If the court determines that the victim was 65 years of age or older or permanently and totally disabled at the time of the commission of the delinquent act, the court, regardless of whether or not the child knew the victim's age, must consider that fact in favor of imposing restitution, but that fact does not control the court's decision. The restitution may be in the form of a cash reimbursement paid in a lump sum or in installments, the performance of repair work to restore any damaged property to its original condition, the performance of a reasonable amount of labor for the victim, the performance of community service or community work, any other form of restitution devised by the court, or any combination thereof.

(13) Subject to the license suspension provision described below, suspend or revoke the child's driver's license, probationary driver's license, or temporary instruction permit or suspend or revoke the registration of all motor vehicles registered in the child's name. A child whose license or permit is so suspended or revoked is ineligible for issuance of a license or permit during the suspension or revocation. At the end of the suspension or revocation, 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.

(14) If the child is adjudicated a delinquent child for committing an act that, if committed by an adult, would be a criminal offense that would qualify the adult as an eligible offender for electronically monitored house arrest (EMHA), impose a period of electronically monitored house detention (EMHD), as described below, that does not exceed the maximum sentence of imprisonment that could be imposed upon an adult who commits the same act;

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

(16) Impose a period of EMHA, as described below;

(17) Impose a period of community service of up to 500 hours;

(18) Impose a period in an alcohol or drug treatment program with a level of security for the child as determined necessary by the court;

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

(20) Impose a period of basic supervision, in which the child is required to maintain contact with a person appointed to supervise the child in accordance with sanctions imposed by the court;

(21) Impose a period of drug and alcohol use monitoring;

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

(23) Require the child to obtain a high school diploma, a certificate of high school equivalence, or employment;

(24) If the court obtains the assent of the victim of the criminal act committed by the child, require the child to participate in a reconciliation or mediation program that includes a meeting in which the child and the victim may discuss the criminal act, discuss restitution, and consider other sanctions for the criminal act;

(25) Commit the child to the temporary or permanent custody of the court;

(26) Make any further disposition that the court finds proper, except that the child cannot be placed in a state correctional institution, county, multicounty, or municipal jail or workhouse, or other place in which an adult convicted of a crime, under arrest, or charged with a crime is held.

**Corrupt activity disposition**

If a child is adjudicated a delinquent child for engaging in a pattern of corrupt activity, the court, in addition to any order of disposition it makes for the child under the provisions described above in "**In general**," must enter an order of criminal forfeiture against the child in accordance with divisions (B)(3), (4), (5), and (6) and (C) to (F) of R.C. 2923.32 (R.C. 2151.355(B)(1)).

**Commitment to DYS for multiple delinquent acts**

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, as described above in "**In general**," the court may order that all of the periods of commitment imposed under those divisions 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 specification, as described above in "**In general**." 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)(2).)

**Drug abuse offense disposition**

If a child is 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 order of disposition authorized by this section, the court must: (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 attends and satisfactorily completes, a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court. (R.C. 2151.355(C).)

**Illegal conveyance or possession of deadly weapons or dangerous ordinance on school premises disposition**

If a child is adjudicated a delinquent child for illegally conveying or possessing a deadly weapon or dangerous ordinance on school premises, the court, in addition to any order of disposition it makes for the child under any of the above-described provisions, must 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)).

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

At the dispositional hearing and prior to making any disposition of a delinquent child, the court must 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, as described above under "**In general**," but those facts do not control the court's decision. (R.C. 2151.355(E)(1).)

**Consideration of prior delinquency adjudication in making a DYS commitment**

At the dispositional hearing and prior to making any disposition of a delinquent child by committing the child 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 so adjudicated a delinquent child, the court, for purposes of entering an order of disposition for the delinquent child, must consider the previous delinquent child adjudication as a conviction of a violation of the law or ordinance in determining the degree of offense the current delinquent act would be had it been committed by an adult. (R.C. 2151.355(E)(2).)

### *Procedures regarding a commitment to DYS*

When a juvenile court commits a delinquent child to DYS's custody, 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 or that the institutionalization is to be in a secure facility if that is required by law. The court 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 section or sections of the Revised Code violated by the child and the degree of the 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 a delinquent child, 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 developed and furnished by DYS and provide DYS with the completed form. DYS may refuse to accept physical custody of a delinquent child until the court provides the Department the specified documents, and no DYS officer or employee who refuses to accept a delinquent child 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 or 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.

When a juvenile court commits a delinquent child to DYS, the court must 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 that 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 home, because of a school's failure to provide the required school transcript. DYS must provide the court and the school with an updated copy of the child's school transcript and with a summary of the institutional record of the child when it releases the child from institutional care. 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.

When a juvenile court commits a delinquent child to DYS, other than for aggravated murder or murder, the court must state in the order of commitment the

total number of days that the child has been held, as of the date of the issuance of the order, in detention in connection with the delinquent child complaint upon which the commitment order is based. DYS must reduce the specified minimum period of institutionalization or institutionalization in a secure facility 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 commitment order but prior to the transfer of physical custody of the child to DYS. (R.C. 2151.355(F).)

### **Notices to victims**

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, (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)).

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

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 court may make a specific finding that the adjudication should 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. If the court makes such a specific finding, it must include the finding in its order of disposition and in the record in the case. (R.C. 2151.355(G)(2).)

### **Victim impact statement**

If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the child caused, attempted to cause, threatened to cause, or created the risk of physical harm to the victim of the act, the court, prior to issuing an order of disposition, must order the preparation of a victim impact statement by the probation department of the county in which the victim act resides, by the court's own probation department, or by a government-

operated victim assistance program. 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 as a result of the act, identify any physical injury suffered by the victim as a result of the act and the seriousness and permanence of the injury, identify any change in the victim's personal welfare or familial relationships as a result of the act and any psychological impact experienced by the victim or the victim's family as a result of the act, and contain any other information related to the impact of the act upon the victim that the court requires.

A victim impact statement must be kept confidential and is not a public record. However, the court may furnish copies of the statement 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. 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).)

#### **Felony drug abuse and gang-related activity forfeitures**

Existing law specifies that the felony drug abuse offense forfeiture provisions contained in existing R.C. 2925.41 to 2925.45 apply to children who are, or could be, adjudicated by a juvenile court to be delinquent children for an act that, if committed by an adult, would be a felony drug abuse offense. Subject to some of those specified provisions, such a delinquent child loses any right to the possession of, and forfeits to the state any right, title, and interest that the child may have in, property as defined in those provisions.

Existing law also specifies that the gang-related activity forfeiture provisions contained in existing R.C. 2923.44 to 2923.47 apply to children who are, or could be, adjudicated by a juvenile court to be delinquent children for an act that is subject to those provisions. Subject to some of those specified provisions, such a delinquent child loses any right to the possession of, and forfeits to the state any right, title, and interest that the child may have in, property as defined in those provisions. (R.C. 2151.355(I).)

#### **Electronically monitored house detention**

A juvenile court, pursuant to the provisions described above in "**In general**," may impose a period of EMHD upon a child who is adjudicated a delinquent child for committing an act that, if committed by an adult, would be a

criminal offense that would qualify the adult as an eligible offender under the Criminal Sentencing Law. The court may impose a period of EMHD in addition to or in lieu of any other dispositional order imposed, except that any period of EMHD cannot extend beyond the child's 18th birthday. If a court imposes a period of EMHD upon a child, it must impose certain specified restrictions and requirements upon the child, and may impose other reasonable restrictions and requirements upon the child. If a child violates any of the restrictions or requirements imposed as part of the EMHD dispositional order, the child cannot receive credit for any time served on EMHD toward any other dispositional order imposed upon the child for the act for which the EMHD dispositional order was imposed. Existing law defines EMHD and, by reference, adopts the existing Criminal Sentencing Law definitions of "electronic monitoring device," "certified electronic monitoring device," "electronic monitoring system," and "certified electronic monitoring system." (R.C. 2151.355(J).)

### *Notices to schools*

Within ten days after completion of the adjudication, the court must give written notice of an adjudication that a child is a delinquent child to the superintendent of a city, local, exempted village, or joint vocational school district if the basis of the adjudication was the commission of an act that would be a criminal offense if committed by an adult and that was committed by the delinquent child when the child was 16 years of age or older and if the act is any of the following: (1) illegal conveyance or possession of a deadly weapon or dangerous ordnance on school premises that relates to property owned or controlled by, or to an activity held under the auspices of, the board of education of that school district, (2) carrying a concealed weapon or a substantially similar municipal ordinance that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, (3) a drug trafficking or drug possession violation committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district and that is not a minor drug possession offense, (4) aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, aggravated assault, felonious assault, rape, or gross sexual imposition, or a violation of former R.C. 2907.12, committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, if the victim at the time was an employee of that board of education, or (5) complicity in any violation described in clause (1) to (4) of this paragraph that was alleged to have been committed in the manner described in any of those clauses, regardless of whether the act of complicity was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district (R.C. 2151.355(K)).

### **Probation-related searches**

During the period of a delinquent child's probation granted under the provisions described above in "**In general**," authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the person of the delinquent child, the place of residence of the delinquent child, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the delinquent child has a right, title, or interest or for which the delinquent child has the 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 probation. The court that places a delinquent child on probation must provide the child with a written notice that informs the child that probation officers engaged within the scope of their supervisory duties or responsibilities may conduct those types of searches during the probation. The court also must provide a written notice to each parent, guardian, or custodian of the delinquent child, in specified circumstances. (R.C. 2151.355(L).)

### **Delinquency dispositions--operation of the bill**

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

### **Extended juvenile jurisdiction dispositions**

If a delinquent child is eligible for an extended juvenile jurisdiction disposition (see "**Eligibility table**" under "**Eligibility for transfer or felony dispositions**," above), the juvenile court may impose extended jurisdiction if the juvenile court on the record finds that, given the nature and circumstances of the offense and the history of the offender, the length of time available under traditional juvenile dispositions is not adequate to provide the court with a reasonable expectation that the purposes set forth in the Juvenile Delinquency Law will be met. If a delinquent child is eligible for an extended juvenile jurisdiction disposition but the juvenile court does not impose extended juvenile jurisdiction, the juvenile court may impose any traditional juvenile disposition. (R.C. 2152.15(A).)

If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and is eligible for extended juvenile jurisdiction either directly or as part of a serious youthful offender dispositional sentence, the juvenile court may commit the child to the legal custody of DYS for secure confinement for the following periods of time (R.C. 2152.15(B)):

(1) If the act for which the child was adjudicated a delinquent child was aggravated murder or murder, until the child reaches 25 years of age. The juvenile court retains control over the commitment until the offender reaches 25 years of age.

(2) If the act for which the child was adjudicated a delinquent child would be a felony other than aggravated murder or murder if committed by an adult, for an indefinite term consisting of a minimum stated period established as follows and a maximum period of the child's attainment of 25 years of age:

(a) If the act would be a felony of the first degree if committed by an adult, the minimum stated period must be from 12 to 60 months.

(b) If the act would be a felony of the second degree if committed by an adult, the minimum stated period must be from 12 to 48 months.

(c) If the act would be a felony of the third degree if committed by an adult, the minimum stated period must be from 12 to 30 months.

The juvenile court retains control over the commitment for the minimum stated period. During the minimum stated period, DYS must not move the child to a non-secure setting without permission of the juvenile court.

If a child is committed to DYS under extended juvenile jurisdiction, DYS may release the child at any time after the period of court control ends. DYS is prohibited from confining any child committed to the custody of DYS under extended juvenile jurisdiction after the child attains 25 years of age. (R.C. 2152.15(C).)

The bill also makes a number of conforming changes throughout the Revised Code to conform to the above new provisions (R.C. 2151.38(B)(1) and (C)(1), 2152.12(K), 2152.17(D) and (E), 2152.22(B) and (C), 5139.01(A)(19), 5139.05(A)(4), (B)(1), and (B)(2)(f), 5139.10, 5139.24, 5139.50(E)(1), and 5139.51(A) and (E)).

### **Commitment to DYS--extended juvenile jurisdiction not imposed**

Under the bill, if a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and extended juvenile jurisdiction is not imposed (see "Extended juvenile jurisdiction dispositions," above), the juvenile court may commit the child to DYS's legal custody for secure confinement. In making a commitment under this provision, the court must select a specific minimum period of months of confinement from the following ranges: (1) for an act that would be aggravated murder or murder if committed by an adult,

until the offender attains 21 years of age, and the court retains control over the commitment until the child reaches that age, (2) for an act that would be a felony of the first degree if committed by an adult, six to 60 months, (3) for an act that would be a felony of the second degree if committed by an adult, six to 48 months, (4) for an act that would be a felony of the third degree if committed by an adult, six to 30 months, (5) for an act that would be a felony of the fourth degree if committed by an adult, six to 18 months, and (6) for an act that would be a felony of the fifth degree if committed by an adult, six to 12 months.

In each case in which a court makes a disposition under this provision: as part of the disposition the court must set the maximum period of the secure confinement as the delinquent child's attainment of 21 years of age; and the court retains control over the commitment for the specific period selected from the ranges set forth in the preceding paragraph. During the period of court control, DYS cannot move the offender to a non-secure setting without the permission of the court that imposed the disposition.

If a delinquent child is committed to DYS under this provision, DYS may release the child at any time after the period of court control ends. The maximum period of confinement of any child committed to DYS under this provision is the delinquent child's attainment of 21 years of age. (R.C. 2152.16.)

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

The bill enacts provisions relative to the commitment of a child to DYS under a firearms term. It specifies that those provisions apply to a child to whom both of the following apply: (1) the child is adjudicated a delinquent child for committing an act, other than carrying a concealed weapon, that would be a felony if committed by an adult, and (2) the court determines that the child, if the child was an adult, would be guilty of a firearms specification of the type set forth in the Criminal Sentencing Law under R.C. 2941.141, 2941.144, 2941.145, or 2941.146.

The bill's firearms provisions also apply to a child who is adjudicated a delinquent child for committing an act described in clause (1) of the preceding paragraph, if the child was an accomplice of a delinquent child to whom the preceding paragraph applies but did not possess the firearm identified in the specification described in that paragraph and if the court determines that the child described in this paragraph knew that the delinquent child to whom the preceding paragraph applies possessed the firearm. If the child described in this paragraph knew that the delinquent child to whom the preceding paragraph applies possessed the firearm under the circumstances described in the specification, the child described in this paragraph must receive the same disposition as the delinquent child to whom the preceding paragraph applies. In all other cases, the delinquent

child described in this paragraph must receive the disposition described in the next paragraph. (R.C. 2152.17(A).)

If a child is adjudicated a delinquent child and if the provisions described in either of the two preceding paragraphs apply to the child, the court, as provided in (1) to (3), below, may commit, or, when required under any of those provisions, must commit the child to DYS for institutionalization in a secure facility. The commitment, which is in addition to the commitment that the court imposes for the underlying delinquent act, must be as follows (R.C. 2152.17(B)(1)):

(1) If the child would be guilty of a specification of the type set forth in R.C. 2941.141 (i.e., the child had a firearm on or about the child's person or under the child's control while committing the act) or if the "accomplice" provisions described in the second preceding paragraph apply, the court may commit the child for the specification for a definite period of up to one year, provided that the court cannot commit the child under this paragraph unless the court also commits the child to DYS for the underlying delinquent act under the previously described provisions of the bill.

(2) If the child would be guilty of a specification of the type set forth in R.C. 2941.145 (i.e., the child displayed, brandished, indicated possession of, or used a firearm in committing the act), the court must commit the child for the specification for a definite period of one to three years, and the court also must commit the child to DYS for the underlying delinquent act under the previously described provisions of the bill.

(3) If the child would be guilty of a specification of the type set forth in R.C. 2941.144 or 2941.146 (i.e., the child had an automatic firearm or a firearm equipped with a muffler or silencer while committing the act or the child discharged a firearm from a motor vehicle in specified circumstances), the court must commit the child for the specification for a definite period of one to five years, and the court also must commit the child to the Department for the underlying delinquent act under the previously described provisions of the bill. A child committed for a specification under this paragraph is not eligible for commitment under paragraph (1) or (2) for the same delinquent act.

The court cannot commit a child to DYS's legal custody for a specification under these provisions for a period of time that exceeds five years for any one delinquent act. The period of 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. If a commitment is imposed under a firearms specification and a commitment also is imposed under a gang-related activity specification (see the next paragraph), the period imposed

under the firearms specification must be "imposed" prior to the period imposed under the gang-related specification. The total of all the periods of commitment imposed for a specification and for the underlying offense under this chapter cannot exceed the child's attainment of 21 years of age, unless the child receives an extended juvenile jurisdiction disposition (see "*Extended juvenile jurisdiction dispositions*," above), in which case the total of all periods of commitment so imposed cannot exceed the child's attainment of 25 years of age. (R.C. 2152.17(D).)

The bill makes it clear that the firearms specification set forth in the Criminal Sentencing Law under R.C. 2941.141, 2941.144, 2941.145, and 2941.146 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***

The bill provides that, if a child is adjudicated a delinquent child for committing an act that would be a first, second, or third degree felony offense of violence if committed by an adult and if the court determines that the child, if the child was an adult, would be guilty of a specification of the type set forth in R.C. 2941.142 (i.e., 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 services 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 in the preceding paragraph, and the court also must commit the child to DYS for the underlying delinquent act under the previously described provisions of the bill. (R.C. 2952.17(D).)

The bill 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***. 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 bill, 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 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 or, if the child is eligible for extended juvenile jurisdiction (see "*Extended juvenile jurisdiction dispositions*," above), the child's attainment of 25 years of age. (R.C. 2152.17(E).)

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

Under a provision identical to existing law, the bill 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 court may make a specific finding that the adjudication should 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. If the court makes such a specific finding, it must include the finding in its order of disposition and in the record in the case. (R.C. 2152.17(F).)

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

The bill includes a series of provisions, similar to existing law, that provide general rules relative to a DYS commitment. 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 preceding 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. 2152.18(A) to (C).)

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

Similar to existing law, under the bill, 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 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 16 years of age or older, and if the act is any of a list of specified delinquent acts. The acts specified under the bill are the same as those specified under existing law, as described above in "Notices to schools" under "Existing 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.

Also, within 14 days after committing a delinquent child to DYS's custody, the court must 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 home, because of a school's failure to provide the required school transcript. Within 14 days 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. 2152.18(D).)

### **Notice to victims**

Similar to existing 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, (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. 2152.18(E).)

### **Disposition other than to DYS**

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

Under the bill, if a child is adjudicated a delinquent child, the court 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 on school premises 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. The former suspension and denial is for the time specified in R.C. 2923.122, and the latter is for a period of time prescribed by the court or, at the court's discretion, until the child attends and satisfactorily completes a specified drug abuse or alcohol abuse education, intervention, or treatment program. (R.C. 2152.19(B).)

Under the bill, if a child is adjudicated a delinquent child for an act that would be a felony or misdemeanor if committed by an adult, the court may make any of the following orders of disposition, in addition to the mandatory disposition described above and any other disposition authorized or required by new R.C. Chapter 2152. (R.C. 2152.19(A)):

(1) Any order authorized for an abused, neglected, or dependent child;

(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 organized under R.C. 2152.41 or 2151.65, 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;

(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, 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 18th birthday or, if the child is subject to extended juvenile jurisdiction under the bill, beyond the child's 25th birthday. If a court imposes a period of EMHA under this provision, as under existing law, it must impose certain specified requirements and restrictions upon the child, and may impose other reasonable requirements upon the child. 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) If the child is adjudicated a delinquent child for committing an act that would be a misdemeanor other than a minor misdemeanor if committed by an adult, a commitment of the child to the legal custody of the detention home or center that serves the county for up to 60 days, in addition to any other disposition authorized or required by new R.C. Chapter 2152. If the child was held in detention relative to the charge for which the disposition was made, the court must credit the time so spent in detention for evaluation against any commitment to a detention home or center made under this provision. If the evaluation time was ordered after the detention under the commitment made under this provision, the time so spent in evaluation must be credited against the period of the commitment made under this provision.

(m) A suspension 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 temporary or permanent custody of the court;

(5) 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 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.

The bill 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 must require the child to participate in the program. (R.C. 2152.19(C).)

### **SORN Law determinations**

The bill specifies that, if a child is adjudicated a delinquent child for committing an act that is a sexually oriented offense, as defined under the SORN Law (see R.C. 2950.01), in addition to any order of disposition it makes for the child under new R.C. Chapter 2152., the court may make any determination, adjudication, or order authorized under that Law and must make any determination, adjudication, or order required under that Law. However, the court is prohibited from subjecting the child to the notification provisions set forth in R.C. 2950.11 of that Law unless the child is adjudicated as a serious youthful offender under the bill (see "**Serious youthful offender dispositional sentence,**" above) and the court determines at a later hearing conducted before the end of the juvenile part of the sentence that community notification under R.C. 2950.11 is warranted (see "**Overview of Sex Offender Registration and Notification Law (SORN Law),**" and succeeding portions below).

If, at a dispositional hearing for a delinquent act that is a sexually oriented offense, a determination is made regarding the status of the child under that Law, the court must advise the child at the dispositional hearing of the child's duty to register under R.C. 2950.03 of that Law of the registration requirements applicable to the child under R.C. 2950.04 to 2950.07 of that Law. (R.C. 2152.19(D).)

### **Victim impact statement**

Under the bill, similar to existing 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 the 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. 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. DYS must work with local probation departments and victim assistance programs to develop a standard victim impact statement.

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. 2152.19(E).)

#### *Community control-related searches*

During the period of a delinquent child's community control granted under the bill, 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(F), and repeal of R.C. 2151.411(C)(2).)

### **Conforming changes**

The bill modifies numerous existing 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), 2151.14(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), 2152.74, 2744.01, 2923.34, 2929.23(E)(1), 3301.121, 3730.99, 5139.01(A)(3) and (12), 5139.04, 5139.05, 5139.06, 5139.20(D), 5139.281, 5139.32, and 5139.35).

### **Electronically monitored house arrest**

#### **Existing law**

Existing law authorizes 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 must be in accordance with the criteria and procedures set forth in existing R.C. 2929.23 and must utilize an "electronic monitoring device," as defined in that section.

Existing law defines "electronic monitoring device" as either of the following (R.C. 2929.13(A)(1)):

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following: (a) it has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in clause (b) if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronically monitored house arrest or electronically monitored house detention or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver, (b) it has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in clause (a), can transmit continuously those signals by telephone to a central monitoring computer of the type described in clause (c), and can transmit continuously an appropriate signal to that central monitoring computer if the receiver is turned off or altered without prior court approval or otherwise tampered with, and (c) it has a central monitoring computer that can receive continuously the signals transmitted by telephone by a receiver of the type described in clause (b)

and can monitor continuously the person to whom is attached an electronic monitoring device of the type described in this paragraph.

(2) Any device that is not a device of the type described in paragraph (1) and that conforms with all of the following: (a) it includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means, and (b) it includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to electronically monitored house arrest or electronically monitored house detention or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

### **Operation of the bill**

The bill 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. 2152.19 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--existing law**

Under existing law, 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 may 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 is so suspended is ineligible for issuance of a license or permit during the period of suspension. At the end of the period of suspension, the child is prohibited from being reissued a license or permit until the child has 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 is so revoked is ineligible for issuance of a license or permit during the period of revocation. At the end of the period of revocation, the child is prohibited from being reissued a license or permit until the child has 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 is adjudicated a juvenile traffic offender for committing a violation of state OMVI or of a municipal ordinance that is 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 is 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 is made, the length of the commitment must not be reduced or diminished as a credit for any time that the child was held in a place of detention or shelter care, or otherwise was detained, prior to entry of the order of disposition.

(7) If, after making a disposition under paragraphs (1) to (6), above, the court finds upon further hearing that the child has failed to comply with the orders of the court and the child's operation of a motor vehicle constitutes the child a danger to the child and to others, the court may make any of the following dispositions authorized for delinquent children, except that the child may 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 may not exceed 24 hours:

(a) Any order that is 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 prescribes;

(c) If the child is adjudicated a juvenile traffic offender for committing an act that would be a felony if committed by an adult and is committed to the legal custody of the Department of Youth Services (DYS) for that act and if the court determines 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 DHS 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 is adjudicated a juvenile traffic offender for committing a category one offense or a category two offense and is committed to the legal custody of DHS for that act and if the court determines 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 DHS 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 is adjudicated a delinquent child for committing an act that, if committed by an adult, would be a criminal offense that would qualify the adult as an "eligible offender" eligible for a period of electronically monitored house detention, impose a period of electronically monitored house detention that does

not exceed the maximum sentence of imprisonment that could be imposed upon an adult who commits the same act;

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

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

If a child is adjudicated a juvenile traffic offender for state OMVI, the court must 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 attends the program, the court must retain any permit or license issued to the child and must return the permit or license when the child satisfactorily completes the program. If a child is adjudicated a juvenile traffic offender for underage OMVI or OMVUAC, the court must 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.)

**Juvenile traffic offenders--operation of the bill**

**Relocation**

The bill renumbers R.C. 2151.356 as R.C. 2152.21.

**Driver's licenses--generally**

Rather than suspend the license for the period that the court prescribes, the bill requires 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 of not less than three months to two years. The bill 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 (3).)

**Further dispositions**

The bill 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 bill,

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 temporary or permanent custody of the court, or make any further disposition the court finds proper other than one the bill prohibits a court from imposing on a delinquent child. (R.C. 2152.21(A)(6) and 2152.19(A)(1), (3), (4), and (5).)

### **OMVI related dispositions**

The bill specifies that if a child is adjudicated a juvenile traffic offender for committing state OMVI and is committed to the custody of a detention home or district home, the child must be kept separate and apart from alleged delinquent children. This provision is relocated from existing R.C. 2151.34 (renumbered R.C. 2152.41 under the bill).

If a child is adjudicated a juvenile traffic offender for underage OMVI or OMVUAC, 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 three months (rather than 60 days as under existing law) to two years. (R.C. 2152.21(A)(5) and (B) and 2152.41.)

### **Cases to be heard without a jury**

Existing law specifies that a juvenile court shall hear all cases involving children without a jury. The bill specifies that this provision specifically includes cases involving alleged juvenile traffic offenders accused of committing acts that would be minor misdemeanors if committed by adults. (R.C. 2151.35(A).)

### **Requested rule changes**

The bill requests the Ohio Supreme Court to amend Juvenile Rule 29(C) to permit "no contest" pleas in juvenile traffic offender 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. (See **COMMENT 8** and **9**.) (Section 3 of the bill.)

The bill also requests 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. (See **COMMENT 10** and **11**.) (Section 4 of the bill.)

### *Technical changes*

The bill 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), 2151.23(I), 2151.27, 2151.3512, and 2152.26(C)).

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

Existing law provides for financial sanctions that may be imposed upon a child who is adjudicated a delinquent child. One of the sanctions, restitution, was discussed in a prior part of this analysis. Another specifies that, if a child is adjudicated a delinquent child or is adjudicated a juvenile traffic offender (j.t.o.) for the following specified felony or misdemeanor class or felony, the court may 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 bill**

The bill relocates the existing fine and cost schedule into new R.C. Chapter 2152. and modifies the schedule. It also includes in the new chapter numerous other provisions that relate to financial sanctions for delinquent children.

**Financial sanctions**

Under the bill, 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. 2152.20(A)):

(1) Impose a fine in accordance with the following schedule (see **COMMENT 12**):

(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 \$500;

(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;

(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.

(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 \$10,000 per year or the total amount of reimbursement the child is able to pay, and 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 existing law (R.C. 307.93(E), 341.06(A), or 341.23(D) or division (C) of R.C. 753.02, 753.04, 2301.56, or 2947.19).

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

As under existing 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 existing 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 existing law, the existing 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. 2152.20(B), 2923.44 to 2923.47, and 2925.41 to 2925.45.)

**Hearing regarding ability to pay**

The bill 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;

(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, or 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--existing law**

#### **In general**

Existing law provides that, when a child is committed to DYS's legal custody, the juvenile court's jurisdiction with respect to the child ceases and terminates at the time of commitment, except in relation to "judicial releases," "early releases," and "supervised releases," as described below. Except in relation to judicial releases and early releases, and subject to specified Juvenile Code provisions and any other provision of law that specifies a different duration for a dispositional order, all other dispositional orders made by the court are temporary and continue for a period designated by the court in its order, until terminated or modified by the court or until the child attains 21 years of age.

DYS's Release Authority, established under R.C. 5139.50, cannot release the child from institutional care or institutional care in a secure facility and as a

result cannot discharge the child or order the child's release on supervised release prior to the expiration of the prescribed minimum period of institutionalization or institutionalization in a secure facility or prior to the child's attainment of 21 years of age, whichever is applicable under the order of commitment, except upon the order of a court in relation to a judicial release or early release or in accordance with the provisions of R.C. 5139.54 governing medical releases or discharges. (R.C. 2151.38(A).)

When a child is committed to DYS's legal custody, the court retains jurisdiction to perform the functions specified in R.C. 5139.51 with respect to the granting of supervised release by DYS's release authority and to perform the functions specified in R.C. 5139.52 with respect to violations of the terms and conditions of, and the revocation of, a supervised release granted by the Release Authority (R.C. 2151.38(G)(2)).

### **Judicial release**

If DYS desires to release a child during the first half of the prescribed minimum term for which the child was committed to it or, if the child was committed to it until the child attains 21 years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, it must request the court that committed the child for a *judicial release* of the child from institutional care or institutional care in a secure facility. During the first half of that prescribed minimum term or of that prescribed period of commitment, whichever is applicable, the child or the parents of the child also may request that court to grant such a judicial release. Upon receipt of a request for a judicial release from DYS, the child, or the child's parent or upon its own motion, the court that committed the child must either: (1) approve the judicial release by journal entry, (2) schedule within 20 days after the request is received a time for a hearing on whether the child is to be released under a judicial release, or (3) reject the request by journal entry without conducting a hearing. If the court rejects an initial request for a judicial release by the child or the child's parent, the child or parent may make one additional request for a judicial release within the first half of the applicable prescribed minimum term or prescribed period of commitment. The child or parent may make the additional request no earlier than 30 days after the filing of the prior request. Upon the filing by the child or parent of a second request for a judicial release, the court must either approve or disapprove the judicial release by journal entry or schedule within 20 days after the request is received a time for a hearing on whether the child is to be released under a judicial release.

If a court schedules a hearing to determine whether a child should be granted a judicial release, it may order DRC 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 terms and conditions of supervision of the child by the court after release. The court may conduct the hearing without the child being present. The court must determine at the hearing whether the child should be granted a judicial release. If it approves the judicial release, it must order its staff to prepare a written treatment and rehabilitation plan for the child that may include any terms and conditions of the child's release recommended by DRC and approved by the court. The committing court must send the juvenile court of the county in which the child is placed a copy of the recommended plan and the terms and conditions set by the committing court. The court of the county in which the child is placed may adopt the recommended terms and conditions set by the committing court as an order of the court and may add any additional consistent terms and conditions it considers appropriate. If a child is granted a judicial release, the judicial release discharges the child from DRC's custody. (R.C. 2151.38(B).)

### *Early release*

If a child is committed to DYS and has been in institutional care or institutional care in a secure facility for more than one-half of the prescribed minimum term for which the child was committed or, if the child was committed to DYS until the child attains 21 years of age, for more than one-half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, if the prescribed minimum period of institutionalization or other statutorily required period of institutionalization has not expired, and if DYS desires to release the child from institutional care or institutional care in a secure facility, it must request the court that committed the child for an *early release* from institutional care or institutional care in a secure facility. During the applicable period described in the preceding sentence, the child or the child's parent also may request the court that committed the child to grant an early release. Upon the receipt of a request from DYS, the child, or the child's parent or upon its own motion at any time during that period, the court must either: (1) approve the early 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 early release by the child or the child's parents, within the applicable period described above, the child or the child's parent may make one or more subsequent requests for early release but may make no more than one request for early release during each period of 90 days that the child is institutionalized or institutionalized in a secure facility after the filing of a prior request. Upon the filing of a request for early release subsequent to an initial request, the court must either approve or disapprove the early 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.

If a court schedules a hearing to determine whether a child committed to DYS should be granted an early release, 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 an early release. If it approves the early release, DYS must prepare a written treatment and rehabilitation plan for the child (see below) that must include the terms and 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 and the terms and conditions that it fixed. That court may adopt the terms and conditions set by DYS as an order of the court and may add any additional consistent terms and conditions it considers appropriate, provided that the court may not decrease the level or degree of supervision specified by DYS in its plan, substantially increase the financial burden of supervision that DYS will experience, or alter the placement DYS specified in its plan. That court must enter any additional terms and conditions it adds to DYS's plan in its journal and must send to DYS a copy of the journal entry.

If the court approves or grants an early release for a child, the actual date on which DYS must release the child from institutional care or institutional care in a secure facility 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 to the home on the date the court schedules for the child's release or must bear the expense of any additional time the child remains in institutional care or institutional care in a secure facility. If the child is unable to return to the child's home, DYS must exercise reasonable diligence in finding a suitable placement for the child, and the child must remain in institutional care or institutional care in a secure facility while DYS finds the suitable placement. (R.C. 2151.38(C).)

Prior to the release of a child on an early release, 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 includes terms and conditions of the release, (2) completely discuss the terms and conditions of the plan prepared pursuant to clause (1) and the possible penalties for violation of the plan with the child and the child's parents, guardian, or legal custodian, (3) have the plan prepared pursuant to clause (1) signed by the child, the child's parents, legal guardian, or custodian, and any authority or person that is to supervise, control, and provide supportive assistance to the child at the time of the child's release on early release, and (4) file a copy of the treatment plan prepared pursuant to clause (1), 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. 2151.38(E)).

DYS must file a written progress report with the committing court regarding each child released pursuant to an early release, 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 and recommendations for alteration of 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. 2151.38(F).)

### **Violations of judicial release or early release; revocation**

If a child is released under a judicial release or early release, 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 post-release terms and conditions of the child's release, that court must schedule a time for a hearing to determine whether the child violated any of those terms and conditions, and, if the child was released under an early release, R.C. 5139.52(A) to (E) apply regarding the child. If that court determines at the hearing that the child violated any of the post-release terms and conditions, the court, if it determines that the violation of the terms and conditions was a serious violation, may order the child to be returned to DYS for institutionalization or institutionalization in a secure facility, consistent with the original order of commitment of the child, or in any case may make any other disposition of the child authorized by law that the court considers proper. If that court orders the child returned to DYS, the time during which the child was institutionalized or institutionalized in a secure facility prior to the judicial release or early release is considered as time served in fulfilling the prescribed minimum period or prescribed period of institutionalization or institutionalization in a secure facility that is applicable to the child under the child's original order of commitment. If the court orders the child returned to DYS, the child must remain in institutional care for a minimum period of three months or until the child successfully completes a revocation program of a duration of not less than 30 days operated either by DYS or by an entity with which DYS has contracted to provide a revocation program. (R.C. 2151.38(D).)

### **Periodic reviews**

Existing law specifies that DYS's Release Authority cannot release a child who is in DYS's custody from institutional care or institutional care in a secure facility and cannot discharge the child or order the child's release on supervised release prior to the expiration of the prescribed minimum period of

institutionalization or institutionalization in a secure facility or prior to the child's attainment of 21 years of age, whichever is applicable under the order of commitment, other than as described above in "*In general.*" The Release Authority may conduct periodic reviews of the case of each child who is in DYS's custody and who is eligible for supervised release or discharge after completing the minimum period of time or period of time in an institution prescribed by the committing court. At least 30 days prior to conducting a periodic review of the case of a child regarding the possibility of supervised release or discharge and at least 30 days prior to conducting a release review, a release hearing, or a discharge review, the Release Authority must give notice of the review or hearing to the court that committed the child, to the prosecuting attorney in the case, and to the victim of the delinquent act or the victim's representative. If a child is on supervised release and has had the child's parole revoked, and if, upon release, there is insufficient time to provide the notices otherwise required, the Release Authority, at least 10 days prior to the child's release, must provide reasonable notice of the child's release to the court that committed the child, to the prosecuting attorney in the case, and to the victim of the delinquent act for which the child was committed or the victim's representative. The court or prosecuting attorney may submit to the Release Authority written comments regarding, or written objections to, the supervised release or discharge of that child. Additionally, if the child was committed for an act that is a category one or category two offense, the court or prosecuting attorney orally may communicate to a representative of the Release Authority comments regarding, or objections to, the supervised release or discharge of the child or, if a hearing is held regarding the possible release or discharge of the child, may communicate those comments at the hearing. In conducting the review of the child's case regarding the possibility of supervised release or discharge, the Release Authority must consider any comments and objections so submitted or communicated by the court or prosecutor and any statements or comments submitted or communicated by a victim of an act for which the child was committed to DYS's legal custody or by the victim's representative of a victim of an act of that type.

The Release Authority must determine the date on which a child may be placed on supervised release or discharged. If the Release Authority believes that a child should be placed on supervised release, it must comply with the provisions described below regarding supervised release. If it believes that a child should be discharged, it must comply with the provisions described below regarding discharge. If the Release Authority denies the supervised release or discharge of a child, it must provide the child with a written record of the reasons for the decision. (R.C. 5139.51(A).)

### *Supervised release*

When DYS's Release Authority decides to place a child on supervised release, it must prepare a written supervised release plan that specifies the terms and conditions upon which the child is to be released on supervised release. At least 30 days prior to the child's release on the supervised release, it must send to the committing court and the juvenile court of the county in which the child will be placed a copy of the supervised release plan and the terms and conditions that it fixes. The juvenile court of the county in which the child will be placed, within 15 days after its receipt of the copy of the supervised release plan, may add to the supervised release plan any additional consistent terms and conditions it considers appropriate. The court may not decrease the level or degree of supervision specified by the Release Authority in the plan, substantially increase the financial burden of supervision that DYS will experience, or alter the placement the release authority specified in the plan.

If, within 15 days after its receipt of the copy of the Release Authority's supervised release plan, the juvenile court of the county in which the child will be placed does not add to the supervised release plan any additional terms and conditions, the court must enter the Release Authority's supervised release plan in its journal within that 15-day period and, within that 15-day period, must send to the Release Authority a copy of the journal entry. The journalized plan applies regarding the child's supervised release.

If, within 15 days after its receipt of the copy of the Release Authority's supervised release plan, that juvenile court adds to the supervised release plan any additional terms and conditions, the court must enter the Release Authority's supervised release plan and the additional terms and conditions in its journal and, within that 15-day period, must send to the Release Authority a copy of the journal entry and additional terms and conditions. The journalized supervised release plan and additional terms and conditions added by the court that satisfy the criteria described in this paragraph apply regarding the child's supervised release.

If, within 15 days after its receipt of the copy of the supervised release plan, the juvenile court of the county in which the child will be placed neither enters in its journal the Release Authority's supervised release plan nor enters in its journal the Release Authority's supervised release plan plus additional terms and conditions added by the court, the court and DYS may attempt to resolve any differences regarding the plan within three days. If a resolution is not reached within that three-day period, thereafter, the Release Authority's supervised release plan is enforceable to the same extent as if the court actually had entered the Release Authority's supervised release plan in its journal.

When the Release Authority receives from the court a copy of the journalized supervised release plan and, if applicable, a copy of the journalized additional terms and conditions added by the court, the Release Authority must keep the original copy or copies in the child's file and must provide a copy of each document to the child, the DYS employee who is assigned to supervise and assist the child while on release, and the committing court. (R.C. 5139.51(B).)

In addition to requirements that are reasonably related to the child's prior pattern of criminal or delinquent behavior and the prevention of further criminal or delinquent behavior, the Release Authority must specify the following requirements for each child whom it releases: (1) the child must observe the law, (2) the child must maintain appropriate contact, as specified in the written supervised release document for that child, with the DYS employee assigned to supervise and assist the child, and (3) the child must not change residence unless the child seeks prior approval for the change from the DYS employee assigned to supervise and assist the child, provides that employee, at the time the child seeks the prior approval for the change, with appropriate information regarding the new residence address at which the child wishes to reside, and obtains that employee's prior approval for the change (R.C. 5139.51(D)).

The period of a child's supervised release may extend from the date of release from an institution until the child attains 21 years of age. If it extends beyond one year after the date of release, the child may request in writing that the Release Authority conduct a discharge review after the expiration of the one-year period or the minimum period. If the child so requests, the Release Authority must conduct a discharge review and give the child its decision in writing. The Release Authority cannot grant a discharge prior to the discharge date if it finds good cause for retaining the child in DYS's custody until the discharge date. A child may request an additional discharge review six months after the date of a previous discharge review decision, but not more than once during any six-month period after the date of a previous discharge review decision. (R.C. 5139.51(E).)

### **Discharge without supervised release**

If a child in DYS's custody was committed other than for an act that would be aggravated murder or murder if committed by an adult and has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under the commitment and if the Release Authority is satisfied that the discharge of the child without the child being placed on supervised release would be consistent with the welfare of the child and protection of the public, the Release Authority, without approval of the court that committed the child, may discharge the child from its custody and control without placing the child on supervised release. Additionally, DYS may discharge a child in its custody

without the child being placed on supervised release if the child is removed from Ohio's jurisdiction by a court order of a court of Ohio, another state, or the United States, or by any agency of Ohio, another state, or the United States, if the child is convicted of or pleads guilty to any criminal offense, or as otherwise provided by law. At least 15 days before the scheduled date of discharge of the child without the child being placed on supervised release, DYS must notify the committing court, in writing, that it is going to discharge the child and of the reason for the discharge. Upon discharge of the child without the child being placed on supervised release, DYS immediately must certify the discharge in writing and transmit the certificate of discharge to the committing court. (R.C. 5149.51(C).)

**Provision of notice regarding supervised release or discharge**

At least two weeks before the Release Authority places on supervised release or discharges a child who was committed to DYS's legal custody, the Release Authority must provide notice of the release or discharge as follows (R.C. 5139.51(F)):

(1) In relation to the placement on supervised release of a child committed to DYS for a category one or category two offense and in relation to the discharge of a child committed to DYS for any act, it must notify, by the specified deadline, all of the following of the release or discharge: (a) the prosecuting attorney of the county in which the child was adjudicated a delinquent child and committed to DYS, and (b) if upon the supervised release or discharge the child will reside in a municipal corporation, the chief of police or other chief law enforcement officer of that municipal corporation, or if upon the supervised release or discharge the child will reside in an unincorporated area of a county, the sheriff of that county;

(2) In relation to the placement on supervised release or discharge of a child who was committed to DYS for committing any act, it must notify, by the specified deadline, each victim of the act for which the child was committed to DYS's legal custody who, pursuant to R.C. 5139.56, has requested to be notified of the placement of the child on supervised release or the discharge of the child, provided that, if any victim has designated a person pursuant to that section to act on the victim's behalf as a victim's representative, this notification must be provided to that victim's representative.

**Violation of supervised release; apprehension of violators**

Existing law sets forth procedures that apply regarding hearings on alleged violations of supervised release, the revocation of supervised release, and the apprehension of alleged supervised release violators (R.C. 5139.52).

### **Release from confinement in a DYS institution--operation of the bill**

The bill relocates to new Chapter 2152. the existing procedures regarding the granting of releases from DYS prior to the expiration of the child's prescribed period of commitment, and the related provisions, currently contained in existing R.C. 2151.38, and modifies some of those procedures (but see **COMMENT 13**).

#### **In general**

The bill specifies that, as under existing law, when a child is committed to DYS's legal custody, the jurisdiction of the juvenile court with respect to the child so committed terminates at the time of commitment, except in relation to "judicial releases" (note that, as described below, existing "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 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 or, if the child is committed for extended juvenile jurisdiction under the bill (see "**Extended juvenile jurisdiction dispositions**," above), the child attains 25 years of age. DYS's Release Authority 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 judicial control over the child or prior to the child's attainment of 21 or 25 years of age, whichever is applicable under the order of commitment, except upon the order of a court pursuant to a judicial release, as described below, or in accordance with the existing medical release or discharge provisions in R.C. 5139.54. (R.C. 2152.22(A).)

As under existing law, when a child is committed to DYS's legal custody, the court retains jurisdiction to perform the functions specified in R.C. 5139.51 with respect to the granting of supervised release by DYS's Release Authority and to perform the functions specified in R.C. 5139.52 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 bill establishes procedures for a type of release called "judicial release to court supervision," which is most comparable to the existing judicial release. The bill 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 of time that are applicable: (1) if the child was given a traditional juvenile disposition, at any time during the first 90 days of the period of

judicial control over the child, (2) if the child was given an extended juvenile jurisdiction disposition, at any time during the first 180 days of the period of judicial control over the child, or (3) if the child was committed to DYS until the child attains 21 years of age, 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, 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. (R.C. 2152.22(B)(1) and (2).)

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 the juvenile court of the county in which the child is placed a copy of the recommended plan. 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)(3).)

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

The bill establishes procedures for a type of release called "judicial release to DYS supervision," which is most comparable to the existing early release. Under the bill, 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: (1) if the child was given a traditional juvenile disposition, as described above, at any time during the period of judicial control over the child, provided at least 90 days of judicial control have elapsed, (2) if the child was given an extended juvenile jurisdiction disposition, as described above, at any time during the period of judicial control over the child, provided at least 180 days of judicial control have elapsed, or (3) if the child was committed to DYS until the child attains 21 years of age, 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 sentence, it must request the court that committed the child for a *judicial early 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 prepared pursuant to clause (1) and the possible penalties for violation of the plan with the child and the child's parents, guardian, or legal custodian, (3) have the plan prepared pursuant to clause (1) 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 release pursuant to the judicial release to DYS supervision, and (4) file a copy of the treatment plan prepared pursuant to clause (1), 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 must retain 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, R.C. 5139.52(A) to (E) 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 bill modifies the existing 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), (C), and (E), 5139.52, and 5139.53(A)).

The bill also modifies numerous existing 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), (12), (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).

### **Parental orders**

#### **Existing law**

Existing law provides that in any proceeding wherein a child has been adjudged delinquent, unruly, abused, neglected, or dependent, on the application of a party, or the court's own motion, the court may make an order restraining or otherwise controlling the conduct of any parent, guardian, or other custodian in the relationship of such individual to the child if the court finds that such an order is necessary to:

(A) Control any conduct or relationship that will be detrimental or harmful to the child;

(B) Where such conduct or relationship will tend to defeat the execution of the order of disposition made or to be made.

Due notice of the application or motion and the grounds therefor, and an opportunity to be heard must be given to the person against whom such order is directed. (R.C. 2151.359.)

#### **Operation of the bill**

The bill renumbers R.C. 2151.359 as R.C. 2152.61 and removes from the renumbered section the references to unruly, abused, neglected, and dependent children. The bill retains the court's existing authority to issue orders controlling a parent, guardian, or custodian and also 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 bill also provides that a person's failure to comply with any order made by the court under this provision is contempt of court under Chapter 2705. of the Revised Code. (R.C. 2152.61.)

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

#### **Existing law**

Existing law prohibits a person under 18 years of age from purchasing or attempting to purchase a firearm. Whoever violates this prohibition is guilty of

underage purchase of a firearm, is a delinquent child, and is subject to an order of disposition for delinquent children under the Juvenile Law. (R.C. 2923.211.)

### **Operation of the bill**

Under the bill, 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 are now available for a child who commits underage purchase of a firearm. See "**Delinquency dispositions--operation of the bill**" above, for a description of the available delinquency dispositions. (See COMMENT 5.)

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

#### **Existing law**

Existing law provides that, when any female over 18 years of age is found guilty of a misdemeanor under the Juvenile Code (R.C. Chapter 2151.), the juvenile judge may 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 (R.C. 2151.48).

#### **Operation of the bill**

The bill repeals existing R.C. 2151.48, as described above (Section 2--repeal of R.C. 2151.48).

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

#### **Existing law**

Existing law provides that, when an adult is sentenced to imprisonment for the offense of nonsupport of dependents or contributing to the nonsupport of dependents under R.C. 2919.21 or the offense of endangering children under R.C. 2919.22, the county from which the adult person is sentenced, on the order of the juvenile judge, must pay from the general revenue fund 50¢ for each day the prisoner is confined to the juvenile court of that county, for the maintenance of the dependent children of the prisoner. The expenditure must be made under the direction of the judge, who must designate an employee for that purpose. The board of county commissioners of the county must make an appropriation for these cases, and allowances from the appropriation must be paid from the county treasury upon the warrant of the county auditor. (R.C. 2151.51.)

**Operation of the bill**

The bill repeals existing R.C. 2151.51, as described above (Section 2--repeal of R.C. 2151.48).

**Expense of extradition**

**Existing law**

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

**Operation of the bill**

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

**Bail**

**Existing law**

Existing law provides that the R.C. sections 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).

**Operation of the bill**

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

**Jury trial procedures**

**Existing law**

Existing law provides that any adult arrested under the Juvenile Code may demand a jury trial or the juvenile judge may call a jury for the arrested adult. Existing law also provides procedures for requesting a jury trial and for impaneling a jury, which are similar to the procedures in a court of common pleas. (R.C. 2151.47.)

**Operation of the bill**

The bill repeals existing R.C. 2151.47, as described above (Section 2--repeal of R.C. 2151.47).

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

### *Existing 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 bill*

The bill 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)).

## *Failure to send a child to school*

### *Existing law*

The Compulsory School Age Law prohibits a parent, guardian, or other person having care of a child of compulsory school age from violating certain provisions of that Law (see **COMMENT 7**). A court may require a person convicted of violating this prohibition to give bond in the sum of \$100 with sureties to the approval of the court, conditioned that the person will cause the child under the person's charge to attend upon instruction as provided by law, and remain as a pupil in the school or class during the term prescribed by law. The requirement to give a bond or a forfeiture of the bond does not relieve from prosecution and conviction any parent, guardian, or other person upon further violation of any of those provisions. A person who violates the prohibition described in the first sentence of this paragraph must be fined not less than \$5 and not more than \$20. (R.C. 3321.38(A) and (B) and 3321.99.)

### **Operation of the bill**

The bill designates a violation of the prohibition in existing law as described above as *failure to send a child to school* and classifies the violation as a misdemeanor of the fourth degree (see COMMENT 16) (R.C. 3321.99).

### **Information to foster caregivers who receive certain delinquents--penalty**

#### **Existing law**

R.C. 2151.62(B) and (C) require entities, courts, agencies, and departments to provide foster caregivers certain information before placing a child with that foster caregiver. R.C. 2151.62(G) prohibits any person employed by any such entity from failing to provide that information when responsible for doing so. Under R.C. 2151.99(C), a violation of R.C. 2151.62(G) is a minor misdemeanor.

#### **Operation of the bill**

The bill renumbers existing R.C. 2151.62 as R.C. 2152.72 and relocates the penalty for R.C. 2152.72(G) (former R.C. 2151.62(G)) to new R.C. 2151.99.

### **Detention homes--existing law**

Existing law contains a series of related provisions that pertain to detention homes and district detention homes.

### **Establishment and operation of detention homes and district detention homes**

Existing law provides that, upon the advice and recommendation of the judge, the board of county commissioners must provide, by purchase, lease, construction, or otherwise, a place to be known as a detention home that must be within a convenient distance of the juvenile court and cannot be used for the confinement of adults charged with criminal offenses and in which delinquent children may be detained until final disposition. Upon the joint advice and recommendation of the juvenile judges of two or more adjoining or neighboring counties, the boards of county commissioners of the counties must form themselves into a joint board and proceed to organize a district for the establishment and support of a detention home for the use of the juvenile courts of those counties, in which delinquent children may be detained until final disposition, by using a site or buildings already established in one of the counties or by providing for the purchase of a site and the erection of the necessary buildings on the site.

A child who is adjudicated to be a juvenile traffic offender for having committed state OMVI or a violation of a substantially comparable municipal ordinance may be confined in a detention home or district detention home, provided the child is kept separate and apart from alleged delinquent children.

A county or district detention home must be maintained as provided in the Juvenile Code. In any county in which there is no detention home or that is not served by a district detention home, the board of county commissioners must provide funds for the boarding of such children temporarily in private homes. Children who are alleged to be or have been adjudicated delinquent children may be detained after a complaint is filed in the detention home until final disposition of their cases or in certified family foster homes or in any other home approved by the court for a period not exceeding 60 days or until final disposition of their cases, whichever comes first. The court also may arrange with any public children services agency or private child placing agency to receive, or private noncustodial agency for temporary care of, the children within the jurisdiction of the court. A district detention home approved for such purpose by DYS may receive children committed to its temporary custody and provide the care, treatment, and training required.

If a detention home is established as an agency of the court or a district detention home is established by the courts of several counties as described above, it must be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron in a nonpunitive neutral atmosphere. The judge, or the directing board of a district detention home, may appoint a superintendent, a matron, and other necessary employees for the home and fix their salaries. During the school year, when possible, a comparable educational program with competent and trained staff must be provided for those children of school age. A sufficient number of trained recreational personnel must be included among the staff to assure wholesome and profitable leisure-time activities. Medical and mental health services must be made available to ensure the courts all possible treatment facilities is given to those children placed under their care. In the case of a county detention home, the salaries must be paid in the same manner as is provided for other court employees, and the necessary expenses incurred in maintaining the detention home must be paid by the county. In the case of a district detention home, the salaries and the necessary expenses incurred in maintaining the district detention home must be paid as provided in R.C. 2151.341 to 2151.3415. (R.C. 2151.34.)

District detention homes must be established, operated, maintained, and managed in the same manner so far as applicable as county detention homes (R.C. 2151.346).

**Financial assistance for operation of a detention home or district detention home**

Existing law provides that a board of county commissioners that provides a detention home and the board of trustees of a district detention home may make application to DYS for financial assistance in defraying the cost of operating and maintaining the home. The application must be made on forms prescribed and furnished by DYS. The joint boards of county commissioners of district detention homes must make annual assessments of taxes sufficient to support and defray all necessary expenses of the home not paid from funds made available by DYS. (R.C. 2151.341.)

**Special provisions regarding district detention homes**

Members of the board of county commissioners of a county who meet by appointment to consider the organization of a district detention home must be paid, upon presentation of properly certified accounts, their necessary expenses upon a warrant drawn by their county auditor (R.C. 2151.3415).

Immediately upon organization or as soon thereafter as practicable, the joint board of county commissioners of a district detention home must appoint a board of not less than five trustees. The board of trustees holds office and performs its duties until the first annual meeting after the choice of an established site and buildings or after the selection and purchase of a building site. At that time, the joint board of county commissioners must appoint a new board of not less than five trustees, one of whom holds office for a term of one year, one for the term of two years, one for the term of three years, half of the remaining number for the term of four years, and the remainder for the term of five years. Annually thereafter, the joint board of county commissioners must appoint one or more trustees, each of whom holds office for the term of five years, to succeed the trustee or trustees whose term of office expires. The annual meeting of the board of trustees must be held on the first Tuesday in May in each year. A majority of the board of trustees appointed under this provision constitutes a quorum, board meetings must be held at least quarterly, the juvenile court judge of each county in the district or the judge's designee must attend the meetings, and the members of the board receive no compensation for their services except travel expenses. (R.C. 2151.343 and 2151.344.)

Each county in a detention home district is entitled to one trustee. In districts composed of two counties, each county is entitled to not less than two trustees. In districts composed of more than four counties, the number of trustees must be sufficiently increased so that there is always an uneven number of trustees constituting such board. The county in which a district detention home is located

must have not less than two trustees, who, in the interim period between the regular meetings of the board of trustees, must act as an executive committee in the discharge of all business pertaining to the home. (R.C. 2151.348.)

The joint board of county commissioners may remove any trustee appointed as described above, but no such removal may be made on account of the religious or political opinion of the trustee. The trustee appointed to fill any vacancy is to hold office for the unexpired term of the appointee's predecessor. (R.C. 2151.349.)

The board of trustees of a district detention home may choose an established institution in one of the counties of the district or may select a suitable site for the erection of a district detention home. The site must be easily accessible, and when, in the judgment of the board, it is equally conducive to health, economy in purchasing or in building, and to the general interest of the home and inmates, the site must be as near as practicable to the geographical center of the district. When only two counties form the district, the site must be as near as practicable to the dividing line between the counties. (R.C. 2151.347.)

The choice of an established site and buildings, or the purchase of a site and equipment, the erection of buildings, and the completion and furnishing of the district detention home for occupancy is in the hands of the joint board of county commissioners of the district. The joint board may delegate all or a portion of these duties to the board of trustees under any restrictions and regulations as the joint board imposes. (R.C. 2151.3411.)

When an established site and buildings are used, the joint board of county commissioners must cause the value of the site and buildings to be properly appraised. This appraisal value or the purchase price of a site and the cost of all betterments and additions must be paid by the counties comprising the district in proportion to the taxable property of each county. The current expenses of maintaining the home not paid from funds made available by the state and the cost of ordinary repairs to it must be paid by each such county in accordance with one of the following methods as approved by the joint board of county commissioners: (1) in proportion to the number of children from the county who are maintained in the home during the year, (2) by a levy submitted by the joint board of county commissioners and approved by the electors of the district, (3) in proportion to the taxable property of each county, and (4) in any combination of the methods for payment described in clauses (1), (2), and (3). (R.C. 2151.3412.)

The county auditor of the county having the greatest population or, with the unanimous concurrence of the county auditors of the counties composing a district, the auditor of the county in which the detention home is located is the fiscal

officer of a detention home district or a combined district. The county auditors of the several counties composing a detention home district must meet at the district detention home not less than once in six months to review accounts and to transact such other duties in connection with the institution as pertain to the business of their office. (R.C. 2151.3414.)

The board of trustees of the home may accept and use any donation or bequest made for the use and benefit of a district detention home as they consider for the best interests of the institution, and consistent with the conditions of the bequest (R.C. 2151.342).

The board of county commissioners of each county that participates in the establishment of a district detention home may apply to DYS for financial assistance to defray the county's share of the cost of acquiring or constructing the home. Application must be made in accordance with rules adopted by DYS. No county may be reimbursed for expenses incurred in the acquisition or construction of a district detention home that serves a district with a population of less than 100,000. (R.C. 2151.3416.)

The board of trustees of a district detention home must appoint the superintendent of the home. The superintendent must give bond to the board conditioned upon the full and faithful accounting of the funds and properties coming into the person's hands. The superintendent appoints all employees, who, except for the superintendent, are in the classified civil service. The superintendent under the supervision and subject to the rules and regulations of the board, controls, manages, operates, and has general charge of the home and has the custody of its property, files, and records.

The children to be admitted for care in a district detention home, the period during which they shall be cared for in the home, and the removal and transfer of children from the home is determined by the juvenile courts of the respective counties. (R.C. 2151.345.)

The board of county commissioners of any county within a detention home district may, upon the recommendation of the juvenile court of the county, withdraw from the district and dispose of its interest in the home by selling or leasing its right, title, and interest in the site, buildings, furniture, and equipment to any counties in the district, at the price and upon the terms as are agreed upon among the boards of county commissioners of the counties concerned. R.C. 307.10 does not apply to this provision. The net proceeds of any such sale or lease must be paid into the treasury of the withdrawing county.

Any county withdrawing from a district or from a combined district must continue to have levied against its tax duplicate any tax levied by the district

during the period in which the county was a member of the district for current operating expenses, permanent improvements, or the retirement of bonded indebtedness. The levy continues to be a levy against the duplicate of the county until it expires or is renewed. Members of the board of trustees of a district detention home who are residents of a county withdrawing from the district are deemed to have resigned their positions upon the completion of the withdrawal procedure as described above. Vacancies then created must be filled according to the existing provisions described above. (R.C. 2151.3413.)

### **Operation of the bill**

The bill relocates and consolidates all of the existing provisions pertaining to detention homes and district detention homes. It generally relocates all of the provisions of existing R.C. 2151.34 to 2151.3416 to R.C. 2152.41 to 2152.50 and consolidates and re-orders those provisions (R.C. 2152.41 to 2152.50, and repeal in Section 2 of 2151.34 to 2151.3416. The bill also eliminates the existing 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." Under the bill, a detention home simply must be under the direction of a superintendent. (R.C. 2152.41.)

The bill conforms numerous existing provisions to its relocation of the Detention Home Law (R.C. 133.01(MM)(8) and (NN)(6), 2151.357, 2151.655, 2151.78, 2151.79, 2152.21(A)(5)(c), 5103.03, 5139.271, 5139.281, 5139.29, 5139.31, 5705.01, and 5705.19).

### **Overview of Sex Offender Registration and Notification Law (SORN Law)**

Chapter 2950. of the Revised Code (the Sex Offender Registration and Notification Law, hereinafter SORN Law) sets forth the registration requirements, victim notification, and community notification requirements for certain specified offenders who have committed sexually oriented offenses. The bill generally makes the SORN Law apply to delinquent children who have committed sexually oriented offenses.

### **Public policy declaration of the General Assembly on SORN Law**

**Existing law.** Under existing law, the General Assembly has declared that it is its intent to protect the safety and general welfare of the people of this state by providing for the registration of sexual predators, habitual sex offenders, and offenders who have committed sexually oriented offenses and by providing for community notification regarding sexual predators and habitual sex offenders who will live in or near a particular neighborhood. Existing law further declares that it

is the policy of this state to (1) require the exchange of relevant information about sexual predators and habitual sex offenders among public agencies and officials and (2) to authorize the release of necessary and relevant information about sexual predators and habitual sex offenders to members of the general public as a means of assuring public protection. Existing law states that the exchange or release of that information is not punitive. (R.C. 2950.02(B).) Under existing law, the General Assembly outlines six findings in support of the above declaration. (See **COMMENT.**) (R.C. 2950.02(A).)

**Operation of the bill.** The bill maintains the substance of the above-referenced declarations and findings and extends those statements to delinquent children who have committed sexually oriented offenses. Therefore, under the bill, it is the General Assembly's intent to protect the safety and general welfare of the people of this state by providing for the registration of sexual predators, habitual sex offenders, offenders, *and delinquent children* who have committed sexually oriented offenses and by providing for victim notification regarding sexual predators and habitual sex offenders, including such juveniles as fit in that category, who will live in or near a particular neighborhood. (R.C. 2950.02.)

### **Notice provided to the offender of the duty to register under SORN Law**

#### **Notice to offender**

**Existing law.** Under existing law, a person who is guilty of a sexually oriented offense and who has a duty to register under the SORN Law must be provided notice of the following: (1) the duty to register, (2) the offender's duty to provide notice of any change in the offender's residence address and to register the new residence address, and (3) the offender's duty to periodically verify the offender's residence address (R.C. 2950.03(A)).

**Operation of the bill.** The bill modifies those provisions to include a child who is adjudicated a delinquent child for committing a sexually oriented offense (R.C. 2950.03(A)).

#### **Who must provide the notice**

**Existing law.** Existing law states that the notice to the offender must be provided by the following persons at the following time: (1) at least ten days before the offender is released pursuant to any type of supervised release or at least ten days before the offender otherwise is released from confinement by the official, or that official's designee, in charge of the institution where the offender serves the term, regardless of when the offender committed the sexually oriented offense, if the offender is sentenced for the sexually oriented offense to any type of confinement, and if, on or after January 1, 1997, the offender is under that

confinement, (2) at the time of sentencing by the judge, if the offender is sentenced for that offense on or after January 1, 1997, and if (1) above does not apply, regardless of when the offender committed the sexually oriented offense, and (3) as soon as possible after January 1, 1997, by the chief of police or sheriff with whom the offender most recently registered if the offender committed the sexually oriented offense prior to January 1, 1997, if neither (1) nor (2) above applies, and if, immediately prior to January 1, 1997, the offender was a habitual sex offender who was required to register under Chapter 2950. of the Revised Code. If the offender who otherwise would fall under category (3) has not registered with a chief of police or sheriff under that chapter, the failure to register constitutes a waiver by the offender of any right to notice. If such an offender does not receive notice, the offender is not relieved of the duty to register, the duty to provide notice of any change in residence address and to register the new residence address, or the duty to periodically verify the residence address. (R.C. 2950.03(A).)

**Operation of the bill.** The bill requires a judge to provide the notice to a delinquent child at the time of the adjudication of the child if the delinquent child committed the sexually oriented offense on or after the effective date of the bill (R.C. 2950.03(A)(4)).

#### **Content of the notice**

**Existing law.** The above-mentioned notice must inform the offender of the offender's duty to do the following: to register, to notify the appropriate officials of a change in the offender's residence address and to register the new residence address, and to periodically verify a residence address. The notice must comport with the following: (a) if the notice is provided under (3) under "**Who must provide the notice,**" above, the notice must be on a form that is prescribed by the Bureau of Criminal Identification and Investigation (hereafter BCII) and that states the offender's duties and that, if the offender has any questions concerning these duties, the offender may contact the chief of police or sheriff who sent the form for an explanation of the duties. If the offender appears in person before the chief of police or sheriff, the chief or sheriff must provide that same notice, and all provisions of (b) below apply regarding a notice provided by an official, official's designee, or judge in that manner, (b) if the notice is provided under (1) or (2) under "**Who must provide the notice,**" above, the official, official's designee, or judge must require the offender to read and sign a form prescribed by BCII, stating that the offender's duties have been explained to the offender. If the offender is unable to read, the official, official's designee, or judge must certify on the form that the official, designee, or judge specifically informed the offender of those duties and that the offender indicated an understanding of those duties. (R.C. 2950.03(B).)

**Operation of the bill.** The bill adds a provision stating that if the notice is provided to a delinquent child who is adjudicated a delinquent child for committing a sexually oriented offense, the judge must require the delinquent child and the delinquent child's parent, guardian, or custodian to read and sign a form prescribed by BCII, stating that the delinquent child's duties to register, to register a new residence address, and to periodically verify a residence address have been explained to the delinquent child and the delinquent child's parent, guardian, or custodian. If the delinquent child or the delinquent child's parent, guardian, or custodian is unable to read, the judge must certify on the form that the judge specifically informed the delinquent child or the delinquent child's parent, guardian, or custodian of those duties and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of those duties (R.C. 2950.03(B)(1)(c)).

### **Form for notice**

**Existing law.** Existing law also states that the form used for the notice must contain all of the information required by BCII, including, but not limited to, a statement as to whether the offender has been adjudicated as being a sexual predator relative to the sexually oriented offense in question, a statement as to whether the offender has been determined to be a habitual sex offender, an explanation of the periodic residence address verification process and of the frequency with which the offender will be required to verify the residence address under that process, and a statement that the offender must verify the residence address at the times specified under that process or face criminal prosecution.

After an offender has signed the form or the official, official's designee, or judge has certified on it that it has been explained to the offender and that the offender indicated an understanding of the duties, the official, official's designee, or judge must give one copy of the form to the offender, within three days must send one copy of the form to BCII, and must send one copy of the form to the sheriff of the county in which the offender expects to reside. After a chief of police or sheriff has sent a form to an offender, the chief or sheriff must send a copy of the form to BCII. (R.C. 2950.03(B)(1)(d) and (B)(2).)

**Operation of the bill.** The bill extends these provisions to juvenile sex offenders by stating that after a delinquent child who is adjudicated a delinquent child for committing a sexually oriented offense and the delinquent child's parent, guardian, or custodian have signed the form or the judge has certified on the form that the form has been explained to the delinquent child or the delinquent child's parent, guardian, or custodian and that the delinquent child or the delinquent child's parent, guardian, or custodian indicated an understanding of the duties indicated on the form, the judge must give one copy of the form to the delinquent

child and to the delinquent child's parent, guardian, or custodian, within three days must send one copy of the form to BCII, and must send one copy of the form to the sheriff of the county in which the delinquent child expects to reside (R.C. 2950.03(B)(2)(c)).

**Duties of the official**

**Existing law.** The official, official's designee, judge, chief of police, or sheriff who is required to provide notice to an offender must do all of the following (R.C. 2950.03(C)):

If the notice is provided by an official in charge of a detention facility, his or her designee, or a judge, the official, designee, or judge must determine the offender's name, identifying factors, and expected future residence address, must obtain the offender's criminal history, and must obtain a photograph and the fingerprints of the offender. If the notice is provided by a judge, the sheriff must provide the offender's criminal history to the judge. The official, official's designee, or judge must obtain this information and these items prior to giving the notice, except that a judge may give the notice prior to obtaining the offender's criminal history. Within three days after receiving this information and these items, the official, official's designee, or judge must forward the information and items to BCII and to the sheriff of the county in which the offender expects to reside. If it has not already done so, BCII must forward a copy of the fingerprints and conviction data received to the FBI.

If the notice is provided by a chief of police or sheriff, the chief of police or sheriff must determine the offender's name, identifying factors, and residence address, must obtain the offender's criminal history from BCII, and, to the extent possible, must obtain a photograph and the fingerprints of the offender. Within three days after receiving this information and these items, the chief or sheriff must forward the information and items to BCII and, in relation to a chief of police, to the sheriff of the county in which the offender resides. If it has not already done so, BCII must forward a copy of the fingerprints and conviction data so received to the FBI.

**Operation of the bill.** The bill makes these provisions applicable to children who are adjudicated delinquent for having committed a sexually oriented offense (R.C. 2950.03(C)).

## *Sex offender registration requirements under SORN Law*

### *Time and place of registration*

*Existing law.* Existing law provides that each offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense and who is described in (1), (2), or (3), below, must register with the sheriff of the appropriate county at the following time: (1) within seven days of the offender's coming into any county in which the offender resides or temporarily is domiciled for more than seven days, regardless of when the sexually oriented offense was committed if the offender is sentenced for the sexually oriented offense to any type of confinement and if, on or after July 1, 1997, the offender is released in any manner from the confinement, with the sheriff of that county, (2) within seven days of the offender's coming into any county in which the offender resides or temporarily is domiciled for more than seven days, regardless of when the sexually oriented offense was committed, if the offender is sentenced for a sexually oriented offense on or after July 1, 1997, and if (1), above, does not apply, with the sheriff of that county, (3) within seven days of the offender's coming into any county in which the offender resides or temporarily is domiciled for more than seven days, if the sexually oriented offense was committed prior to July 1, 1997, if neither (1) nor (2), above, applies, and if, immediately prior to July 1, 1997, the offender was a habitual sex offender who was required to register under Chapter 2950. of the Revised Code, with the sheriff of that county, (4) within seven days of the offender's coming into any county in which the offender resides or temporarily is domiciled for more than seven days, regardless of when the sexually oriented offense was committed, if (1), (2), and (3), above, do not apply, if the offender is convicted of or pleads guilty to a sexually oriented offense in another state or in a federal court, military court, or an Indian tribal court, if, on or after July 1, 1997, the offender moves to and resides in Ohio or temporarily is domiciled in Ohio for more than seven days, and if, at the time the offender moves to and resides in Ohio or temporarily is domiciled in Ohio for more than seven days, and if the offender has a duty to register as a sex offender under the law of that other jurisdiction as a result of the conviction or guilty plea, with the sheriff of that county, and (5) within seven days of the offender's coming into any county in which the offender resides or temporarily is domiciled for more than seven days, regardless of when the sexually oriented offense was committed, if (1), (2), and (3), above, do not apply, if the offender is convicted of or pleads guilty to a sexually oriented offense in another state or in a federal court, military court, or an Indian tribal court, if, on or after July 1, 1997, the offender is released from imprisonment or confinement imposed for that offense, and if, on or after July 1, 1997, the offender moves to and resides in Ohio or temporarily is domiciled in Ohio for more than seven days, with the sheriff of that county. The duty to register applies regardless of whether the offender, at the

time of moving to and residing in Ohio or temporarily being domiciled in this state for more than seven days, has a duty to register as a sex offender under the law of the jurisdiction in which the conviction or guilty plea occurred. (R.C. 2950.04(A).)

**Operation of the bill.** The bill would create new provisions applicable to juveniles as follows: each delinquent child who is adjudicated a delinquent child for committing a sexually oriented offense that was committed on or after the effective date of the bill and who is described below must register at the following time and with the following official. If the delinquent child is committed to the custody of DYS for committing the sexually oriented offense, and if, on or after the effective date of the bill, the delinquent child is discharged from the custody of DYS, within seven days of the delinquent child's coming into any county in which the delinquent child resides or temporarily is domiciled for more than seven days, the delinquent child must register with the sheriff of that county. If that provision does not apply, then within seven days of the delinquent child's coming into any county in which the delinquent child resides or temporarily is domiciled for more than seven days, the delinquent child must register with the sheriff of that county. (R.C. 2950.04(A)(2).)

Regardless of when the sexually oriented offense was committed, if the preceding provisions do not apply, if the offender is adjudicated a delinquent child for committing a sexually oriented offense in another state or in a federal court, military court, or an Indian tribal court, if, on or after July 1, 1997, the delinquent child is released from detention imposed for committing that sexually oriented offense, and if, on or after July 1, 1997, the delinquent child moves to and resides in Ohio or temporarily is domiciled in Ohio for more than seven days, within seven days of the delinquent child's coming into any county in which the delinquent child resides or temporarily is domiciled for more than seven days, the delinquent child must register with the sheriff of that county. The duty to register as described in this provision applies regardless of whether the delinquent child, at the time of moving to and residing in Ohio or temporarily being domiciled in Ohio for more than seven days, has a duty to register as a sex offender under the law of the jurisdiction in which the adjudication occurred.

Regardless of when the sexually oriented offense was committed, if the preceding paragraph does not apply, if the person is adjudicated a delinquent child for committing a sexually oriented offense in another state or in a federal court, military court, or an Indian tribal court, if, on or after July 1, 1997, the delinquent child moves to and resides in Ohio or temporarily is domiciled in Ohio for more than seven days, and if, at the time the delinquent child moves to and resides in Ohio or temporarily is domiciled in Ohio for more than seven days, the offender has a duty to register as a sex offender under the law of that other jurisdiction as a

result of the adjudication, within seven days of the delinquent child's coming into any county in which the delinquent child resides or temporarily is domiciled for more than seven days, the delinquent child must register with the sheriff of that county. (R.C. 2950.04(A)(3) and (4).)

**Other requirements for completion of the form**

**Existing law.** Existing law states that an offender who is required to register personally must obtain from the sheriff or from a designee of the sheriff a registration form, must complete and sign the form, and must return the completed form together with the offender's photograph to that sheriff or the designee. The sheriff or designee must sign the form and indicate on the form the date on which it was returned. The registration required is complete when the offender returns the form, containing the requisite information, photograph, signatures, and date, to the sheriff or designee.

Existing law further provides that the registration form to be used must contain the current residence address of the offender who is registering, the name and address of the offender's employer, if applicable, and any other information required by BCII and must include the offender's photograph. Additionally, if the offender has been adjudicated as being a sexual predator relative to the sexually oriented offense in question and the court has not subsequently determined that the offender no longer is a sexual predator or if the sentencing judge determined that the offender is a habitual sex offender, the offender must include on the signed, written registration form all of the following information: (1) a specific declaration that the person has been adjudicated as being a sexual predator or has been determined to be a habitual sex offender, whichever is applicable, and (2) if the offender has been adjudicated as being a sexual predator, the identification license plate number of each motor vehicle the offender owns and of each motor vehicle registered in the offender's name.

Existing law also states that after an offender registers with a sheriff, the sheriff must forward the signed, written registration form and photograph to BCII. BCII must include the information and materials forwarded to it in the state registry of sex offenders. No person who is required to register may fail to register as required. An offender who is required to register must register for the period of time specified below under "**Compliance dates and duration of the duty to register under SORN Law.**" (R.C. 2950.04(B) through (F).)

**Operation of the bill.** The bill makes these provisions generally applicable to juvenile sex offenders (R.C. 2950.04(B) through (F)). It also specifies that the juvenile court may require a delinquent child who is required to register to register

for a definite period of time that does not exceed the period of time under existing law.

### **Notification of a residence address change under SORN Law**

#### **Existing law**

Existing law states that, if an offender is required to register, the offender, at least seven days prior to changing the offender's residence address during the period during which the offender is required to register, must provide written notice of the residence address change to the sheriff with whom the offender most recently registered. If an offender is required to provide notice of a residence address change, the offender, at least seven days prior to changing the residence address, also must register the new residence address in the manner described above, with the sheriff of the county in which the offender's new residence address is located.

Under existing law, the preceding paragraph applies to a person who is required to register regardless of whether the new residence address is in Ohio or in another state. If the new residence address is in another state, the person must register with the appropriate law enforcement officials in that state in the manner required under the law of that state and within the earlier of the period of time required under the law of that state or at least seven days prior to changing the residence address.

Existing law further states that, upon receiving from an offender notice of a change of the offender's residence address, a sheriff promptly must forward the new residence address to BCII if the new residence address is in another state or, if the offender's new residence address is located in another county in Ohio, to the sheriff of that county. BCII must include all information forwarded to it in the State Registry of Sex Offenders and must forward notice of the offender's new residence address to the appropriate officials in the other state. When an offender registers a new residence address, the sheriff with whom the offender registers and BCII must comply with their respective duties outlined in "**Other requirements for completion of the form,**" above.

Existing law prohibits a person who is required to notify a sheriff of a change of address from failing to notify the appropriate sheriff. The bill also prohibits person who is required to register a new residence address with a sheriff or with an official of another state from failing to register with the appropriate sheriff or official of the other state.

An offender who is required to comply with the above must do so for the period of time specified below under "**Compliance dates and duration of the duty to register under SORN Law.**" (R.C. 2950.05.)

**Operation of the bill**

The bill makes these provisions generally applicable to children who are adjudicated delinquent children for committing sexually oriented offenses (R.C. 2950.05)).

**Verification of an offender's current address under SORN Law**

**Existing law**

Existing law states that an offender who is required to register must periodically verify the offender's current residence address. The frequency and manner of verification is determined as follows: (1) the offender must verify the offender's current residence address every 90 days after the offender's initial registration date during the period the offender is required to register, regardless of when the sexually oriented offense for which the offender is required to register was committed, if the offender has been adjudicated as being a sexual predator relative to the sexually oriented offense, and if the court has not subsequently entered a determination that the offender no longer is a sexual predator, (2) the offender must verify the offender's current residence address on each anniversary of the offender's initial registration date during the period the offender is required to register in all circumstances not described in (1) above. (R.C. 2950.06(A) and (B).)

An offender who is required to verify the offender's current residence address must verify the address with the sheriff with whom the offender most recently registered by personally appearing before the sheriff or a designee of the sheriff, no earlier than ten days before the date on which the verification is required and no later than the date so required for verification, and completing and signing a copy of the verification form prescribed by BCII. The sheriff or designee must sign the completed form and indicate on the form the date on which it is completed. The verification is complete when the offender personally appears before the sheriff or designee and completes and signs the form.

Existing law further provides that, to facilitate the verification of an offender's current residence address, the sheriff with whom the offender most recently registered may mail a nonforwardable verification form prescribed by BCII to the offender's last reported address, with a notice that conspicuously states that the offender must personally appear before the sheriff or a designee of the sheriff to complete the form and the date by which the form must be so completed.

Regardless of whether a sheriff mails a form to an offender, each offender who is required to verify the offender's current residence address must personally appear before the sheriff or a designee of the sheriff to verify the address.

The verification form to be used contains the current residence address of the offender, the name and address of the offender's employer if appropriate, and any other information required by BCII. (R.C. 2950.06(C) and (D).)

Upon an offender's personal appearance and completion of a verification form, a sheriff promptly must forward a copy of the verification form to BCII in accordance with the forwarding procedures adopted by the Attorney General. The Bureau must include all information forwarded to it under this division in the State Registry of Sex Offenders. Existing law prohibits a person who is required to verify a current residence address from failing to verify a current residence address by the date required for the verification, provided that no person may be prosecuted for such a failure prior to the expiration of the period of time outlined in the following paragraph. (R.C. 2950.06(E) and (F).)

If an offender fails to verify a current residence address by the date required, the sheriff with whom the offender is required to verify the current residence address, on the day following that date required for the verification, must send a written warning to the offender, at the offender's last known residence address, regarding the offender's duty to verify the offender's current residence address. The written warning must identify the sheriff who sends it and the date on which it is sent and must state conspicuously that the offender has failed to verify the offender's current residence address by the date required for the verification, that the offender has seven days from the date on which the warning is sent to verify the current residence address with the sheriff who sent the warning, that a failure to timely verify the current residence address is a felony offense, that, if the offender verifies the current residence address with that sheriff within that seven-day-period, the offender will not be prosecuted for a failure to timely verify a current residence address, and that, if the offender does not verify the current residence address with that sheriff within that seven-day-period, the offender will be arrested and prosecuted for a failure to timely verify a current residence address.

If an offender fails to verify a current residence address by the date required, the offender cannot be prosecuted for failure to register unless the seven-day-period subsequent to that date that the offender is provided to verify the current residence address has expired and the offender, prior to the expiration of that seven-day-period, has not verified the current residence address. Upon the expiration of the seven-day-period that the offender is provided, if the offender has not verified the current residence, all of the following apply: (a) the sheriff with

whom the offender is required to verify the current residence address promptly must notify BCII of the failure, (b) the sheriff with whom the offender is required to verify the current residence address, the sheriff of the county in which the offender resides, or a deputy of the appropriate sheriff, must locate the offender, promptly must seek a warrant for the arrest of the offender for the violation, and must arrest the offender, and (c) the offender is subject to prosecution for the violation.

A person who is required to verify the person's current residence address must do so for the period of time specified below under "*Compliance dates and duration of the duty to register under SORN Law.*" (R.C. 2950.06(G) and (H).)

### *Operation of the bill*

The bill makes these provisions generally applicable to children who are adjudicated delinquent children for committing sexually oriented offenses (R.C. 2950.06).

### *Compliance dates and duration of the duty to register under SORN Law*

#### *Compliance dates*

*Existing law.* The duty of an offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense to comply with the SORN Law commences on whichever of the following dates is applicable (R.C. 2950.07(A)):

(1) The offender's duty to comply commences on the date of the offender's release from confinement or on July 1, 1997, whichever is later, if the offender is sentenced to a prison term or other confinement for the sexually oriented offense.

(2) The offender's duty to comply commences on the date of entry of the judgment of conviction of the sexually oriented offense or on July 1, 1997, whichever is later, if the offender was sentenced on or after July 1, 1997, and paragraph (1), above, does not apply.

(3) The offender's duty to comply commences 14 days after July 1, 1997, if the offender was an habitual offender and required to register prior to July 1, 1997.

(4) The offender's duty to comply commences on March 30, 1999, or on the date that the offender begins to reside or becomes temporarily domiciled in Ohio, whichever is later, if the offender was convicted of a sexually oriented offense in a jurisdiction outside Ohio.

**Operation of the bill.** The bill makes these provisions applicable to children adjudicated delinquent children for committing sexually oriented offenses by extending the duty to comply with the registration and residence verification provisions of the SORN Law to a delinquent child who is adjudicated a delinquent child for committing a sexually oriented offense. If the delinquent child's duty to register is imposed after the child has been in DYS custody, the delinquent child's duty to comply with those sections commences on the date of the delinquent child's discharge from the custody of DYS. If the delinquent child's duty to register is imposed as a result of a delinquency adjudication in a jurisdiction outside of Ohio, the delinquent child's duty to comply with those sections commences on the effective date of the bill or on the date the child begins to reside or becomes temporarily domiciled in Ohio, whichever is later. If the delinquent child's duty to register is otherwise imposed, the delinquent child's duty to comply with those sections commences on the date of entry of the order of disposition for committing the sexually oriented offense. (R.C. 2950.07(A)(5), (6), and (7).)

### **Registration period**

**Existing law.** The duty of an offender who is convicted of or pleads guilty to, or has been convicted of or pleads guilty to, a sexually oriented offense to comply with the SORN Law continues, after the date of commencement, for whichever of the following periods is applicable: (1) except as otherwise provided, the offender's duty to comply continues until the offender's death if the offender has been adjudicated as being a sexual predator relative to the sexually oriented offense. If the judge who sentenced the offender or that judge's successor in office subsequently enters a determination that the offender no longer is a sexual predator, the offender's duty to comply continues for the period of time that otherwise would have been applicable to the offender, (2) the offender's duty to comply continues for 20 years if the judge who sentenced the offender for the sexually oriented offense determined that the offender is a habitual sex offender, or (3) otherwise, the offender's duty to comply continues for ten years.

If an offender has been convicted of or pleaded guilty to a sexually oriented offense and if the offender subsequently is convicted of or pleads guilty to another sexually oriented offense, the period of time for which the offender must comply must be separately calculated for each of the sexually oriented offenses, and the separately calculated periods of time must be complied with independently.

The duty of an offender to register under the SORN Law is tolled for any period during which the offender is returned to confinement for any reason or imprisoned for an offense when the confinement or imprisonment occurs subsequent to the original date. The offender's duty to register under the SORN Law resumes upon the offender's release from confinement or imprisonment.

An offender who has been convicted of or pleaded guilty to a sexually oriented offense in another state or in a federal court, military court, or an Indian tribal court may apply to the sheriff of the county in which the offender resides or temporarily is domiciled for credit against the duty to register for the time that the offender has complied with the sex offender registration requirements of another jurisdiction. The sheriff must grant the offender credit against the duty to register for time for which the offender provides adequate proof that the offender has complied with the sex offender registration requirements of another jurisdiction. If the offender disagrees with the determination of the sheriff, the offender may appeal the determination to the court of common pleas of the county in which the offender resides or is temporarily domiciled. (R.C. 2950.07(B) through (E).)

**Operation of the bill.** The bill makes these provisions generally applicable to children adjudicated delinquent children for committing sexually oriented offenses. A delinquent child's duty to comply with the SORN Law continues for a definite period set by juvenile court that does not exceed the registration period under existing law that would have applied if the child had been convicted of the involved offense. The juvenile court must inform the delinquent child of the definite period at the dispositional hearing. (R.C. 2950.07(B) through (E).)

### **Confidentiality of specified information under SORN Law**

#### **Existing law**

Existing law provides that the statements, information, photographs, and fingerprints required by the SORN Law and provided by a person who registers, who provides notice of a change of residence address and registers the new residence address, or who provides verification of a current residence address pursuant to those Laws and that are in the possession of BCII and the information in the possession of BCII that was received by BCII from the Department of Rehabilitation and Correction are not open to inspection by the public or by any person other than the following persons (R.C. 2950.08):

- (1) A regularly employed peace officer or other law enforcement officer;
- (2) An authorized employee of BCII for the purpose of providing information to a board, administrator, or person as part of a criminal background records check.

#### **Operation of the bill**

The bill adds an additional category of persons to whom are these records open: the superintendent of each board of education of a school district or the appointing or hiring officer of each chartered nonpublic school in which a child

who has been adjudicated a delinquent child for a sexually oriented offense is enrolled (R.C. 2950.08(C)).

**Classification as a sexual predator or habitual sex offender under SORN Law**

**Classification as a sexual predator**

**Existing law.** Under existing law, if a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is a sexually violent offense and also is convicted of or pleads guilty to a sexually violent predator specification, the conviction of or plea of guilty to the specification automatically classifies the offender as a sexual predator for purposes of the SORN Law. If a person is convicted of or pleads guilty to a sexually oriented offense in another state, or in a federal court, military court, or an Indian tribal court and if, as a result of that conviction or plea of guilty, the person is required, under the law of the jurisdiction in which the person was convicted or pleaded guilty, to register as a sex offender until the person's death and is required to verify the person's address on at least a quarterly basis each year, that conviction or plea of guilty automatically classifies the offender as a sexual predator, but the offender may challenge that classification.

The judge who is to impose sentence upon the offender must conduct a hearing to determine whether the offender is a sexual predator if: (1) regardless of when the sexually oriented offense was committed, the person is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is not a sexually violent offense, or (2) regardless of when the sexually oriented offense was committed, the person is to be sentenced on or after January 1, 1997, for a sexually oriented offense that is a sexually violent offense and a sexually violent predator specification was not included. The judge must conduct the hearing prior to sentencing. If the sexually oriented offense is a felony, the court may conduct it as part of the sentencing hearing. The court must give the offender and the prosecutor who prosecuted the offender for the sexually oriented offense notice of the date, time, and location of the hearing. At the hearing, the offender and the prosecutor have an opportunity to testify, present evidence, call and examine witnesses and expert witnesses, and cross-examine witnesses and expert witnesses regarding the determination as to whether the offender is a sexual predator. The offender has the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender. (R.C. 2950.09(A) and (B)(1).)

**Operation of the bill.** The bill makes these provisions generally applicable to children who are adjudicated delinquent children for committing sexually oriented offenses (R.C. 2950.09(A), (B)(1), and (B)(2)).

### *Determination of sexual predator status*

*Existing law.* In making a determination as to whether an offender is a sexual predator, the judge must consider all relevant factors, including, but not limited to, all of the following: (1) the offender's age, (2) the offender's prior criminal record regarding all offenses, including, but not limited to, all sexual offenses, (3) the age of the victim of the sexually oriented offense for which sentence is to be imposed, (4) whether the sexually oriented offense for which sentence is to be imposed involved multiple victims, (5) whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting, (6) if the offender previously has been convicted of or pleaded guilty to any criminal offense, whether the offender completed any sentence imposed for the prior offense and, if the prior offense was a sex offense or a sexually oriented offense, whether the offender participated in available programs for sexual offenders, (7) any mental illness or mental disability of the offender, (8) the nature of the offender's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse, (9) whether the offender, during the commission of the sexually oriented offense for which sentence is to be imposed, displayed cruelty or made one or more threats of cruelty, and (10) any additional behavioral characteristics that contribute to the offender's conduct (R.C. 2950.09(B)(2)).

After reviewing all testimony and evidence presented at the hearing and the factors specified above, the judge must make a determination by clear and convincing evidence whether the offender is a sexual predator. If the judge determines that the offender is not a sexual predator, the judge must specify in the offender's sentence and the judgment of conviction that contains the sentence the judge's determination. If the judge determines by clear and convincing evidence that the offender is a sexual predator, the judge must specify in the offender's sentence and the judgment of conviction that contains the sentence the judge's determination and must specify how the determination was achieved. The offender and the prosecutor who prosecuted the offender for the sexually oriented offense in question may appeal as a matter of right the judge's determination as to whether the offender is, or is not, a sexual predator.

A hearing cannot be conducted regarding an offender if the sexually oriented offense in question is a sexually violent offense and the indictment, count in the indictment, or information charging the offense also included a sexually violent predator specification. (R.C. 2950.09(B)(3) and (4).)

**Operation of the bill.** The bill makes these provisions generally applicable to children who are adjudicated delinquent children for committing sexually oriented offenses (R.C. 2950.09(B)(3) through (5)).

**Department of Rehabilitation and Corrections recommendation of sexual predator status and hearings regarding several predator and habitual sex offender status**

**Existing law.** If a person was convicted of or pleaded guilty to and was sentenced for a sexually oriented offense prior to January 1, 1997, and if, on or after January 1, 1997, the offender is serving a term of imprisonment in a state correctional institution, prior to the offender's release from the term of imprisonment, the Department of Rehabilitation and Correction (DRC) must determine whether to recommend that the offender be adjudicated as being a sexual predator. In making such a determination, DRC must consider all relevant factors, including, but not limited to, all of the factors for consideration outlined above.

If DRC determines that it will recommend that the offender be adjudicated as being a sexual predator, it immediately must send the recommendation to the court that sentenced the offender and enter its determination and recommendation in the offender's institutional record. If DRC sends to a court such a recommendation, the court is not bound by the DRC's recommendation, and the court may conduct a hearing to determine whether the offender is a sexual predator. Although the court may deny the recommendation and determine that the offender is not a sexual predator without a hearing, it may not make a determination that the offender is a sexual predator in any case without a hearing. If the court determines without a hearing that the offender is not a sexual predator, it must include its determination in the offender's institutional record and must determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the court determined that the offender is not a sexual predator. This latter determination relates to a habitual sex offender determination.

The court may make the determination as to whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense without a hearing, but, if the court determines that the offender previously has been convicted of or pleaded guilty to such an offense, it cannot impose a requirement that the offender be subject to the community notification provisions as a habitual sex offender regarding the offender's place of residence without a hearing. The court may conduct a hearing to determine both whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense and whether to impose a requirement that the offender be subject to the

community notification provisions as a habitual sex offender, or may conduct a hearing solely to make the latter determination. The court must include in the offender's institutional record any determination made as to whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense, and, as such, whether the offender is a habitual sex offender.

If the court schedules the above-mentioned hearing, the court must give the offender and the prosecutor who prosecuted the offender for the sexually oriented offense, or that prosecutor's successor in office, notice of the date, time, and place of the hearing. In making a determination as to whether the offender is a sexual predator, the court must consider all relevant factors, including, but not limited to, all of the factors for consideration specified above. After reviewing all testimony and evidence presented at the sexual predator hearing and the factors, the court must make a determination by clear and convincing evidence whether the offender is a sexual predator. If the court determines that the offender is not a sexual predator, it also must determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted. (R.C. 2950.09(C)(1) and (2)(a).)

Upon making its determinations at the hearing, the court proceeds as follows (R.C. 2950.09(C)(2)(b)):

(1) If the hearing is to determine whether the offender is a sexual predator, and if the court determines that the offender is not a sexual predator and that the offender previously has not been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted, it must include its determinations in the offender's institutional record;

(2) If the hearing is to determine whether the offender is a sexual predator, and if the court determines that the offender is not a sexual predator but that the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted, it must include its determination that the offender is not a sexual predator but is a habitual sex offender in the offender's institutional record, must attach the determinations to the offender's sentence, must specify the authority of the determinations, must provide a copy of the determinations to the offender, to the prosecuting attorney, and to DRC, and may impose a requirement that the offender be subject to the community notification provisions. The offender may not be subject to those community notification provisions relative to the sexually oriented offense in question if the court does not so impose that requirement. If the court imposes those community notification provisions, the offender may appeal the judge's determination that the offender is a habitual sex offender;

(3) If the hearing is to determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted and whether to impose a requirement that the offender be subject to the specified community notification provisions, and if the court determines that the offender previously has been convicted of or pleaded guilty to such an offense, the court must proceed as described in (2), above, and may impose a community notification requirement. The offender cannot be subject to the community notification provisions relative to the sexually oriented offense in question if the court does not so impose that requirement. If the court imposes those community notification provisions, the offender may appeal the judge's determination that the offender is a habitual sex offender;

(4) If the court determined without a hearing that the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the court determined that the offender is not a sexual predator, and, as such, is a habitual sex offender, and the hearing is solely to determine whether to impose a requirement that the offender be subject to the specified community notification provisions, after the hearing, the court may impose a community notification requirement. The offender cannot be subject to the community notification provisions relative to the sexually oriented offense in question if the court does not so impose those requirements. If the court imposes those community notification provisions, the offender may appeal the judge's determination that the offender is a habitual sex offender;

(5) If the hearing is to determine whether the offender is a sexual predator, and if the court determines by clear and convincing evidence that the offender is a sexual predator, it must enter its determination in the offender's institutional record, attach the determination to the offender's sentence, specify the authority for the determination, and provide a copy of the determination to the offender, to the prosecuting attorney, and to DRC.

The offender and the prosecutor may appeal as a matter of right the judge's determination as to whether the offender is, or is not, a sexual predator.

Upon the expiration of the applicable period of time, an offender who has been convicted of or pleaded guilty to a sexually oriented offense and who has been adjudicated as being a sexual predator relative to the sexually oriented offense may petition the judge who made the determination that the offender was a sexual predator, or that judge's successor in office, to enter a determination that the offender no longer is a sexual predator. Upon the filing of the petition, the judge may review the prior sexual predator determination that comprises the sexual violent predator adjudication, and, upon consideration of all relevant evidence and

information, including, but not limited to, the factors for consideration set forth above, must either enter a determination that the offender no longer is a sexual predator or enter an order denying the petition. The court cannot enter a determination that the offender no longer is a sexual predator unless the court determines by clear and convincing evidence that the offender is unlikely to commit a sexually oriented offense in the future. If the judge enters a determination that the offender no longer is a sexual predator, the judge must notify BCII and the Parole Board of the determination. Upon receipt of the notification, BCII promptly must notify the sheriff with whom the offender most recently registered of the determination that the offender no longer is a sexual predator. If the judge enters an order denying the petition, the prior adjudication of the offender as a sexual predator remains in effect. An offender determined to be a sexual predator may file a petition prior to the expiration of the following periods of time:

(1) The offender initially may file the petition not earlier than one year prior to the offender's release from confinement, regardless of when the sexually oriented offense was committed, if, on or after January 1, 1997, the offender is imprisoned or sentenced to confinement for the sexually oriented offense in relation to which the determination was made; the offender initially may file the petition upon the expiration of one year after the entry of the offender's judgment of conviction if the offender is sentenced on or after January 1, 1997, for the sexually oriented offense in relation to which the determination is made and is not imprisoned or sentenced to confinement for the sexually oriented offense;

(2) An offender may file a petition upon the expiration of five years after the court has entered an order denying the most recent petition the offender has filed after the offender's initial filing of a petition.

Except as otherwise provided, these provisions do not apply to a person who is classified as a sexual predator as a result of being adjudicated a sexually violent predator or being adjudicated a sexual predator in a jurisdiction outside Ohio. If a person who is so classified was sentenced to a prison term under the Sexually Violent Predator Laws and if the sentencing court terminates the offender's prison term, the court's termination of the prison term automatically constitutes a determination by the court that the offender no longer is a sexual predator. If the court so terminates the offender's prison term, the court must notify BCII and the Parole Board of the determination that the offender no longer is a sexual predator. Upon receipt of the notification, BCII promptly must notify the sheriff with whom the offender most recently registered that the offender no longer is a sexual predator. If an offender who is classified as a sexual predator is released from prison pursuant to a pardon or commutation, the classification of the offender as a sexual predator must remain in effect after the offender's release, and

the offender may file one or more petitions in accordance with the appropriate procedures and time limitations for a determination that the offender no longer is a sexual predator. (R.C. 2950.09(D).)

If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense, the judge who is to impose sentence on the offender must determine, prior to sentencing, whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense. If the judge determines that the offender previously has not been convicted of or pleaded guilty to a sexually oriented offense, the judge must specify in the offender's sentence that the judge has determined that the offender is not a habitual sex offender. If the judge determines that the offender previously has been convicted of or pleaded guilty to a sexually oriented offense, the judge must specify in the offender's sentence and the judgment of conviction that contains the sentence that the judge has determined that the offender is a habitual sex offender and may impose a requirement in that sentence and judgment of conviction that the offender be subject to the community notification provisions. Unless the habitual sex offender also has been adjudicated as being a sexual predator relative to the sexually oriented offense in question, the offender may be subject to those community notification provisions only if the court imposes the requirement in the offender's sentence and the judgment of conviction. (R.C. 2950.09(E).)

**Operation of the bill.** The bill makes these provisions generally applicable to children who are adjudicated delinquent children for committing sexually oriented offenses. The bill specifically provides that if the person committed and was adjudicated a delinquent child for committing the sexually oriented offense on or after the effective date of the bill and if the person was committed to the custody of DYS for the sexually oriented offense, the delinquent child initially may file the petition for a determination that the child is no longer a sexual predator not earlier than one year prior to the delinquent child's discharge from that custody. If the person committed and was adjudicated a delinquent child for committing the sexually oriented offense on or after the effective date of the bill and if the person was not committed to the custody of DYS for the sexually oriented offense, the delinquent child initially may file the petition upon the expiration of one year after the entry of the delinquent child's adjudication as a delinquent child. (R.C. 2950.09(C), (D), and (E).)

**Petition to rescind sexual predator status**

**Existing law.** An offender classified as a sexual predator may petition the court of common pleas of the county in which the offender resides or temporarily is domiciled to enter a determination that the offender is not an adjudicated sexual predator in Ohio for purposes of the sex offender registration law or the

community notification provisions if all of the following apply: (1) the offender was convicted of or pleaded guilty to a sexually oriented offense in another state or in a federal court, a military court, or an Indian tribal court, (2) as a result of the conviction or plea of guilty, the offender is required under the law of the jurisdiction under which the offender was convicted or pleaded guilty to register as a sex offender until the offender's death and is required to verify the offender's address on at least a quarterly basis each year, and (3) the offender was automatically classified as a sexual predator in relation to the conviction or guilty plea.

The court may enter a determination that the offender filing the petition is not an adjudicated sexual predator in Ohio for purposes of the sex offender registration requirements or the community notification provisions of the SORN Law only if the offender proves by clear and convincing evidence that the requirement of the other jurisdiction that the offender register as a sex offender until the offender's death and the requirement that the offender verify the offender's address on at least a quarterly basis each year is not substantially similar to a classification as a sexual predator for purposes of the SORN Law. (R.C. 2950.09(F).)

**Operation of the bill.** The bill makes this provision generally applicable to children who are adjudicated delinquent children for committing sexually oriented offenses (R.C. 2950.09(F)).

### **Victim notification of offender registration under SORN Law**

#### **Existing law**

The sheriff must notify the victim of the sexually oriented offense, in writing, that the offender has registered if all of the following apply: (1) a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense, (2) the offender has been adjudicated as being a sexual predator relative to the sexually oriented offense, and the court has not subsequently determined that the offender no longer is a sexual predator or the offender has been determined to be a habitual sex offender and the court has imposed a requirement subjecting the habitual sex offender to registration requirements, (3) the offender registers with a sheriff, and (4) the victim of the sexually oriented offense has made a request that specifies that the victim would like to be provided the notices described below. The notice must include the offender's name and residence address or addresses. The sheriff must provide the notice to the victim at the most recent residence address available for that victim, not later than 72 hours after the offender registers with the sheriff.

If the offender notifies the sheriff of a change of residence address, the sheriff must notify the victim of the sexually oriented offense, in writing, that the offender's residence address has changed. The notice must include the offender's name and new residence address or addresses. The sheriff must provide the notice to the victim at the most recent residence address available for that victim, no later than 72 hours after the offender notifies the sheriff of the change in address.

If an offender is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense and if the offender is adjudicated as being a sexual predator relative to the sexually oriented offense or the offender is determined to be a habitual sex offender and is made subject to the registration requirements, the victim of the offense may make a request that specifies that the victim would like to be provided the above-referenced notices. If the victim makes a request, the sheriff must provide the victim with the notices.

If a victim makes a request that specifies that the victim would like to be provided specified notices, all information a sheriff obtains regarding the victim from or as a result of the request is confidential, and the information is not a public record. The notices described above are in addition to any notices regarding the offender that the victim is entitled to receive under the Victims Rights Law.

A victim of a sexually oriented offense is not entitled to be provided any notice unless (1) the offender is adjudicated as being a sexual predator relative to the sexually oriented offense and the court has not subsequently determined that the offender no longer is a sexual predator or (2) the offender has been determined to be a habitual sex offender and the court has imposed a requirement subjecting the habitual sex offender to victim notification. A victim of a sexually oriented offense is not entitled to any notice unless the victim makes a request to be provided the notices. This provision does not affect any rights of a victim of a sexually oriented offense to be provided notice regarding an offender that are described in the Victims Rights Law. (R.C. 2950.10.)

### **Operation of the bill**

The bill makes these provisions generally applicable to children who are adjudicated delinquent children for committing sexually oriented offenses (R.C. 2950.10).

**Community notification of sexual predators and habitual sex offenders under SORN Law**

**Existing law**

**Who receives notice.** If a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense, and if the offender is subject to the community notification provisions as a sexual predator or a habitual sex offender, the sheriff with whom the offender has most recently registered, within the period of time specified below, must provide a written notice containing specified information to all of the following persons: (1) all occupants of residences adjacent to the offender's place of residence that are located within the county served by the sheriff and all additional neighbors of the offender who are within any category that the Attorney General requires to be provided the notice and who reside within the county served by the sheriff, (2) the executive director of the public children services agency that has jurisdiction within the "specified geographical notification area" and that is located within the county served by the sheriff, (3) the superintendent of each board of education of a school district that has schools within the specified geographical notification area and that is located within the county served by the sheriff, (4) the appointing or hiring officer of each chartered nonpublic school located within the specified geographical notification area and within the county served by the sheriff or of each other school located within the specified geographical notification area and within the county served by the sheriff and that is not operated by a board of education, (5) the director, head teacher, elementary principal, or site administrator of each preschool program that is located within the specified geographical notification area and within the county served by the sheriff, (6) the administrator of each child day-care center or type A family day-care home that is located within the specified geographical notification area and within the county served by the sheriff, and the provider of each certified type B family day-care home that is located within the specified geographical notification area and within the county served by the sheriff, (7) the president or other chief administrative officer of each institution of higher education that is located within the specified geographical notification area and within the county served by the sheriff, and the chief law enforcement officer of the state university law enforcement agency or campus police department, if any, that serves that institution, (8) the sheriff of each county that includes any portion of the specified geographical notification area, and (9) if the offender resides within the county served by the sheriff, the chief of police, marshal, or other chief law enforcement officer of the municipal corporation in which the offender resides or, if the offender resides in an unincorporated area, the constable or chief of the police department or police district police force of the township in which the offender resides.

**Content of the notice.** The notice required above must include all of the following information regarding the subject offender: (1) the offender's name, (2) the address or addresses at which the offender resides, (3) the sexually oriented offense of which the offender was convicted or to which the offender pleaded guilty, and (4) a statement that the offender has been adjudicated as being a sexual predator and that, as of the date of the notice, the court has not entered a determination that the offender no longer is a sexual predator, or a statement that the sentencing or reviewing judge has determined that the offender is a habitual sex offender.

**Giving the notice.** If a sheriff with whom an offender registers is required to provide notices regarding an offender and if, pursuant to that requirement, the sheriff provides a notice to a sheriff of one or more other counties, the sheriff of each of the other counties who is provided the notice must provide the proper notices to each person or entity entitled to the notices that is located within the geographical notification area and within the county served by the sheriff in question. A sheriff who is required to provide notices regarding an offender must provide the notice to the neighbors and to law enforcement personnel that are entitled to those notices no later than 72 hours after the offender registers with the sheriff or, as applicable, no later than 72 hours after the sheriff is provided the notice. A sheriff required to provide notices regarding an offender must provide the notices to all other specified persons not later than seven days after the offender registers with the sheriff, or no later than 72 hours after the sheriff is provided the notice.

If a sexual predator verifies his or her current residence address with a sheriff, the sheriff may provide a written notice containing the information to the persons identified in (1) to (9), above. If a sheriff provides that notice to the sheriff of one or more other counties, the sheriff of each of the other counties who is provided the notice may provide, but is not required to provide, a written notice containing the information to the persons identified in (1) to (7) and (9), above.

All information that a sheriff possesses regarding a sexual predator or a habitual sex offender and that must be provided in certain specified notices or that may be provided in other specified notices is a public record that is open to inspection.

If a person has been adjudicated a habitual sex offender (but not a sexual predator), these notification provisions do not apply unless the sentencing or reviewing court imposes a requirement in the offender's sentence and in the judgment of conviction that contains the sentence, or imposes a requirement that subjects the offender to the community notification provisions of the SORN Law. (R.C. 2950.11(A) through (F)(1).)

### **Operation of the bill**

The bill provides that the notification provisions set forth above generally do not apply to the records of delinquent children. If, at a hearing conducted under the Juvenile Delinquency Law, the juvenile court determines that a child who received a serious youthful offender dispositional sentence for committing a sexually oriented offense must abide by the notification provisions of the SORN Law, the child must abide by the notification provisions to the extent ordered by the juvenile court. (See **COMMENT 7.**) (R.C. 2950.11(F)(2).)

### **Immunity of certain specified persons under SORN Law**

#### **Existing law**

Except as provided below, any of the following persons are immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by an act or omission in connection with a power, duty, responsibility, or authorization under the SORN Law or under rules adopted under authority of the SORN Law (R.C. 2950.12(A)):

(1) An officer or employee of BCII;

(2) The Attorney General, a chief of police, marshal, or other chief law enforcement officer of a municipal corporation, a sheriff, a constable or chief of police of a township police department or police district police force, and a deputy, officer, or employee of the office of the Attorney General, the law enforcement agency served by the marshal or the municipal or township chief, the office of the sheriff, or the constable;

(3) A prosecutor and an officer or employee of the office of a prosecutor;

(4) A supervising officer and an officer or employee of the Adult Parole Authority of DRC;

(5) A person identified in (2), (3), (4), (5), (6), or (7) of "**Community notification of sexual predators and habitual sex offenders under SORN Law**"; "**Who receives notice**," above, or the agent of that person.

The immunity does not apply to the above persons if, in relation to the act or omission in question, any of the following applies (R.C. 2950.11(B)):

(1) The act or omission was manifestly outside the scope of the person's employment or official responsibilities.

(2) The act or omission was with malicious purpose, in bad faith, or in a wanton or reckless manner.

(3) Liability for the act or omission is expressly imposed by a section of the Revised Code.

### **Operation of the bill**

The bill adds to the list of individuals with the above immunity, a supervising officer and an officer or employee of DYS (R.C. 2950.12(A)(5)).

### **Attorney General duties under SORN Law**

#### **State Registry of Sex Offenders**

**Existing law.** The Attorney General must establish and maintain a State Registry of Sex Offenders that is housed at BCII and that contains all of the registration, change of residence address, and verification information BCII receives pursuant to the SORN Law regarding a person who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense and all of the information BCII receives pursuant to DRC/DYS duties under the SORN Law (R.C. 2950.13(A)).

**Operation of the bill.** The bill requires the Attorney General to add children adjudicated delinquent for committing sexually oriented offenses to the Registry (R.C. 2950.13(A)(1)).

#### **Victims rights pamphlet**

**Existing law.** The Attorney General must publish a victims rights pamphlet that informs a victim of the right of a victim of a sexually oriented offense that is committed by a person who is adjudicated as being a sexual predator or, in certain cases, by a person who is determined to be an habitual sex offender, to receive notice that the offender has registered with a sheriff under the SORN Law, notice of the offender's name and residence address or addresses, and a summary of the manner in which the victim must make a request to receive the notice (R.C. 109.42).

**Operation of the bill.** The bill changes the term "offender" to "person" in the provisions dealing with the above SORN Law notice with the result that children adjudicated delinquent for committing sexually oriented offenses are included within that notice (R.C. 109.42(A)(16)).

### *Other duties*

Under existing law, unchanged by the bill, the Attorney General must do all of the following (R.C. 2950.13(A)):

(1) In consultation with local law enforcement representatives and no later than July 1, 1997, adopt rules that contain guidelines necessary for the implementation of the SORN Law;

(2) In consultation with local law enforcement representatives and no later than July 1, 1997, adopt rules for the implementation and administration of the provisions of the SORN Law that pertain to the notification of neighbors of a person who has committed a sexually oriented offense and has been adjudicated as being a sexually violent predator or determined to be an habitual sex offender, and rules that prescribe a manner in which victims of a sexually oriented offense committed by a person who has been adjudicated as being a sexual predator or determined to be an habitual sex offender may make a request that specifies that the victim would like to be provided certain specified notices under the SORN Law;

(3) In consultation with local law enforcement representatives and through BCII, prescribe the forms to be used by judges and officials to advise offenders of their duties of registration, notification of a change of residence address and registration of the new residence address, and residence address verification, and prescribe the forms to be used by sheriffs relative to those duties of registration, change of residence address notification, and residence address verification;

(4) Make copies of the forms available to judges, officials, and sheriffs;

(5) Through BCII, provide the notifications, the information, and the documents that the Bureau is required to provide to appropriate law enforcement officials and to the FBI;

(6) Through BCII, maintain the verification forms returned under the residence address verification mechanism set forth in the SORN Law;

(7) In consultation with representatives of the officials, judges, and sheriffs, adopt procedures for officials, judges, and sheriffs to use to forward information, photographs, and fingerprints to BCII;

(8) In consultation with the Director of Education, the Director of Human Services, and the Director of Rehabilitation and Correction, adopt rules that contain guidelines to be followed by boards of education of a school district, chartered nonpublic schools or other schools not operated by a board of education,

preschool programs, child day-care centers, type A family day-care homes, certified type B family day-care homes, and institutions of higher education regarding the proper use and administration of information received under the SORN Law relative to a person who has been adjudicated as being a sexual predator or determined to be an habitual sex offender;

(9) In consultation with local law enforcement representatives, adopt rules that designate a geographic area or areas within which the notice must be given to those specified persons.

The Attorney General, in consultation with local law enforcement representatives, may adopt rules that establish one or more categories of neighbors of an offender who, in addition to the occupants of residences adjacent to an offender's place of residence, must be given notice under the SORN Law (R.C. 2930.13(B)).

### **Department of Rehabilitation and Corrections duties under SORN Law**

#### **Existing law**

Prior to releasing an offender who is under the custody and control of DRC and who has been convicted of or pleaded guilty to committing, either prior to, on, or after January 1, 1997, any sexually oriented offense, DRC must provide all of the following information to BCII regarding the offender: (1) the offender's name and any aliases used by the offender, (2) all identifying factors concerning the offender, (3) the offender's anticipated future residence, (4) the offense history of the offender, (5) whether the offender was treated for a mental abnormality or personality disorder while under the custody and control of DRC, and (6) any other information that BCII indicates is relevant and that DRC possesses (R.C. 2950.14).

Upon receipt of that information, BCII immediately must enter the information into the State Registry of Sexual Offenders and into specified other records that BCII maintains (R.C. 2950.14).

#### **Operation of the bill**

The bill expands the preceding described provisions to apply to delinquent children. Under the bill, prior to releasing a delinquent child who is in the custody of DYS and who has committed and has been adjudicated a delinquent child for committing a sexually oriented offense on or after the effective date of the bill, DYS must provide all of the information specified above to BCII regarding the delinquent child. (R.C. 2950.14(B).)

## **Penalties under SORN Law**

### **Existing law**

Whoever violates a prohibition regarding the registration requirements, notification of a change of address requirements, and the verification of address requirements of the SORN Law is guilty of a felony of the fifth degree if the most serious sexually oriented offense that was the basis of the registration, change of address notification, or address verification requirement that was violated under the prohibition is a felony. The violation is a misdemeanor of the first degree if the most serious sexually oriented offense that was the basis of the registration, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor. In addition to any penalty or sanction imposed for the violation, if the offender is on probation or parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation constitutes a violation of the terms and conditions of the probation, parole, post-release control sanction, or other type of supervised release. (R.C. 2950.99.)

### **Operation of the bill**

The bill specifies that the violations are felonies or misdemeanors only if they are committed by an adult. The bill also states that, in addition to any penalty or sanction imposed for the violation, if the offender *or delinquent child* is on probation or parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation must constitute a violation of the terms and conditions of the probation, parole, post-release control sanction, or other type of supervised release (R.C. 2950.99).

## **Definitions of terms used in SORN Law**

### **Existing law**

As used in the SORN Law, unless the context clearly requires otherwise (R.C. 2950.01):

(1) "Confinement" includes, but is not limited to, a community residential sanction imposed pursuant to the Felony Sentencing Law.

(2) "Habitual sex offender" means a person who is convicted of or pleads guilty to a sexually oriented offense and who previously has been convicted of or pleaded guilty to one or more sexually oriented offenses.

(3) "Sexually oriented offense" means any of the following offenses: (a) regardless of the age of the victim of the offense, rape, sexual battery, or gross sexual imposition, (b) any of the following offenses involving a minor, in the circumstances specified: (i) kidnapping, abduction, unlawful restraint, criminal child enticement, or corruption of a minor when the victim of the offense is under 18 years of age, (ii) compelling prostitution when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18 years of age, (iii) certain pandering obscenity or pandering sexually oriented matter involving minor violations, (iv) certain illegal use of a minor in nudity oriented material or performance violations, or (v) certain endangering children offenses when the child who is involved in the offense is under 18 years of age, (c) regardless of the age of the victim of the offense, the offense of aggravated murder, murder, felonious assault, or kidnapping, or involuntary manslaughter that is committed with a purpose to gratify the sexual needs or desires of the offender, (d) a sexually violent offense, (e) a violation of any former law of Ohio that was substantially equivalent to any offense listed in (4)(a), (b), (c), or (d), above, (f) a violation of an existing or former municipal ordinance or law of another state or the United States, a violation under the law applicable in a military court, or a violation under the law applicable in an Indian tribal court that is or was substantially equivalent to any offense listed in (4)(a), (b), (c), or (d), above, or (g) an attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (4)(a), (b), (c), (d), (e), or (f) above.

(4) "Sexual predator" means a person who has been convicted of or pleaded guilty to committing a sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses.

(5) "Supervised release" means a release from a prison term, a term of imprisonment, or another type of confinement that satisfies either of the following conditions: (a) the release is on parole, a conditional pardon, or probation, under transitional control, or under a post-release control sanction, and it requires the person to report to or be supervised by a parole officer, probation officer, field officer, or another type of supervising officer, (b) the release is any type of release that is not described in (a) and that requires the person to report to or be supervised by a probation officer, a parole officer, a field officer, or another type of supervising officer.

(6) An offender is "adjudicated as being a sexual predator" if any of the following applies: (a) the offender is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is a sexually violent offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or

information that charged the sexually violent offense, (b) regardless of when the sexually oriented offense was committed, on or after March 30, 1999, the offender is sentenced for a sexually oriented offense, and the sentencing judge determines that the offender is a sexual predator, (c) prior to January 1, 1997, the offender was convicted of or pleaded guilty to, and was sentenced for, a sexually oriented offense, the offender is imprisoned in a state correctional institution on or after January 1, 1997, and, prior to the offender's release from imprisonment, the court determines that the offender is a sexual predator, (d) regardless of when the sexually oriented offense was committed, the offender is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense in another state or in a federal court, military court, or an Indian tribal court, as a result of that conviction or plea of guilty, the offender is required, under the law of the jurisdiction in which the offender was convicted or pleaded guilty, to register as a sex offender until the offender's death and to verify the offender's address on at least a quarterly basis each year, and, on or after July 1, 1997, the offender moves to and resides in Ohio or temporarily is domiciled in Ohio for more than seven days, unless a court of common pleas determines that the offender is not a sexual predator.

### **Operation of the bill**

The bill revises several of the definitions to make the SORN Law apply to delinquent child. Specifically, under the bill:

(1) "Habitual sex offender" means a person to whom both of the following apply:

(a) The person is convicted of or pleads guilty to a sexually oriented offense (existing law) or *is adjudicated a delinquent child for committing a sexually oriented offense* (added by the bill);

(b) The person previously has been convicted of or pleaded guilty to one or more sexually oriented offenses (existing law) or *previously has been adjudicated a delinquent child for committing one or more sexually oriented offenses* (added by the bill).

(2) "Sexually oriented offense" is expanded to include an act committed by a person under 18 years of age that would be a sexually oriented offense under existing law if committed by an adult.

(3) "Sexual predator" and "adjudicated as being a sexual predator" are amended to apply to delinquency adjudications. The changes regarding adjudication as a sexual predator are discussed more fully under "**Classification as a sexual predator or habitual sex offender under SORN Law.**"

(4) "Supervised release" is amended to refer to release from detention that satisfies the conditions specified in existing law.

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## COMMENT

1. The bill defines *offense of violence* as having the same meaning as in R.C. 2901.01 (R.C. 2152.02(R)). R.C. 2901.01(A)(9) defines *offense of violence* as any of the following:

(a) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, kidnapping, abduction, extortion, rape, sexual battery, gross sexual imposition, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, certain acts constituting burglary, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidation of an attorney, victim, or witness in a criminal case, escape, improperly discharging a firearm at or into a habitation or school, or the former offense of felonious sexual penetration;

(b) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any offense listed in (a), above;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense under (a), (b), or (c), above.

2. The bill defines *firearm* as having the same meaning as in R.C. 2923.11 (R.C. 2152.02(M)). R.C. 2923.11(B) defines *firearm* as any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. *Firearm* includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable. When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm. (R.C. 2923.11(B).)

3. The key word "AGG" (abbreviated from "aggravated") does not appear in the bill's eligibility table, which uses the complete word "aggravated."

4. The bill erroneously refers to "division (L)(14)(a) of this section," instead of "(L)(5)(a) of this section."

5. Juvenile Rule 30(C) provides that in any proceeding in which transfer of a case for criminal prosecution is permitted, but not required, by statute, and in which probable cause is found at the preliminary hearing, the court must continue the proceeding for full investigation. The investigation must include a mental examination of the child by a public or private agency or by a person qualified to make the examination. When the investigation is completed, an amenability hearing must be held to determine whether to transfer jurisdiction.

6. The bill defines *public record* as having the same meaning as in R.C. 149.43 (R.C. 2152.02(T)). R.C. 149.43(A)(1) defines *public record* as any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except that *public record* does not mean any of specified types of records, including records the release of which is prohibited by state or federal law.

7. R.C. 2152.13(E) and 2950.11(F)(2) state the child must abide by the community notification provisions. These provisions are confusing because the child has no duties relating to community notification: the sheriff has the duty of community notification under the Sex Offender Registration and Notification Law. These provisions probably should be clarified to say either that the child is subject to the community notification provisions or that the sheriff must abide by these provisions.

8. Juvenile Rule 29(C) provides that "[t]he court shall request each party against whom allegations are made in the complaint to admit or deny the allegations. A failure or refusal to admit the allegations shall be deemed a denial."

9. Criminal Rule 11 provides:

(A) Pleas

A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas may be made orally. The pleas of not guilty and not guilty by reason of insanity may be joined. If a defendant refuses to

plead, the court shall enter a plea of not guilty on behalf of the defendant.

(B) Effect of guilty or no contest pleas

With reference to the offense or offenses to which the plea is entered:

(1) The plea of guilty is a complete admission of the defendant's guilt.

(2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.

(3) When a plea of guilty or no contest is accepted pursuant to this rule, the court, except as provided in divisions (C)(3) and (4) of this rule, shall proceed with sentencing under Crim. R. 32.

(C) Pleas of guilty and no contest in felony cases

(1) Where in a felony case the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim. R. 44 by appointed counsel, waives this right.

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

(3) With respect to aggravated murder committed on and after January 1, 1974, the defendant shall plead separately to the charge and to each specification, if any. A plea of guilty or no contest to the charge waives the defendant's right to a jury trial, and before accepting a plea of guilty or no contest the court shall so advise the defendant and determine that the defendant understands the consequences of the plea.

If the indictment contains no specification, and a plea of guilty or no contest to the charge is accepted, the court shall impose the sentence provided by law.

If the indictment contains one or more specifications, and a plea of guilty or no contest to the charge is accepted, the court may dismiss the specifications and impose sentence accordingly, in the interests of justice.

If the indictment contains one or more specifications that are not dismissed upon acceptance of a plea of guilty or no contest to the charge, or if pleas of guilty or no contest to both the charge and one or more specifications are accepted, a court composed of three judges shall: (a) determine whether the offense was aggravated murder or a lesser offense; and (b) if the offense is determined to have been a lesser offense, impose sentence accordingly; or (c) if the offense is

determined to have been aggravated murder, proceed as provided by law to determine the presence or absence of the specified aggravating circumstances and of mitigating circumstances, and impose sentence accordingly.

(4) With respect to all other cases the court need not take testimony upon a plea of guilty or no contest.

(D) Misdemeanor cases involving serious offenses

In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily. Where the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim. R. 44 by appointed counsel, waives this right.

(E) Misdemeanor cases involving petty offenses

In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty.

The counsel provisions of Crim. R. 44(B) and (C) apply to division (E) of this rule.

(F) Negotiated plea in felony cases

When, in felony cases, a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying agreement upon which the plea is based shall be stated on the record in open court.

(G) Refusal of court to accept plea

If the court refuses to accept a plea of guilty or no contest, the court shall enter a plea of not guilty on behalf of the defendant. In such cases neither plea shall be admissible in evidence nor be the subject of comment by the prosecuting attorney or court.

(H) Defense of insanity

The defense of not guilty by reason of insanity must be pleaded at the time of arraignment, except that the court for good cause shown shall permit such a plea to be entered at any time before trial.

10. As used in the Traffic Rules, "court" means municipal court, county court, juvenile court, police court, and mayor's court (Traffic Rule 2).

11. Traffic Rule 13 authorizes each court, other than the juvenile division of the court of common pleas, to establish a traffic violations bureau. The violations bureau accepts appearance, waiver of trial, plea of guilty, and payment of fine and costs for offenses within its authority. The violations bureau is authorized to dispose of most types of traffic offenses.

12. Section 2 of the bill indicates that existing R.C. 2151.3512, which currently contains the fine and cost schedule to be used in dispositions of delinquent children and j.t.o.s, is repealed by the bill. However, the body of the bill, in Section 1, contains existing R.C. 2151.3512 for the purpose of making technical changes in it. The inclusion of the section in Section 1 of the bill is a mistake, and it should be removed.

13. The body of the bill, in Section 1, contains existing R.C. 2151.38 for the purpose of making technical changes in it. Because all of the provisions of R.C. 2151.38 are relocated to new R.C. 2152.22, the inclusion of the existing section in Section 1 of the bill is a mistake, and R.C. 2151.38 should be repealed by the bill.

14. In the context of this offense, stating that the act would be "a felony of the fourth degree if it could be committed by an adult" appears to acknowledge that a person over 18 years of age cannot violate this prohibition. This phrasing may cause some confusion, however, if a child charged with violating this prohibition is transferred from the juvenile court to the general division of the court of common pleas for trial as an adult.

15. These provisions in the Compulsory School Age Law pertain to:

(a) The compulsory school age of a child which is between 6 and 18 years of age and the admission of a pupil to kindergarten or first grade (R.C. 3321.01);

(b) The requirement, subject to specific exceptions, for a parent of a child of compulsory school age to cause the child to attend a school in the school district in which the child is entitled to attend school, to participate in a special education program under the law, or to otherwise cause the child to be instructed in accordance with law. Every child of compulsory school age must attend a school or participate in a special education program that conforms to the minimum standards prescribed by the State Board of Education until the child: (i) receives a diploma granted by the board of education or other governing authority, successfully completes the curriculum of any high school, or successfully completes the individualized education program developed for the student by any high school pursuant to law, (ii) receives an age and schooling certificate as provided in the law, or (iii) is excused from school under standards adopted by the State Board of Education, or if in need of special education, the child is excused from special education programs. (R.C. 3321.03.)

(c) The requirement for every parent of any child of compulsory school age who is not employed under an age and schooling certificate to send the child to a school or a special education program that conforms to the minimum standards prescribed by the State Board of Education, for the full time the school or program attended is in session, which must not be for less than 32 weeks per school year. The attendance must begin within the first week of the school term or program, within one week of the date on which the child begins to reside in the district, or within one week after the child's withdrawal from employment. The law defines "full time the school attended is in session" depending upon whether a school or program is operated on a trimester plan, quarterly plan, or pentameter plan. The law also provides that excuses from future attendance at or past absence from school or a special education program may be granted for the causes, by the authorities, and under the conditions specified in the law. (R.C. 3321.04.)

(d) The requirement that if any child attends instruction elsewhere than in a public school, that instruction must be in a school that conforms to the minimum standards prescribed by the State Board of Education. This provision does not require a child to attend a high school instead of a vocational, commercial, or other special type of school, if the instruction received is for a term and for hours equivalent to those of the high school, and if the child's attendance at that type of school will not interfere with a continuous program of education for the child to the age of 16 years. (R.C. 3321.07.)

(e) The requirement that all parents, guardians, and other persons who have the care of children who are employed under age and schooling certificates must

cause them to attend a part-time day school or class for the full time that the school or class is in session whenever that part-time school or class has been established and is accessible to the child in the district where the child resides or is employed, unless the superintendent of schools determines that (i) the child has already completed the same work as or work equivalent to that taken up in the part-time schools or classes that are available for the child to attend or (ii) the bodily or mental condition of the child does not permit attendance at that school or class. (R.C. 3321.10.)

(f) The prohibition against a parent failing without good cause to attend an educational program established pursuant to rules adopted by the State Board of Education for the purpose of encouraging parental involvement in compelling the attendance of the child at school, if a board of education determines that a student has been truant and the parent, guardian, or other person having care of the child has failed to cause the student's attendance and requires the parent, guardian, or other person having care of the child to attend that program. If any child of compulsory school age, in violation of law, is not attending school, the attendance officer must notify the parent, guardian, or other person in charge of the child of the fact, and require the parent, guardian, or other person to cause the child to attend school forthwith. The law requires the parent, guardian, or other person in charge of the child to cause the child's attendance at school and authorizes the filing of a complaint in court for failure to do so. (R.C. 3321.19(A) and (B).)

(g) The requirement for an attendance officer to warn a child and the child's parent, guardian, or other person in charge of the child in writing of the legal consequences of failure of the child to attend a part-time school or class in violation of the law, and to file a complaint in court against the parent, guardian, or other person in charge of the child for failure to cause that child's attendance at the part-time school or class (R.C. 3321.20).

(h) The requirement for a parent or guardian of a child of compulsory school age to secure and keep on file the child's or ward's proper age and schooling certificate if the child or ward is employed by the parent or guardian and to return that certificate as provided by law, except that a parent or guardian need not secure and keep on file a special or vacation certificate of the child or ward who is to be employed by the parent or guardian personally when school is not in session (R.C. 3331.14).

16. A misdemeanor of the fourth degree is punishable by a term of imprisonment of not more than 30 days, a fine of not more than \$250, or both (R.C. 2929.21(B) and (C)).

17. The six findings in support of the General Assembly's declaration of the necessity of the SORN Law read as follows:

(a) If the public is provided adequate notice and information about sexual predators, habitual sex offenders, and certain other offenders who commit sexually oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the sexual predator's, habitual sex offender's, or other offender's release from imprisonment, a prison term, or other confinement. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(b) Sexual predators and habitual sex offenders pose a high risk of engaging in further offenses even after being released from imprisonment, a prison term, or other confinement, and the protection of members of the public from sexual predators and habitual sex offenders is a paramount governmental interest.

(c) The penal and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from either component may result in the failure of both systems to satisfy this paramount governmental interest of public safety described in paragraph (b), above.

(d) Overly restrictive confidentiality and liability laws governing the release of information about sexual predators and habitual sex offenders have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(e) A person who is found to be a sexual predator or an habitual sex offender has a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(f) The release of information about sexual predators and habitual sex offenders to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems as long as the information released is rationally related to the furtherance of those goals.

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## HISTORY

| ACTION     | DATE     | JOURNAL ENTRY |
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