



Bill Analysis

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Legislative Service Commission

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Sens. Latta, Hottinger, Johnson

BILL SUMMARY

General provisions

- Enacts new R.C. Chapter 2152. to contain the law pertaining to delinquent children and juvenile traffic offenders and relocates to the new chapter, without substantive change, many provisions of the current Juvenile Code (R.C. Chapter 2151.) that pertain to delinquent children and juvenile traffic offenders.
- Provides that the overriding purposes for dispositions under new R.C. Chapter 2152. are to protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender and provides standards and criteria for achieving those purposes.
- Makes it clear that certain 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" that applies for the purposes of the current Juvenile Code and relative to certain children who receive a serious youthful offender dispositional sentence under the bill so that it includes any person who is under 18 years of age, modifies that definition relative to juvenile court jurisdiction over unruly children, and moves to

* *This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

new R.C. Chapter 2152. the provisions of that definition that address delinquent children.

- Moves the definitions of "delinquent child," with a few modifications, and "juvenile traffic offender," without modification, to new R.C. Chapter 2152.
- Removes from the definition of "unruly child" that applies to the Juvenile Code a child who: is 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.
- Consolidates and clarifies the meaning of "juvenile court" that applies throughout the Revised Code.

Assignment of other judges to act as juvenile judge

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

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

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

Closing of juvenile court hearings

- Provides that: (1) if a juvenile court excludes the general public from its hearings pursuant to an existing authorization, after a hearing on the exclusion, the court may admit to a hearing those persons who have a direct interest in the case and those who demonstrate that their need for access outweighs the interest in keeping the hearing closed, and specifies that the hearing-closing provisions do not apply in circumstances in which the bill's provisions pertaining to serious youthful offenders provide otherwise, and (2) the provisions regarding the closing of hearings does not limit or affect the Crime Victim's Rights Law.

Representation by counsel at a juvenile court proceeding

- Specifies that the existing right to be represented by counsel in juvenile court proceedings does not apply in any proceeding involving a child who is alleged to be a delinquent child or a juvenile traffic offender for committing an act that would be a minor misdemeanor if committed by an adult.

Eligibility for transfer for criminal prosecution and specified types of dispositions

- Retains the existing "category one" offense and "category two" offense mandatory transfer mechanism, and, for other cases, 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, presumed, or discretionary transfer* of alleged delinquent children for criminal prosecution and for a *mandatory or discretionary serious youthful offender disposition* or a *traditional juvenile disposition* for adjudicated delinquent children, and bases the criteria on the child's age (any age from ten to 17 years) at the time of the act charged, the category of felony offense the act would be if committed by an adult, and whether the act is enhanced by certain 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 requirements and establishes procedures for mandatory transfers, presumed transfers, or discretionary transfers for criminal prosecution of delinquent child cases that are eligible for transfer, as described above, 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 and information.

Serious youthful offender dispositional sentence

- Generally authorizes a juvenile court to impose a "dispositional sentence" for certain "serious youthful offenders" that contains a juvenile portion (consisting of a traditional juvenile delinquency disposition) and an adult portion (consisting of a criminal sentence); requires the court to stay the adult portion pending the satisfactory completion of the juvenile portion; and authorizes the court to invoke the adult portion if the child does not satisfactorily complete the juvenile portion because of specified types of conduct of the child.
- Requires a prosecuting attorney to initiate the process for imposition of a serious youthful offender dispositional sentence by requesting a presumed transfer when the case is subject to a presumed transfer, by obtaining an indictment or information charging the child as a serious youthful offender, by requesting such a disposition in the original complaint, or by timely filing written notice of that intent.
- Specifies the procedures to be followed in serious youthful offender cases, including providing to the child protections normally afforded to criminal defendants, such as a preliminary hearing, an open and speedy trial by jury, and bail.
- If a child is adjudicated a delinquent child in a mandatory serious youthful offender case: (1) requires the court to impose on the child a serious youthful offender dispositional sentence that consists of a criminal

sentence (the adult portion) and a traditional juvenile disposition (the juvenile portion) and (2) requires the court to stay the adult portion.

- 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 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 that permit invocation of the adult portion, and the child's conduct demonstrates that the child is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.
- 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 or place the child under another sanction imposed as part of the sentence.

Dispositions for delinquent children

- In a case in which a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, modifies some of the periods of commitment that may be made of the child, as a traditional juvenile disposition to the Department of Youth Services, and also revises procedures regarding the periods of commitment for firearms and gang-

related activity 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 as a traditional juvenile disposition for a child who is adjudicated a delinquent child; designates some of these alternatives as "community control" sanctions and conditions; expressly permits as one of these community control sanctions the direct placement of the child in the detention facility that serves the county for up to 60 days if the child's act would be a felony if committed by an adult and for up to 30 days if the child's act would be a misdemeanor if committed by an adult; specifies that abused, neglected, or dependent child dispositions to the temporary custody of a public children services agency for a child who is at least 14 years of age may be used only if the delinquent child is not receiving a serious youthful offender dispositional sentence for an act that would be an offense of violence if committed by an adult; 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.
- In the existing provision that specifies that, if a person is convicted of a specified serious criminal offense and the criminal court is determining for sentencing purposes whether the offender is a repeat violent offender, the criminal court must consider a prior delinquency adjudication for any of a list of specified serious offenses as a prior criminal conviction, removes the requirement that the juvenile court that made the prior delinquency adjudication must have specifically found that the adjudication is to be considered as a prior conviction in order for it to be so considered.

Juvenile traffic offenders

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

Financial sanctions

- Revises the standardized fines that are available as disposition alternatives for a child who is adjudicated a delinquent child or a juvenile traffic offender, and provides a broader range of financial sanctions for a child who is so adjudicated.
- Permits a juvenile court to collect a financial sanction by: (1) entering into contracts with a vendor for the collection of the amounts due under the sanction, (2) permitting payment in installments, by credit or debit card, by another type of electronic transfer, or by any other reasonable method, up

to a five-year maximum, with the maximum time for payment not exceeding five years (the court may pay any processing fee and charge the fee to the delinquent child), or (3) to defray administrative costs, charging a reasonable fee to a child who elects a payment plan rather than a lump sum payment.

Release from DYS

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

Parental control orders

- Provides that the order made by a juvenile court restraining or otherwise controlling the conduct of any parent, guardian, or other custodian of an unruly, abused, neglected, dependent, or delinquent child or a juvenile traffic offender may include a requirement that the child's parent, guardian, or other custodian enter into a recognizance with sufficient surety, conditioned upon the faithful discharge of any conditions or controls required by the court, and provides that a person's failure to comply with any court order restraining or otherwise controlling a parent, guardian, or custodian is contempt of court.

Underage purchase of a firearm or a handgun

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

Repeals

- Repeals 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) provide 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.
- Repeals existing provisions that deal with control of the parents of a delinquent child who is placed on probation, and that permit the Department of Youth Services to transfer to a state reformatory any child in its legal custody who is over 16 years of age and is incorrigible or incapable of benefiting by the treatment or training afforded by the Department.

Employment protection for witnesses at a juvenile court proceeding

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

Contributing to the unruliness or delinquency of a child

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

Tattooing, body piercing, and ear piercing services for juveniles

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

Detention facilities

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

makes a few changes in those provisions, and renames the homes as "detention facilities" and "district detention facilities."

RECLAIM Ohio funding

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

General Assembly encouragement to the Supreme Court

- Specifies that the General Assembly encourages the Supreme Court to: (1) amend the Rules for the Government of the Judiciary of Ohio or other appropriate rules, or take other appropriate action, to encourage cooperation between common pleas court divisions to better implement the bill, including, but not limited to, the provisions of the bill authorizing, in specified circumstances, jury trials in juvenile courts, (2) amend the Juvenile Rules to be consistent with the changes in the Juvenile Laws pertaining to delinquent children, particularly the laws relating to serious youthful offenders and extended juvenile jurisdiction dispositions, and (3) take appropriate action to collect data from Ohio juvenile courts on both the number of alleged delinquent children for whom a serious youthful dispositional sentence is sought under the bill and the number of jury trials held in the juvenile courts annually as a result of serious youthful offender dispositional sentences being sought for alleged delinquent children, and to prepare and submit to the General Assembly a report containing the data so collected.

Delayed effective date

- Specifies that its provisions are to take effect on July 1, 2001.

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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 and 2152.01). The bill provides that the overriding purposes for dispositions under R.C. Chapter 2152., which will contain the law pertaining to delinquent children and juvenile traffic offenders, are to protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These

purposes must be achieved by a system of graduated sanctions and services. Dispositions under R.C. Chapter 2152. must be reasonably calculated to achieve the overriding purposes of the chapter, commensurate with and not demeaning to the seriousness of the delinquent child's or juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court must not base the disposition on the race, ethnic background, gender, or religion of the delinquent child or juvenile traffic offender. (R.C. 2152.01(A) and (B).)

The 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), access to juvenile court probation department records (R.C. 2151.14(B)), access to certain fingerprints, photographs, and arrest records of juveniles (R.C. 2151.313(C)(2)(c)(i)), 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. It makes conforming changes in existing cross-references to the relocated sections.

Existing section	Renumbered section	Subject Matter
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2151.11	2152.73	Delinquency prevention--authorizes juvenile courts to participate with others in delinquency prevention programs and allows the court to accept gifts.
2151.18	2152.71	Records, Traffic Docket, and Delinquency Reports-- deals with certain records that must be kept by the juvenile court (a new version of R.C. 2151.18 is enacted and contains for R.C. Chapter 2151. the provision of the existing section that do not pertain to delinquent children).
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	2152.43	Detention homes
2151.343	2152.44	Detention homes
2151.356	2152.21	Dispositions for juvenile traffic offenders
2151.3511	2152.81	Special procedures for taking testimony of child victims of sex offenses.
2151.62	2152.72	Information to foster caregivers who receive certain delinquents - requires entities to provide specified information about an adjudicated delinquent child to the foster care givers before placing the delinquent child in a foster home.

The bill also repeals numerous sections of the Revised Code contained in R.C. Chapter 2151. and includes some, or all, of the language of the repealed

sections in newly enacted sections contained in R.C. Chapter 2152. Succeeding portions of this analysis address these provisions.

Definition of "child" in Juvenile Law

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. The bill modifies the provision to also specify that the juvenile court retains jurisdiction over any person who is adjudicated an unruly child prior to attaining age 18 until the child attains age 21, and that, for purposes of that jurisdiction, a person who is so adjudicated an unruly child is deemed to be a "child" until the person attains age 21. (R.C. 2151.011(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 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 and who subsequently is convicted of a felony in that case, and any person who is adjudicated a delinquent child, who has a serious youthful offender dispositional sentence imposed under the bill for the delinquent act (see "*Serious youthful offender dispositional sentence*," below), and whose adult portion of the dispositional sentence is imposed under the bill, is after the transfer or invocation deemed not to be a child in any case in which a complaint is filed against the person, and the person is eligible for a presumed transfer or discretionary transfer under the bill. In a case brought for a delinquent act allegedly committed prior to or subsequent to the transfer or invocation when the person is eligible for presumed transfer or discretionary transfer under the bill, the juvenile court, on the next court day after verification of the prior transfer and the prior criminal prosecution and conviction or after verification of the invocation, must transfer the case to the appropriate court, 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 allegedly was committed in the same county in which the case was transferred or the adult portion of the sentence was invoked 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 the adult portion of the sentence was invoked or in another county. This provision applies to a case that involves an act allegedly committed prior to the transfer or invocation 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 R.C. 2151.02 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 with a few modifications, 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 Ohio or the United States, or any ordinance of an Ohio political subdivision, that would be an offense if committed by an adult, (2) any child who violates any lawful order of the court made under R.C. Chapter 2151. or 2152., and (3) any child who violates R.C. 2923.211(A). (R.C. 2151.011(B)(12), 2151.02 (repealed), and 2152.02(E).) The bill makes conforming changes in existing cross-references to the Revised Code section containing the definition.

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 Ohio, the United States, or any Ohio political subdivision, other than a resolution, ordinance, or regulation of an Ohio political subdivision 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 without change to the definitional section for new R.C. Chapter 2152., and provides in the definitional section for the current Juvenile Code that juvenile traffic offender has the same meaning as in new R.C. Chapter 2152. (R.C. 2151.011(B)(18), 2151.021(repealed), and 2152.02(N)).

Definition of "unruly child" in Juvenile Law

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 deport 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.

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

Existing law

Existing law provides that, as used in the Revised Code, "juvenile court" means the division of the court of common pleas or a juvenile court separately and independently created having jurisdiction under the current Juvenile Code (R.C. 2151.011(A)(1)). Related to this, existing law provides that the juvenile court is a court of record and within the division of domestic relations or probate of the court of common pleas, except that the juvenile courts of Cuyahoga County and Hamilton County are separate divisions of the court of common pleas (R.C. 2151.07).

Operation of the bill

The bill consolidates and clarifies the meaning of the term "juvenile court." It provides that, as used in the Revised Code, "juvenile court" means whichever of

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

Other definitions for 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 Ohio 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 SYO" means that a case is eligible for a serious youthful offender disposition, in the juvenile court's discretion.

(5) "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).

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

(7) "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.

(8) "Economic loss" means any economic detriment suffered by a victim of a delinquent act as a result of the delinquent act and includes any loss of income due to lost time at work because of an injury caused to the victim and any property loss, medical cost, or funeral expense incurred as a result of the delinquent act.

(9) An act charged is "enhanced" if any of the factors described in R.C. 2152.11(A)(1), (2), (3), or (4) (see "Enhancement factors," below) is specified in the complaint and proven in the manner described in R.C. 2152.11(M)(3).

(10) "Firearm" has the same meaning as in R.C. 2923.11 (see **COMMENT 1**).

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

(12) "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).

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

(14) "Offense of violence" has the same meaning as in R.C. 2901.01 (see **COMMENT 2**).

(15) "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).

(16) "Public record" has the same meaning as in R.C. 149.43 (see **COMMENT 3**).

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

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

(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.

Assignment of another judge to act as juvenile judge

Existing law

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

Operation of the bill

The bill modifies this provision to specify that, whenever the juvenile judge of the juvenile court *is sick*, is absent from the county, is unable to attend court, or the volume of cases pending in court necessitates it, *upon the request of the administrative juvenile judge*, the presiding judge of the court of common pleas *pursuant to R.C. 2301.13(AA)* must assign a judge *of any division of the court of common pleas of the county* to act in the juvenile judge's place or in conjunction with the juvenile judge. The bill retains existing law in circumstances in which no judge of the court of common pleas is available for that purpose. (R.C. 2151.07.)

Filing of complaints in juvenile court

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. 2151.31 and 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 regarding that child, the prosecuting attorney of the county in which the alleged delinquency occurs may initiate a case in the juvenile court by presenting the case to a grand jury for indictment under the bill (see "**Serious youthful offender dispositional sentence**," below) (R.C. 2152.021(A)).

Taking a child into custody

Existing law

Existing law provides that a child may be taken into custody in any of the following ways (R.C. 2151.31(A)):

- (1) Pursuant to an order of the court under R.C. Chapter 2151.;

(2) Pursuant to the laws of arrest;

(3) By a law enforcement officer or duly authorized officer of the court when any of the following conditions are present: (a) there are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, and the child's removal is necessary to prevent immediate or threatened physical or emotional harm, (b) there are reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary to prevent immediate or threatened physical or emotional harm, or (c) there are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child's household has abused or neglected another child in the household and to believe that the child is in danger of immediate or threatened physical or emotional harm from that person;

(4) By an enforcement official, as defined in R.C. 4109.01, under the circumstances set forth in R.C. 4109.08;

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

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

The taking of a child into custody is not and cannot be deemed an arrest except for the purpose of determining its validity under the constitution of Ohio or of the United States.

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

order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter. (R.C. 2151.31(B) and (C).)

Operation of the bill

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

The bill also provides a new exception to the existing limitations on the confinement in a place of juvenile detention of a child who has been taken into custody. Under the bill, in addition to the existing circumstances in which a child may be so confined, a child alleged to be a delinquent child who is taken into custody may be confined in a place of juvenile detention prior to the implementation of the court's final order of disposition if the confinement is authorized under R.C. 2152.04 (regarding confinement for evaluation) or if the child is alleged to be a serious youthful offender (see below) under the bill and is not released on bond. (R.C. 2151.31(C)(2).)

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 so that it applies only to delinquent children and j.t.o.s, and places the provisions dealing with unruly, neglected, abused, and dependent children in a new R.C. 2151.312 (R.C. 2151.312 and 2152.26).

The bill also relocates an existing provision that provides that a child who is alleged to be or who is adjudicated a delinquent child may be confined in a place of juvenile detention for a period of not to exceed 90 days during which time a social history may be prepared. The social history must include the child's court record, family history, personal history, school and attendance records, and any other pertinent studies and material that will be of assistance to the juvenile court in its disposition of the charges against the alleged or adjudicated delinquent child (see "**Detention homes (detention facilities)**," below). (R.C. 2152.04, relocated from R.C. 2151.34, which is renumbered R.C. 2152.41.)

Separate room for juvenile hearings

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).)

Closing of juvenile court hearings

Existing law

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

Operation of the bill

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

Representation by counsel at a juvenile court proceeding

Existing law

Existing law provides that a child, and the child's parents, custodian, or other person in loco parentis of the child is entitled to representation by legal counsel at all stages of the proceedings in juvenile court and if, as an indigent person, the person is unable to employ counsel, to have counsel provided pursuant to the Public Defender Law. If a party appears without counsel, the court must ascertain whether the party knows of this right to counsel and of this right to be provided with counsel if indigent. The court may continue the case to enable a party to obtain counsel or to be represented by the county public defender or the joint county public defender and must provide counsel upon request pursuant to the Public Defender Law. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more parties conflict, separate counsel must be provided for each of them. (R.C. 2151.352.)

Operation of the bill

The bill specifies that the right to be represented by counsel that is described above does not apply in any proceeding involving a child who is alleged to be a delinquent child or a juvenile traffic offender for committing an act that would be a minor misdemeanor if committed by an adult (R.C. 2151.352).

Eligibility for transfer or felony dispositions, under the bill

Enhancement factors

Under the bill, a case involving a child alleged to be or adjudicated a delinquent child is eligible for mandatory transfer in the same circumstances as under existing law, regarding category one and category two offenses, and is eligible for other particular types of *transfer* or *disposition* if the *act charged* is *enhanced* by one or more of the following factors specified in the complaint or if the bill otherwise makes the child eligible for a specified type of transfer or disposition as described below (R.C. 2152.11(A)):

(1) The act charged against the child would be an *offense of violence* (see **COMMENT 2**) if committed by an adult (hereafter, "offense of violence factor").

(2) The child used or displayed a *firearm* (see **COMMENT 1**), brandished a firearm, or indicated 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 the case involves a child who is charged with the commission of an act that would be a felony if committed by an adult and the child was 14 years of age or older at the time of the alleged act. (R.C. 2152.11(B).)

Mandatory transfer

The bill retains the provisions of existing law that provide for the mandatory transfer of a child who is alleged to have committed a category one offense or a category two offense, in specified circumstances (see "**Mandatory bindover**," below). It does not change any of the criteria regarding eligibility for the mandatory transfer but relocates the provisions to new R.C. Chapter 2152. (R.C. 2152.11(C).)

Aggravated murder or murder eligibility

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(D)):

(1) *Mandatory transfer*, when required under the provisions described above in "**Mandatory transfer**";

(2) *Presumed transfer*, if the act allegedly was committed when the child was 14 or 15 years of age and the preceding paragraph (1) does not apply;

(3) *Mandatory SYO* (see "**Serious youthful offender dispositional sentence**," below), if 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;

(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 eligibility

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(E)):

(1) *Mandatory transfer*, when required under the provisions described above in "**Mandatory transfer**";

(2) *Presumed transfer*, if the act allegedly was committed when the child was 14 or 15 years of age and the preceding paragraph (1) does not apply;

(3) *Discretionary SYO*, if the act was committed when the child was 10, 11, 12, 13, 14, or 15 years of age.

First degree felony eligibility

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(F)):

(1) *Mandatory transfer*, if the act alleged is a category one or category two offense and mandatory transfer is required under the provisions described above in "**Mandatory transfer**";

(2) *Presumed transfer*, if the act allegedly was committed when the child was 16 or 17 years of age, the preceding paragraph (1) does not apply, and the act is enhanced by both the offense of violence factor and either the firearm factor or the previous DYS admission factor;

(3) *Discretionary SYO*, if: (a) the act was committed when the child was 16 or 17 years of age and the preceding paragraphs (1) and (2) do not apply, (b) the act was committed when the child was 14 or 15 years of age, (c) the act was committed when the child was 12 or 13 years of age and is enhanced by the offense of violence factor, the firearm factor, or the previous DYS admission

factor, or (d) the act was committed when the child was 10 or 11 years of age and is enhanced by both the offense of violence factor and either the firearm factor or the previous DYS admission factor;

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

Second degree felony eligibility

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(G)):

(1) *Mandatory transfer*, if the act alleged is a category two offense and mandatory transfer is required under the provisions described above in "**Mandatory transfer**";

(2) *Discretionary SYO*, if the act was committed when the child was 14, 15, 16, or 17 years of age, and the preceding paragraph (1) does not apply;

(3) *Discretionary SYO*, 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;

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

Third degree felony eligibility

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(H)):

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

(2) *Discretionary SYO*, if 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 original previous DYS admission factor;

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

Fourth and fifth degree felony eligibility

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(I)):

(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(J)):

(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 a traditional juvenile 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 a traditional juvenile disposition alone.

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(K), (L), and (M)):

OFFENSE CATEGORY	AGE 16 & 17	AGE 14 & 15	AGE 12 & 13	AGE 10 & 11
Murder/Aggravated Murder, Enhanced	MT	MT	MSYO	MSYO
Murder/Aggravated Murder	MT	PT or MSYO	DSYO	DSYO
Attempted Murder/Aggravated Murder, Enhanced	MT	MT	DSYO	DSYO
Attempted Murder/Aggravated Murder	MT	PT or DSYO	DSYO	DSYO
F1-V, Enhanced	MT or PT	DSYO	DSYO	DSYO
F1-V	DSYO	DSYO	DSYO	TJ
F1, Enhanced	MT or DSYO	DSYO	DSYO	TJ
F1	DSYO	DSYO	TJ	TJ
F2, Enhanced	MT or DSYO	DSYO	DSYO	TJ
F2	DSYO	DSYO	TJ	TJ
F3, Enhanced	DSYO	DSYO	TJ	TJ
F3	DSYO	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 for any offense 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).

(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 4**.)

(2) "DSYO" refers to discretionary SYO.

(3) "Enhanced," for purposes of the eligibility table, refers to any of the following:

(a) In relation to aggravated murder, murder, attempted aggravated murder, attempted murder, or a felony of the first or second degree that is a category one or category two offense, that R.C. 2152.11(C) of the bill, as described above in "Mandatory transfers," makes the case eligible for mandatory transfer under R.C. 2152.12.

(b) Aggravated murder, murder, attempted aggravated murder, or attempted murder, or a felony of the first degree that is an offense of violence and that is not described in the preceding paragraphs (a) or (b), if any of those offenses is enhanced by either the firearm factor or the previous DYS admission factor;

(c) Any felony that is not described above in the preceding paragraphs (a) or (b) and that is enhanced by the offense of violence factor, the firearm factor, or the previous DYS admission factor.

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

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

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

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

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

(9) "MSYO" refers to mandatory SYO.

(10) "MT" refers to mandatory transfer.

- (11) "PT" refers to presumed transfer.
- (12) "SYO" refers to serious youthful offender disposition.
- (13) "TJ" refers to traditional juvenile.
- (14) "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 under this provision 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*, *murder*, *attempted aggravated murder*, or *attempted 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 there is probable cause to believe that the

child committed the act charged or if the child is 14 or 15 years of age, the bill's R.C. 2152.04(C) or (D) as described above provides that the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged (R.C. 2151.12(B)(1)(a)).

Further, after a complaint has been filed alleging that a child is a delinquent child for committing a category one or category two offense, the juvenile court at a hearing *must* transfer the case if R.C. 2152.11(C), as described above, provides that the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged (R.C. 2152.12(B)(1)(b)).

The juvenile court also *must* transfer a case in the circumstances set forth in R.C. 2152.02(C)(5) as described above in "Definition of 'child' in Juvenile Law," or if either of the following applies (R.C. 2152.12(B)(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 above in "Construction and purposes of the Juvenile Code," and if the court finds all of the following on the record (R.C. 2152.12(C)):

(1) There is probable cause to believe that 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 child is amenable to care or rehabilitation within the juvenile system and that the safety of the community does not require that the child be placed under

legal restraint, including, if necessary, for a period beyond the child's majority. In making this decision, the court must determine whether 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 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(D)):

- (1) The child was 14 years of age or older at the time of the act charged.
- (2) There is probable cause to believe that the child committed the act charged.
- (3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be placed under legal restraint, including, if necessary, for a period beyond the child's majority. In making this decision, the court must consider the applicable factors described below in "**Factors favoring transfer**" indicating that the case should be transferred outweigh the applicable factors described below in "**Factors against transfer**" indicating that the case should not be transferred. The record must indicate the specific factors that 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 examination by the child constitutes a waiver of the examination. (R.C. 2152.12(E).)

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(F)):

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

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

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

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

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

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

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

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

(9) 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(G)):

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

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

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

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

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

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

(7) 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(H)):

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

Conforming changes

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

Procedures for transfer of delinquent child case

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(I), (J), and (K).)

Treatment of persons apprehended at age 21 or over for acts committed as a juvenile

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 existing 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 and if the person is not taken into custody or apprehended for that act until after the person attains 21 years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, 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(L).)

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*, under the provision described in the preceding paragraph, 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(M)(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(M)(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 3) 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, under provisions enacted in the bill

Overview

Under existing law, if a child is alleged to have violated a section of the Revised Code, the juvenile court may transfer the child's case for trial as an adult in specified circumstances. In other circumstances, the juvenile court is required to transfer the child's case. (See the discussion of existing law above in "*Types of transfer to criminal court--existing law*.") If the juvenile court does not transfer the child's case, 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), DYS must release the child when the child reaches 21 years of age, if the child has not been released sooner in accordance with law. (R.C. 2151.26 and 2151.355.)

The bill enacts a mechanism pursuant to which a juvenile court may impose a "dispositional sentence" for certain "serious youthful offenders" that contains a juvenile portion consisting of a traditional delinquency disposition and an adult portion that contains a criminal sentence of a type that could have been imposed on the child had the child's case been transferred for criminal prosecution. The adult portion is stayed pending the satisfactory completion of the juvenile portion of the dispositional sentence. If the child does not satisfactorily complete the juvenile portion because of specified types of conduct of the child, 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 specifies that a juvenile court may impose a "serious youthful offender dispositional sentence" on a child only if the prosecuting attorney of the county in which the delinquent act allegedly occurred initiates the process against the child in the manner described below and the child is an alleged delinquent

child who is eligible for the sentence (see "Eligibility for transfer or felony dispositions," above). The prosecuting attorney may initiate the process in any of the following ways (R.C. 2152.13(A)):

(1) The case is subject to a presumed transfer under the bill (see "Presumed transfer," above), the prosecuting attorney moves for the presumed transfer, and the presumption is overcome.

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

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

Unless the indictment, information, or original complaint includes a notice of intent to seek that type of sentence, the prosecuting attorney must file with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within 20 days after the later of the following, unless the time for filing the notice is extended by the juvenile court for good cause shown: (1) the date of the child's first juvenile court hearing regarding the complaint, or (2) the date the juvenile court determines not to transfer the case to an adult court for prosecution. After the written notice is filed under this provision, the juvenile court must serve a copy of the notice on the child and advise the child of the prosecuting attorney's intent to seek a serious youthful offender dispositional sentence in the case. (R.C. 2152.13(B).)

Procedure in a serious youthful offender case

If an alleged delinquent child is not indicted or charged by information, as described above, and if a notice or complaint as described above indicates that the prosecuting attorney intends to pursue a serious youthful offender dispositional sentence in the case, the juvenile court must hold a preliminary hearing to determine if there is probable cause that the child committed the act charged and is by age eligible for, or required to receive, a serious youthful offender dispositional sentence.

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

Once a child is indicted or charged by information or the juvenile court determines the child to be eligible for a serious youthful offender dispositional

sentence, the child is entitled to an open and speedy trial by jury in juvenile court and to be provided with a transcript of the proceedings. The time within which the trial is to be held commences on the date of the filing of the indictment or information. If the child is detained awaiting adjudication, upon indictment or being charged by information, the child has the same right to bail as an adult charged with the offense the alleged delinquent act would be if committed by an adult. Except for the hearing to determine whether to invoke the adult portion of the dispositional sentence, all provisions of the Criminal Code (R.C. Title XXIX) and the Criminal Rules apply in the case and to the child. The juvenile court must afford the child all rights afforded a person who is criminally prosecuted for committing an offense. (R.C. 2152.13(C) and (D).)

Mandatory serious youthful offender dispositional sentences

If a child is adjudicated a delinquent child for committing an act under circumstances that *require* the juvenile court to impose 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(E)(1)(a)):

(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 one or more traditional juvenile dispositions.

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

The child has a right to appeal under specified circumstances described in existing R.C. 2953.08 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(E)(1)(b).)

Discretionary serious youthful offender dispositional sentence--generally

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

(1) If the juvenile court on the record makes a finding that, given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes of the Juvenile Delinquency Law will be met, the juvenile court may impose upon the child a criminal sentence available for the violation, as if the child were an adult. But, the juvenile court is prohibited from imposing on the child a sentence of death or life imprisonment without parole.

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

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

(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 described in existing R.C. 2953.08 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 one or more traditional juvenile dispositions under the Juvenile Delinquency Law. (R.C. 2152.13(E)(2)(b) and (c).)

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 in which is located the juvenile court that imposed a serious youthful offender dispositional sentence upon a person to file a motion with that juvenile court to invoke the adult 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 substantial risk 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 in which is located 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 substantial risk 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 as described above, 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 appointed under the Juvenile Rules, 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 that are a condition for invoking the adult portion of the sentence, and the person's conduct demonstrates that the person is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.

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

If a juvenile court issues an order invoking the adult 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 or place the person under another sanction imposed as part of the sentence. The juvenile court must state in its order the total number of days that the person has been held in detention or in a facility operated by, or under contract with, DYS under the juvenile portion of the dispositional sentence. The time the person must serve on a prison term imposed under the adult 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.

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

Conforming changes

The 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), 2152.71(B), 2152.81(A)(2), (C), and (D), 2923.32(B)(4)(a), 2923.33, 2923.36(A), 2923.44(B)(1)(a), (D)(1), (D)(2), and (F)(1), 2923.45(A), (C)(3), and (D)(1), 2925.42(B)(1)(a), (D)(1), (D)(2), and (F)(1), 2925.43(A), (C)(3), and (D)(1), 3313.66(F)(1), and 5139.05(B)(1)(c) and (B)(2)(e)).

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 under R.C. 2151.353 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).)

Traditional 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.

Commitment to DYS for a felony

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, 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 impose an indefinite commitment as specified in clause (1) or (2) or must select a specific period of months during which the court controls the child's confinement from the ranges set forth in clauses (3) to (7) as appropriate: (1) for an act that would be aggravated murder or murder if committed by an adult, until the offender attains 21 years of age, (2) for an act that would be attempted aggravated murder or attempted murder if committed by an adult, a minimum period of six to seven years as prescribed by the court and a maximum period not to exceed the child's attainment of 21 years of age, (3) for an act that would be a felony of the first degree if committed by an adult, 12 to 60 months, (4) for an act that would be a felony of the second degree if committed by an adult, 12 to 36 months, (5) for an act that would be a felony of the third degree if committed by an adult, six to 20 months, (6) for an act that would be a felony of

the fourth degree if committed by an adult, six months, and (7) for an act that would be a felony of the fifth degree if committed by an adult, six 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; also, 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 child 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.

As under existing law, if a child is adjudicated a delinquent child, at the dispositional hearing and prior to making any disposition to DYS, the court must determine whether the delinquent child previously has been adjudicated a delinquent child for a violation of a law or ordinance. If the delinquent child previously has been adjudicated a delinquent child for a violation of a law or ordinance, the court, for purposes of entering an order of disposition of the delinquent child to DYS, must consider the previous delinquent child adjudication as a conviction of a violation of the law or ordinance in determining the degree of the offense the current act would be had it been committed by an adult. This provision also applies in relation to the imposition of any financial sanction, as described below in "*Financial sanctions for delinquent children and juvenile traffic offenders--operation of the bill.*" (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, if a child is adjudicated a delinquent child for committing an act, other than the offense of carrying a concealed weapon, that would be a felony if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a firearms specification of the type set forth in R.C. 2941.141, 2941.144, 2941.145, or 2941.146, in addition to any commitment the court imposes for the underlying delinquent act, the court may, or, when required, must commit the child to DYS as follows (R.C. 2152.17(A)):

(1) If the specification is that the child had a firearm on or about the child's person or under the child's control while committing the act, the court *must* commit the child for the specification for a definite period of 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 specification is that the child displayed, brandished, indicated possession of, or used a firearm in committing the act, that the child had an automatic firearm or a firearm equipped with a muffler or silencer while committing the act, or that the child discharged a firearm from a motor vehicle in specified circumstances, the court *must* commit the child for the specification for a definite period of 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.

The bill specifies that the above-described provisions regarding commitments to DYS for a firearms specification also apply to a child who is an accomplice of a principal delinquent child to whom those above-described provisions apply, if the accomplice did not possess the firearm identified in the specification described in that provision, provided that the court determines that the accomplice knew that the principal delinquent child possessed the firearm in furtherance of the underlying act charged. If the court makes that determination, the accomplice is eligible for the same disposition relative to the specification, under the above-described provisions, as the principal delinquent child. (R.C. 2152.17(B).)

The court cannot commit a child to DYS's legal custody for a specification under the above-described firearms specification provisions for a period of time that exceeds five years for any one delinquent act. 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 second succeeding paragraph), the period imposed under the firearms specification must be served prior to the period imposed under the gang-related specification. The total of all the periods of commitment imposed for any specification and for the underlying offense cannot exceed the child's attainment of 21 years of age. (R.C. 2152.17(C).)

The bill makes it clear that the firearms specification set forth in the Criminal Sentencing Law under existing 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 aggravated murder, murder, or a first, second, or third degree felony offense of violence if committed by an adult and if the court

determines that, if the child was an adult, the child would be guilty of a specification that the act was a felony offense of violence committed while the child was participating in a criminal gang in relation to the act for which the child was adjudicated a delinquent child, the court must commit the child for the specification to DYS's legal custody for institutionalization in a secure facility for a period of not less than one year and not more than three years, subject to the maximum duration limitations set forth in the second 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(C).)

The bill makes it clear that the gang-related activity specification set forth in the Criminal Sentencing Law under existing 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. (R.C. 2152.17(E).)

Consideration of delinquency adjudication as a criminal conviction

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 adjudication must be considered a conviction for purposes of a determination in the future, pursuant to the state's Criminal Sentencing Law, as to whether the child is a repeat violent offender as defined in R.C. 2929.01. (R.C. 2152.17(F) and 2929.01(DD).) This provision is based on existing law contained in R.C. 2151.355(G)(2) and

2929.01(DD), but differs from it in that existing law does not permit the adjudication to be so considered as a conviction unless the juvenile court that commits the child to DYS makes a specific finding that the adjudication should be so considered, and includes the finding in its order of disposition and in the record in the case.

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

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

Within 20 working days after DYS receives physical custody of a delinquent child from a juvenile court, the court must provide DYS with a certified copy of the child's birth certificate and the child's social security number, or, if the court made all reasonable efforts to obtain the information but was unsuccessful,

with documentation of the efforts it made to obtain the information. (R.C. 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 facility, 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 for property damage or a theft committed by the child, (2) the right of victims to recover, under R.C. 3109.10, compensatory damages from the child's parents for willful and malicious assaults

committed by the child, and (3) the right of victims to recover under the Crime Victims Reparations Law. (R.C. 2152.18(E).)

Disposition other than a DYS commitment

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, in addition to any other disposition made, *must* suspend the child's temporary instruction permit, restricted license, probationary driver's license, or nonresident operating privilege, or suspend the child's ability to obtain such a permit if the child is adjudicated a delinquent child for: (1) illegally conveying or possessing a deadly weapon or dangerous ordnance 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 in violation of R.C. 2917.11(B). The former suspension and denial is for the time specified in R.C. 2923.122, and the latter is for a period until the child attends and satisfactorily completes a court specified drug abuse or alcohol abuse education, intervention, or treatment program. (R.C. 2152.19(B).)

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 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, except that the court may not commit a child who is 14 years of age or older to the temporary custody of a public children services agency if the delinquent act would be an offense of violence if committed by an adult and the child is receiving a serious youthful offender dispositional sentence under the bill for that act;

(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 21st 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. Unless ordered by the court, a child cannot receive credit for any time served on EMHA toward any other disposition order imposed upon the child for the act for which was imposed the EMHA order.

(l) In addition to any other disposition authorized or required by new R.C. Chapter 2152., place the child in the detention facility that serves the court, for up to 60 days if the child's delinquent act would be a felony if committed by an adult or for up to 30 days if the delinquent act would be a misdemeanor other than a minor misdemeanor if committed by an adult. If the child was held in detention for evaluation 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 facility 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 detention under this provision must be credited against the evaluation period. The bill states that this provision: (i) does not limit the duties of a parent, guardian, or custodian of a child or of a board of education or other entity to provide for the care, protection, and education of a child who is under detention under this provision, and (ii) does not limit the authority of the court to order the release of the child when necessary for any reason, including, but not limited to, the child's care, protection, and education.

(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 may require the child to participate in the program. (R.C. 2152.19(C).)

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 a risk of physical harm to the victim, the court, prior to issuing an order of disposition, must order the preparation of a victim impact statement by the probation department of the county in which the victim resides, by the court's own probation department, or by a government-operated victim assistance program. 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(D).)

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(E) 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(A) and (D)(1), 2151.35(A), 2151.354(A)(2) and (5), 2151.3510, 2152.21(A)(6), 2152.71(B)(4) and (6), 2152.72(D)(2) and (3), 2152.74, 2744.01, 2744.03, 2923.32(D), 2923.34(M), 2929.23(E)(1), 3301.121, 5139.01(A)(3) and (13)(d) and (e), 5139.04, 5139.05, 5139.06, 5139.20(D), 5139.281, 5139.32, 5139.35, and 5139.51(C)).

Electronically monitored house arrest

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(A)(3)(k) and 2929.23). It also expands the definition of "electronic monitoring device" to also include any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the Director of Rehabilitation and Correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved (R.C. 2929.23(A)(1)(c)).

Juvenile traffic offenders--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 and OMVUAC 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.

Financial sanctions

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

Driver's licenses--generally

Rather than suspend the license for the period that the court prescribes, the bill authorizes the court to suspend the child's driver's license, probationary driver's license, or temporary instruction permit or the registration of all motor vehicles registered in the name of the child for a definite period not exceeding two years. The 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 repeal of (A)(3).)

Community control

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

Further dispositions

The 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

If a child is adjudicated a juvenile traffic offender for state OMVI or state OMVUAC, in addition to any other order of disposition made, the court must suspend the temporary instruction permit, probationary driver's license, or driver's

license issued to the child for a definite period of three months to two years. (R.C. 2152.21(A)(5) and (B).)

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

Requested rule changes

The bill includes a provision under which the General Assembly encourages the Ohio Supreme Court to amend Juvenile Rule 29(C) to permit "no contest" pleas in juvenile traffic offender and non-traffic cases with the consent of the juvenile court in a manner similar to Criminal Rule 11. Children paying fines to juvenile traffic violations bureaus should be required to admit guilt, with parental knowledge. (See **COMMENT** 6 and 7.) (Section 3 of the bill.)

The bill also includes a provision under which the General Assembly encourages the Ohio Supreme Court to amend Traffic Rule 2 to exclude juvenile courts from the definition of "court" and to amend Traffic Rule 13 to authorize juvenile courts to create violations bureaus for the payment of tickets that involve first offense minor misdemeanor traffic offenses that did not result in an accident. (See **COMMENT** 8 and 9.) (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), 2151.27, 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 (R.C. 2151.20(A) and repeal of R.C. 2151.3512). It also includes in the new section numerous other provisions that relate to financial sanctions for delinquent children and juvenile traffic offenders.

Financial sanctions

Under the 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:
 - (a) For an act that would be a minor misdemeanor or an unclassified misdemeanor if committed by an adult, a fine not to exceed \$50;
 - (b) For an act that would be a misdemeanor of the fourth degree if committed by an adult, a fine not to exceed \$100;
 - (c) For an act that would be a misdemeanor of the third degree if committed by an adult, a fine not to exceed \$150;
 - (d) For an act that would be a misdemeanor of the second degree if committed by an adult, a fine not to exceed \$200;
 - (e) For an act that would be a misdemeanor of the first degree if committed by an adult, a fine not to exceed \$250;
 - (f) For an act that would be a felony of the fifth degree or an unclassified felony if committed by an adult, a fine not to exceed \$300;
 - (g) For an act that would be a felony of the fourth degree if committed by an adult, a fine not to exceed \$400;
 - (h) For an act that would be a felony of the third degree if committed by an adult, a fine not to exceed \$750;
 - (i) For an act that would be a felony of the second degree if committed by an adult, a fine not to exceed \$1,000;
 - (j) For an act that would be a felony of the first degree if committed by an adult, a fine not to exceed \$1,500;
 - (k) For an act that would be aggravated murder or murder if committed by an adult, a fine not to exceed \$2,000.
- (2) Require the child to pay costs;
- (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 the total amount of reimbursement the child is able to pay as determined at a hearing and cannot exceed the actual cost of the confinement. Any reimbursement so ordered may be collected by the court. If the court does not order reimbursement under clause (b), confinement costs may be assessed pursuant to a repayment policy adopted under specified provisions of 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--not in the bill).

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, which amounts may include interest from the date of the imposition of the financial sanction;

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

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

Release from confinement in a DYS institution--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 a child from DYS 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

Under existing law, 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

Under existing law, 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

Existing law provides that, 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 under existing law 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

Existing law specifies that, 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

Under existing law, 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. It retains in R.C. 2151.38 the existing language pertaining to juvenile court dispositions other than

commitments to DYS, but limits that language to dispositions made under R.C. Chapter 2151. (i.e., commitments of abused, neglected, dependent, or unruly children).

In general

The bill specifies that, as under existing law, when a child is committed to DYS's legal custody, the juvenile court relinquishes control with respect to the child so committed, except in relation to "judicial releases" (note that, as described below, 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 under new Chapter 2152. are temporary and continue for a period designated by the court in its order, until terminated or modified by the court or until either the child attains 21 years of age. DYS cannot release the child from a DYS facility and as a result cannot discharge the child or order the child's release on supervised release prior to the expiration of the period of court control over the child or prior to the child's attainment of 21 years of age, except upon the order of a court pursuant to a judicial release, as described below, or in accordance with 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 that are applicable, provided any firearms specification or gang-related activity specification commitment has ended: (1) if the child was given a traditional juvenile disposition for an act that would be a felony of the third, fourth, or fifth degree if committed by an adult, at any time during the first 90 days of the period of court control over the child, (2) if the child was given a serious youthful offender disposition or a traditional juvenile disposition, or both, for an act that would be a felony of the first or second degree if committed by an

adult, at any time during the first 180 days of the period of court control over the child, or (3) if the child was committed to DYS until the child attains 21 years of age for an aggravated murder or murder, at any time during the first half of the prescribed period of that commitment.

If DYS desires to release a child during a period specified in the preceding paragraph, it must request the court that committed the child to grant a judicial release of the child to court supervision. During whichever of those periods is applicable, the child or the parents of the child also may request that court to grant a judicial release of the child to court supervision. Upon receipt of a request for such a release, 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 for an act that would be a felony of the third, fourth, or fifth degree if committed by an adult, at any time during the period of court control over the child, provided at least 90 days of that period have elapsed, (2) if the child was given a serious youthful offender disposition and a traditional juvenile disposition for an act that would be a felony of the first or second degree if committed by an adult, at any time during the period of court control over the child, provided at least 180 days of that period have elapsed, or (3) if the child was committed to DYS until the child attains 21 years of age for an aggravated murder or murder, at any time during the second half of the prescribed period of that commitment.

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

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

If a court schedules a hearing to determine whether to grant a child a judicial release to DYS supervision, it may order DYS to deliver the child to the court on the date set for the hearing and must order DYS to present to the court at that time a treatment plan for the child's post-institutional care. The court may

conduct the hearing without the child being present. The court must determine at the hearing whether the child should be granted a judicial release to DYS supervision.

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

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

Prior to the release of a child pursuant to a judicial release to DYS supervision, DYS must do all of the following: (1) after reviewing the child's rehabilitative progress history and medical and educational records, prepare a written treatment and rehabilitation plan for the child that must include conditions of the release, (2) completely discuss the conditions of the plan 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) and (C), 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), (13), (26), and (27), 5139.05, 5139.06, 5139.07, 5139.11, 5139.18, 5139.20, 5139.50, 5139.51, 5139.52, 5139.53, and 5139.54).

Parental control 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 removes from R.C. 2151.359 all references to a delinquent child and, thus, the section no longer applies regarding delinquent children. It enacts new R.C. 2152.61 and includes in that section comparable provisions regarding the court's authority to issue orders controlling a parent, guardian, or custodian of a delinquent child or a juvenile traffic offender. For orders under either section, the bill enacts new language that provides that the order made by the court restraining or otherwise controlling the conduct of any parent, guardian, or other custodian in the relationship of the individual to the child may include a requirement that the child's parent, guardian, or other custodian enter into a recognizance with sufficient surety, conditioned upon the faithful discharge of any conditions or controls required by the court. The bill provides that a person's failure to comply with any order made by the court under either provision is contempt of court under Chapter 2705. of the Revised Code. (R.C. 2151.359 and 2152.61.)

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

Underage purchase of a firearm or a handgun

Existing law

Existing law prohibits a person under 18 years of age from purchasing or attempting to purchase a firearm. Whoever violates that 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, 2151.02(C), and 2151.022(G).)

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 will be 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. (R.C. 2923.211, 2151.022(D), and 2152.01(E).) (See COMMENT 10.)

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).

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

Existing law

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

It also specifies that, if a child is adjudicated a delinquent child and placed on probation, if a parent of the child whose marriage to the other parent of the child has not been so terminated or the residential parent and legal custodian of the child was notified prior to the adjudication hearing of the provisions described in this paragraph and of the possibility that the provisions may be applied to the parent, and if the court finds at the hearing that the parent has failed or neglected to subject the child to reasonable parental control and authority and that that parent's failure or neglect is the proximate cause of the act or acts of the child upon which the delinquency adjudication is based, the court may require that parent to enter into a recognizance with sufficient surety, in an amount of not more than \$500, conditioned upon the faithful discharge of the conditions of probation of the child. If the child then commits a second act and is adjudicated a delinquent child

for the commission of the second act or violates the conditions of probation and if the court finds at the hearing that the failure or neglect of a parent of the child whose marriage to the other parent of the child has not been terminated or the parent who is the residential parent and legal custodian of the child to subject the child to reasonable parental control and authority or faithfully to discharge the conditions of probation of the child on the part of that parent is the proximate cause of the act or acts of the child upon which the second delinquency adjudication is based or upon which the child is found to have violated the conditions of probation, the court may declare all or a part of the recognizance forfeited. The proceeds of the forfeited recognizance are used to pay any damages caused by the child, and the proceeds of the forfeited recognizance remaining after the payment of any damages shall be paid into the county treasury. This provision does not apply to foster parents.

Additionally, it specifies that, if a child is adjudicated a delinquent child, the court may issue an order requiring either parent or both parents of the child whose marriage to the other parent of the child has not been so terminated, the parent who is the residential parent and legal custodian of the child, or the guardian or other custodian of the child to exercise appropriate and necessary control and authority over the child to ensure that the child complies with the terms and conditions of probation imposed upon the child, treatment or testing that the child is required to take part in, and the terms of any other order of disposition that the court imposed upon the child. The court must give a copy of the order to the child and to the subject parent, guardian, or custodian and must notify that parent, guardian, or custodian that a willful failure to comply with the order is contempt of court. If the court determines that any parent, guardian, or custodian willfully has failed to comply with the order, it may punish the parent, guardian, or custodian for contempt of court or take other action that it determines is necessary to ensure that the child will comply with the terms and conditions of the order of disposition.

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

The above-described provisions dealing with the failure or neglect of parents to subject a child to reasonable parental control and authority are in

addition to and not in substitution for any other provision of the Juvenile Code dealing with the failure or neglect of a person to exercise parental control or authority over a child. (R.C. 2151.411.)

Operation of the bill

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

DYS transfer of incorrigibles to a reformatory

Existing law

Existing law provides that, upon the written order of DYS, any child in its legal custody who is over 16 years of age may be transferred to *an appropriate state reformatory for men or women* when the child is incorrigible to the extent that he or she has a detrimental effect on the well-being of other children in DYS's custody, or when the child, because of previous conduct or criminal tendencies, appears incapable of benefiting by the treatment or training afforded by DYS. Persons so transferred may be paroled or released upon the recommendation of the reformatory's superintendent and with the DYS's approval, but those persons are not subject to state control, either in the reformatory or on parole, after having reached 21 years of age. (R.C. 5139.24.)

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

Operation of the bill

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

Employment protection

Existing law

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

Operation of the bill

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

Contributing to the unruliness or delinquency of a child

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)).

Tattooing, body piercing, or ear piercing for juveniles

Existing law

Existing law includes several prohibitions related to the provision of tattooing services, body piercing services, and ear piercing services to juveniles. Under the prohibitions (R.C. 3730.06 and 3730.07):

(1) A person is prohibited from performing a tattooing procedure, body piercing procedure, or ear piercing procedure with an ear piercing gun on an individual under 18 years of age unless the individual's parent, guardian, or custodian has given consent, as described in this paragraph. A parent, guardian, or custodian who desires to give the consent must appear in person at the business at the time the procedure is to be performed and sign a document provided by the business that explains the manner in which the procedure will be performed and methods for proper care of the affected body area following performance of the procedure.

(2) Unless consent has been given as described in paragraph (1), an individual under age 18 is prohibited from obtaining or attempting to obtain a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

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

(4) An individual is prohibited from knowingly showing or giving any false information as to the name, age, or other identification of an individual under age 18 for the purpose of obtaining for the individual under age 18 a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

(5) An individual is prohibited from impersonating the parent, guardian, or custodian of an individual under age 18 for the purpose of obtaining for the individual under age 18 a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

A person who violates the prohibition described in paragraph (1) is guilty of a misdemeanor of the fourth degree. A person who violates the prohibition described in paragraph (4) or (5) is guilty of a misdemeanor of the first degree. A person (i.e., a person under age 18) who violates the prohibition described in paragraph (2) or (3) is designated a delinquent child and is subject to an order of disposition as a delinquent child that must require the child to pay a fine not exceeding \$75 and costs for a violation of the prohibition described in paragraph (2) or a fine not exceeding \$225 and costs for a violation of the prohibition described in paragraph (3). (R.C. 3730.99(B) and (C) and 2151.02.)

Operation of the bill

The bill repeals the prohibitions described in paragraphs (2) and (3), above, under "**Existing law**" (R.C. 3730.07(A)(1) and (2) and 3730.99(C)).

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 who is or who previously has been adjudicated a delinquent 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 a violation of R.C. 2152.72(G) (former R.C. 2151.62(G)) to new R.C. 2152.99.

Detention homes (detention facilities)

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, and renames the homes as "detention facilities" and "district detention facilities." It generally relocates all of the provisions of existing R.C. 2151.34 to 2151.3416 into R.C. 2152.41 to 2152.44 and consolidates and re-orders those provisions R.C. 2152.41 to 2152.44, and repeal in Section 2 of R.C. 2151.342 and 2151.345 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," provides for the appointment of a superintendent and employees for either type of facility and the payment of their salaries, provides for the donation or bequest of property to either type of facility, revises the grounds for removal of a trustee or a joint facility, and reaffirms, in accordance with other provisions of existing law and the bill, that the facilities may be used to detain alleged delinquent children until final disposition, for evaluation of children pursuant to R.C. 2152.04 of the bill, for certain children adjudicated delinquent children under R.C. 2152.19(A)(3)(l) of the bill, and for adjudicated juvenile traffic offenders under R.C. 2152.21(A)(5) of the bill. 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 and the renaming of the facilities (R.C. 133.01(MM)(8) and (NN)(6), 181.22, 307.02, 307.022, 329.05, 2151.10, 2151.354(A)(5), 2151.357, 2151.655, 2151.78, 2151.79, 2152.19(A)(3)(l), 2152.21(A)(5), 2152.26(B),

2301.31, 5103.03, 5139.191, 5139.271, 5139.281, 5139.29, 5139.31, 5139.52(D)(2), 5705.01, and 5705.19).

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

Existing law

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

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

(2) After setting aside the amount described in paragraph (1), DYS must set aside 25% of the remainder of the appropriation and use that amount for the purpose described in paragraph (3) and to pay certain of the operational costs associated with, and to provide cash flow for, the following: (a) institutions, (b) the diagnosis, care, or treatment of felony delinquents at institutions, facilities, or centers pursuant to contracts entered into pursuant to R.C. 5139.08, or (c) community corrections facilities constructed, reconstructed, improved, or financed as described in R.C. 5139.36 for the purpose of providing alternative placement and services for felony delinquents who have been diverted from care and custody in institutions.

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

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

percentage of the per diem cost for the care and custody of felony delinquents who are in the care and custody of community corrections facilities described in clause (c) of paragraph (2), above, for which DYS is responsible under R.C. 5139.41 to 5139.45.

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

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

Operation of the bill

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

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

The bill includes a provision under which the General Assembly encourages the Supreme Court to amend the Rules for the Government of the Judiciary of Ohio or other appropriate rules, or take other appropriate action, to encourage cooperation between divisions of the courts of common pleas to better implement the bill, including, but not limited to, the provisions of the bill authorizing, in specified circumstances, jury trials in juvenile courts (Section 3).

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

The bill includes a provision under which the General Assembly encourages the Supreme Court that the Court amend the Juvenile Rules to be consistent with the changes in the Juvenile Laws pertaining to delinquent children, particularly the laws relating to serious youthful offenders (Section 3 of the bill).

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

The bill includes a provision under which the General Assembly encourages the Supreme Court to take appropriate action to collect data from each Ohio juvenile court on both the number of alleged delinquent children for whom a serious youthful dispositional sentence is sought under the bill and the number of jury trials held in the juvenile courts annually as a result of serious youthful offender dispositional sentences being sought for alleged delinquent children, and to prepare and submit to the General Assembly a report containing the data so collected (Section 5).

Delayed effective date

The bill specifies that its provisions are to take effect on July 1, 2001 (Section 6).

COMMENT

1. 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).)

2. 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.

3. 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.

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

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. 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."

7. 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.

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

9. 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.

10. 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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-24-99	pp. 950-951
Reported, S. Judiciary	---	---

S0179-RS.123/nlr

