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Bill Analysis
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BILL SUMMARY

- Expands the definition of delinquent child to also include any child who is an "habitual truant" and who previously has been adjudicated an unruly child for being an habitual truant and any child who is a "chronic truant."
- Expands the definition of unruly child to also include any child who is an "habitual truant" from school and who previously has not been adjudicated an unruly child for being an habitual truant, and makes other modifications in the definition.
- Expands juvenile court jurisdiction by granting them exclusive original jurisdiction: (1) concerning the parent, guardian, or other person having care of a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant, (2) generally, over all criminal cases in which an adult is charged with the offense of "parental education neglect" under R.C. 2919.222, (3) to hear and determine violations of the prohibition against a parent, guardian, or other person having care of a child of compulsory school age sending the child to school as required by law, as contained in R.C. 3321.38, and (4) generally, to exercise jurisdiction and authority over the parent, guardian, or other person having care of a child alleged to be a delinquent child, unruly child, or juvenile traffic offender.
- Specifies that the juvenile court must require the parent, guardian, or custodian of an alleged delinquent child, unruly child, or juvenile traffic offender to attend all proceedings of the court regarding the child, and that failure to so attend may be treated as contempt.
- Makes exceptions to certain existing juvenile court procedures in cases involving a child who is alleged to be an unruly or delinquent child for

being an habitual or chronic truant and involving the parent, guardian, or other person having care of the child.

- Establishes an additional method for the bindover of a child alleged to have committed a specified type of delinquent act from a juvenile court to the general division of a court of common pleas so that the general division may impose upon the child a "blended sentence," which may involve the imposition of a prison term or other criminal sanction under the Criminal Sentencing Law that may extend beyond the child's attainment of 21 years of age, or a criminal sentence, and provides rules and procedures for the service of a blended sentence so imposed.
- Specifically permits a juvenile court judge to issue an order of disposition committing a delinquent child to a detention home.
- Specifies that, if a child is adjudicated a delinquent or unruly child for being a "chronic truant" or an "habitual truant" and if the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of law, the court may require the parent, guardian, or other person to participate in any community service program, preferably a community service program that requires the involvement of the parent, guardian, or other person having care of the child in the school the child attends.
- Expands the existing provision that requires the notification of specified school officials if a child is found to be a delinquent child for any of a list of specified acts by: (1) reducing to 14 years of age or older the age of delinquent children to whom it applies, (2) requiring the notice to also be given to the school principal, and (3) expanding the list of offense in relation to which the provisions applies.
- Expands the authorized dispositions for unruly children to also include: (1) ordering the appropriate board of education to require the child to attend an alternative school if one school has been established, (2) requiring the child to participate in any academic program or community service program, (3) requiring the child to participate in a drug abuse or alcohol abuse counseling program, (4) requiring the child to receive appropriate medical or psychological treatment or counseling, and (5) making any other order that the court finds proper to address the child's habitual truancy.

- Clarifies provisions that, in specified circumstances, permit a juvenile court to use specified delinquent child dispositions for unruly children and juvenile traffic offenders.
- Clarifies a provision that permits a juvenile court, if a child is adjudicated a delinquent, unruly, abused, neglected, or dependent child, to make an order restraining or otherwise controlling the conduct of any parent, guardian, or other custodian in the relationship of that individual to the child.
- Expands the record-keeping requirements of juvenile courts to also require each juvenile court to maintain, in cases pertaining to an alleged delinquent child, arrest and custody records, complaints, journal entries, and hearing summaries, and in all cases in which a record of testimony and other oral proceedings is not required, to make and retain a summary of all hearings and proceedings.
- Specifies that the victim of a delinquent act, or a member of the victim's person's family, may inspect all arrest and custody records pertaining to the delinquent act and all general court records, including, but not limited to, all complaints, journal entries, and hearing summaries, that pertain to that act.
- Specifies that the provisions for the sealing of the record of a delinquent child do not apply if the delinquent act was aggravated murder, murder, rape, sexual battery, or gross sexual imposition; permits the person who maintains sealed records pertaining to a delinquent child adjudication; and, in specified circumstances, expands the list of persons who may inspect the sealed records to also include any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, may inspect the records that have been ordered sealed for any valid law enforcement or prosecutorial purpose.
- Expands the list of acts and offenses in relation to which the existing provisions regarding the taking of DNA specimens from delinquent children and criminal offenders apply.
- Authorizes a board of education that determines that a student has been truant and that the parent, guardian, or other person having care of the child has failed to cause the student's attendance at school to require the

parent, guardian, or other person to attend a specified educational program for the purpose of encouraging parental involvement in compelling the attendance of the child, and, in certain cases, requires the attendance of the parent, guardian, or other person at such a program.

- Requires each board of education to adopt a policy to guide employees of the district in addressing and ameliorating the attendance practice of any pupil who is an habitual truant.
- Regarding habitual truants, authorizes the board of education to take any appropriate action as an intervention strategy contained in the or file a complaint in the juvenile court jointly against the child and the parent, guardian, or other person having care of the child alleging that the child is an unruly child and that the parent, guardian, or other person has violated the compulsory School Attendance Law, and regarding chronic truants, requires the board of education to file a complaint in the juvenile court jointly against the child and the parent, guardian, or other person having care of the child containing those allegations.
- Grants juvenile courts exclusive original jurisdiction over a complaint alleging that a parent, guardian, or other person in charge of a child failed to cause the child's attendance at school.
- Provides that, when a complaint is filed in juvenile court alleging that a child is an unruly or delinquent child for being an habitual or chronic truant and that the parent, guardian, or other person having care of the child failed to cause the child's attendance at school, the court must order the parent, guardian, or other person to appear personally at the hearing and direct the person to bring the child to the hearing.

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CONTENT AND OPERATION

Delinquent child definition

Existing law

Under existing law, as used in the Juvenile Code (R.C. Chapter 2151.), "delinquent child" includes any of the following (R.C. 2151.02): (1) any child who violates any law of Ohio 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 if the child is a juvenile traffic offender (a jto), (2) any child who violates any lawful order of a court made under the Juvenile Code, (3) any child who purchases or attempts to purchase a firearm illegally, or (4) any child who illegally obtains or attempts to obtain a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun without consent, or knowingly shows or gives false identification as to the name, age, or other identification of an individual who is under the age of 18 for the purpose of obtaining for the individual under 18 any such service.

Operation of the bill

The bill expands the definition of delinquent child to also include (R.C. 2151.02): (1) any child who is an "habitual truant" (see below) and who previously has been adjudicated an unruly child for being an habitual truant, and (2) any child who is a "chronic truant" (see below).

The bill defines "habitual truant" and "chronic truant" for purposes of the Juvenile Code. An "habitual truant" is any child "of compulsory school age" (see below) who is absent without "legitimate excuse for absence from the public school the child is supposed to attend" (see below) for five or more consecutive school days, seven or more school days in one month, or 12 or more school days in a school year. A "chronic truant" is any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one month, or 15 or more school days in a school year. The bill provides that, for purposes of the Juvenile Code, a "legitimate excuse for absence from the public school the child is supposed to attend" includes, but is not limited to: (1) the fact that the child in question has enrolled in and is attending another public or nonpublic school in Ohio or another state, (2) the fact that the child in question is

excused from attendance at school for any of the reasons specified in the Education Law under R.C. 3321.04 (e.g., a determination that the child's bodily or mental condition does not permit attendance at school or that the child is receiving home schooling from a qualified person, etc.), (3) and the fact that the child in question has received an age and schooling certificate. The bill provides that, for purposes of the Juvenile Code, "of compulsory school age" means a child between six and 18 years of age. "School day" means the school day established by the State Board of Education. "School month" and "school year" have the same meanings as in the Education Law. (R.C. 2151.011(B)(9), (18), (20), (25), (46), and (47), and R.C. 3321.01, 3313.48, and 3313.62 by reference--not in the bill.)

Unruly child definition

Existing law

Under existing law, as used in the Juvenile Code, "unruly child" includes any of the following (R.C. 2151.022): (1) any child who does not subject the child's self to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient, (2) any child who is an habitual truant from home or school, (3) any child who so departs the child as to injure or endanger the child's own health or morals or the health or morals of others, (4) any child who attempts to enter the marriage relation in any state without the consent of the child's parents, custodian, or legal guardian or other legal authority, (5) any child who is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons, (6) any child who engages in an occupation prohibited by law or is in a situation dangerous to life or limb or injurious to the child's own health or morals or to the health or morals of others, and (7) any child who violates a law, other than the law against the purchase or attempt to purchase a firearm that is applicable only to a child.

Operation of the bill

The bill modifies the provision described in clause (2) of the preceding paragraph so that it refers to any child who is *persistently truant from home* (instead of a child who is "an habitual truant from home or school"). The bill then expands the definition of unruly child so that it also includes any child who is an "habitual truant" from school and who previously has not been adjudicated an unruly child for being an habitual truant. See "**Delinquent child definition**," above for the bill's definition of "habitual truant." (R.C. 2151.022 and 2151.011(B)(18).)

Juvenile court jurisdiction

Existing law

Under existing law, each juvenile court has *exclusive original jurisdiction* as follows: (1) concerning any child who on or about the date specified in the complaint is alleged to be a jto or a delinquent, unruly, abused, neglected, or dependent child, (2) subject to existing R.C. 2301.03(V), to determine the custody of any child not a ward of another court of this state, (3) to hear and determine any application for a writ of habeas corpus involving the custody of a child, (4) to exercise the powers and jurisdiction given the probate division of the court of common pleas if the court has probable cause to believe that a child otherwise within the jurisdiction of the court is a mentally ill person subject to hospitalization by court order, (5) to hear and determine *all criminal cases charging adults with the violation of any section of the Juvenile Code*, (6) to hear and determine all criminal cases in which an adult is charged with a violation of R.C. 2919.21(C), 2919.22(B)(1), 2919.23(B), or 2919.24, provided the charge is not included in an indictment that also charges the alleged adult offender with the commission of a felony arising out of the same actions that are the basis of the alleged violation of that division or section, (7) under the Interstate Compact on Juveniles in R.C. 2151.56, (8) concerning any child who is to be taken into custody upon being notified of the intent to take the child into custody and the reasons for taking the child into custody, (9) to hear and determine requests for the extension of temporary custody agreements, and requests for court approval of permanent custody agreements, that are filed pursuant to R.C. 5103.15, (10) to hear and determine applications for consent to marry, (11) subject to R.C. 2301.03(V), to hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, or an action for support brought under R.C. Chapter 3115., (12) concerning an action commenced under R.C. 121.38, and (13) concerning an action commenced under R.C. 2151.55.

Also, the juvenile court has *original jurisdiction*: (1) to hear and determine *all cases of misdemeanors charging adults with any act or omission with respect to any child, which act or omission is a violation of any state law or any municipal ordinance*, (2) to determine the paternity of any child alleged to have been born out of wedlock pursuant to R.C. 3111.01 to 3111.19, (3) under the Uniform Interstate Family Support Act in R.C. Chapter 3115., (4) to hear and determine an application for an order for the support of any child, if the child is not a ward of another court of this state, and (5) to hear and determine an action commenced under R.C. 5101.314. (R.C. 2151.23.)

Operation of the bill

The bill modifies the juvenile court jurisdiction provisions as follows:

(1) It specifies that, if a case concerning an alleged delinquent child has been transferred to the general division of a court of common pleas pursuant to the bill's provisions regarding a blended sentence-related bindover (see "*Imposition of a "blended sentence" upon transfer of a child's case to the court of common pleas*," below), the general division of that court of common pleas has exclusive jurisdiction over the case, including exclusive jurisdiction and authority over the parent, guardian, or other person having care of the delinquent (R.C. 2151.23(J)).

(2) It modifies the existing provision that specifies that juvenile courts have exclusive original jurisdiction concerning any child who, on or about the date specified in the complaint, is alleged to be a juvenile traffic offender or a delinquent, unruly, abused, neglected, or dependent child so that the provision specifies that, *except as described above in paragraph (1)*, juvenile courts have exclusive original jurisdiction over any such child *and concerning the parent, guardian, or other person having care of a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant* (R.C. 2151.23(A)(1)).

(3) It expands the existing provision that specifies that juvenile courts have exclusive original jurisdiction to hear and determine all criminal cases in which an adult is charged with a violation of R.C. 2919.21(C), 2919.22(B)(1), 2919.23(B), or 2919.24, provided the charge is not included in an indictment that also charges the alleged adult offender with the commission of a felony arising out of the same actions that are the basis of the alleged violation of the specified division or section so that the provision specifies that, in addition, juvenile courts also have exclusive original jurisdiction to hear and determine all criminal cases in which an adult is charged with the offense of "parental education neglect" under existing R.C. 2919.222, provided the charge is not included in an indictment that also charges the alleged adult offender with the commission of a felony arising out of the same actions that are the basis of the alleged violation of the parental education neglect (R.C. 2151.23(A)(6)).

(4) It grants juvenile courts exclusive original jurisdiction to hear and determine violations of the prohibition against a parent, guardian, or other person having care of a child of compulsory school age sending the child to school as required by law (see "*School Attendance Law*," below) (R.C. 2151.23(A)(14)).

(5) It grants juvenile courts, subject to the provision described above in paragraph (1), exclusive original jurisdiction to exercise jurisdiction and authority over the parent, guardian, or other person having care of a child alleged to be a delinquent child, unruly child, or juvenile traffic offender (R.C. 2151.23(A)(15)).

Juvenile court hearings

Existing law

Existing law provides that a juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time and that in the hearing of any case the general public may be excluded and only those persons admitted who have a direct interest in the case. All cases involving children must be heard separately and apart from the trial of cases against adults. The court may excuse the attendance of the child at the hearing in cases involving abused, neglected, or dependent children. The court must hear and determine all cases of children without a jury.

If the court at the adjudicatory hearing finds from clear and convincing evidence that the child is an abused, neglected, or dependent child, the court must proceed, in a specified manner, to hold a dispositional hearing and hear the evidence as to the proper disposition to be made of the child under law. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent or unruly child or a jto, the court must proceed immediately, or at a postponed hearing, to hear the evidence as to the proper disposition to be made of the child under law. If the court does not find the child to be an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, it must order that the complaint be dismissed and that the child be discharged from any detention or restriction theretofore ordered. (R.C. 2151.35.)

Operation of the bill

The bill enacts a provision that specifies that, if a complaint is filed in a juvenile court that alleges a child to be a delinquent child, unruly child, or jto, the court must require the parent, guardian, or custodian of the child to attend all proceedings of the court regarding the child. If a parent, guardian, or custodian fails to so attend, the court may find the parent, guardian, or custodian in contempt. (R.C. 2151.35(A)(1).)

The bill also modifies certain of the existing juvenile court hearing procedures in relation to cases in which a child is alleged to be an unruly or delinquent child by reason of being an habitual or chronic truant, as follows:

(1) It specifies that the existing requirement that all cases involving children be heard separately and apart from the trial of cases against adults does not apply regarding cases involving children who are alleged to be unruly or delinquent children for being habitual or chronic truants (R.C. 2151.35(A)(1)).

(2) It specifies that the existing requirement that juvenile courts must hear and determine all cases of children without a jury does not apply in cases involving a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant and a parent, guardian, or other person having care of the child who allegedly failed to cause the child's attendance at school. In a case of that type, the bill and existing law provide for jury trials, in specified circumstances, of adult cases before a juvenile court, and the bill amends the jury trial section only for technical reasons. (R.C. 2151.35(A)(1) and 2151.47.)

(3) It enacts a new provision that specifies that, if the juvenile court at the adjudication hearing finds beyond a reasonable doubt that the child is an unruly child for being an habitual truant, or that the child is an unruly child for being an habitual truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of the School Attendance Law, as modified by the bill (see "*School Attendance Law*," below), the court must proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under the law governing unruly child dispositions and the proper action to take in regard to the parent, guardian, or other person having care of the child (see "*Unruly child dispositions*," below) (R.C. 2151.35(A)(1)).

(4) It enacts a new provision that specifies that, if the juvenile court at the adjudication hearing finds beyond a reasonable doubt that the child is a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, or that the child is a delinquent child *for that reason* and the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of the School Attendance Law, as modified by the bill, the court must proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under the law governing delinquent child dispositions and the proper action to take in regard to the parent, guardian, or other person having care of the child (see "*Delinquent child dispositions*," below) (R.C. 2151.35(A)(1)).

(5) It specifies that, if the juvenile court transfers a child's case to the general division of a court of common pleas pursuant to the bill's blended sentence-related bindover provisions and there is a conflict between those bindover provisions and the provisions of the general juvenile court hearing law, the procedures under the bindover provisions apply to the transferred case (R.C. 2151.35(H)).

Imposition of a "blended sentence" upon transfer of a child's case to the court of common pleas

Existing law--background

Under existing law, when a child is arrested under any charge, complaint, affidavit, or indictment for a violation of law, proceedings regarding the child initially must be in the juvenile court (R.C. 2151.25). If the juvenile court determines that the child committed the violation, the court will adjudicate the child as a delinquent child, a juvenile traffic offender, or an unruly child and will make an appropriate disposition of the child under the Juvenile Code; the child is not subject to criminal sanctions. In specified circumstances, the child's case may be transferred (i.e., "bound over") to a court of common pleas for criminal prosecution as if the child were an adult (R.C. 2151.26). A summary of those "bindover" provisions follows.

Mandatory bindover under existing law

After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be an offense if committed by an adult, the court at a hearing must transfer the case for criminal prosecution to the appropriate court if the child was 14 years of age or older at the time of the act charged, there is probable cause to believe that the child committed the act charged, and one or more of the following applies to the child or the act charged: (1) a complaint previously was filed in a juvenile court alleging that the child was a delinquent child for committing an act that would be an offense if committed by an adult, the juvenile court transferred the case for criminal prosecution, 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, and the child was 16 years of age or older at the time of the act charged, the child previously was adjudicated a delinquent child for committing a category one offense or a category two offense and was committed to the Department of Youth Services (DYS) upon the basis of that adjudication, or both, or (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 the child previously was adjudicated a delinquent child for committing a category one offense or a category two offense and was committed to DYS upon the basis of that adjudication, the child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have

displayed, brandished, indicated possession of, or used the firearm to facilitate the commission of the act charged, or both.

Discretionary bindover under existing law

Except as provided in the mandatory bindover provisions and subject to the "multiple delinquent acts" provision described below, 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, after considering certain specified factors and after making all of the following determinations: (1) the child was 14 years of age or older at the time of the act charged, (2) there is probable cause to believe that the child committed the act charged, (3) after an investigation (unless waived by the child), including a mental examination of the child, and after consideration of all relevant information and factors, including any factor required to be considered, that there are reasonable grounds to believe that both: (a) the child is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children, and (b) the safety of the community may require that the child be placed under legal restraint, including, if necessary, for the period extending beyond the child's majority.

Existing transfer provisions when case involves 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 mandatory bindover provisions require at least one case to be transferred for criminal prosecution, and if a motion also is filed or made requesting that at least one case be transferred for criminal prosecution pursuant to the discretionary bindover provisions, the court, in deciding the motions, must proceed in the following manner (R.C. 2151.26(C)(4)):

(1) Initially, it must decide the motion alleging that the mandatory bindover provisions apply.

(2) If, pursuant to the provision described in (1), above, the court determines that the mandatory bindover provisions require that at least one case be transferred for criminal prosecution, the court must transfer the case or cases in accordance with the applicable provision. After the transfer under the mandatory bindover provisions, the court must decide, in accordance with the discretionary bindover provisions, whether to grant the motion requesting that one or more cases be transferred for criminal prosecution. In making its decision regarding the motion requesting a transfer pursuant to the discretionary bindover provisions, 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; the court is not required to consider any specified factor in the discretionary bindover provisions or to conduct an investigation or make a determination of the type described in those provisions.

(3) If the court determines pursuant to paragraph (1), above, that the mandatory bindover provisions do not apply, the court must decide in accordance with the discretionary bindover provisions whether to grant the motion requesting that one or more cases be transferred for criminal prosecution to the appropriate court having jurisdiction of the case.

Bindover is sole method under existing law for criminal prosecution of a child

Existing law specifies that no person, either before or after reaching 18 years of age, may be prosecuted as an adult for an offense committed prior to becoming 18 years of age, unless the person has been transferred under the existing bindover provisions or unless the provision described below in "**Juvenile court authority over child apprehended after attaining 21 years of age**" applies. Any prosecution had 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).)

Effect of bindover under existing law

Upon the bindover of a case for criminal prosecution, 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, and the case then is within the jurisdiction of the court to which it is transferred. (R.C. 2151.26(F).)

Juvenile court authority over child apprehended after attaining 21 years of age

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, the juvenile court does not have jurisdiction to hear or determine any

portion of the case charging the person with committing that act, the existing bindover provisions do not apply regarding that act, 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, all proceedings pertaining to that act must be within the jurisdiction of the court having jurisdiction of the offense, and the court having jurisdiction of the offense has all the authority and duties in the case as it has in other criminal cases commenced in that court (R.C. 2151.26(G)).

Service under existing law of sentence imposed upon conviction after bindover

Existing law provides that, if the case of a child who is alleged to be a delinquent child is transferred for criminal prosecution, if the child is convicted of or pleads guilty to a felony in that case, if the child is sentenced to a prison term, and if the child is under 18 years of age when delivered to the custody of the Department of Rehabilitation and Correction (DRC), all of the following apply regarding the housing of the child (R.C. 5120.16(B)):

(1) Until the child attains 18 years of age, subject to paragraphs (2) to (4), below, DRC must house the child in a housing unit in a state correctional institution separate from inmates who are 18 years of age or older.

(2) DRC is not required to house the child in the manner described in paragraph (1), above, if the child does not observe the rules and regulations of the institution or the child otherwise creates a security risk by being housed separately.

(3) If DRC receives too few inmates who are under 18 years of age to fill a housing unit in a state correctional institution separate from inmates who are 18 years of age or older, as described in paragraph (1), above, DRC may house the child in a housing unit in a state correctional institution that includes both inmates who are under 18 years of age and inmates who are 18 years of age or older and under 21 years of age.

(4) Upon the child's attainment of 18 years of age, DRC may house the child with the adult population of the state correctional institution.

Operation of the bill--general

The bill establishes an additional method for the bindover of a child alleged to have committed a specified type of delinquent act from a juvenile court to the general division of a court of common pleas so that the general division may impose a "blended sentence" or a criminal sentence upon the child.

Request for, and decision to, transfer a case under the bill

The bill provides that, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony offense of violence if committed by an adult, the prosecuting attorney may request the juvenile court to transfer the case to the general division of the court of common pleas so that the general division impose a "blended sentence" or a criminal sentence upon the child. If the prosecuting attorney makes such a request, the juvenile court at a hearing may transfer the case for criminal prosecution to the general division after considering the factors specified in the next paragraph and after making all of the following determinations: (1) the child was 14 years of age or older at the time of the act alleged, (2) there is probable cause to believe that the child committed the act alleged, and (3) 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 factors and information, including the factors specified in the next paragraph, there are reasonable grounds to believe that both: (a) the child is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children, and (b) the safety of the community may require that the child be placed under legal restraint, including, if necessary, for the period extending beyond the child's majority.

When determining whether to order the transfer of a case for criminal prosecution to the general division of a court of common pleas as described in the preceding paragraph, the court must consider all of the following factors in favor of ordering the transfer of the case: (1) a victim of the act charged was five years of age or younger, regardless of whether the child who allegedly committed the act knew the age of the victim, (2) a victim of the act 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 carrying a concealed weapon, 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 and to have displayed, brandished, or 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 delinquent child to a facility for the care of delinquent children or to DYS, and (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 allegedly committed the act knew the age of that victim.

A child whose case is being considered for possible transfer to the general division of a court of common pleas as described above may waive the investigation that otherwise is required, if the court finds the waiver is competently

and intelligently made. Refusal by a child to submit to a mental and physical examination constitutes a waiver of the investigation.

A juvenile court that is considering a motion for possible transfer of a case to the general division of a court of common pleas as described above must give written notice of the date, time, place, and purpose of the hearing to the child's parents, guardian, or other custodian and to the child's attorney. The court must give the written notice at least three days prior to the hearing. (R.C. 2151.261(A).)

Effect of transfer under the bill

The transfer of a child's case to the general division of a court of common pleas under the bill's new provision as described above abates the jurisdiction of the juvenile court *with respect to the delinquent acts alleged in the complaint that is the basis of the case*. The clerk of the court of common pleas is the clerk of the court in the case. Upon the transfer, the child does not have the right to have hearings conducted under the Juvenile Code and the Juvenile Rules. The general division of the court of common pleas must conduct all hearings in the transferred case in accordance with the Criminal Code and the Criminal Rules and must afford the child all rights afforded an adult who is prosecuted for committing a criminal offense, including, but not limited to, the right to trial by jury, preliminary hearing or indictment, and an open court.

Upon the transfer, if the prosecuting attorney fails to obtain an indictment against the child within 60 days after the transfer, the general division must order that the complaint be dismissed and that the child be discharged from any detention or restriction imposed upon the child. (R.C. 2151.261(B) and (C).)

General division proceedings under the bill upon a transfer

If a child's case is transferred to a general division of a court of common pleas, as described above, the general division must require the child's parent, guardian, or custodian to attend all proceedings of the division regarding the child or the child's case. If a parent, guardian, or custodian fails to attend any of the proceedings of the general division regarding the child or the child's case, the division may find the parent, guardian, or custodian in contempt. The general division must conduct the proceedings with respect to the transferred case in the same manner as it would conduct a trial of an adult, except that the court cannot permit the child to be kept in any facility except as permitted by the Juvenile Code. (R.C. 2151.261(D).)

General division sentencing of a child under the bill

If, at the proceedings conducted by the general division, the child is found by proof beyond a reasonable doubt to have committed the act charged or any other act that would be an offense of violence that is a felony if committed by an adult, the general division of the court of common pleas must do either of the following (R.C. 2151.261(E)(1)):

(1) Impose a "blended sentence" by adjudicating the child a delinquent child and imposing appropriate dispositions under the delinquency disposition provision of the Juvenile Code (see "**Delinquent child dispositions**," below) and by entering a conviction for the offense that would be the subject of the proceeding if the child were an adult, imposing a sentence for the offense under the Criminal Sentencing Law that may extend beyond the child's attainment of 21 years of age, and suspending the conviction and the sentence pending the child's completion of or failure to complete delinquency dispositions imposed;

(2) Entering a conviction for the offense that would be the subject of the proceeding if the child were an adult, imposing a sentence for the offense under the Criminal Sentencing Law that may extend beyond the child's attainment of 21 years of age, and committing the child to DRC's custody to serve a prison term or a local residential sanction.

Effect, and service, of a blended sentence under the bill

During the time that a child is under a delinquent child order of disposition imposed as part of a blended sentence, as described above, the general division of the court of common pleas that imposed the order of disposition has all of the powers and duties of a juvenile court with respect to the child and the child's case. The general division retains jurisdiction over the child's case until the child completes the dispositions, the court reimposes the conviction and sentence imposed and suspended as part of the blended sentence, or the court enters a conviction and imposes a sentence as if the child were an adult as described in the preceding paragraph.

During the time that a child serves the delinquent child dispositional part of a blended sentence, the related criminal conviction and sentence is held in abeyance until the child's successful completion of the orders of disposition imposed under the dispositional part or the child's failure to successfully complete those orders of disposition. A general division of a court of common pleas that imposes a blended sentence upon a child must hold a hearing, as described in the next paragraph, if any of the following occurs: (1) it is alleged that, while in DYS's custody, the child was adjudicated a delinquent child for committing while in that custody an act that would be a criminal offense if committed by an adult or

the child was convicted of a criminal offense, (2) it is alleged that, during the duration of a delinquent child order that does not involve the child being in DYS's custody, the child was adjudicated a delinquent child for committing an act that would be a criminal offense if committed by an adult or the child was convicted of a criminal offense, (3) while the child is in DYS's custody, DYS's Director determines that the child has violated any disciplinary measure DYS imposed upon the child or has interfered with DYS's rehabilitation programs involving other children in DYS's custody, or (4) the child successfully completes the delinquent child orders of disposition imposed as part of the blended sentence.

The division must schedule the hearing within 14 days after receipt of the information that is the basis of the requirement of the hearing or of a request for a hearing and must give notice of the date, time, and location of the hearing to the child, the child's attorney, and the prosecuting attorney. At the hearing, the prosecuting attorney and the child or the child's attorney may present evidence, call witnesses, and cross examine witnesses.

If the division determines at the hearing that the child successfully completed the delinquent child orders of disposition imposed as part of the blended sentence, it must issue a written order setting forth its findings and terminating and expunging the conviction and sentence imposed as part of the blended sentence.

If the court concludes at the hearing that any of the other circumstances that are the basis of the hearing apply to the child, it must determine whether to reimpose the criminal conviction and sentence imposed as part of the blended sentence. If the court determines to reimpose the criminal conviction and sentence, it must issue a written order setting forth its reasons for doing so, the sentence to be imposed upon the child, and the location at which the child is to serve any prison term or residential sanction. The court must deduct from the length of any prison term or local residential sanction imposed on the child any time the child served under the delinquent child order of disposition. If the general division determines not to reimpose the original conviction and sentence, it may reimpose the original order of disposition for the child or impose any other orders of disposition in addition to or in lieu of the original order of disposition and must issue a written order setting forth its reasons for doing so and the orders of disposition imposed upon the child. (R.C. 2151.261(E)(2) to (G).)

Conforming changes under the bill

The bill expands the existing Revised Code definitions of "juvenile court" and "juvenile judge," and provides a new exception to the Juvenile Code definition of "child," to reflect its provisions pertaining to the bindover of a child's case to

the general division of a court of common pleas for the imposition of a "blended sentence" or a criminal sentence. Under the bill (R.C. 2151.011(A)(1), (A)(2), and (B)(6)):

(1) In addition to including the division of a court of common pleas or the separate juvenile court that has jurisdiction under existing law, under the bill, "juvenile court" includes the general division of a court of common pleas after a case involving a child alleged to be a delinquent child has been transferred to the general division of that court pursuant to the bill's provisions regarding a blended sentence-related bindover. The bill specifies that, when the general division is a juvenile court under this provision, the division is a juvenile court only for the purposes of hearing that case, administering any blended sentence imposed in that case, and performing other duties of a juvenile court that are related to that case, including, but not limited to certain statutorily specified duties.

(2) In addition to including a judge of a court having jurisdiction under the Juvenile Code, as under existing law, under the bill, "juvenile judge" includes a judge of the general division of a court of common pleas when the judge is acting in relation to a case transferred to the general division of that court pursuant to the bill's provisions regarding a blended sentence-related bindover. The bill specifies that the judge is a juvenile judge only for the purposes of hearing that case, administering any blended sentence imposed in that case, and performing other duties of a juvenile judge that are related to that case, including, but not limited to certain statutorily specified duties.

(3) In addition to the numerous categories of persons under 18 years of age who are excepted by existing law from the definition of "child," under the bill, any person whose case is transferred for criminal prosecution pursuant to the bill's provisions regarding a blended sentence-related bindover is not a "child" in the transferred case after the conviction and sentence for the offense involved and the commitment of the person to DRC's custody pursuant to the bill's blended sentence provisions.

The bill specifies that its provisions regarding a blended sentence-related bindover are exceptions to the existing mandatory and discretionary bindover provisions, and that the existing provision that prohibits the prosecution as an adult of a person for an act the person committed before turning 18 years of age unless the person is bound over under the existing mandatory or discretionary bindover provision is subject to its provisions regarding a blended sentence-related bindover (R.C. 2151.26(B), (C), and (E)).

Transfer of a child's case to a juvenile court from another court

Existing law

Existing law provides that, when a child is arrested under any charge, complaint, affidavit, or indictment for a felony or misdemeanor, proceedings regarding the child initially must be in the juvenile court in accordance with the Juvenile Code. If the child is taken before a judge of a court other than a juvenile court, that judge must transfer the case to the juvenile court, and, upon the transfer, the proceedings in the case must be in accordance with the Juvenile Code. Upon the transfer, all further proceedings under the charge, complaint, information, or indictment must be discontinued in the court of the transferring judge, subject to the existing mandatory and discretionary bindover provisions, and the case relating to the child then is within the exclusive jurisdiction of the juvenile court subject to the existing and mandatory bindover provisions. (R.C. 2151.25.)

Operation of the bill

The bill conforms the provisions described above to its provisions regarding a blended sentence-related bindover (see "**Imposition of a "blended sentence" upon transfer of a child's case to the court of common pleas,**" above). It specifies that, upon the transfer of a child's case from a court other than a juvenile court to a juvenile court, all further proceedings under the charge, complaint, information, or indictment must be discontinued in the court of the transferring judge, subject to the existing mandatory and discretionary bindover provisions *and to the bill's provisions regarding a blended sentence-related bindover*, and the case relating to the child then is within the exclusive jurisdiction of the juvenile court subject to the existing and mandatory bindover provisions *and to the bill's provisions regarding a blended sentence-related bindover*. (R.C. 2151.25.)

Delinquent child dispositions

Existing law in general

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

- (1) Any order authorized as a disposition for an abused, neglected, or dependent child;
- (2) Place the child on probation under any conditions that the court prescribes. In specified circumstances, the court must require the child to make restitution for the property damage caused by the violation as a condition of probation (if the delinquent act was vandalism, criminal damaging or endangering,

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

(3) Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children by the county, by a district, or by a private agency or organization, within or without Ohio, that is authorized and qualified to provide the care, treatment, or placement required;

(4) If the child is adjudicated a delinquent child for committing an act that would be a felony of the third, fourth, or fifth degree if committed by an adult or for the underage purchase of a firearm under R.C. 2923.211(A), commit the child to the legal custody of the Department of Youth Services (DYS) for institutionalization for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of 21 years of age;

(5) If the child is adjudicated a delinquent child for committing voluntary manslaughter, kidnapping, aggravated arson, aggravated robbery, involuntary manslaughter by reason of committing a felony or for rape when the victim was not under 13 and the sexual conduct or insertion involved was consensual and when the victim under 13 was older than the delinquent child, was the same age as the delinquent child, or was less than three years younger than the delinquent child, commit the child to DYS's legal custody for institutionalization in a secure facility for an indefinite term consisting of a minimum period of one to three years, as prescribed by the court, and a maximum period not to exceed the child's attainment of 21 years of age;

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

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

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

(9) If the child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, other than carrying a concealed weapon, and is committed to DYS's legal custody under the provisions described above in paragraphs (4) to (8) and if the court determines that the child, if the child was an adult, would be guilty of a firearms specification in relation to the act for which the child was adjudicated a delinquent child, commit the child to DYS's legal custody for institutionalization in a secure facility for the following period of time, except as described in this paragraph: (a) if the child would be guilty of a specification regarding simple possession of a firearm while committing the act, a period of one year, or (b) if the child would be guilty of an R.C. 2941.144, 2941.145, or 2941.146 specification, a period of three years. The court cannot commit a child to DYS's legal custody under this provision for a period of time that exceeds three years. The period of commitment imposed under this provision is in addition to, and must be served consecutively with and prior to, a period of commitment ordered pursuant to provisions described above in paragraphs (4) to (8), provided that the total of all the periods of commitment cannot exceed the child's attainment of 21 years of age.

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

for a period of not less than one year or more than three years, subject to the limitations described in the last two sentences of the preceding paragraph;

(11) Impose a fine and costs in accordance with the schedule set forth in existing R.C. 2151.3512;

(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 under existing law

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 under existing law

If a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court orders the commitment of the child, for two or more of those acts, to DYS's legal custody, 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 under existing law

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 ordnance on school premises disposition under existing law

If a child is adjudicated a delinquent child for illegally conveying or possessing a deadly weapon or dangerous ordnance 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)).

Operation of the bill in general

The bill expands the authorized dispositions of a delinquent child by specifying that a child who is adjudicated a delinquent child may be committed for a specified period of time to a detention home or district detention home and by specifying authorized orders of disposition for a child who is adjudicated a delinquent child for being a chronic truant or an habitual truant (R.C. 2151.355(A)).

Commitment to a detention home under the bill

The bill specifies that a child who is adjudicated a delinquent child may be committed for a specified period of time to a detention home or district detention home. (1) If the child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court may commit the child to the temporary custody of such a home for a definite term of not longer than 90 days. (2) If the child is adjudicated a delinquent child for committing an act that would be a misdemeanor if committed by an adult, the juvenile court may commit the child to the temporary custody of such a home for a definite term of not longer than 45 days. (R.C. 2151.355(A)(8) and (9) and 2151.34.)

Dispositions under the bill for delinquent children who are chronic truants or habitual truants

The bill specifies that, if a child is adjudicated a delinquent child for being a "chronic truant" or an "habitual truant" who previously has been adjudicated an unruly child for being an habitual truant (see "**Delinquent child definition**," above), both of the following apply (R.C. 2151.355(A)(25)):

(1) The court may make any order of disposition that is authorized by law for a delinquent child.

(2) If the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of the law that prohibits a parent, etc., from failing to send a child to school as required by law (see "**School Attendance Law**," below), the court may require the parent, guardian, or other person having care of the child to participate in any community service program, preferably a community service program that requires the involvement of the parent, guardian, or other person having care of the child in the school the child attends. In addition, the court must warn the parent, guardian, or other person having care of the child that any subsequent adjudication of the child as an unruly or delinquent child for being an habitual or chronic truant may result in a criminal charge against the parent, guardian, or other person having care of the child for a violation of the prohibition against aiding, abetting, inducing,

causing, encouraging, or contributing to a child becoming a dependent child or a neglected child or the prohibition against aiding, abetting, inducing, causing, encouraging, or contributing to a child becoming an unruly child or a delinquent child and against acting in a way tending to cause a child to become an unruly child or a delinquent child.

Conforming changes made by the bill

The bill makes nonsubstantive changes to a few existing sections to conform them to its delinquent child adjudication provisions described above (R.C. 2151.18(B)(4), 2151.354(A)(5), 2151.356(A)(7), and 3730.99(C)).

Notice to school officials of certain delinquency adjudications

Existing law

Existing law provides that, 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 violation 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)).

Operation of the bill

The bill adds new school officials who must receive the notice, reduces the age of the delinquent children in relation to whom the notice must be given, expands the list of delinquent acts in relation to which the notice must be provided, and specifies the information that must be in the notice as follows (R.C. 2151.355(K)):

(1) Under the bill, the notice must be given to the principal of the school the child attends, in addition to the superintendent of the school district.

(2) Under the bill, the notice must be given to the specified school officials regarding any child who is adjudicated a delinquent child for committing, *when the child was 14 years of age or older*, any of the following acts: (a) any act that would be a felony if committed by an adult, (b) any act in the commission of which the child used or brandished a firearm, (c) any act constituting corruption of a minor, sexual imposition, importuning, voyeurism, public indecency, soliciting, soliciting after a positive HIV test, loitering to engage in solicitation, or loitering to engage in solicitation after a positive HIV test and that would be a misdemeanor if committed by an adult, (d) carrying a concealed weapon or a substantially similar municipal ordinance violation that would be a misdemeanor if committed by an adult and that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of the involved school district, (e) a drug trafficking or drug possession violation that would be a misdemeanor if committed by an adult, that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of the involved school district, and that is not a minor drug possession offense, or (f) complicity in any violation described in clause (a) to (e) of this paragraph that was alleged to have been committed in the manner described in any of those clauses, regardless of whether the activity was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of the involved school district.

(3) The notice must include the name of the child who was adjudicated to be a delinquent child, the child's age at the time the child committed the act that was the basis of the adjudication, and identification of the violation of the law or ordinance that was the basis of the adjudication.

Unruly child dispositions

Existing law

Existing law provides that, if a child is adjudicated an unruly child, the court may: (1) make any dispositions authorized for dependent, neglected, and

abused children, (2) place the child on probation under any conditions that the court prescribes, (3) suspend or revoke the child's driver's license, probationary driver's license, or temporary instruction permit and 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 period of suspension or revocation and cannot be reissued a license or permit at the end of the period of suspension or revocation 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, and (5) if, after making a disposition under clause (1), (2), or (3), the court finds upon further hearing that the child is not amenable to treatment or rehabilitation under that disposition, make a disposition otherwise authorized for a delinquent child, except that the child may not be committed to or placed in a secure correctional facility and that commitment to or placement in a detention home generally may not exceed 24 hours.

If a child is adjudicated an unruly child for committing any act that, if committed by an adult, would be a drug abuse offense or would be the offense of disorderly conduct committed in specified circumstances while the child was voluntarily intoxicated, then, in addition to imposing, in its discretion, any other order of disposition described above, the court must do both of the following: (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. 2151.354.)

Operation of the bill

The bill expands the dispositions that, in specified circumstances, may be made of a child who is adjudicated an unruly child. Under the bill, if a child is adjudicated an unruly child for being an "habitual truant" (see "**Unruly child definition**," above), in addition to or in lieu of imposing any other order of disposition authorized by law for unruly children, the court may do any of the following: (1) order the board of education of the child's school district or the governing board of the educational service center in the child's school district to require the child to attend an alternative school if an alternative school has been established in the school district in which the child is entitled to attend school, (2) require the child to participate in any academic program or community service program, (3) require the child to participate in a drug abuse or alcohol abuse counseling program, (4) require that the child receive appropriate medical or

psychological treatment or counseling, or (5) make any other order that the court finds proper to address the child's habitual truancy.

If a child is adjudicated an unruly child for being an habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of existing law, the court may require the parent, guardian, or other person having care of the child to participate in any community service program, preferably a community service program that requires the involvement of the parent, guardian, or other person having custody of the child in the school attended by the child. In addition, the court must warn the parent, guardian, or other person having care of the child that any subsequent adjudication of the child as an unruly or delinquent child for being an habitual or chronic truant may result in a criminal charge against the parent, guardian, or other person having care of the child for aiding, abetting, inducing, causing, encouraging, or contributing to a child becoming a dependent child or a neglected child, aiding, abetting, inducing, causing, encouraging, or contributing to a child becoming an unruly child or a delinquent child, or acting in a way tending to cause a child to become an unruly child or a delinquent child. (R.C. 2151.354(C).)

The bill also changes the reference in existing law to the types of delinquent child dispositions that may be made of an unruly child who, after being subjected to an unruly child disposition, is found to be unamenable to treatment or rehabilitation under the unruly child disposition. Currently, the reference indicates that the delinquent child dispositions that may be used in those circumstances are any dependent, neglected, or abused child disposition, placement on probation, commitment to DYS, imposition of a fine and costs, imposition of a restitution order, suspension or revocation of the child's driver's license or vehicle registration, imposition of a period of electronically monitored house detention, and imposition of a period of day reporting, provided that no commitment may be made to a secure correctional facility and detention home commitment generally may not exceed 24 hours. The bill eliminates the reference to the availability of a DYS commitment in the specified circumstances. (R.C. 2151.354(A)(5).)

Juvenile traffic offender dispositions

Existing law

Existing law provides that, if a child is adjudicated a jto, the court may make any of the following orders of disposition: (1) impose a fine and costs in accordance with the schedule set forth in R.C. 2151.3512, (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 child's name for the period

that the court prescribes (the child is ineligible for issuance of a license or permit during the suspension, and, 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), (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 child's name (the child is ineligible for issuance of a license or permit during the period of revocation and, at the end of the period of 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), (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 jto for committing a state OMVI violation or of a violation of substantially comparable municipal ordinance, commit the child, for not longer than five days, to the temporary custody of a detention home or district detention home, or a school, camp, institution, or other facility for children operated in whole or in part for the care of jtos, and (7) if, after making a disposition under clauses (1) to (6), 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, make any of a list of specified delinquent child dispositions authorized by R.C. 2151.355, except that the child generally may not be committed to or placed in a secure correctional facility and commitment to or placement in a detention home may not exceed 24 hours.

If a child is adjudicated a jto for committing state OMVI, the court must 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. If a child is adjudicated a jto for committing state OMVUAC, the court must suspend the child's temporary instruction permit, probationary driver's license, or driver's license for a period of not less than 60 days nor more than two years. If a child is adjudicated a jto for committing a seat belt violation, the court must impose the appropriate fine set forth in existing law and, in certain circumstances, cannot impose a fine but may place the child on probation. (R.C. 2151.356.)

Operation of the bill

The bill changes the reference in existing law to the types of delinquent child dispositions that may be made of a jto who, after being subjected to a jto disposition, is found to have failed to comply with the court's orders and to

constitute a danger through the operation of a motor vehicle. Currently, the reference indicates that the delinquent child dispositions that may be used in those circumstances are any dependent, neglected, or abused child disposition, placement on probation, commitment to DYS, imposition of a fine and costs, imposition of a restitution order, suspension or revocation of the child's driver's license or vehicle registration, imposition of a period of electronically monitored house detention, and commitment of the child to the temporary or permanent custody of the court, provided that generally, no commitment may be made to a secure correctional facility and detention home commitment may not exceed 24 hours. The bill eliminates the reference to the availability of a DYS commitment in the specified circumstances. (R.C. 2151.356(A)(7).)

Restraint of control of child's parent, guardian, or custodian

Existing law

Under existing law, in any proceeding in which a child has been adjudicated a delinquent, unruly, abused, neglected, or dependent child, the court, upon the application of a party or on its own motion, may make an order restraining or otherwise controlling the conduct of any parent, guardian, or other custodian in the relationship of that individual to the child if the court finds such an order is necessary to: (1) control any conduct or relationship that will be detrimental or harmful to the child, (2) where that conduct or relationship will tend to defeat the execution of the order of disposition to be made. The court must give notice of the application or motion and the grounds for it, and an opportunity to be heard, to the person against whom the order is directed. (R.C. 2151.359.)

Operation of the bill

The bill modifies the grounds for the issuance of an order restraining or otherwise controlling the conduct of a parent, guardian, or other custodian to specify that the court, upon the application or upon its own motion, may issue the order if it finds both of the following: (1) an order of that nature is necessary to control any conduct or other relationship that will be detrimental or harmful to the child, and (2) that conduct or relationship will tend to defeat the execution of the order of disposition made or to be made. The bill retains the existing notification and hearing provisions relative to an application or motion for the order. The bill specifies that an order issued under this provision that restrains or otherwise controls the conduct of a parent, guardian, or other custodian is in addition to an order made by the court under the bill's provisions expanding the authorized dispositions for children who are adjudicated as delinquent or unruly children because they are a chronic truant or an habitual truant, as described above in

"Delinquent child dispositions" and "Unruly child dispositions." (R.C. 2151.359.)

Maintenance and inspection of juvenile court records

Record-keeping requirements and inspection under existing law

Existing law requires each juvenile court to maintain records of all official cases brought before it, including an appearance docket, a journal, and a cashbook, to maintain a separate docket for traffic cases, and to record all traffic cases on the separate docket instead of on the general appearance docket. The parents of any child affected, if they are living, or the nearest of kin of the child, if the parents are deceased, may inspect the records, either in person or by counsel during the hours that the court is open. Existing law also specifies that a record must be made of all testimony and other oral proceedings in each juvenile court that are held pursuant to specified existing provisions that pertain to the permanent custody of an abused, neglected, or dependent child and must be made upon request in all other cases. (R.C. 2151.18(A)(1) and 2151.35(A).)

Existing law requires each juvenile court to send to the Superintendent of the Bureau of Criminal Identification and Investigation (the BCII) a weekly report containing a summary of each case before it that involves an adjudication that a child is a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult (R.C. 109.57).

The clerk of each juvenile court is required to maintain a statistical record that includes all of the following: (1) the number of complaints filed with the court that allege that a child is a delinquent child, in relation to which the court determines that the victim of the alleged delinquent act was 65 years of age or older or permanently and totally disabled at the time of the act, (2) the number of complaints described in clause (1) that result in the child being adjudicated a delinquent child, (3) the number of complaints described in clause (2) in which the delinquent act caused property damage or would be a theft offense if committed by an adult, (4) the number of complaints described in clause (3) that result in the delinquent child being required to make restitution for all or part of the property damage caused by the delinquent act or for all or part of the value of the property that was the subject of the delinquent act that would be a theft offense if committed by an adult, (5) the number of complaints described in clause (2) in which the delinquent act would have been an offense of violence if committed by an adult, (6) the number of complaints described in clause (5) that result in the delinquent child being committed to any facility for delinquent children operated by the county, a district, or a private agency or organization or to DYS, and (7) the number of complaints described in clause (1) that result in the case being

transferred for criminal prosecution. The clerk must compile an annual summary covering the preceding calendar year showing all of the information for that year contained in the statistical record. The statistical record and the annual summary are public records open for inspection, but neither of them may include the identity of any party to a case.

Not later than June of each year, each juvenile court must prepare an annual report covering the preceding calendar year showing the number and kinds of cases that have come before it, the disposition of the cases, and any other data pertaining to the work of the court that the juvenile judge directs. The court must file copies of the report with the board of county commissioners and, with the board's approval, may print or cause to be printed copies of the report for distribution to persons and agencies interested in the court or community program for dependent, neglected, abused, or delinquent children and juvenile traffic offenders. (R.C. 2151.18(A)(2) to (D).)

Destruction of fingerprints, photographs, and arrest or custody records under existing law

Existing law contains restrictions on the taking of fingerprints and photographs of a child in the investigation of a violation of law, imposes restrictions on the use and release of fingerprints and photographs that are taken in accordance with those restrictions and the use of the records of the arrest or custody that was the basis for the taking of the fingerprints or photographs (the use and release are limited to specified law enforcement purposes), and provides rules and procedures for the disposition of fingerprints, photographs, and arrest/custody records that are so used. The rules and procedures for the disposition of the fingerprints, photographs, and arrest/custody records generally permit their retention, and use, for specified periods of time (the periods vary, depending upon the circumstances present) and, upon the expiration of the applicable specified period, generally require that the fingerprints and photographs, all copies of the fingerprints and photographs, and all records of the arrest or custody that was the basis of the taking of the fingerprints or photographs must be removed from the child's file and delivered to the juvenile court. All fingerprints of a child, photographs of a child, records of an arrest or custody of a child, and copies that are so delivered to a juvenile court must be destroyed by the court. (R.C. 2151.313.)

Expansion of record-keeping requirements under the bill

The bill expands the record-keeping requirements of juvenile courts to also require each juvenile court to (R.C. 2151.18(A)(1) and 2151.35(A)(2)): (1) maintain, in cases pertaining to an alleged delinquent child, arrest and custody

records, complaints, journal entries, and hearing summaries, and (2) in all cases in which a record of testimony and other oral proceedings is not required under existing law, to make and retain a summary of all hearings and proceedings. Also, the bill expands the information that the clerk of the juvenile court must include in the clerk's statistical record to also require the record to include the number of complaints filed with the juvenile court that result in the child being adjudicated a delinquent child for an act that would be an offense of violence if committed by an adult, and that result in the case being transferred for criminal prosecution to the general division of a court of common pleas under the bill's new bindover provisions described above in "*Imposition of a 'blended sentence' upon transfer of a child's case to the court of common pleas*" (R.C. 2151.18(B)(8)).

Victim's inspection of records under the bill

The bill enacts a new provision that specifies that the person who is identified as the victim of a delinquent act in a police report or in a complaint that alleges the commission of a delinquent act and that provides the basis for any juvenile court delinquency proceeding under the Juvenile Code, or, if that person is a minor or is incapacitated, incompetent, or deceased, a member of that person's family, may inspect all arrest and custody records pertaining to the delinquent act and all general court records, including, but not limited to, all complaints, journal entries, and hearing summaries, that pertain to that act (R.C. 2151.18(A)(1)).

The bill enacts another new provision in the law that currently governs the taking, retention, use, and disposition of fingerprints and photographs of a child in the investigation of a violation of law and of the records of an arrest or custody that was the basis of the taking of the fingerprints or photographs. Under the bill, when any such fingerprints, photographs, arrest/custody records, and copies are returned to the appropriate juvenile court upon the expiration of the applicable period for which they may be retained and used, the court, as under existing law, generally must destroy the fingerprints, photographs, records, and copies, *provided that, if a complaint is filed against the child in relation to any act to which the records pertain, the court must maintain all arrest/custody records so delivered for at least three years after the final disposition of the case or after the case becomes inactive. During the period for which the arrest/custody records are so retained, the records must be available for inspection by victims as described in the preceding paragraph.* (R.C. 2151.313(B)(5).)

Sealing or expungement of juvenile records

Sealing of records under existing law

Existing law specifies that, two years after the termination of any order made by a juvenile court or two years after the unconditional discharge of a person

from DYS or another institution or facility to which the person may have been committed, the court that issued the order or committed the person must do one of the following: (1) if the person was adjudicated an unruly child, order the record of the person sealed, or (2) if the person was adjudicated a delinquent child or a jto, either order the record of the person sealed or send the person notice of the person's right to have that record sealed. For purposes of this provision, "seal a record" means to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records and that is accessible only to the juvenile court. A record that is sealed must be destroyed by all persons and governmental bodies except the juvenile court. A court must send the notice described in this paragraph within 90 days after the expiration of the specified two-year period by certified mail, return receipt requested, to the person at the person's last known address. The notice must state that the person may apply to the court for an order to seal the person's record, explain what sealing a record means, and explain the possible consequences of not having the record sealed. (R.C. 2151.358(A) to (C).)

At any time after the two-year period described in the preceding paragraph has elapsed, any person who has been adjudicated a delinquent child or a jto may apply to the court for an order to seal the person's record. The court must hold a hearing on each application within 60 days after it is received. Notice of the hearing must be given to the prosecuting attorney and to any other public office or agency known to have a record of the prior adjudication. If the court finds that the rehabilitation of the person who was adjudicated a delinquent child or a jto has been attained to a satisfactory degree, the court may order the record of the person sealed. (R.C. 2151.358(D).)

If the court orders the adjudication record of a person sealed pursuant to the provisions described in either of the two preceding paragraphs, the court must order that the proceedings in the case in which the person was adjudicated a jto, a delinquent child, or an unruly child be deemed never to have occurred. All index references to the case and the person must be deleted, and the person and the court properly may reply that no record exists with respect to the person upon any inquiry in the matter. Inspection of records ordered sealed may be permitted by the court only upon application by the person who is the subject of the sealed records and only by the persons that are named in that application. (R.C. 2151.358(E).)

Expungement of records under existing law

Under existing law, a person who has been arrested and charged with being a delinquent child or a jto and who is *adjudicated not guilty of the charges* or *has the charges dismissed* may apply to the court for an expungement of the record in

the case. The application may be filed at any time after the person is adjudicated not guilty or the charges are dismissed. The court must give notice to the prosecuting attorney of any hearing on the application. The court may initiate expungement proceedings on its own motion. Also, any person who has been arrested and charged with being an (unruly child) who is adjudicated not guilty of the charges or has the charges dismissed may apply to the court for an expungement of the record in the case. The court must initiate the expungement proceedings on its own motion if an application for expungement is not filed.

If the court upon receipt of an application for expungement or upon its own motion determines that the charges against any person in any case were dismissed or that any person was adjudicated not guilty in any case, the court must order that the records of the case be expunged and that the proceedings in the case be deemed never to have occurred. If the applicant for the expungement order, with the written consent of the applicant's parents or guardian if the applicant is a minor and with the written approval of the court, waives in writing the applicant's right to bring any civil action based on the arrest for which the expungement order is applied, the court must order the appropriate persons and governmental agencies to delete all index references to the case; destroy or delete all court records of the case; destroy all copies of any pictures and fingerprints taken of the person pursuant to the expunged arrest; and destroy, erase, or delete any reference to the arrest that is maintained by the state or any political subdivision of the state, except a record of the arrest that is maintained for compiling statistical data and that does not contain any reference to the person. If the applicant does not so waive the right to bring such a civil action, the court, in addition to ordering the deletion, destruction, or erasure of all index references and court records of the case and of all references to the arrest that are maintained by the state or any political subdivision of the state, must order that a copy of all records of the case, except fingerprints held by the court or a law enforcement agency, be delivered to the court. The court must seal all records delivered to it in a separate file in which only sealed records are maintained, must keep the sealed records until the statute of limitations expires for any civil action based on the arrest, any pending litigation based on the arrest is terminated, or the applicant files a written waiver of the right to bring a civil action based on the arrest and, after the expiration of the statute of limitations, the termination of the pending litigation, or the filing of the waiver, must destroy the sealed records. After the expungement order has been issued, the court must, and the person may properly, reply that no record of the case with respect to the person exists.

In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any arrest for which the records were expunged. If an inquiry is made in violation of this provision, the person may respond as if the expunged arrest did

not occur, and the person shall not be subject to any adverse action because of the arrest or the response. (R.C. 2151.358(F) and (I).)

Notice and effect of sealing or expungement order under existing law

The court must send notice of an order to expunge or seal to any public office or agency that the court has reason to believe may have a record of the expunged or sealed record. Except as described in the next paragraph, an order to seal or expunge applies to every public office or agency that has a record of the prior adjudication or arrest, regardless of whether it receives notice of the hearing on the expungement or sealing of the record or a copy of the order. Except as described in the next paragraph, upon the written request of a person whose record has been expunged or sealed and the presentation of a copy of the order to expunge or seal, a public office or agency must destroy its record of the prior adjudication or arrest, except a record of the adjudication or arrest that is maintained for compiling statistical data and that does not contain any reference to the person who is the subject of the order to expunge or seal.

Notwithstanding any provision of the sealing and expungement law that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded is permitted to maintain records regarding an adjudication that the individual is a delinquent child that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order to seal the record of an adjudication that an individual is a delinquent child does not revoke the adjudication order of the Superintendent of Public Instruction to permanently exclude the individual who is the subject of the sealing order, and such an order may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Except as otherwise described in this paragraph or as authorized by R.C. 3301.121 and 3313.662, any school employee in possession of or having access to the sealed adjudication records of an individual that were the basis of a permanent exclusion of the individual is subject to the prohibition described in the next paragraph. (R.C. 2151.358(G) and (K).)

An officer or employee of the state or any of its political subdivisions who knowingly releases, disseminates, or makes available for any purpose involving employment, bonding, licensing, or education to any person or to any department, agency, or other instrumentality of the state or of any of its political subdivisions any information or other data concerning any arrest, complaint, trial, hearing, adjudication, or correctional supervision, the records of which have been expunged

or sealed pursuant to the above-described provisions, is guilty of divulging confidential information, a misdemeanor of the fourth degree (R.C. 2151.358(J)).

Operation of the bill

The bill modifies the existing juvenile record sealing and expungement law as follows:

(1) It specifies that the provisions relating the sealing of the record of a child adjudicated a delinquent child *do not apply* if the delinquent act was an act that would be aggravated murder, murder, rape, sexual battery, or gross sexual imposition if committed by an adult (R.C. 2151.358(C)(1) and (D));

(2) As under existing law, it provides that, if the adjudication record of a child is ordered sealed, all index references to the case generally must be destroyed. However, it enacts a new provision that permits the person, or the public office or agency, that maintains sealed records pertaining to an adjudication of a child as a delinquent child to maintain a manual or computerized index to the sealed records. The index may contain only the name of, and alphanumeric identifiers that relate to, the persons who are the subject of the sealed records, the word "sealed," and the name of the person, or the public office or agency with custody of the sealed records, and cannot contain the name of the delinquent act committed. The person with custody of the sealed records may make the index available only for the purposes described in the next paragraph. (R.C. 2151.358(E)(1) and (G)(2).)

(3) It expands the existing provision that specifies that inspection of records that have been ordered sealed may be permitted by the court only upon application by the person who is the subject of the sealed records and only by the persons named in that application. Under the bill, in addition to inspection by those persons in that manner, if the records in question pertain to an act that would be an offense of violence that would be a felony if committed by an adult, any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, may inspect the records that have been ordered sealed for any valid law enforcement or prosecutorial purpose. (R.C. 2151.358(E)(2).)

(4) It clarifies that the existing offense of divulging confidential information that applies regarding expunged or sealed juvenile records applies only when the release, dissemination, or availability in question is not expressly permitted by law (R.C. 2151.358(J)).

DNA testing for juvenile and adult offenders

Existing law

Under existing law, a child who is adjudicated a delinquent child for committing any of a list of specified acts and who is committed to DYS or to a school, camp, institution, or other facility for delinquent children, and a person who is convicted of any of a list of specified offenses and who is sentenced to a prison term, to a community residential sanction in a jail or community-based correctional facility, or to a term of imprisonment must submit to a DNA specimen collection procedure administered under specified procedures by an official of the agency or facility to which the child or person is committed or sentenced. Generally, the DNA specimen must be collected from the child or person during the intake process for the facility. The DNA specimen must be forwarded to the BCII no later than 15 days after the date it is collected.

If a child or person described in the preceding paragraph does not provide a DNA specimen as described in that paragraph, prior to the child's release from the custody of DYS or the custody of the school, camp, institution, or facility, or prior to the person's release from the prison term, community residential sanction, or imprisonment, the child or person must submit to, and a specified official of the agency or facility must administer under specified procedures, a DNA specimen collection procedure at the facility in which the child is committed or the person is serving the term or sanction. The DNA specimen must be forwarded to the BCII no later than 15 days after the date it is collected.

If a person serving a prison term or community residential sanction for a felony is released on parole, under transitional control, or on another type of release or is on post-release control, if the person is under the supervision of the Adult Parole Authority, if the person is returned to a jail, community-based correctional facility, or state correctional institution for a violation of the terms and conditions of the parole, transitional control, other release, or post-release control, if the person was or will be serving a prison term or community residential sanction for committing any of the specified list of offenses, and if the person did not provide a DNA specimen as described in either of the preceding paragraphs, the person must submit to, and a specified official of the agency or facility must administer under specified procedures, a DNA specimen collection procedure at the facility in which the person is serving the prison term or community residential sanction. The DNA specimen must be forwarded to the Bureau of Criminal Identification and Investigation no later than 15 days after the date it is collected.

The list of acts and offenses in relation to which the above-described DNA specimen provisions apply are: (1) aggravated murder, murder, kidnapping, rape,

sexual battery, corruption of a minor, gross sexual imposition, and aggravated burglary, (2) the former offense of felonious sexual penetration, (3) an attempt to commit rape, sexual battery, corruption of a minor, gross sexual imposition, or felonious sexual penetration, (4) a violation of any law that arose out of the same facts and circumstances and same act as did a charge against the child or person of committing aggravated murder, murder, kidnapping, rape, sexual battery, corruption of a minor, gross sexual imposition, or aggravated robbery that previously was dismissed or amended or as did a charge against the person of committing felonious sexual penetration that previously was dismissed or amended, (5) abduction or interference with custody that would have been the former offense of child stealing, or (6) a sexually oriented offense, if, in relation to that offense, the offender has been adjudicated as being a sexual predator.

The specified officials of agencies and facilities are not required to comply with the above-described requirements until BCII's Superintendent gives agencies in the criminal justice system in the state official notification that the state DNA laboratory is prepared to accept DNA specimens. (R.C. 2151.315 and 2901.07.)

Operation of the bill

The bill expands the list of acts and offenses in relation to which the existing DNA specimen provisions apply. Under the bill, in addition to the acts and offenses currently included in the list, the list includes all of the following: (1) the offenses of voluntary manslaughter, involuntary manslaughter, felonious assault, assault, abduction, extortion, aggravated arson, arson, aggravated robbery, robbery, and burglary, and (2) a violation of any law that arose out of the same facts and circumstances and same act as did a charge against the child or person of committing any of those offenses that previously was dismissed or amended. (R.C. 2151.315(D) and 2901.07(D).)

School Attendance Law

Existing law

Existing law provides that, for purposes of the School Attendance Law (R.C. Chapter 3321.), a child between six and 18 years of age is "of compulsory school age." The compulsory school age of a child does not commence until the beginning of the term of such schools, or other time in the school year fixed by the rules of the board of the district in which the child resides. Also, "parent," "guardian," or "other person having charge or care of a child" means either parent unless the parents are separated or divorced or their marriage has been dissolved or annulled, in which case "parent" means the parent who is the residential parent and legal custodian of the child. If the child is in the legal or permanent custody of a person or government agency, "parent" means that person or government agency.

When a child is a resident of a home and the child's parent is not a resident of this state, "parent," "guardian," or "other person having charge or care of a child" means the head of the home. (R.C. 3321.01.)

Existing law specifies that, except as described below in clauses (1) to (3), the parent of a child of compulsory school age must cause the child to attend a school in the school district in which the child is entitled to attend school under R.C. 3313.64(B) or (F) or R.C. 3313.65, to participate in a special education program under R.C. Chapter 3323., or to otherwise cause the child to be instructed in accordance with law. Every child of compulsory school age must attend a school or participate in a special education program that conforms to the minimum standards prescribed by the State Board of Education until the child: (1) receives a diploma granted by the board of education or other governing authority, successfully completes the curriculum of any high school, or successfully completes the individualized education program developed for the student by any high school, (2) receives an age and schooling certificate, or (3) is excused from school under standards adopted by the State Board of Education or, if in need of special education, is excused from such programs. (R.C. 3321.03.)

Every parent of any child of compulsory school age who is not employed under an age and schooling certificate must send the child to a school or a special education program that conforms to the minimum standards prescribed by the State Board of Education, for the "full time the school or program attended is in session" (as defined in existing law), which cannot be for less than 32 weeks per school year. The attendance must begin within the first week of the school term or program or within one week of the date on which the child begins to reside in the district or within one week after the child's withdrawal from employment. Excuses from future attendance at or past absence from school or a special education program may be granted for the causes, by the authorities, and under the following conditions (R.C. 3321.04):

(1) The superintendent of the city or exempted village school district or the educational service center in which the child resides may excuse the child from attendance for any part of the remainder of the current school year upon satisfactory showing of either of the following facts: (a) that the child's bodily or mental condition does not permit attendance at school or a special education program during that period; this fact is certified in writing by a licensed physician or, in the case of a mental condition, by a licensed physician, a licensed psychologist, licensed school psychologist or a certificated school psychologist; and provision is made for appropriate instruction of the child, or (b) that the child is being instructed at home by a person qualified to teach the branches in which instruction is required, and such additional branches, as the advancement and needs of the child may, in the opinion of such superintendent, require. All such

excuses become void and are subject to recall upon the removal of the disability of the child or the cessation of proper home instruction; and thereupon the child or the child's parents may be proceeded against after due notice whether such excuse be recalled or not.

(2) The State Board of Education may adopt rules authorizing the superintendent of schools of the district in which the child resides to excuse a child over 14 years of age from attendance for a future limited period for the purpose of performing necessary work directly and exclusively for the child's parents or legal guardians.

(3) The board of education of the city or exempted village school district or the governing board of the educational service center in which a public school is located or the governing authorities of a private or parochial school may in the rules governing the discipline in the schools, prescribe the authority by which and the manner in which any child may be excused for absence from such school for good and sufficient reasons.

Existing law provides for school attendance officers and the powers and duties of those officers (R.C. 3321.14 to 3321.22). It provides that, when a board of education determines that a student in its district has been truant and the parent, guardian, or other person having care of the child has failed to cause the student's attendance, the board may require the parent, guardian, or other person having care of the child, as described in the next paragraph, to attend an educational program established pursuant to rules adopted by the State Board of Education for the purpose of encouraging parental involvement in compelling the attendance of the child (R.C. 3321.19(A)).

On the request of the superintendent of schools or the board of education or when it otherwise comes to the officer's notice, a school attendance officer must examine into any case of supposed truancy within the officer's district, and warn the child, if found truant, and the child's parent, guardian, or other person in charge of the child, in writing, of the legal consequences of truancy if persisted in. When any child of compulsory school age, in violation of law, is not attending school, the attendance officer must notify the parent, guardian, or other person in charge of that child of that fact, and require the parent, guardian, or other person to cause the child to attend school forthwith; and the parent, guardian, or other person in charge of the child must cause the child's attendance at school. Upon the failure of the parent, guardian, or other person in charge of the child to do so, the attendance officer must either make complaint against the parent, guardian, or other person in charge of the child in any court of competent jurisdiction or if so directed by the superintendent or district board, send notice requiring that person's attendance at a parental education program established as described in the

preceding paragraph. No parent may fail without good cause to attend such a program when served notice as described in this paragraph. (R.C. 3321.19(A) and (B).)

Under existing law, when any child, in violation of law, is not attending a part-time school or class, the attendance officer must warn the child and the child's parent, guardian, or other person in charge of the child in writing of the legal consequences of the child's failure to attend such school or class. If the parent, guardian, or other person in charge of that child fails thereupon to cause the child's attendance at the part-time school or class, the attendance officer must make complaint against the parent, guardian, or other person in charge of the child in any court of competent jurisdiction. (R.C. 3321.20.)

Existing law prohibits any parent, guardian, or other person having care of a child of compulsory school age from violating existing R.C. 3321.01, 3321.03, 3321.04, 3321.07, 3321.10, 3321.19(A) or (B), 3321.20, or 3331.14. The court may require a person convicted of violating this prohibition to give a \$100 bond with sureties to the approval of the court, conditioned that the person will cause the child under the person's charge to attend upon instruction as provided by law, and remain as a pupil in the school or class during the term prescribed by law. The existing provision indicates that it does not relieve from prosecution and conviction any parent, guardian, or other person upon further violation "of such sections" and that a forfeiture of the required bond does not relieve the parent, guardian, or other person from prosecution and conviction upon further violation "of such sections." A person who violates the prohibition must be fined not less than \$5 nor more than \$20. (R.C. 3321.38 and 3321.99.)

If the parent, guardian, or other person in charge of a child, upon complaint for failure to cause the child to attend a school or part-time school or class, proves an inability to do so, the parent, guardian, or other person must be discharged, and thereupon the school attendance officer must make complaint before the juvenile judge of the county that the child is a delinquent child or a dependent child, as defined under the Juvenile Code. The juvenile judge must hear the complaint and, if the judge determines that the child is a delinquent or dependent child, must deal with the child according to the Juvenile Code. (R.C. 3321.22.)

Operation of the bill--generally

The bill repeals R.C. 3321.22, as described in the preceding paragraph (Section 2), and makes other changes to the exiting provisions described above that pertain to enforcement of the School Attendance Law.

Under the bill, when a board of education of any city, exempted village, local, joint vocational, or cooperative education school district or the governing

board of any educational service center determines that a student in its district has been truant and the parent, guardian, or other person having care of the child has failed to cause the student's attendance at school, the board may require the parent, guardian, or other person having care of the child, as described in the next paragraph, to attend an educational program established pursuant to rules adopted by the State Board of Education for the purpose of encouraging parental involvement in compelling the attendance of the child at school (R.C. 3321.19(B)).

On the request of the superintendent of schools, the superintendent of any educational service center, the board of education of any city, exempted village, local, joint vocational, or cooperative education school district, or the governing board of any educational service center or when it otherwise comes to the notice of the school attendance officer or other appropriate officer of the school district, the school attendance officer or other appropriate officer must examine into any case of supposed truancy within the district and must warn the child, if found truant, and the child's parent, guardian, or other person having care of the child, in writing, of the legal consequences of being an habitual or chronic truant (see "***Delinquent child definition***," above, for the meaning of those terms). When any child of compulsory school age, in violation of law, is not attending school, the attendance or other appropriate officer must notify the parent, guardian, or other person having care of that child of that fact, and require the parent, guardian, or other person to cause the child to attend school immediately. The parent, guardian, or other person must cause the child's attendance at school. Upon the failure of the parent, guardian, or other person to do so, the attendance officer or other appropriate officer, if so directed by the superintendent, the district board, or the educational service center governing board, must send notice requiring that parent's, guardian's, or other person's attendance at a parental education program established as described in the preceding paragraph. No *parent* may fail without good cause to attend such a program when served notice as described in this paragraph. (R.C. 3321.19(B) and (C).)

Upon the failure of the parent, guardian, or other person having care of the child to cause the child's attendance at school, if the child is considered an habitual truant, the board of education of the school district or the governing board of the educational service center *may* take any appropriate action as an intervention strategy contained in the policy developed by the board pursuant to the bill, as described below in "***Board habitual truant attendance policy required by the bill***," or file a complaint in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed to attend school jointly against the child and the parent, guardian, or other person having care of the child. The complaint must allege that the child is an unruly child for being an habitual truant and that the parent, guardian, or other person having care of the

child has violated the prohibition contained in R.C. 3321.38, as described below. (R.C. 3321.19(D).)

Upon the failure of the parent, guardian, or other person having care of the child to cause the child's attendance at school, if the child is considered a chronic truant, the board of education of the school district or the governing board of the educational service center *must* file a complaint in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed to attend school jointly against the child and the parent, guardian, or other person having care of the child. The complaint must allege that the child is an unruly child for being a chronic truant and that the parent, guardian, or other person having care of the child has violated the prohibition contained in R.C. 3321.38, as described below. (R.C. 3321.19(E).)

Board habitual truant attendance policy required by the bill

The bill requires that, no later than August 31, 2000, the board of education of each city, exempted village, local, joint vocational, and cooperative education school district and the governing board of each educational service center must adopt a policy to guide employees of the school district or service center in addressing and ameliorating the attendance practice of any pupil who is an habitual truant. In developing the policy, the board must consult with the judge of the juvenile court of the county or counties in which the district or board is located, with the parents, guardians, or other persons having care of the pupils attending school in the district, and with appropriate state and local agencies. The board must incorporate into the policy as an intervention strategy the assignment of an habitual truant to an alternative school if the board has established an alternative school.

The policy so developed may include as an intervention strategy any of the following actions, if appropriate: (1) providing counseling for an habitual truant, (2) requesting or requiring a parent, guardian, or other person having care of an habitual truant to attend parental involvement programs, including programs adopted under existing R.C. 3313.472 or 3313.663 (not in the bill), (3) notification of the Registrar of Motor Vehicles, or (4) taking legal action regarding the offense of parental education neglect, or under the provisions described below in "**Attendance officer duties under the bill**" and "**Criminal prohibition under the bill**."

That bill states that none of its provisions relative to the policy, as described above, may be construed to limit the duty or authority of a district board of education or governing body of an educational service center to develop other

policies related to truancy or to limit the duty or authority of any employee of the school district or service center to respond to pupil truancy. (R.C. 3321.191.)

Attendance officer duties under the bill

As under existing law, under the bill, when any child, in violation of law, is not attending a part-time school or class, the attendance officer must warn the child and the child's parent, guardian, or other person in charge of the child in writing of the legal consequences of the child's failure to attend such school or class. Also, as under existing law, under the bill, if the parent, guardian, or other person in charge of that child fails thereupon to cause the child's attendance at the part-time school or class, the attendance officer must make complaint against the parent, guardian, or other person in charge of the child in a specified court. However, under the bill, the complaint must be made *in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed to attend the part-time school or class.* (R.C. 3321.20.)

Criminal prohibition under the bill

The bill retains the existing prohibition against any parent, guardian, or other person having care of a child of compulsory school age violating any of a list of specified sections pertaining to compulsory education but modifies the list of sections *so that it includes all divisions in R.C. 3321.19 instead of only divisions (A) and (B) of that section.*

The bill modifies the existing procedural provisions that are related to the prohibition. Under the bill, *the juvenile court*, which has exclusive jurisdiction over any violation of the prohibition described in the preceding paragraph, may require a person convicted of violating the prohibition to give a \$100 bond with sureties to the approval of the court, conditioned that the person will cause the child under the person's charge to attend upon instruction as provided by law, and remain as a pupil in the school or class during the term prescribed by law. If the juvenile court adjudicates the child as an unruly or delinquent child for being an habitual or chronic truant, the court must warn the parent, guardian, or other person having care of the child that any subsequent adjudication of that nature involving the child may result in a criminal charge against the parent, guardian, or other person having care of the child for a violation of the prohibition against aiding, abetting, inducing, causing, encouraging, or contributing to a child becoming a dependent child or a neglected child or the prohibition against aiding, abetting, inducing, causing, encouraging, or contributing to a child becoming an unruly child or a delinquent child and against acting in a way tending to cause a child to become an unruly child or a delinquent child.

Finally, the bill modifies the existing provision that indicates that R.C. 3321.38 does not relieve from prosecution and conviction any parent, guardian, or other person upon further violation "of such sections" and that a forfeiture of the required bond does not relieve the parent, guardian, or other person from prosecution and conviction upon further violation "of such sections." Under the bill, the provision specifies that R.C. 3321.38 does not relieve from prosecution and conviction any parent, guardian, or other person upon further violation *of any provision listed in the prohibition, any provision of R.C. 2919.222 or 2919.24, or division (C) of R.C. 2919.21* (see the preceding paragraph) and that a forfeiture of the required bond does not relieve the parent, guardian, or other person from prosecution and conviction upon further violation *of any provision in any of those sections or that division.* (R.C. 3321.38.)

The bill does not change the existing penalty for a violation of the prohibition, contained in R.C. 3321.99 (not in the bill).

Filing of juvenile court complaint under the bill

The bill enacts a new provision relative to the filing of a complaint in a juvenile court alleging that a parent has violated the above-described prohibition. Under the bill, any person having knowledge of a child who appears to be an unruly or delinquent child for being an habitual or chronic truant may file a sworn complaint with respect to that child and the parent, guardian, or other person having care of the child in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed to attend public school. The sworn complaint may be upon information and belief and must contain the following allegations:

(1) That the child is an unruly child for being an habitual truant or the child is a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant and, in addition, the particular facts upon which that allegation is based;

(2) That the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of the prohibition contained in R.C. 3321.38, as described above in "**Criminal prohibition under the bill**" and, in addition, the particular facts upon which that allegation is based. (R.C. 2151.27(A)(2).)

Order under the bill directing parent, etc., to appear at hearing and bring child

When a complaint is filed in juvenile court that alleges that a child is an unruly or delinquent child for being an habitual or chronic truant and that the

parent, guardian, or other person having care of the child has failed to cause the child's attendance at school, the court must endorse upon the summons an order directing the parent, guardian, or other person having care of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing. The existing provision that currently permits a juvenile court to endorse upon the summons an order directing the parent, guardian, or other person with whom the child may be to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing will apply in all other cases. (R.C. 2151.28(E).)

Related and conforming changes under the bill

The bill enacts special provisions in the law governing juvenile court adjudication hearings and dispositional hearings, the law setting forth authorized dispositions of delinquent children, and the law setting forth authorized dispositions of unruly children that pertain to children who are alleged or adjudicated to be delinquent or unruly children on the basis that they were habitual or chronic truants (see "Juvenile court hearings," "Delinquent child dispositions," and "Unruly child dispositions," above).

The bill amends a few existing provisions to conform them to the changes described above relative to the School Attendance Law (R.C. 3321.14, 3321.18, and 4109.13).

HISTORY

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