



Am. Sub. H.B. 400
124th General Assembly
(As Passed by the General Assembly)

Reps. Faber, Willamowski, Hoops, Latta, Young, Webster, Schmidt, Husted, Lendrum, Schaffer, Womer Benjamin, Callender, Flowers, Niehaus, Hagan, Buehrer, Coates

Sens. Oelslager, Amstutz

Effective date: April 3, 2003; Sections 4 and 5 effective January 1, 2004

ACT SUMMARY

- Authorizes a child adjudicated a delinquent child or juvenile traffic offender for whom a court makes a disposition to be held, at any time after the child attains 18 years of age, in places other than a certified foster home or a home approved by the court, a facility operated by a certified child welfare agency, or another suitable place designated by the court, and specifies that these "other places" include, but are not limited to, a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.
- Authorizes a person alleged to be a delinquent child to be held in places other than those places in which an alleged delinquent child generally may be held, including, but not limited to, a county, multicounty, or municipal jail, if the delinquent act that the child allegedly committed would be a felony if committed by an adult, and if either: (1) the person attains 18 years of age before the person is arrested or apprehended for that act, or (2) the person is arrested or apprehended for that act before the person attains 18 years of age, but the person attains 18 years of age before the court orders a disposition in the case.
- Grants an alleged delinquent child who is held in a place other than a place an alleged delinquent child generally may be held pursuant to the preceding dotpoint the same rights to bail as an adult charged with the same offense who is confined in a jail pending trial.

- In the general restriction against an alleged or adjudicated juvenile traffic offender being held for more than 24 hours in a detention facility, includes an additional exception for a child held under preexisting R.C. 2152.21(A)(6), which is retained by the act with conforming changes.
- Amends the definition of "child" that applies to the Juvenile Delinquency/Juvenile Traffic Offender Law to specify that a child who is adjudicated a delinquent child or juvenile traffic offender (JTO) and receives a disposition for that adjudication, at any time after the child or JTO attains 18 years of age, may be held in places other than those authorized under that Law solely for confinement of children.
- Amends the delinquent child dispositional option that authorizes the court to commit the delinquent child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children to specifically include a school, camp, or facility operated under R.C. 2151.65, which is not in the act.
- Adds a new delinquent child dispositional option that permits a court to place a delinquent child in a detention facility or district detention facility operated by a county or affiliated group of counties for up to 90 days.
- Revises the method by which the per diem cost for the care and custody of felony delinquents is calculated for each year of a biennium, in relation to the formula used in expending the appropriation made to the Department of Youth Services for care and custody of felony delinquents.

CONTENT AND OPERATION

Places a child may be confined

Preexisting and continuing law

Continuing law specifies that, subject to certain exceptions, which are expanded by the act as described below, an alleged or adjudicated delinquent child or juvenile traffic offender may be held only in a certified foster home, a home approved by the court, a facility operated by a certified child welfare agency, or another suitable place designated by the court. Under continuing law, expanded by the act as described below, an alleged or adjudicated delinquent child also may be held in a detention facility for delinquent children under the direction or

supervision of the court or other public authority or of a private agency and approved by the court.¹ (R.C. 2152.26(A) and (B).)

Continuing law provides that an alleged or adjudicated juvenile traffic offender generally may not be held in a secure correctional facility, a state correctional institution, a county, multicounty, or municipal jail or workhouse, or another place in which an adult convicted of crime, under arrest, or charged with a crime is held. Also, subject to a few exceptions that are expanded by the act, an alleged or adjudicated juvenile traffic offender generally may not be held for more than 24 hours in a detention facility. And under continuing law, an alleged or adjudicated delinquent child generally may not be held in a state correctional institution, county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held. (R.C. 2152.26(C) and (D).)

Finally, continuing law specifies that, if a juvenile court case is transferred to another court for criminal prosecution, the child may be transferred for detention pending the criminal prosecution in a jail or other facility in accordance with the law governing the detention of persons charged with crime. Any child so held must be confined in a manner that keeps the child beyond the range of touch of all adult detainees, and the child must be supervised at all times during the detention. (R.C. 2152.26(F).)

Operation of the act

The act expands the places in which an alleged or adjudicated delinquent child or juvenile traffic offender may be held, in specified circumstances. Under the act, if a child is adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition under the Juvenile Delinquency/Juvenile Traffic Offender Law, at any time after the person attains 18 years of age, the person may be held under that disposition in places other than a certified foster home or a home approved by the court, a facility operated by a certified child welfare agency, or another suitable place designated by the court (the places specified by continuing law where such a child generally may be held). The act specifies that the "other places" include, but are not limited to, a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held. (R.C. 2152.26(B) and (F)(2).)

Also, under the act, a person alleged to be a delinquent child may be held in places other than those places specified under continuing law as places an alleged

¹ This "detention facility" provision applies to a child alleged to be or adjudicated a delinquent child for truancy only in limited circumstances.

delinquent child generally may be held, including, but not limited to, a county, multicounty, or municipal jail, if the delinquent act that the child allegedly committed would be a felony if committed by an adult, and if either of the following applies: (1) the person attains 18 years of age before the person is arrested or apprehended for that act, or (2) the person is arrested or apprehended for that act before the person attains 18 years of age, but the person attains 18 years of age before the court orders a disposition in the case. If the person is held under this provision in a place other than a place specified under continuing law as a place an alleged delinquent child generally may be held, the person has the same rights to bail as an adult charged with the same offense who is confined in a jail pending trial. (R.C. 2152.26(F)(3).)

The act modifies the general restriction against an alleged or adjudicated juvenile traffic offender being held for more than 24 hours in a detention facility to include, as an additional exception to the restriction, the provision contained in R.C. 2152.21(A)(6). That provision, retained by the act with conforming changes, specifies that if, after making disposition of an adjudicated juvenile traffic offender under R.C. 2152.21(A)(1) to (5), the court finds upon further hearing that the child has failed to comply with the orders of the court and that the child's operation of a motor vehicle constitutes the child a danger to the child and to others, the court may make any disposition authorized for disposition of a delinquent child under certain specified portions of R.C. 2152.19, except that the child may not be committed to or placed in a secure correctional facility unless authorized by R.C. 2152.21(A)(5), and commitment to or placement in a detention facility may not exceed 24 hours. (R.C. 2152.26(C)(2) and, by cross-reference, 2152.21(A)(6).)

The act also amends the definition of "child" that applies to the Juvenile Delinquency/Juvenile Traffic Offender Law to specify that: (1) a child who is adjudicated a delinquent child or juvenile traffic offender and receives a disposition under that Law, at any time after the person attains 18 years of age, may be held in places in addition to the places authorized under that Law solely for confinement of children, and (2) the person may be confined under that disposition, in accordance with the provision described in the third preceding paragraph, in places other than those authorized solely for confinement of children. (R.C. 2152.02(C)(6).)

Delinquent child dispositions

Preexisting and continuing law

Preexisting law specified numerous orders of disposition a juvenile court was permitted to make for a child adjudicated a delinquent child, in addition to any other disposition authorized or required by the Juvenile Delinquency Law.



Formerly, one of the authorized orders of disposition was to 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 the state, that is authorized and qualified to provide the care, treatment, or placement required.

Other authorized orders of disposition, retained by the act without change, provide that the court may: (1) make any order authorized as a disposition for an abused, neglected, or dependent child, (2) place the child on community control under any sanctions, services, and conditions the court prescribes (the law lists examples of community control sanctions and conditions), (3) commit the child to the custody of the court, (4) require the child to not be absent without legitimate excuse from the public school the child is supposed to attend for more than a specified period of time, (5) 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, make certain truancy related dispositions, or (6) make any further disposition that the court finds proper, subject to certain limitations. (R.C. 2152.19(A).)

Operation of the act

The act amends the former disposition option described above that authorized the court to commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children. Under the act, this option is retained but language is added stating that the option specifically includes, but is not limited to, a school, camp, or facility operated under preexisting R.C. 2151.65 (not in the act).² The act also adds another disposition, which permits the court to place the child in a detention facility or

² R.C. 2151.65 (not in the act) provides that, upon the advice and recommendation of the juvenile judge, the board of county commissioners may provide by purchase, lease, construction, or otherwise a school, forestry camp, or other facility or facilities where delinquent children, dependent children, abused children, unruly children, neglected children, or juvenile traffic offenders may be held for training, treatment, and rehabilitation. Upon the joint advice and recommendation of the juvenile judges of two or more adjoining or neighboring counties, the boards of county commissioners of those counties may form themselves into a joint board and proceed to organize a district for the establishment and support of a school, forestry camp, or other facility or facilities for the use of the juvenile courts of those counties, where delinquent, dependent, abused, unruly, or neglected children or juvenile traffic offenders may be held for treatment, training, and rehabilitation.

district detention facility operated by a county or affiliated group of counties under R.C. 2152.41, for up to 90 days.³ (R.C. 2152.19(A)(2) and (3) and 2152.41(A).)

The act updates the preexisting delinquent child DNA specimen collection provisions to reflect these additional disposition options and to make the provisions apply regarding children committed for a specified delinquent act to a facility authorized under the options (R.C. 2152.74). The act also makes a number of cross-reference changes related to its amendment to R.C. 2152.19 (R.C. 2151.011(B)(38), 2151.152, 2151.35(A)(1), 2151.354(A)(2) and (6), 2151.359(B), 2152.19(A)(7)(a), and 2152.21(A)(6)).

Calculation of per diem cost for the care and custody of felony delinquents

Prior and continuing law

Generally. Under continuing law, the appropriation made to the Department of Youth Services (DYS) for care and custody of felony delinquents must be expended in accordance with a formula that DHS must develop for each year of a biennium; the formula must be consistent with certain statutory requirements and be developed in accordance with the following guidelines (R.C. 5139.41--not in the act):

(1) DHS must set aside at least 3% but not more than 5% of the appropriation for purposes of funding a statutorily required contingency program.

(2) After setting aside the amount described in (1), DHS must set aside 25% of the remainder of the appropriation and use that amount for certain

³ Preexisting R.C. 2152.41 provides that, upon the recommendation of the judge, the board of county commissioners must provide a detention facility within a convenient distance of the juvenile court. Formerly, the section provided that: (a) the facility could not be used for the confinement of adults charged with criminal offenses, (b) the facility could be used to detain alleged delinquent children until final disposition for evaluation and for children adjudicated juvenile traffic offender, (c) upon the joint recommendation of the juvenile judges of two or more neighboring counties, the boards of county commissioners of the counties had to form themselves into a joint board and proceed to organize a district for the establishment and support of a detention facility for the use of the juvenile courts of those counties, in which alleged delinquent children may be detained, and (d) a child who is adjudicated to be a juvenile traffic offender for having committed state OMVI or violated a substantially similar municipal ordinance could be confined in a detention facility or district detention facility, provided the child is kept separate and apart from alleged delinquent children. The act expands the authorized uses of the facility to include confinement under the new disposition it enacts, as described above, but otherwise retains these provisions.

administrative expenses and to pay certain of the operational costs associated with, and to provide cash flow for, the following: (a) institutions, (b) the diagnosis, care, or treatment of felony delinquents at institutions, facilities, or centers pursuant to contracts, and (c) community corrections facilities constructed, reconstructed, improved, or financed for the purpose of providing alternative placement and services for felony delinquents who have been diverted from care and custody in institutions.

(3) After setting aside the amounts described in (1) and (2), DYS must set aside the amount of the appropriation that is equal to 25% of the amount that is calculated by multiplying the per diem cost for the care and custody of felony delinquents (see "Per diem," below) by the number of bed days that DYS projects for occupancy in community corrections facilities described in (2)(c), above. DYS must use this amount to pay the percentage of the per diem cost for the care and custody of felony delinquents who are in the care and custody of community corrections facilities described in (2)(c), above, for which DYS is responsible.

(4) After setting aside the amounts described in (1) to (3), DYS must set aside the amount of the appropriation that is necessary to pay 75% of the per diem cost of public safety beds and must use that amount for the purpose of paying that per diem cost.

(5) After setting aside the amounts described in (1) to (4), DYS must use the remainder of the appropriation in connection with the felony delinquent care and custody program, except that, for fiscal year 2002 and fiscal year 2003 and only for those two fiscal years, the total number of beds available to all counties via public safety beds and county allocations may not be less than the total beds used by all the counties during fiscal year 2000 funded by care and custody chargebacks (line item 401) and as public safety beds.

Development of the expenditure formula. Under preexisting law, retained by the act except as described below in "Operation of the act," in developing the expenditure formula described above in "Generally," DYS must use the data included by each juvenile court in its annual report, other data included in any monthly reports that DYS may require juvenile courts to file, and other data derived from a fiscal monitoring program or another monitoring program to project or calculate the following for each year of a biennium (R.C. 5139.42):

(1) The total number of children who will be adjudicated delinquent children by the juvenile courts for acts that if committed by an adult would be a felony;

(2) The number of public safety beds;



(3) The state target youth;

(4) *The per diem cost for the care and custody of felony delinquents, pursuant to a specified formula modified by the act (see "Per diem," below);*

(5) For each county of the state, that county's average percentage of the total number of children who during the past four fiscal years were adjudicated delinquent children by the juvenile courts for acts that, if committed by an adult, would be a felony;

(6) The number of children who satisfy all of the following: (a) they are at least 12 years of age but less than 18 years of age, (b) they were adjudicated delinquent children for having committed acts that if committed by an adult would be a felony, (c) they were committed to DYS by the juvenile court of a county that has had 0.1% or less of the statewide adjudications for felony delinquents as averaged for the past four fiscal years, and (d) they are in the care and custody of an institution or a community corrections facility.

Per diem. Formerly, the per diem cost for the care and custody of "felony delinquents" was calculated for each year of a biennium as follows (R.C. 5139.42(D)):⁴

(1) By multiplying the "state target youth" by the projected length of stay of state target youth in the care and custody of DYS;

(2) By subtracting from the appropriation made to DYS for care and custody of felony delinquents for each fiscal year of the biennium the amount of the appropriation that must be set aside for purposes of funding the contingency program, and then dividing the remainder of the appropriation that was so calculated by the product derived under (1);

(3) By dividing the quotient derived under (2) by the number of days in the fiscal year.

⁴ As used in these provisions (R.C. 5139.01(A)(11) and (14))--not in the act):

(1) *"Felony delinquent" means any child who is at least 12 years of age but less than 18 years of age and who is adjudicated a delinquent child for having committed an act that if committed by an adult would be a felony. "Felony delinquent" includes any adult who is between the ages of 18 and 21 and who is in the legal custody of DYS for having committed an act that if committed by an adult would be a felony.*

(2) *"State target youth" means 25% of the projected total number of felony delinquents for each year of a biennium, factoring in revocations and recommitments.*

Operation of the act

The act retains all of the preexisting provisions regarding the development of the expenditure formula described above, except that it revises the formula for determining the per diem cost for the care and custody of felony delinquents by repealing the provision described above in (3) under "**Per diem.**" Under the act, the per diem cost is calculated for each year of a biennium as follows (R.C. 5139.42(D)):

(1) By multiplying the state target youth by the projected length of stay of state target youth in the care and custody of DYS;

(2) By subtracting from the appropriation made to DYS for care and custody of felony delinquents for each fiscal year of the biennium the amount of the appropriation that must be set aside for purposes of funding the contingency program;

(3) By dividing the remainder of the appropriation that was calculated under (2) by the product derived under (1).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-11-01	p. 911
Reported, H. Criminal Justice	03-20-02	p. 1592
Passed House (71-21)	03-21-02	pp. 1614-1616
Reported, S. Judiciary on Criminal Justice	12-05-02	p. 2276
Passed Senate (30-1)	12-05-02	pp. 2281-2282
House concurred in Senate amendments (71-23)	12-06-02	pp. 2294-2295

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