



Am. Sub. H.B. 393

124th General Assembly

(As Passed by the House)

Reps. Latta, Womer Benjamin, Seitz, Gilb, Schmidt, Lendrum, Willamowski, Cirelli, Flowers, Salerno, Manning, Niehaus, Roman, Coates, Webster, Carmichael

BILL SUMMARY

- Expands the circumstances that require the mandatory transfer of a child to criminal court to require a child to be transferred if the child is charged with 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 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 *brandished the firearm*.
- Clarifies that an existing five-year limit relative to the duration of commitments to the Department of Youth Services (DYS) for a firearm, anti-gang, or body armor specification applies to commitments for two or more specifications.
- Revises the length of time that a person can be committed to DHS for a body armor specification from "two years" to "up to two years."
- Specifies that, when a juvenile court makes a disposition of a delinquent child under a firearm, anti-gang, or body armor specification, the court retains control over the commitment for its entire duration.
- Revises, in a largely technical manner the methods by which the prosecuting attorney may initiate the process to permit a court to impose a serious youthful offender dispositional sentence.
- Expands, to include all possible traditional juvenile dispositions, the dispositions that may be made: (1) as the juvenile portion of a mandatory serious youthful offender dispositional sentence and (2) in discretionary

serious youthful offender cases in which the court does not impose a discretionary serious youthful offender dispositional sentence.

- Requires the motion that the prosecuting attorney may file to initiate the process to invoke the adult portion of a serious youthful offender dispositional sentence to also state that at least one incident of misconduct upon which the motion is based occurred after the person reached 14 years of age.
- If a court decides to invoke the adult portion of a serious youthful offender dispositional sentence, permits the court to modify the adult sentence that the court invokes to consist of any lesser prison term that could be imposed for the offense and, in addition to the prison term or in lieu of the prison term if the prison term was not mandatory, any community control sanction that the offender was eligible to receive at sentencing.
- Provides that, for the purposes of the Sex Offender Registration and Notification Law, "adjudicated a delinquent child for committing a sexually oriented offense" includes a child who receives a serious youthful offender dispositional sentence for committing a sexually oriented offense.
- Modifies a general provision in the Juvenile Delinquency Law that limits when DYS may release a child to expressly subject it to a supervised release or to a discharge of the child from DYS custody for medical reasons.
- Replaces the formula for determining when the court can grant a judicial release to court supervision or a judicial release to DYS supervision with the formula that existed prior to the enactment of Am. Sub. S.B. 179 of the 123rd General Assembly, which was effective on January 1, 2002.
- Revises a provision prohibiting DYS's Release Authority from delegating its authority to make final decisions regarding policy or the release authority of a child to authorize the Release Authority to otherwise delegate responsibilities to hearing officers or other designated staff under the Release Authority's auspices.
- Repeals a provision that specified that for the purposes of transacting the official business of DYS's Release Authority, a majority of the members

of the Release Authority constitutes a quorum, and a provision that stated that a majority vote of the quorum determines the actions of the Release Authority.

- Permits, rather than requires, the Director of DYS to designate certain employees with arrest, etc., authority as employees authorized to carry a firearm.
- Limits to a period of up to 175 hours the community service that a juvenile court may require an unruly child to serve.
- Reenacts, in a revised form, a provision stating that the parents, guardian, or other custodian of any child affected, if they are living, or the nearest of kin of the child, if the parents are deceased, may inspect juvenile court records, either in person or by counsel during the hours in which the court is open.
- Creates an exception to the prohibition against a child accepting, receiving, using, consuming, or possessing cigarettes, other tobacco products, or papers used to roll cigarettes and to the prohibition against a cigarette, tobacco product, or papers to roll cigarettes, manufacturer, producer, distributor, wholesaler, or retailer, an agent, employee, or representative of any such entity, or any person giving or otherwise distributing any of these items to a child, if, at the time of the act in question, the child is participating in a research protocol under specified conditions.
- Encourages the Supreme Court to amend the Juvenile Rules.
- Declares an emergency.

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CONTENT AND OPERATION

Overview

Am. Sub. S.B. 179 of the 123rd General Assembly made substantial revisions to the Juvenile Delinquency Law, effective January 1, 2002. This bill revises some of the provisions of Am. Sub. S.B. 179 and makes other changes in the Juvenile Delinquency Law.

Mandatory transfers--brandishing a firearm

Existing law

General. Existing law describes circumstances in which a child is subject to a mandatory transfer for trial in criminal court and other circumstances in which a child is eligible for a discretionary transfer for trial in criminal court.

Mandatory transfer. One circumstance in which the Juvenile Delinquency Law provides that a child is eligible for mandatory transfer, and must be transferred, for trial in a criminal court is that the child: (1) is charged with a category two offense other than kidnapping, (2) was 16 years of age or older at the time of the commission of the act charged, and (3) is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged. (R.C. 2152.10(A)(2)(b).)¹

Discretionary transfer. But a related provision in the existing discretionary transfer provisions is broader than the mandatory transfer provision described in the preceding paragraph. Under the discretionary transfer provisions, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case if the court finds: (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, and (3) the child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In determining whether the child is amenable to care or rehabilitation within the juvenile system, the court must consider whether certain statutorily specified factors indicating that the case should be transferred outweigh certain statutorily specified factors indicating that the case should not be transferred. One of the factors that the court considers in favor of a transfer is that the child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not carrying a concealed weapon, and the child, during the commission of the act charged, allegedly used or displayed the firearm, *brandished the firearm*, or indicated that the child possessed a firearm. (R.C. 2152.12(B) and (D)(5)--not in the bill.)

Operation of the bill

The bill expands the circumstances described above under "**Mandatory transfer**" under "**Existing law**" that provide for a mandatory transfer by adding

¹ "Category two offense" means any of the following: a violation of R.C. 2903.03 (voluntary manslaughter), 2905.01 (kidnapping), 2907.02 (rape), former 2907.12 (felonious sexual penetration), 2909.02 (aggravated arson), 2911.01 (aggravated robbery), or 2911.11 (aggravated burglary) or a violation of R.C. 2903.04 (involuntary manslaughter) based on the offender's causing the death of another as a proximate result of the offender's committing or attempting to commit an act that would be a felony if committed by an adult (R.C. 2152.02(CC)).

"brandishing the firearm" to the criterion set forth in (3). Thus, a child must be transferred for trial in criminal court if the child: (1) is charged with a category two offense other than kidnapping, (2) was 16 years of age or older at the time of the commission of the act charged, and (3) is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, *brandished the firearm*, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged. (R.C. 2152.10(A)(2)(b).)

Traditional delinquent child disposition--commitment to DYS pursuant to a specification

Existing law

Existing law permits the court to commit to the Department of Youth Services (DYS) a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult (R.C. 2152.16). Existing law also separately provides that the court may, and in certain cases must, commit a child who is adjudicated a delinquent child for an act, other than carrying concealed weapons, that would be a felony if committed by an adult and who would be guilty of certain types of specifications if an adult, to DYS for an additional specified period of time as set forth below for the specification (R.C. 2152.17(A), (C), and (D)):

(1) For a firearm possession specification, permissive commitment for a definite period of up to one year;

(2) For a specification alleging that the child displayed, brandished, or indicated possession of a firearm or used a firearm to facilitate the act, mandatory commitment for a definite period of not less than one and not more than three years;²

(3) For an automatic firearm or silencer specification, or specification alleging that the child discharged a firearm at or into a habitation or school safety zone or from a motor vehicle, mandatory commitment for a definite period of not less than one and not more than five years;³

² *The court also must commit the child to DYS for the underlying delinquent act.*

³ *The court also must commit the child to DYS for the underlying delinquent act.*

(4) For a gang activity specification in relation to certain serious violations, mandatory commitment for institutionalization in a secure facility for a definite period of not less than one and not more than three years;⁴

(5) For a body armor specification in relation to felony offense of violence violations, if the court commits the child to DYS for the underlying delinquent act, permissive commitment for institutionalization in a secure facility for two years.

A court that imposes a period of commitment under paragraph (1), (2), or (3) may impose an additional period of commitment under paragraph (4) or (5), a court that imposes a period of commitment under paragraph (4) may impose an additional period of commitment under paragraphs (1), (2), (3), or (5), and a court that imposes a period of commitment under paragraph (5) may impose an additional period of commitment under paragraph (4). (R.C. 2152.17(D)(2), as technically harmonized and renumbered in the bill.)

Under existing law, the court is prohibited from committing a child to DYS *for a specification* for a period that exceeds five years for any one delinquent act. Any specification commitment is in addition to, and is to be served consecutively with and prior to, a period of commitment ordered for the underlying delinquent act, and each specification commitment is in addition to, and is to be served consecutively with, any other specification commitment period. If a commitment is imposed under paragraph (1), (2), or (3) and a commitment also is imposed under paragraph (4), the period imposed under paragraph (1), (2), or (3) must be served prior to the period imposed under paragraph (4). The total of all the periods of commitment imposed for any specification and for the underlying "offense" (i.e., the delinquent act) may not exceed the child's attainment of 21 years of age. (R.C. 2152.17(D).)

Operation of the bill

The bill modifies the five-year limit described in the preceding paragraph to specify that it applies to commitments *for two or more specifications* (R.C. 2152.17(E)).

The bill also revises the length of time that a person can be committed for a body armor specification from "two years" to "up to two years" (R.C. 2152.17(D)(1)).

Further, the bill specifies that, in each case in which a court makes a disposition (to DYS) under the above-described specification commitment

⁴ *The court also must commit the child to DYS for the underlying delinquent act.*

provisions, the court retains control over the commitment for the entire period of the commitment (R.C. 2152.17(E)).

The bill also makes a number of technical changes to R.C. 2152.17 to harmonize Am. Sub. S.B. 179 and Am. Sub. S.B. 222 of the 123rd General Assembly (R.C. 2152.17 and 5139.06(A)(2)).

Serious youthful offenders

Overview of existing law

The Juvenile Delinquency Law specifies circumstances in which a child who is adjudicated a delinquent child is eligible for a "serious youthful offender (SYO) dispositional sentence." It permits, and in certain circumstances requires, the juvenile court to impose such a dispositional sentence upon a delinquent child who is eligible for the sentence. This dispositional sentence consists of a juvenile portion comprised of one or more traditional juvenile dispositions and of an adult portion comprised of a criminal sentence. The adult portion is held in abeyance until it is "invoked" but it may not be invoked unless the child is at least 14 years of age and has misbehaved in a statutorily specified manner. If the child misbehaves in a specified manner, upon request of a prosecuting attorney or upon its own motion, the court may hold a hearing and may invoke the adult portion of the dispositional sentence. The adult portion cannot be invoked unless the child is serving the juvenile portion of the dispositional sentence.

Initiating a serious youthful offender case

The bill revises, in a largely technical manner, the methods by which the prosecuting attorney may initiate the process to permit a court to impose an SYO dispositional sentence. Under the bill, the prosecuting attorney may initiate the process in any of the following ways (R.C. 2152.13(A), (B), (C)(2)(a)(ii) (c)(2), and (C)(3), and R.C. 2151.28(A)(1) and 2151.314(A)):

- (1) Obtaining an indictment of the child as an SYO;
- (2) The child waives the right to indictment, charging the child in a bill of information as an SYO;
- (3) Until an indictment or information is obtained, requesting an SYO dispositional sentence in the original complaint alleging that the child is a delinquent child;
- (4) Until an indictment or information is obtained, if the original complaint does not request an SYO dispositional sentence, filing with the juvenile court a written notice of intent to seek an SYO dispositional sentence generally within 20

days after the later of the following: (a) the date of the child's first juvenile court hearing regarding the complaint or (b) the date the juvenile court determines not to transfer the case to criminal court under the Juvenile Transfer Law.

Serious youthful offender disposition

Operation of the bill. Existing law governing the imposition of dispositions in serious youthful offender cases is described below. The bill revises the traditional juvenile dispositions that a court may impose upon a delinquent child as part of a mandatory SYO disposition or, in certain circumstances, in a discretionary SYO case. If the court is required to impose an SYO dispositional sentence, the bill permits the court to impose as part of the traditional juvenile disposition any financial dispositions available for delinquent children under existing law (see R.C. 2152.20--not in the bill) and any periods of commitment to DYS authorized because of a specification, as described above in "**Traditional delinquent child disposition--commitment to DYS pursuant to a specification.**" These dispositions are in addition to DYS commitments and other dispositional orders permitted under existing law. In a discretionary SYO case in which the court does not impose a discretionary SYO dispositional sentence, the bill permits the court to impose upon the delinquent child any financial disposition available for delinquent children under existing law in addition to all the other types of commitments available to such children under existing law. (R.C. 2152.13(D)(1)(b) and (2)(b).)

Existing law--mandatory serious youthful offender disposition. Under existing law, if a child is adjudicated a delinquent child for committing an act under circumstances that require the juvenile court to impose upon the child an SYO dispositional sentence, all of the following apply (R.C. 2152.13(E)(1)):

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

(2) The juvenile court also must impose upon the child one or more traditional juvenile dispositions under R.C. 2152.16 (DYS commitments) or R.C. 2152.19 (additional dispositional orders). Existing law does not authorize financial dispositions or DYS commitments made pursuant to specifications, but the bill, as discussed above, does permit such dispositions and commitments.

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

Existing law--discretionary serious youthful offender disposition. Under existing law, if a child is adjudicated a delinquent child for committing an act under circumstances that allow, but do not require, the juvenile court to impose on the child an SYO dispositional sentence, all of the following apply (R.C. 2152.13(E)(2)(a)):

(1) If the juvenile court on the record makes certain findings, the court: (a) may impose upon the child a sentence available for the violation, as if the child were an adult, under the Criminal Code, except that the court is prohibited from imposing on the child a sentence of death or life imprisonment without parole, (b) must impose upon the child one or more traditional juvenile dispositions under the Juvenile Delinquency Law (all types of dispositions are authorized), and (c) must stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

(2) If the juvenile court does not find that a discretionary SYO dispositional sentence should be imposed as described in (1)(a), above, the court may impose one or more traditional juvenile dispositions under R.C. 2152.16 (DYS commitments) 2152.19 (additional dispositional orders), and, if applicable, 2152.17 (DYS commitments made pursuant to specifications). Existing law does not authorize financial dispositions, but the bill does (R.C. 2152.13(E)(2)(b)).

Invoking adult portion of serious youthful offender dispositional sentence

Operation of the bill--DYS, the juvenile court, or the probation department requests prosecutor to file motion. Existing law governing requests to invoke the adult portion of an SYO dispositional sentence is described below. The bill revises the content of the motion to invoke the adult portion of an SYO dispositional sentence that the prosecuting attorney may file pursuant to a request by the Director of DYS, the juvenile court that imposed the sentence on the person, or the probation department supervising the person if a person is at least 14 years of age, is serving the juvenile portion of an SYO dispositional sentence, and is on parole or aftercare from a DYS facility, or on community control. Under the bill, in addition to the statements required under existing law, the motion also must state that at least one incident of misconduct occurred after the person reached 14 years of age. This change is consistent with a requirement in existing law for such a motion when DYS requests the motion for a child who is serving the juvenile portion of the sentence in a DYS institution or is an escapee from such custody. (R.C. 2152.14(B).)

Operation of the bill--response of court upon the filing of a motion. Existing law governing a juvenile court's response upon the filing of a motion to invoke the adult portion of an SYO dispositional sentence is described below. The bill expands existing law to permit the court (apparently subsequent to the filing of

a motion to invoke the adult portion of an SYO dispositional sentence) to modify the adult sentence that the court invokes to consist of any lesser prison term that could be imposed for the offense and, in addition to the prison term or in lieu of a prison term that was not mandatory, any community control sanction that the offender was eligible to receive at sentencing (R.C. 2152.14(E)(2)).

Existing law--DYS requests prosecutor to file motion. Under existing law, the Director of DHS may request the prosecuting attorney of the county in which is located the juvenile court that imposed an SYO dispositional sentence upon a person to file a motion with that court to invoke the adult portion of the dispositional sentence if all of the following apply to the person: (1) the person is at least 14 years of age, (2) the person is in the institutional custody, or an escapee from the custody, of DHS, and (3) the person is serving the juvenile portion of the SYO dispositional sentence.

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

If the prosecutor declines to file the motion or does not act on the request within a reasonable time, DHS may file a motion requesting invocation with the court (R.C. 2152.14(C)).

Existing law--DYS, the juvenile court, or the probation department requests prosecutor to file motion. If a person is at least 14 years of age, is serving the juvenile portion of an SYO dispositional sentence, and is on parole or aftercare from a DHS facility, or on community control, the Director of DHS, the juvenile court that imposed the dispositional sentence on the person, or the probation department supervising the person may request the prosecuting attorney of the county in which is located the juvenile court to file a motion with the juvenile court to invoke the adult portion of the dispositional sentence. The prosecuting attorney may file a motion to invoke the adult portion of the dispositional sentence even if no request is made. The motion must state that there is reasonable cause to believe that either of the following misconduct occurred (there is no requirement that the motion state that at least one act of misconduct occurred after the age of 14): (1) the person committed an act that is a violation of the conditions of supervision and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult, or (2) the

person has engaged in conduct that creates a substantial risk to the safety or security of the community or of the victim. (R.C. 2152.14(B).)

If the prosecutor declines to file the motion or fails to act on the request within a reasonable time, DYS or the probation department may file a motion with the court requesting invocation or the court on its own motion may conduct an invocation hearing (R.C. 2152.14(C)).

Existing law--response of court upon the filing of a motion. Upon the filing of a motion described above, the juvenile court may hold a hearing to determine whether to invoke the adult portion of a person's SYO dispositional sentence. The court is prohibited from invoking the adult portion without a hearing. The court may invoke the adult portion if it finds all of the following on the record by clear and convincing evidence: (1) the person is serving the juvenile portion of an SYO dispositional sentence, (2) the person is at least 14 years of age and has been admitted to a DYS facility, or criminal charges are pending against the person, and (3) the person engaged in the conduct or acts charged under the motion, and the person's conduct demonstrates that the person is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.

If a juvenile court issues an order invoking the adult portion of an SYO dispositional sentence, the juvenile portion of the dispositional sentence terminates and DYS must transfer the person to the Department of Rehabilitation and Correction (DRC) or place the person under another sanction imposed as part of the sentence. The time the person must serve on a prison term imposed under the adult portion is subject to statutorily specified limitations. (R.C. 2152.14(D), (E), and (F).)

Serious youthful offenders and the Sex Offender Registration and Notification Law

Existing law subjects persons who are "adjudicated delinquent children for committing a sexually oriented offense," who are at least 14 years old when they commit it, and who are classified by a juvenile court judge under specified provisions as a "juvenile sex offender registrant" to the registration, change of address notification, and address verification provisions of the Sex Offender Registration and Notification Law (R.C. 2152.82 to 2152.85, and R.C. Chapter 2950., unchanged by the bill except as described in the next paragraph).

The bill specifies that, for purposes of that Law, "adjudicated a delinquent child for committing a sexually oriented offense" includes a child who receives an SYO dispositional sentence for committing a sexually oriented offense (R.C. 2950.01(N)).

Release of a child from DYS

Background

If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court may commit the child to the legal custody of DYS for secure confinement for a period determined by the seriousness of the act. The court retains control over the commitment for a statutorily specified minimum period, and, among its options, it may grant judicial release of the child to either court supervision or to DYS supervision. After the period of court control for the child ends, DYS may release a delinquent child committed to it on supervised release or by discharge. (R.C. 2152.16(A) and (B), 2152.22, 5139.05(B)(1), and 5139.51.)

Release from DYS custody for medical reasons

The bill modifies the existing provisions that specify that DYS may release a child committed to it at any time after the period of court control. The bill expressly subjects those provisions to a supervised release or a discharge of the child from DYS custody for medical reasons under existing R.C. 2152.54, provided that, during the minimum period specified by the court, DYS must obtain court approval of such a release or discharge (R.C. 2152.16(B)(1) and (2) and 5139.05(B)(1)).

Under existing R.C. 5139.54(A), unchanged by the bill, notwithstanding any other provision for determining when a child is to be released or discharged from DYS's legal custody, DYS's release authority, for medical reasons, may release a child upon supervised release or discharge the child from DYS custody when the child (1) is terminally ill or otherwise in imminent danger of death, (2) is incapacitated due to injury, disease, illness, or other medical condition and is no longer a threat to public safety, or (3) appears to be a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. The section currently does not require court approval for the release or discharge but does require DYS to notify the court of the release or discharge.

Judicial release to court supervision

Operation of the bill. Existing law, discussed below, contains a formula for determining when the court may grant a judicial release to court supervision to a delinquent child who has been committed to DYS. The bill replaces the existing formula with the formula that existed prior to the enactment of Am. Sub. S.B. 179 of the 123rd General Assembly. Thus, under the bill, the court that commits a delinquent child to DYS may grant judicial release of the child to court

supervision during the first half of the prescribed minimum term for which the child was committed to DYS or, if the child was committed to DYS until the child attains 21 years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, provided any specification commitment period has ended. (R.C. 2152.22(B)(1).)

Existing law. Under the formula contained in existing law, the court that commits a delinquent child to DYS may grant judicial release of the child to court supervision during any of the following periods that are applicable, provided any specification commitment period has ended (see "**Traditional delinquent child dispositions--Commitment to DYS pursuant to a specification,**" above) (R.C. 2152.22(B)(1)):

(1) If the child was committed to DYS for committing an act that would be a felony of the third, fourth, or fifth degree if committed by an adult, at any time during the first 90 days of the period of court control over the child (the period of court control over the child is the first six months of the commitment);

(2) If the child was given a traditional juvenile disposition or an SYO dispositional sentence for committing an act that would be a felony of the first or second degree if committed by an adult, at any time during the first 180 days of the period of court control over the child (the period of court control over the child is the first year of the commitment);

(3) If the child was committed to DYS until the child attains 21 years of age for an act that would be aggravated murder or murder if committed by an adult, at any time during the first half of the prescribed period of that commitment of the child.

Judicial release to DYS supervision

Operation of the bill. Existing law, discussed below, contains a formula for determining when the court may grant a judicial release to DYS supervision to a delinquent child who has been committed to DYS. The bill replaces the existing formula with the formula that existed prior to the enactment of Am. Sub. S.B. 179 of the 123rd General Assembly. Thus, under the bill, the court that commits a delinquent child to DYS may grant judicial release of the child to DYS supervision during the second half of the prescribed minimum term for which the child was committed to DYS or, if the child was committed to DYS until the child attains 21 years of age, during the second half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, provided any specification commitment period has ended. (R.C. 2152.22(C)(1).)

Existing law. Under the formula contained in existing law, the court that commits a delinquent child to DYS may grant judicial release of the child to DYS supervision during any of the following periods that are applicable, provided any specification commitment period has ended (R.C. 2152.22(C)(1)):

(1) If the child was committed to DYS for an act that would be a felony of the third, fourth, or fifth degree if committed by an adult, at any time during the period of court control over the child, provided that at least 90 days of that period have elapsed (the period of court control over the child is the first six months of the commitment);

(2) If the child was given a traditional juvenile disposition or an SYO dispositional sentence for an act that would be a felony of the first or second degree if committed by an adult, at any time during the period of court control over the child, provided that at least 180 days of that period have elapsed (the period of court control over the child is the first year of the commitment);

(3) If the child was committed to DYS for an act that would be aggravated murder or murder if committed by an adult until the child attains 21 years of age, at any time during the second half of the prescribed period of that commitment of the child.

Technical

The bill amends numerous existing provisions to remove references to the term "period of court control" and instead directly refer to the "statutorily specified minimum period" for which a court may commit a delinquent child to DYS. The bill also provides that the court has control over the child during the entire period the child serves a specification commitment to DYS. (R.C. 2152.16(A)(2) and (B), 2152.17(E), 2152.22(A), and 5139.05(A)(1) and (B)(1).)

Department of Youth Services

Release Authority of DYS

Existing law establishes a Release Authority in DYS to perform certain duties relating to the evaluation and release of delinquent children committed to DYS (R.C. 5139.50).

The bill retains an existing provision that prohibits the Release Authority from delegating its authority to make final decisions regarding policy or the release authority of a child but adds language to the provision that specifically authorizes the Release Authority to otherwise delegate responsibilities to hearing officers or other designated staff under its auspices (R.C. 5139.50(G)).

The bill repeals provisions enacted in Am. Sub. S.B. 179 of the 123rd General Assembly that provide that: (1) for the purposes of transacting the official business of the Release Authority of DYS, a majority of the members of the Release Authority constitutes a quorum, and (2) a majority vote of the quorum determines the actions of the Release Authority (R.C. 5139.50(D)).

DYS employees authorized to carry a firearm

Existing law requires the Director of DYS to designate DYS employees as persons who are authorized to execute an order of apprehension or a warrant for, or otherwise to arrest, children in DYS custody who are violating or are alleged to have violated the terms and conditions of supervised release or judicial release to DYS supervision. It requires the Director to designate some of those designated employees as employees authorized to carry a firearm. The bill permits, rather than requires, the Director to designate employees as employees who are authorized to carry a firearm. (R.C. 5139.53(A)(2).)

Community service disposition imposed on an unruly child

Operation of the bill

Existing law sets forth a series of options that a juvenile court may use as dispositions of a child who is adjudicated an unruly child. One of those options, discussed below, permits the court to order the unruly child to perform community service to the same extent as if the child had been adjudicated a delinquent child. The bill limits to a period not to exceed 175 hours the community service that a court may require an unruly child to serve. (R.C. 2151.354(A)(2).)

Existing law

Under existing law, one of the dispositional options available to a juvenile court that adjudicates a child an unruly child is to place the child on community control under any sanctions, services, and conditions that a court may prescribe for delinquent children. One community control sanction a court may prescribe for delinquent children is a period of community service of up to 500 hours for an act that would be a felony or a misdemeanor of the first degree if committed by an adult, up to 200 hours for an act that would be a misdemeanor of the second, third, or fourth degree if committed by an adult, or up to 30 hours for an act that would be a minor misdemeanor if committed by an adult. The law currently establishes no limit for community service for an unruly child. (R.C. 2151.354(A)(2) and 2152.19(A)(3)(d).)

Who may inspect juvenile court records

Existing law

Under existing law, the juvenile court must maintain records of all official cases brought before it (R.C. 2151.18(A)). Prior to Am. Sub. S.B. 179 of the 123rd General Assembly, this provision also specified that the parents of any child affected, if they are living, or the nearest of kin of the child, if the parents are deceased, could inspect these records, either in person or by counsel during the hours in which the court is open. Am. Sub. S.B. 179 repealed this latter provision.

Similarly, the Juvenile Delinquency Law enacted in Am. Sub. S.B. 179 requires the juvenile court to maintain records of all official cases brought before it, 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. (R.C. 2152.71(A)(1).)

Operation of the bill

The bill reenacts the former language in R.C. 2151.18 stating that the parents, guardian, or other custodian of any child affected, if they are living, or the nearest of kin of the child, if the parents are deceased and would be entitled to inspect the records, may inspect these juvenile court records, either in person or by counsel during the hours in which the court is open. The bill also enacts a parallel provision in the Juvenile Delinquency Law. The bill also provides that the above-described existing records provision in the Juvenile Delinquency Law and the inspection provision that it enacts in the Juvenile Delinquency Law do not require the release or authorize the inspection of arrest or incident reports, law enforcement investigatory reports or records, or witness statements. (R.C. 2151.18(A) and 2152.71(A)(1).)

Child tobacco use related to research protocols

Existing law

Existing law provides two complementary prohibitions relating to children and cigarettes, other tobacco products, or papers used to roll cigarettes.

One of the provisions, contained in the Juvenile Law, prohibits a child, unless accompanied by a parent, spouse who is 18 years of age or older, or legal guardian of the child, from using, consuming, or possessing cigarettes, other tobacco products, or papers used to roll cigarettes and, subject to some employment-related or law enforcement-related exceptions, from accepting or receiving any of those items. The Juvenile Law prohibits a juvenile court from adjudicating a child a delinquent or unruly child for a violation of these

prohibitions. Instead, the Juvenile Law authorizes the court to issue certain orders regarding a child who violates them, including imposing a fine and requiring the child to attend a youth smoking education program or other smoking treatment program. (R.C. 2151.87(B), (D), (F), and (G).)

The Criminal Law has a complementary prohibition. It prohibits a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, an agent, employee, or representative of any such manufacturer, producer, distributor, wholesaler, or retailer, and any other person from doing either of the following: (1) giving, selling, or otherwise distributing those items to any child, or (2) giving away, selling, or distributing those items in any place that does not have posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing those items to a person under 18 years of age is prohibited by law. It is an affirmative defense to a charge of a violation of this prohibition that the child was accompanied by a parent, adult spouse, or legal guardian, or that the actor is a parent, adult spouse, or legal guardian of the child. A person who violates either of these prohibitions is guilty of "illegal distribution of cigarettes or other tobacco products," a misdemeanor of the fourth degree on a first offense and a misdemeanor of the third degree if the offender has certain prior convictions. (Existing R.C. 2927.02(B), (D), and (E)(1).)

Operation of the bill

The bill creates an exception to these prohibitions relating to research protocols. Under the bill, it is not a violation of the Juvenile Law prohibition for a child to accept, receive, use, consume, or possess cigarettes, other tobacco products, or papers used to roll cigarettes and is not a violation of the Criminal Law prohibitions for a person to give or otherwise distribute any of these items to a child, while the child is participating in a research protocol if all of the following apply (R.C. 2151.87(E)(3) and 2927.02(E)):

- (1) The parent, guardian, or legal custodian of the child has consented in writing to the child participating in the research protocol.
- (2) An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.
- (3) The child is participating in the research protocol at the facility or location specified in the research protocol.

Supreme Court Rules

The bill includes a provision stating that the General Assembly encourages the Supreme Court to amend the Juvenile Rules to do both of the following (Section 3):

(1) Make clear that, while a magistrate may not try or sentence a case involving an alleged or adjudicated SYO, a magistrate may handle ministerial duties in that type of case, including arraignment and setting bail;

(2) Make clear that juvenile courts may establish traffic bureaus.

Technical changes

The bill repeals a provision stating that the Release Authority of the Department of Youth Services is prohibited from releasing the child from institutional care or institutional care in a secure facility and as a result is prohibited from discharging the child or ordering the child's release on supervised release prior to the expiration of the prescribed minimum period of institutionalization or institutionalization in a secure facility or prior to the child's attainment of 21 years of age, whichever is applicable under the order of commitment. This provision appears redundant of the provisions described under "Release of a child from DYS--Release from DYS custody for medical reasons," above. (R.C. 2151.38(A).)

The bill also: (1) corrects, from nonexistent "division (K)(1) of this section" to division (D)(1) of this section," an erroneous cross-reference in R.C. 2152.18(D)(2), and (2) corrects, from nonexistent "R.C. 2159.19" to "R.C. 2152.19," an erroneous cross-reference in R.C. 2152.71(B)(6).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-03-01	p. 876
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