



Sub. H.B. 400*

124th General Assembly
(As Reported by H. Criminal Justice)

**Reps. Faber, Willamowski, Hoops, Latta, Young, Webster, Schmidt, Husted,
Lendrum, Schaffer, Womer Benjamin**

BILL SUMMARY

- Authorizes a court to order a delinquent child or juvenile traffic offender to be held, at any time after the child attains 18 years of age, in 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 (in addition to 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).
- Authorizes a person alleged to be a delinquent child to be held in places other than those places 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.

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

- Amends the definition of "child" for the purposes of the Juvenile Delinquency/Juvenile Traffic Offender Law to specify that a delinquent child or juvenile traffic offender (JTO), 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.
- Permits a court to place a delinquent child in a detention facility or district detention facility 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.

CONTENT AND OPERATION

Places a child may be confined

Existing law

Generally, an alleged or adjudicated delinquent child or juvenile traffic offender may be held only in a certified foster home, home approved by the court, facility operated by a certified child welfare agency, or other suitable place designated by the court. 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).)

An alleged or adjudicated juvenile traffic offender generally may not be held in a secure correctional facility, state correctional institution, county, multicounty, or municipal jail or workhouse, or other place in which an adult convicted of crime, under arrest, or charged with a crime is held. Also, an alleged or adjudicated juvenile traffic offender generally may not be held for more than 24 hours in a detention facility. And an alleged or adjudicated delinquent child generally may not be held in a state correctional institution, county, multicounty,

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

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).)

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

Operation of the bill

Under the bill, if a delinquent child or juvenile traffic offender is subject to 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 where such a child generally may be held). 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. Any person so held must be confined in accordance with the law governing the detention of persons charged with crime and 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(B) and (F)(2).)

Also, a person alleged to be a delinquent child may be held in places other than those places 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 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 in a place other than 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. Any person so held must be confined in accordance with the law governing the detention of persons charged with crime and 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)(3).)

The bill also amends the definition of "child" for the purposes of the Juvenile Delinquency/Juvenile Traffic Offender Law to specify that a delinquent

child or juvenile traffic offender who receives a disposition under the Juvenile Delinquency/Juvenile Traffic Offender 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. In addition, it specifies that the person may be confined under that disposition, in accordance with the provision described in the second preceding paragraph, in places other than those authorized solely for confinement of children. (R.C. 2152.02(C)(6).)

Delinquent child dispositions

Existing law

The court may make any of the following orders of disposition for a delinquent child, in addition to any other disposition authorized or required by the Juvenile Delinquency Law (R.C. 2152.19(A)):

- (1) Any order authorized for an abused, neglected, or dependent child;
- (2) Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children by the county, by a district, 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;
- (3) Place the child on community control;
- (4) Commit the child to the custody of the court;
- (5) 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;
- (6) 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;
- (7) Make any further disposition that the court finds proper, subject to certain limitations.

Operation of the bill

The bill amends the second disposition option above that authorizes 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 bill, this option specifically includes, but is not limited to, a school, camp, or

facility operated under R.C. 2151.65.² The bill also adds another disposition: the court may place the child in a detention facility or district detention facility operated under R.C. 2152.41, for up to 90 days.³ (R.C. 2152.19(A)(2) and (3) and 2152.41(A).)

The bill updates the delinquent child DNA specimen collection provisions to reflect these additional disposition options (R.C. 2152.74).

The bill also makes a number of cross-reference changes related to the amendment to R.C. 2152.19 (R.C. 2151.011(B)(38), 2151.35(A)(1), 2151.354(A)(2) and (5), 2151.359(B), and 2152.21(A)(6)).

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

Existing law

Generally. The appropriation made to the Department of Youth Services (DYS) for care and custody of felony delinquents must be expended in accordance

² R.C. 2151.65 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.

³ 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. The facility must not be used for the confinement of adults charged with criminal offenses. The facility may be used to detain alleged delinquent children until final disposition for evaluation and for children adjudicated juvenile traffic offenders. Upon the joint recommendation of the juvenile judges of two or more neighboring counties, the boards of county commissioners of the counties must form themselves into a joint board and proceed to organize a district for the establishment and support of a detention facility for the use of the juvenile courts of those counties, in which alleged delinquent children may be detained. A child who is adjudicated to be a juvenile traffic offender for having committed state OMVI or violated a substantially similar municipal ordinance may be confined in a detention facility or district detention facility, provided the child is kept separate and apart from alleged delinquent children.

with a formula that DYS 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):

(1) DYS 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), DYS must set aside 25% of the remainder of the appropriation and use that amount for certain 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.

In developing this formula, 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 (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. The per diem cost for the care and custody of felony delinquents is 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

⁴ As used in these provisions (R.C. 5139.01(A)(11) and (14)):

(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.

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.

Operation of the bill

The bill revises the formula for determining the per diem cost for the care and custody of felony delinquents. Under the bill, 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).

Technical

The bill appears to make a cross-reference correction in R.C. 2152.26(C)(2).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-11-01	p. 911
Reported, H. Criminal Justice	--	---

H0400-RH.124/jc