Dennis M. Papp *Legislative Service Commission*

Sub. H.B. 400*

124th General Assembly
(As Reported by S. Judiciary on Criminal Justice)

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

BILL 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, including but 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 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.

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* *This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate 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 child who is adjudicated a delinquent child or juvenile traffic offender (JTO) and who 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.

- 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

Existing law

Generally, 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. 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).)

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

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, 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, 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).)

Existing 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 bill

Under the bill, 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 existing law 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. (R.C. 2152.26(B) and (F)(2).)

Also, under the bill, a person alleged to be a delinquent child may be held in places other than those places specified under existing law as 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 specified under existing 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 bill modifies the provision that currently specifies that an alleged or adjudicated juvenile traffic offender generally may not be 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 bill 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 bill also amends the definition of "child" for the purposes of the Juvenile Delinquency/Juvenile Traffic Offender Law to specify that a child who is adjudicated a delinquent child or juvenile traffic offender and 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, the bill 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 child who is adjudicated 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 under any sanctions, services, and conditions the court prescribes (the law lists examples of community control sanctions and conditions);

(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 existing R.C. 2151.65 (not in the bill).[2] The bill also adds another disposition, which permits the court to place the child in a detention facility or 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).)

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[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*

The bill updates the delinquent child DNA specimen collection provisions (see **COMMENT**) 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 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 (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

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 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--not in the bill):

(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

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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.

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 formula. In developing the 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 (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 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 by repealing the provision described above in (3) under "***Per diem***." 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

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[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.

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).

COMMENT

Existing R.C. 2152.74 provides for the collection of DNA specimens from certain adjudicated delinquent children. Under existing law, a child who is adjudicated a delinquent child for committing a specified delinquent act (see below) and who is committed to the custody of the Department of Youth Services or to a school, camp, institution, or other facility for delinquent children described in R.C. 2152.19(A)(2) must submit to a DNA specimen collection procedure administered by DYS's Director if committed to DYS or by the chief administrative officer of the school, camp, institution, or other facility to which the child was committed. DYS's Director or the chief administrative officer of the school, camp, institution, or facility generally must cause the DNA specimen to be collected from the child during the intake process and must cause the DNA specimen to be forwarded to the Bureau of Criminal Identification and Investigation (BCII) no later than 15 days after the date of its collection.

If a child is adjudicated a delinquent child for committing one of the specified delinquent acts, is committed to DYS or to a school, camp, institution, or other facility for delinquent children, and does not submit to a DNA specimen collection procedure as described in the preceding paragraph, prior to the child's release from the custody of DYS or the school, camp, institution, or facility, the child must submit to, and DYS's Director or the chief administrator of the school, camp, institution, or facility must administer, a DNA specimen collection procedure at the institution or at the school, camp, institution, or facility. The Director or chief administrative officer must cause the DNA specimen to be forwarded to BCII no later than 15 days after the date of its collection.

If the DNA specimen is collected by withdrawing blood or a similarly invasive procedure, a physician, registered nurse, licensed practical nurse, duly licensed clinical laboratory technician, or other qualified medical practitioner must collect in a medically approved manner the DNA specimen required to be collected as described above. If the DNA specimen is collected by swabbing for buccal cells or a similarly noninvasive procedure, the preceding sentence does not apply regarding the collection. No later than 15 days after the date of the collection of the DNA specimen, DYS's Director or the chief administrative officer of the school, camp, institution, or other facility must cause the DNA specimen to be forwarded to BCII in accordance with procedures established by

BCII's Superintendent. BCII must provide the specimen vials, mailing tubes, labels, postage, and instruction needed for the collection and forwarding of the DNA specimen to BCII.

The DNA specimen-procedures apply to children who are adjudicated a delinquent child for committing any of the following acts: (1) a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, 2907.02, 2907.03, 2907.05, 2911.01, 2911.02, 2911.11, or 2911.12, (2) a violation of R.C. 2907.12 as it existed prior to September 3, 1996, (3) an attempt to commit a violation of R.C. 2903.01, 2903.02, 2907.02, 2907.03, or 2907.05 or to commit a violation of R.C. 2907.12 as it existed prior to September 3, 1996, (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 of a violation of R.C. 2903.01, 2903.02, 2905.01, 2907.02, 2907.03, 2907.05, or 2911.11 that previously was dismissed or amended or as did a charge against the child of a violation of R.C. 2907.12 as it existed prior to September 3, 1996, that previously was dismissed or amended, (5) a violation of R.C. 2905.02 or 2919.23 that would have been a violation of R.C. 2905.04 as it existed prior to July 1, 1996, had the violation been committed prior to that date, (6) a felony violation of any law that arose out of the same facts and circumstances and same act as did a charge against the child of a violation of R.C. 2903.11, 2911.01, 2911.02, or 2911.12 that previously was dismissed or amended, (7) a violation of R.C. 2923.01 involving a conspiracy to commit a violation of R.C. 2903.01, 2903.02, 2905.01, 2911.01, 2911.02, 2911.11, or 2911.12, or (8) a violation of R.C. 2923.03 involving complicity in committing a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, 2907.02, 2907.03, 2907.04, 2907.05, 2911.01, 2911.02, 2911.11, or 2911.12 or a violation of R.C. 2907.12 as it existed prior to September 3, 1996.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	10-11-01	p.	911
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