



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **S.B. 64**

132nd General Assembly  
(As Introduced)

**Sens.** Thomas, Yuko, Brown, Tavares, Williams, Lehner

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### **BILL SUMMARY**

- Eliminates mandatory transfers (bindovers) of a child's case from juvenile court to criminal court for criminal prosecution.
  - Eliminates reverse transfers (bindovers) of a mandatory transfer case back to juvenile court for determination of a disposition.
  - Modifies the factors a juvenile court must consider in determining whether to make a discretionary transfer (bindover) of a child's case from the court to criminal court for criminal prosecution and grants a child the right to appeal a transfer decision.
  - Repeals a provision regarding a juvenile court's imposition of a serious youthful offender dispositional sentence on a child who is adjudicated a delinquent child for committing an act under specified circumstances that require the court to impose such a sentence.
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### **CONTENT AND OPERATION**

#### **Introduction**

Currently, when a child (a person under age 18) commits any violation of law that would be a criminal offense if committed by an adult or commits a traffic violation, except as described below, the charges against the child are considered in juvenile court. If the child is found in juvenile court to have committed the violation, the person is adjudicated a delinquent child or a juvenile traffic offender. In certain circumstances, though, the child's case must be transferred, and in other cases it may be transferred, to criminal court for criminal prosecution.

## Mandatory transfer of child's case

The bill repeals all existing provisions that require the mandatory transfer, commonly referred to as the "mandatory bindover," of a child's case from juvenile court to criminal court for criminal prosecution<sup>1</sup> and all provisions that relate to, or refer to, such a mandatory transfer.<sup>2</sup>

Currently, the mandatory transfer provisions require a juvenile court to transfer a child's case to a criminal court for criminal prosecution if any of the following applies:<sup>3</sup>

(1) The child is charged with a "category one offense" (aggravated murder, murder, attempted aggravated murder, or attempted murder) and either: (a) the child was age 16 or 17 at the time of the act charged and there is probable cause to believe that the child committed the act charged, or (b) the child was age 14 or 15 at the time of the act charged, previously was adjudicated a delinquent child for committing a category one or "category two offense" (voluntary manslaughter, kidnapping, rape, aggravated arson, aggravated robbery, aggravated burglary, the former offense of felonious sexual penetration, or a first degree felony offense of involuntary manslaughter), and was committed to the Department of Youth Services (DYS) based on that adjudication and there is probable cause to believe that the child committed the act charged.

(2) The child is charged with a category two offense, the child was age 16 or 17 at the time of the act charged, and either: (a) the child previously was adjudicated a delinquent child for committing a category one or category two offense and was committed to DHS based on that adjudication and there is probable cause to believe that the child committed the act charged, or (b) the child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed, brandished, indicated possession of, or used the firearm to facilitate the commission of the act charged and there is probable cause to believe that the child committed the act charged.

(3) The child is eligible for a discretionary transfer (i.e., the child is age 14 or older and is charged with a felony) and previously was convicted of a felony in a case that was transferred to a criminal court, or the child is domiciled in another state and is

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<sup>1</sup> Repeal of R.C. 2152.10(A) and 2152.12(A).

<sup>2</sup> R.C. 2151.23(I), R.C. 2152.02(G), (Q), (S), and redesignated (W) and (Y), repeal of R.C. 2152.12(F), R.C. 2152.12 redesignated (D), (F), (G), and (H), and R.C. 2152.26(G)(2).

<sup>3</sup> Repealed R.C. 2152.10(A) and 2152.12(A).



alleged to be a delinquent child for committing a felony, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

### **Discretionary transfer of child's case**

The bill retains the existing provisions that authorize the discretionary transfer, commonly referred to as the "discretionary bindover," of a child's case from juvenile court to criminal court for criminal prosecution but modifies the factors a juvenile court must consider in determining whether to make such a transfer and grants a child the right to appeal a transfer decision.<sup>4</sup>

#### **In general; right to appeal transfer decision**

Under existing law, substantively unchanged by the bill, if a child who is charged in juvenile court with a felony is age 14 or older, the child is eligible for discretionary transfer to criminal court for criminal prosecution, with the juvenile court required to follow specified procedures in deciding whether to transfer the case.<sup>5</sup> If a complaint is filed in juvenile court alleging that a child is a delinquent child for committing a felony, the juvenile court at a hearing may transfer the case if the court finds that the child was age 14 or older at the time of the act charged, there is probable cause to believe that the child committed the act charged, and 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 (see below).<sup>6</sup> Before considering a transfer, the court must order an investigation into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The child may waive the examination, and a child's refusal to submit to a mental examination constitutes a waiver.<sup>7</sup>

Under the bill, a child who has been found not amenable to care or rehabilitation within the juvenile system under the provisions described above has a right to appeal the transfer. Upon issuing the order for transfer, the juvenile court immediately must

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<sup>4</sup> R.C. 2152.12.

<sup>5</sup> R.C. 2152.10(B), redesignated as R.C. 2152.10.

<sup>6</sup> R.C. 2152.12(B), redesignated as (A).

<sup>7</sup> R.C. 2152.12(C), redesignated as (B).

stay the transfer for a period of 14 days, unless waived by the child.<sup>8</sup> An appeal under this provision is governed by R.C. Chapter 2505.,<sup>9</sup> which in turn subjects the appeal to the Rules of Appellate Procedure and the Rules of Practice of the Supreme Court.<sup>10</sup>

## **Factors to be considered in discretionary transfer decision**

### **Operation of the bill**

Existing law specifies factors, changed by the bill, that a court must consider in making its amenability/community safety decision and its final transfer decision at a discretionary transfer hearing. Some of the factors are to be considered in favor of making a transfer and some are to be considered against making a transfer. Under the bill, in making its decision on that issue, the court must consider the following factors that are relevant:<sup>11</sup>

(1) The child's risk level as determined by a standardized, evidence-based risk assessment tool endorsed by DYS and administered by a trained court professional;

(2) The level of harm to the victim in the child's alleged act, including the level of physical, psychological, or serious economic harm the victim suffered or whether the child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, and whether the physical or psychological harm the victim suffered was exacerbated because of the physical or psychological vulnerability or age of the victim;

(3) The victim's role, including whether the child's relationship with the victim facilitated the act charged, and whether the victim induced or facilitated the act charged or the child acted under provocation in allegedly committing the act charged;

(4) The circumstances of the offense, including whether the child was not the principle actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person, whether the child allegedly committed the act charged for hire or as part of a gang, and whether the child did or did not have 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 the offense of carrying a concealed weapon,

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<sup>8</sup> R.C. 2152.12(E) and 2505.02.

<sup>9</sup> R.C. 2505.03, not in the bill.

<sup>10</sup> R.C. 2505.03 to 2505.05 and other provisions of R.C. Chapter 2505., not in the bill.

<sup>11</sup> R.C. 2152.12(C).



and the child, during the commission of the act charged, allegedly used, displayed, brandished, or indicated possession of a firearm;

(5) The child's prior experience in the juvenile court, including the presence or lack of any prior or current cases and rehabilitative efforts by the court and the availability of a reasonable and appropriate juvenile sanction or program that has not yet been utilized;

(6) The child's individual developmental characteristics, including whether the child is emotionally, physically, or psychologically mature enough for the transfer, and whether the child has a behavioral health issue, including a mental illness, substance abuse disorder, or developmental disability;

(7) The child's background, including family and environment, and trauma history;

(8) Whether there is sufficient time to rehabilitate the child within the juvenile system.

### **Currently**

Currently, in considering whether to transfer a child under a discretionary transfer, a juvenile court must consider in favor of a transfer, as relevant: factors similar to some of those listed in paragraphs (2), (3), (4), (6), and (8), above; that the child at the time of the act charged was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction; that the results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system; and any other relevant factors. A juvenile court must consider against a transfer, as relevant, factors similar to some of those listed in paragraphs (2), (3), (4), (5), (6), and (8), above.<sup>12</sup>

### **Reverse transfer to determine a disposition in a mandatory transfer case**

Because the bill repeals the existing provisions that require the mandatory transfer of a child's case to criminal court for criminal prosecution, as described above, it also repeals the existing provisions that provide for the reverse transfer of a mandatory transfer case, commonly referred to as the "reverse bindover," back to juvenile court for determination of a disposition.<sup>13</sup> The bill also generally repeals

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<sup>12</sup> Repealed R.C. 2152.12(D) and (E).

<sup>13</sup> Repeal of R.C. 2152.121.



existing provisions that relate, or refer, to such a reverse transfer,<sup>14</sup> but retains references to such a reverse transfer under current law with respect to a restriction against the release of information regarding a conviction of a child who was subject to such a transfer,<sup>15</sup> to the jurisdiction of juvenile courts over a child who was subject to such a transfer,<sup>16</sup> to the invocation of the adult portion of a serious youthful offender (SYO) dispositional sentence,<sup>17</sup> and to the public record status of information related to the confinement of a child in specified circumstances under the reverse transfer mechanism.<sup>18</sup>

Currently, the reverse transfer provisions apply when a child's case is transferred under either of two mandatory transfer provisions and the child is convicted of an offense in the case. The first is when the child is charged with aggravated murder, murder, attempted aggravated murder, or attempted murder, the child was 16 or 17 at the time of the act charged, and there is probable cause to believe the child committed that act. The second is when the child is charged with a category two offense, the child was 16 or 17 at the time of the act charged, there is probable cause to believe the child committed that act, and the child is alleged to have had a firearm while committing the act charged and to have displayed, brandished, indicated possession of, or used the firearm in committing the act charged.

In either case, the court in which the child is convicted of the crime after the transfer (the court of conviction) must determine whether, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be the offense of conviction if committed by an adult, the existing mandatory transfer provisions would have required, or the discretionary transfer provisions would have allowed, transfer of the case for criminal prosecution. Depending on what the court determines, it must do one of three things: transfer the case back to juvenile court for that court's imposition of a traditional juvenile sentence on the offender; impose sentence on the child under the Criminal Sentencing Law with the sentence being invoked; or impose sentence on the child under the Criminal Sentencing Law, transfer the case back to the juvenile court, and stay the sentence pending juvenile court action. If the court uses the third option, the juvenile court follows specified procedures and, depending on its findings, either imposes an SYO dispositional sentence on the child or

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<sup>14</sup> R.C. 2151.23(H), 2152.021, 2152.12(A)(3), and 2152.13(A).

<sup>15</sup> R.C. 109.57(E)(2).

<sup>16</sup> R.C. 2152.02(C)(5), (Q), and redesignated (W).

<sup>17</sup> R.C. 2152.14.

<sup>18</sup> R.C. 2152.26(G)(2).



transfers jurisdiction of the case back to the court of conviction with the sentence imposed by that court being invoked.<sup>19</sup>

### **Serious youthful offender dispositional sentence**

The bill repeals a provision that governs the imposition of mandatory SYO dispositional sentences. Under the repealed provision, if a child is adjudicated a delinquent child for committing an act under circumstances that require the juvenile court to impose on the child an SYO dispositional sentence under R.C. 2152.11, 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 (other than a sentence of death or life imprisonment without parole), the court also must impose upon the child one or more traditional juvenile dispositions under the Juvenile Code, and the court must stay the adult portion of the SYO dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.<sup>20</sup>

The bill does not change the existing provisions that specify when an SYO dispositional sentence is required,<sup>21</sup> does not change the provisions that govern the imposition of discretionary SYO dispositional sentences,<sup>22</sup> and does not substantively change the procedures that govern the invocation of the adult portion of an SYO dispositional sentence.<sup>23</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-21-17

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<sup>19</sup> R.C. 2152.121.

<sup>20</sup> Repeal of R.C. 2152.13(D)(1).

<sup>21</sup> R.C. 2152.11(B)(1), (C)(1), and (D)(1), not in the bill.

<sup>22</sup> R.C. 2152.11(B)(2), (C)(2), (D)(2), (E)(1) and (2), (F)(1) and (2), and (G)(1), not in the bill, and 2152.13(D)(2).

<sup>23</sup> R.C. 2152.14.

