



OHIO LEGISLATIVE SERVICE COMMISSION

Maggie Wolniewicz

Fiscal Note & Local Impact Statement

Bill: S.B. 64 of the 132nd G.A.
(with LSC amendment AM0206)

Status: In Senate Judiciary

Sponsor: Sen. Thomas

Local Impact Statement Procedure Required: Yes

Subject: Transfer of children to adult court (bindovers)

State Fiscal Highlights

- The Department of Rehabilitation and Correction (DRC) may experience a minimal at most annual incarceration cost savings, as somewhat fewer children may be tried as adults, convicted, and subsequently sentenced to serve a term of incarceration in the state's prison system.
- There will likely be an increase in the annual care and custody costs of the Department of Youth Services (DYS), as the potential is created for a child to be committed to a term of incarceration with DYS rather than DRC as noted in the above dot point. The magnitude of such an increase is indeterminate, as it is dependent upon the discretionary authority of the juvenile court.
- It appears likely that the state's 12 district courts of appeal will be able to process appeals of transfer decisions using existing staff and appropriated resources.

Local Fiscal Highlights

- There may be some reduction in the number of children charged with committing a felony offense who are transferred to be tried as adults annually, as well as a corresponding shift in expenses to dispose of such cases from an adult court to a juvenile court.
- Juvenile courts may experience a potentially significant increase in annual costs to hold hearings, order investigations, and make determinations in certain cases seeking to transfer a juvenile to adult court for prosecution that would not have been incurred under current law. County detention facilities may also incur additional costs to confine children over whom they otherwise might not have had jurisdiction.

Detailed Fiscal Analysis

The bill: (1) eliminates mandatory transfers (bindovers) of a child's case from juvenile court to criminal court for prosecution, (2) eliminates reverse transfers (bindovers) of a mandatory transfer case back to the juvenile court for determination of a disposition, and (3) modifies the rules and procedures regarding the discretionary bindover of an alleged juvenile offender from a juvenile court to a criminal court. The latter most notably provides a right to appeal the transfer and requires the court, after ordering a transfer, to immediately issue a 14-day stay, unless waived by the child.

The bill also repeals a provision of law regarding the imposition of mandatory serious youthful offender dispositional sentences. The repeal will not result in any discernible fiscal effect, as the bill does not make any substantive changes to the provisions of law governing the utilization or implementation of discretionary serious youthful offender dispositional sentences.

Mandatory and reverse bindovers

Under current law, any child, who is 14 years of age or older and is charged with committing a felony level offense, may be transferred to adult court and subsequently tried as an adult. In certain very serious cases, the transfer and standing trial as an adult is mandatory and automatic without any hearings. In other cases, the juvenile court, after conducting hearings, ordering investigations, and making certain other determinations, has the discretion to transfer a child to stand trial as an adult. This transfer of a child from a juvenile court to an adult court is known as a bindover. In FY 2015,¹ a total of 159 children in 24 counties were bound over and tried as adults. Of that number, 88, or 55%, were considered to be mandatory bindovers. The number of reverse bindovers is not readily available, but presumably would be some smaller subset of the mandatory bindovers.

The impact of the bill's elimination of mandatory bindovers is two-fold: (1) it may reduce, by some magnitude, the number of children who are ultimately transferred to be tried as adults in any given year, and (2) it will increase costs, potentially significantly, in certain counties by requiring juvenile courts to hold hearings, order investigations, and make determinations in cases where they otherwise would not have been required to do so under current law. Based on conversations with the Ohio Judicial Conference, the discretionary bindover process can be costly, with expert witnesses (psychologists, etc.) alone costing several thousands of dollars. Those additional costs are likely to be higher in Cuyahoga, Franklin, Hamilton, Montgomery, and Summit counties, which accounted for 114, or 72%, of FY 2015 bindovers.

¹ FY 2015 represents the most recent available data that includes a breakdown of mandatory and discretionary bindovers.

Interlocutory appeal

The bill grants a child the right to appeal a juvenile court's decision to transfer the child from juvenile court to adult court for prosecution and requires a juvenile court, upon ordering such a transfer, to immediately stay the transfer for a period of 14 days.

Under current law, the decision of a juvenile court to transfer a child to be tried as an adult is not appealable. As such, it is reasonable to believe that most, if not all, of the children transferred to adult court will appeal the decision thus resulting in some increase in the number of cases for Ohio's 12 district courts of appeals to hear and determine. The districts that are most likely to be affected by the bill's appeal provision are District 1 (Hamilton County), District 8 (Cuyahoga County), and District 10 (Franklin County), as the counties represented by those districts have historically accounted for more than 50% of bindovers to adult court annually statewide.

Determining the precise effect of the appeals provision on the district courts of appeals is problematic, as both the number of appeals that may be filed and their processing costs are unknown. Recent bindover data however does suggest that the number of appeals filed annually statewide is likely to be less than 100. If true, then it appears likely that the state's 12 district courts of appeal will be able to process appeals of transfer decisions using existing staff and appropriated resources.

There may also be some additional, likely minimal, impact associated with confining a child who is bound over to adult court due to the bill's required 14-day required stay. Presumably, a child would be confined in a local juvenile detention center during this time and utilizing bed space that absent the bill's requirement would be made available for other children. Additionally, counties may be spending more to confine children who have been bound over, as juvenile facilities tend to be more costly than adult facilities. The magnitude of any such impact is uncertain, but when combined with the bill's other provisions, the overall impact has the potential to be significant.

Incarceration costs

The bill may result in a relatively small number of children who would otherwise have been tried as adults, potentially convicted, and subsequently sentenced to serve a period of incarceration with the Department of Rehabilitation and Correction (DRC) being committed to the care and custody of the Department of Youth Services (DYS) instead. This will likely mean: (1) a minimal annual savings in terms of DRC's incarceration costs, and (2) some increase in costs for DHS to support any additional juvenile offenders, the exact magnitude of which is uncertain and will depend largely on court discretion.

In calendar year 2016, 48 children under the age of 18 were committed to serve a term of incarceration in the state's prison system; the number of those that resulted from a mandatory bindover is uncertain. Even in the absence of a mandatory bindover, it is likely that at least some, if not many, of those 48 children would have been transferred from a juvenile court to an adult court anyway, as the bill does not change the statute with respect to discretionary bindovers.

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