



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 394 of the 132nd G.A.  
(L\_132\_1279-3)

**Status:** In House Criminal Justice

**Sponsor:** Rep. Rezabek

**Local Impact Statement Procedure Required:** Yes

**Subject:** Juvenile law and procedures

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### State Fiscal Highlights

- The Department of Rehabilitation and Correction (DRC) may experience an annual savings in incarceration costs, 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.
- The bill's parole eligibility requirements for certain offenders may result in an increase in parole-related costs for DRC. Those costs may be offset by an incarceration cost savings if the offender is released on parole instead of remaining incarcerated. The net effect is indeterminate.
- There may be an indeterminate 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 DHS rather than DRC.

### Local Fiscal Highlights

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

## Detailed Fiscal Analysis

The bill makes various changes to provisions of juvenile law. Most notably, those changes include: (1) transfers from juvenile to criminal court (bindovers), (2) delinquent child confinement credit, and (3) parole eligibility. Those changes and their corresponding fiscal effects are described in more detail below. The bill's other provisions are not expected to have a significant impact on the state or local criminal/juvenile justice systems.

### **Transfer from juvenile to criminal court**

The bill: (1) eliminates mandatory transfers (bindovers) of a child's case from juvenile court to criminal court for prosecution except in aggravated murder cases where a child was age 16 or 17 at the time the offense was committed, and (2) 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.

### **Mandatory and reverse bindovers**

Under current law, any child 14 years of age or older, who 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,<sup>1</sup> 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. Aggravated murder charges accounted for six, or 4%, of all bindovers that year, with five of those reported as mandatory.

The impact of the bill's elimination of certain mandatory bindovers is twofold: (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.

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<sup>1</sup> 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 located in 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 appeals 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 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 2017, 44 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 44 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.

### **Delinquent child confinement credit**

The bill modifies the law as it pertains to juvenile confinement credit by: (1) specifying that a juvenile is to be credited for any time spent in a locked and secure facility or secure section of a facility, be it adult or juvenile, or any community correction facility, and (2) allowing the juvenile court continuing jurisdiction to consider confinement credit disputes. The overall impact on juvenile courts and DYS is expected to be minimal.

#### **Confinement credit**

Currently, juveniles do not receive confinement credit for time spent in pre-adjudication treatment. A judge can order a juvenile to pre-adjudication treatment and if that juvenile fails treatment, the judge has the ability to commit the juvenile to the care and custody of DYS for the juvenile's full term. Under the bill, confinement credit would be given for any time spent in a locked and secure facility or section of a facility, thereby potentially extending confinement credit to pre-adjudication treatment, even in cases where a juvenile has failed treatment. According to the Ohio Judicial Conference, some juvenile court judges have indicated that they may no longer send juveniles to treatment and opt for the higher cost full-term commitment to DYS. As such, the Department may experience an indeterminate annual increase in the number of juveniles committed and related institutional operating expenses.

#### **Disputes**

Under current law, a juvenile disputing the amount of confinement credit that they have received from a juvenile court would have to file the dispute with the district court of appeals. The bill instead permits juvenile courts to resolve such disputes mirroring the confinement credit dispute process in the adult system. Any costs incurred for juvenile courts to comply with the bill's provisions will consist of reviewing and hearing motions to correct confinement credit, and are likely to be absorbed with existing appropriated resources. There would presumably be a related savings effect for district courts of appeals that would no longer have to adjudicate such disputes.

### **Parole eligibility**

The bill prohibits sentencing an offender to life imprisonment without parole for an offense that was committed when the offender was under age 18 and establishes a review mechanism for offenders in certain circumstances who receive, or have received, a definite sentence of more than 18 years or an indefinite sentence for a crime committed before turning 18 years of age.<sup>2</sup> This provision may result in some increased

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<sup>2</sup> The bill specifies that this provision does not apply to offenders serving a life sentence for aggravated murder that was committed prior to the bill's effective date.

costs for DRC to conduct review hearings when they otherwise, absent the bill, would not have been conducted. If, as a result of such a review, an offender is paroled, the costs incurred by the Department to conduct the review may be at least partially offset by the savings from no longer having to incarcerate that offender. The number of inmates that may be eligible for review under the bill is uncertain.

## **Synopsis of Fiscal Effect Changes**

The differences in the fiscal effects between the previous substitute version of the bill (LSC\_132\_1279-2) and this substitute version (L\_132\_1279-3) can be summarized as follows:

- The current substitute bill (L\_132\_1279-3) restores provisions of existing law that require: (1) a transfer to criminal court when a child is charged with aggravated murder and the child was age 16 or 17 at the time of the offense, and (2) the reverse transfer of certain mandatory transfer cases back to juvenile court for disposition. The substitute bill's restoration of certain mandatory bindovers will allow a small number<sup>3</sup> of juvenile cases to continue to be transferred automatically to criminal court to stand trial as an adult, thereby potentially saving juvenile courts as much as thousands of dollars by not requiring it to conduct hearings, order investigations, or make certain other determinations in order to transfer that child under the bill.
- The current substitute bill (L\_132\_1279-3) restores a provision of existing law that mandates a serious youthful offender (SYO) disposition in certain juvenile cases. The restoration of this provision will not result in any discernible fiscal effect.
- The current substitute bill (L\_132\_1279-3) makes changes to the bill's life imprisonment without parole and special parole eligibility provisions by specifying that those provisions do not apply to offenders serving a life sentence for aggravated murder that was committed prior to the bill's effective date. It also includes offenders who receive or received definite sentences of more than 18 years for an offense committed when the offender was under age 18 in the bill's special parole eligibility provisions. This provision may result in additional costs for the Department of Rehabilitation and Correction to conduct additional review hearings but those costs may be at least partially offset if, as a result of the review hearing, the offender is paroled and no longer incarcerated in a state prison. The net effect is indeterminate.

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<sup>3</sup> In FY 2015, there were five cases that would have been eligible for a mandatory bindover under the substitute bill.