



# Judicial Impact Statement

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## JUVENILE JUSTICE REFORM FIXES

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#### TITLE INFORMATION

To amend sections 2152.121, 2152.52, 2152.53, 2152.54, and 2152.58 of the Revised Code to permit a juvenile to waive a return bindover when the waiver is made competently and intelligently, to make the imposition of an SYO dispositional sentence upon a return bindover discretionary, to make the procedure for transferring a case back to the general division under 2152.121 consistent with the procedure for an initial transfer to the general division under 2152.12, to eliminate the presumption of competence for children age 14 and older, to permit juvenile courts to extend the time frames set forth in the juvenile competency proceedings for good cause shown, and to clarify that a juvenile court, during a hearing to determine competency, may consider certain additional evidence in determining the child's competency.

#### What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

#### IMPACT SUMMARY

This proposal will improve public confidence in the law, increase judicial discretion and bring clarity and consistency to the Ohio Revised Code.

#### BACKGROUND

House Bill 86 of the 129th General Assembly included several provisions that impacted the policies and procedures of Ohio juvenile courts. These included the enactment of a juvenile competency statute, the creation of a return bindover procedure, changes to judicial release authority, and changes to gun specification procedures. In the period that this legislation has been effective, Ohio judges have discovered several problems that they would like to address.

#### JUDICIAL IMPACT

Waiver of Return Bindover: Under the law as enacted by House Bill 86, a general division court is required to transfer a juvenile, whose case has been boundover to the general division court, back to the juvenile court

when the juvenile pleads guilty to or is convicted of a lesser offense for which he or she could not have been boundover in the first place. Judges are concerned that, because the juvenile has no say over this “return bindover” process, prosecutors will be unwilling to plea bargain out of concern that a plea to a lesser offense the juvenile will cause the juvenile to be sent back to juvenile court where he or she will receive a lighter punishment than if the case were tried in the general division. If, however, the juvenile is permitted to competently and intelligently waive the return bindover the prosecutor may be more willing to accept a plea to a lesser offense.

Discretionary SYO: Under the law as enacted by House Bill 86, a juvenile court is required to impose a serious youthful offender dispositional sentence on a juvenile whose case has been returned to juvenile court under the return bindover procedure. The mandatory imposition of an SYO under these circumstances may result in cases where the punishment does not fit the crime. As such, Ohio judges would like the imposition of an SYO under these circumstances to be discretionary.

Transfers to the General Division: Under current law, when a juvenile court considers a discretionary bindover, section 2152.12(B) of the Revised Code states that the court “may” transfer the case to the general division court if, among other things, the court finds that the child is not amenable to care or rehabilitation within the juvenile system “and” that the safety of the community may require that the child be subject to adult sanctions. In House Bill 86, the General Assembly enacted a similar provision for the transfer of cases back to the general division after a return bindover. Specifically, under section 2152.121(B)(3)(b) of the Revised Code, when a case is sent back to juvenile court under the return bindover process, the prosecutor may file a motion objecting to the juvenile court’s imposition of a sentence and requesting that the sentence of the general division be imposed. The statute goes on to say that the court “shall” transfer the case back to the general division court if the court finds that the child is not amenable to care or rehabilitation within the juvenile system “or” that the safety of the community may require that the child be subject only to adult sanctions. Ohio judges would like to amend section 2152.121 to make it consistent with the procedure found in section 2152.12.

Presumption of Competence: Section 2152.52(A)(2) creates a rebuttable presumption that a child who is 14 years of age or older and who is not otherwise found to be mentally ill, intellectually disabled, or developmentally disabled does not have a lack of mental capacity for purposes of the juvenile competency statute. Ohio judges believe that this presumption creates an artificial barrier regarding competency, that age is irrelevant to the question of whether a person is competent or incompetent to stand trial, and that the presumption should, therefore, be eliminated.

Competency Time Frames: Sections 2152.53, 2152.54, 2152.55, and 2152.58 all contain specific, mandatory time frames for the completion of certain events related to a competency determination. While judges appreciate the need to proceed promptly with competency determinations, the current time frames may prove difficult to meet given court dockets, the availability of competency professionals, and the nature of certain cases. Because of this, Ohio judges would like the authority to extend these time frames for good cause shown.

## RECOMMENDATION

### **2152.121 Retention of jurisdiction for purposes of making disposition.**

(A) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of section 2152.12 of the Revised Code, the juvenile court that transferred the case shall retain jurisdiction for purposes of making disposition of the child when required under division (B) of this section.

(B) If a complaint is filed against a child alleging that the child is a delinquent child, if the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of section 2152.12 of the Revised Code, and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined as follows:

- (1) The court in which the child is convicted of or pleads guilty to the offense shall 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 that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of the case or division (B) of that section would have allowed discretionary transfer of the case. The court shall not consider the factor specified in division (B)(3) of section 2152.12 of the Revised Code in making its determination under this division.
- (2) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case, and division (B) of that section would not have allowed discretionary transfer of the case, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case, and the juvenile court shall impose one or more traditional juvenile dispositions upon the child under sections 2152.19 and 2152.20 of the Revised Code. The child may waive the transfer of the case back to the juvenile court under this division if the court finds that the waiver is competently and intelligently made.
- (3) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case but division (B) of that section would have allowed discretionary transfer of the case, the court shall determine the sentence it believes should be imposed upon the child under Chapter 2929. of the Revised Code, shall impose that sentence upon the child, and shall stay that sentence pending completion of the procedures specified in this division. Upon imposition and staying of the sentence, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case and the juvenile court shall proceed in accordance with this division. The child may waive the transfer of the case back to juvenile court under this division if the court finds that the waiver is competently and intelligently made.

In no case may the child waive a right to a hearing of the type described in division (B)(3)(b) of this section, regarding a motion filed as described in that division by the prosecuting attorney in the case. Upon transfer of jurisdiction of the case back to the juvenile court, both of the following apply:

- (a) Except as otherwise provided in division (B)(3)(b) of this section, the juvenile court ~~shall~~ may impose a serious youthful offender dispositional sentence upon the child under division (D)(1) of section 2152.13 of the Revised Code. In imposing the adult portion of that sentence, the juvenile court shall consider and give preference to the sentence imposed upon the child by the court in which the child was convicted of or pleaded guilty to the offense. Upon imposing a serious youthful offender dispositional sentence upon the child as described in this division, the juvenile court shall notify the court in which the child was convicted of or pleaded guilty to the offense, the sentence imposed upon the child by that court shall terminate, the court and all other agencies that have any record of the conviction of the child shall expunge the conviction or guilty plea and all records of it, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have never occurred, and the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have been a delinquent child adjudication of the child.
  
- (b) Upon the transfer, the prosecuting attorney in the case may file a motion in the juvenile court that objects to the imposition of a serious youthful offender dispositional sentence upon the child and requests that the sentence imposed upon the child by the court in which the child was convicted of or pleaded guilty to the offense be invoked. Upon the filing of a motion under this division, the juvenile court shall hold a hearing to determine whether the child is not amenable to care or rehabilitation within the juvenile system and whether the safety of the community may require that the child be subject solely to adult sanctions. If the juvenile court at the hearing finds that the child is not amenable to care or rehabilitation within the juvenile system ~~or~~ and that the safety of the community may require that the child be subject solely to adult sanctions, the court ~~shall~~ may grant the motion. Absent such a finding, the juvenile court shall deny the motion. In making its decision under this division, the juvenile court shall consider the factors listed in division (D) of section 2152.12 of the Revised Code as factors indicating that the motion should be granted, shall consider the factors listed in division (E) of that section as factors indicating that the motion should not be granted, and shall consider whether the applicable factors listed in division (D) of that section outweigh the applicable factors listed in division (E) of that section.

If the juvenile court grants the motion of the prosecuting attorney under this division, the juvenile court shall transfer jurisdiction of the case back to the court in which the child was convicted of or pleaded guilty to the offense, and the sentence imposed by that court shall be invoked. If the juvenile court denies the motion of the prosecuting attorney under this section, the juvenile court shall impose a serious youthful offender dispositional sentence upon the child in accordance with division (B)(3)(a) of this section.

- (4) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of the case, the court shall impose sentence upon the child under Chapter 2929. of the Revised Code.

## **2152.52 Determination of competency.**

(A)(1) In any proceeding under this chapter other than a proceeding alleging that a child is a juvenile traffic offender, any party or the court may move for a determination regarding the child's competency to participate in the proceeding.

~~(2) In any proceeding under this chapter other than a proceeding alleging that a child is a juvenile traffic offender, if the child who is the subject of the proceeding is fourteen years of age or older and if the child is not otherwise found to be mentally ill, intellectually disabled, or developmentally disabled, it is rebuttably presumed that the child does not have a lack of mental capacity. This presumption applies only in making a determination as to whether the child has a lack of mental capacity and shall not be used or applicable for any other purpose.~~

(B) The court may find a child incompetent to proceed without ordering an evaluation of the child's competency or holding a hearing to determine the child's competency if either of the following applies:

- (1) The prosecuting attorney, the child's attorney, and at least one of the child's parents, guardians, or custodians agree to the determination.
- (2) The court relies on a prior court determination that the child was incompetent and could not attain competency even if the child were to participate in competency attainment services.

## **2152.53 Time periods for determination; hearing.**

(A) Within fifteen business days after a motion is made under section 2152.52 of the Revised Code, the court shall do one of the following, unless the time is extended by the court for good cause shown:

- (1) Make a determination of incompetency under division (B) of section 2152.52 of the Revised Code;
- (2) Determine, without holding a hearing, whether there is a reasonable basis to conduct a competency evaluation;
- (3) Hold a hearing to determine whether there is a reasonable basis to conduct a competency evaluation.

(B) If the court holds a hearing, it shall make its determination within ten business days after the conclusion of the hearing unless the time is extended by the court for good cause shown. If the court determines that there is a reasonable basis for a competency evaluation or if the prosecuting attorney and the child's attorney agree to an evaluation, the court shall order a competency evaluation and appoint an evaluator.

## **2152.54 Evaluators; qualifications.**

(A) An evaluation of a child who does not appear to the court to be a person who is at least moderately intellectually disabled shall be made by an evaluator who is one of the following:

- (1) A professional employed by a psychiatric facility or center certified by the department of mental health and addiction services to provide forensic services and appointed by the director of the facility or center to conduct the evaluation;
- (2) A psychiatrist or a licensed clinical psychologist who satisfies the criteria of division (I) of section 5122.01 of the Revised Code and has specialized education, training, or experience in forensic evaluations of children or adolescents.

(B) An evaluation of a child who appears to the court to be a person who is at least moderately intellectually disabled shall be made by a psychiatrist or licensed clinical psychologist who satisfies the criteria of division (I) of section 5122.01 of the Revised Code and has specialized education, training, or experience in forensic evaluations of children or adolescents who have intellectual disability.

(C) If an evaluation is conducted by an evaluator of the type described in division (A)(1) or (2) of this section and the evaluator concludes that the child is a person who is at least moderately intellectually disabled, the evaluator shall discontinue the evaluation and notify the court within one business day after reaching the conclusion. Within two business days after receiving notification, the court shall order the child to undergo an evaluation by an evaluator of the type described in division (B) of this section unless the time is extended by the court for good cause shown. Within two business days after the appointment of the new evaluator, the original evaluator shall deliver to the new evaluator all information relating to the child obtained during the original evaluation.

## **2152.55 Evaluation process.**

(A) If a court orders a child to receive an evaluation under section 2152.53 of the Revised Code, the child and the child's parents, guardians, or custodians shall be available at the times and places established by the evaluator who conducts the evaluation. The evaluation shall be performed in the least restrictive setting available that will both facilitate an evaluation and maintain the safety of the child and community. If the child has been released on temporary or interim orders and refuses or fails to submit to the evaluation, the court may amend the conditions of the orders in whatever manner necessary to facilitate an evaluation.

(B) The court shall provide in its evaluation order that the evaluator shall have access to all relevant private and public records related to the child, including competency evaluations and reports conducted in prior delinquent child proceedings. The court may include an order for all relevant private and public records related to the child in the journal entry ordering the evaluation.

(C) Within ten business days after the court appoints an evaluator, the prosecuting attorney shall deliver to the evaluator copies of relevant police reports and other background information that pertain to the child and that are in the prosecuting attorney's possession, except for any information that the

prosecuting attorney determines would, if released, interfere with the effective prosecution of any person or create a substantial risk of harm to any person.

(D) Within ten business days after the court appoints an evaluator, the child's attorney shall deliver to the evaluator copies of relevant police reports and other background information that pertain to the child and that are in the attorney's possession and that is not protected by attorney-client privilege.

## **2152.58 Hearing to determine competency.**

(A) Not less than fifteen nor more than thirty business days after receiving an evaluation under division (A) of section 2152.57 of the Revised Code or not less than fifteen nor more than thirty business days after receiving an additional evaluation under division (E) of that section, the court shall hold a hearing to determine the child's competency to participate in the proceeding unless the time is extended by the court for good cause shown.

(B) At a hearing held under this section, a competency assessment report may be admitted into evidence by stipulation. If the court contacts the evaluator to obtain clarification of the report contents, the court shall promptly inform all parties and allow each party to participate in each contact.

(C) In determining the competency of the child to participate in the proceeding, the court shall consider the content of all competency assessment reports admitted as evidence. The court may consider additional evidence, including, but not limited to, the court's own observations of the child's conduct and demeanor in the courtroom.

(D)(1) Except as otherwise provided in this division, the court shall make a written determination as to the child's competency or incompetency based on a preponderance of the evidence within fifteen business days after completion of the hearing. The court, by journal entry, may extend the period for making the determination for not more than fifteen additional days. If the court extends the period for making the determination, it shall make the written determination within the period as extended.

(2) The court shall not find a child incompetent to proceed solely because the child is receiving or has received treatment as a voluntary or involuntary mentally ill patient under Chapter 5122. of the Revised Code, is or has been institutionalized under Chapter 5123. of the Revised Code, or is receiving or has received psychotropic or other medication, even if the child might become incompetent to proceed without that medication.