

OHIO

CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

Juvenile Justice Committee

August 18, 2016

Agenda

- I. Call to Order
 - II. Approval of Meeting Notes of July 21, 2016 meeting
 - IV. Mandatory Bindovers
 - Discussion and vote on draft language (attached)
 - V. Probation (length of time)
 - Discussion of work chart agenda item (Beeler)
 - VI. Post-Dispositional Detention Time
 - Discussion of work chart agenda item (Hamm)
 - VII. Adjourn
-

Upcoming Meetings

Ohio Criminal Sentencing Commission September 22, 2016

Juvenile Justice committee October 20, 2016

Juvenile Justice Subcommittee

July 21, 2016

Meeting Notes

Attending:	Paul Dobson, Chair	Jim Cole
	Rep. Hearcel Craig	Judge Robert DeLamatre
	Kate Foulke	Linda Janes
	Rep. Dorothy Pelanda	Kyle Petty
	Director Harvey Reed	Judge Nick Selvaggio
	Sara Andrews, OCSC	Jo Ellen Cline, OCSC
	Lucy Chandler	Laura Austen
	Brooklyn Russell	Phyllis Warden

1. Chair Dobson called the meeting to order at 10:06 a.m.
2. Upon motion and second the committee approved the meeting notes of the May 19, 2016 meeting as submitted.
3. The committee continued its discussion of mandatory bindovers focusing on the last two suggested factors from the list provided by Vice-Chair Davies. On the factor of overall youth development committee members felt that the same ideas were covered in the previously approved factor regarding "child characteristics". Some members expressed that the suggested language was not a factor but was instead a policy statement and why the juvenile court exists to begin with. Also, a member pointed out that the language regarding whether or not there is proper programming in the juvenile system or adult system is covered in another factor. Upon motion and second it was unanimously agreed that this factor should not be added to the statute. The committee then discussed potential bright line restrictions to bindovers including: the crime had to be felony and the youth does not have a developmental disability or an IQ of less than 70. Some discussion was had over the IQ factor and whether or not making a presumption against binding the youth over if they have a low IQ would be better than a bright line prohibition. Committee members expressed that low IQ may be covered by other factors already included in the draft. Other members expressed that IQ may be considered but is not considered strongly enough when it should be. Committee members want to determine if DRC has data on the number of 16 – 24 years old in their custody have a less than 70 IQ. The issue as tabled until more information can be gathered. The committee plans to vote on the entire mandatory bindover proposal in August.

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4. The committee turned its attention to mandatory sentences. The questions before the committee are whether or not there should be mandatory sentences in juvenile court and if there needs to be clarification about confinement credit counting against mandatory time? DYS made it clear that it has already changed its confinement credit policy comply with the 10th District decision in *M.A. v. DYS*. Judge Delamatre indicated that specifications (gun, etc.) aren't really mandatory because a judge has discretion to give a specification mandatory term but then give them early release. Ms. Austen indicated that the Criminal recodification committee is also discussing mandatory sentences. Kyle Petty suggested he would draft some potential language for the committee's consideration. The committee also decided it would not change anything regarding confinement credit at this time.
5. Review of Committee Work chart
 - a. Sexting – the Criminal Justice Recodification Committee is discussing this issue even in the context of juveniles so the juvenile justice committee has decided to not move forward until a proposal is made by that committee.
 - b. Probation – The Criminal Justice Recodification Committee has suggested limits on the length of supervision in adult cases. The committee discussed youth lingering on probation because of financial sanctions including restitution and the lack of a mechanism to address indefinite probation for juveniles. This topic will be the next tackled by the committee.
 - c. Post-dispositional time – The committee discussed reverse bindover situations but will ask Ms. Hamm for a summary of the issue she would like to see resolved before moving forward.
 - d. Juvenile records – the committee will keep this issue on its agenda and monitor and consult with the Ad Hoc Committee on Rights Restoration on its work as it pertains to juveniles.
6. The committee addressed the issuance of a report by the Juvenile Justice Coalition regarding the lack of data regarding juvenile court cases. Committee members expressed grave concerns that they were not apprised of the imminent release of the report and that the report, in their opinion, had gaps and incorrect information. Data collection is an ongoing issue of interest to the committee.



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7. There being no further business to come before the committee, the committee adjourned at 12:10 p.m.

DRAFT

1 **2152.10 Mandatory and discretionary transfers.**

2 ~~(A) A child who is alleged to be a delinquent child is eligible for mandatory transfer and shall be~~
3 ~~transferred as provided in section 2152.12 of the Revised Code in any of the following~~
4 ~~circumstances:~~

5 ~~(1) The child is charged with a category one offense and either of the following apply:~~

6 ~~(a) The child was sixteen years of age or older at the time of the act charged.~~

7 ~~(b) The child was fourteen or fifteen years of age at the time of the act charged and previously was~~
8 ~~adjudicated a delinquent child for committing an act that is a category one or category two offense~~
9 ~~and was committed to the legal custody of the department of youth services upon the basis of that~~
10 ~~adjudication.~~

11 ~~(2) The child is charged with a category two offense, other than a violation of section 2905.01 of~~
12 ~~the Revised Code, the child was sixteen years of age or older at the time of the commission of the~~
13 ~~act charged, and either or both of the following apply:~~

14 ~~(a) The child previously was adjudicated a delinquent child for committing an act that is a category~~
15 ~~one or a category two offense and was committed to the legal custody of the department of youth~~
16 ~~services on the basis of that adjudication.~~

17 ~~(b) The child is alleged to have had a firearm on or about the child's person or under the child's~~
18 ~~control while committing the act charged and to have displayed the firearm, brandished the firearm,~~
19 ~~indicated possession of the firearm, or used the firearm to facilitate the commission of the act~~
20 ~~charged.~~

21 ~~(3) Division (A)(2) of section 2152.12 of the Revised Code applies.~~

22 ~~(B) Unless the child is subject to mandatory transfer, if a child is fourteen years of age or older at~~
23 ~~the time of the act charged and if the child is charged with an act that would be a felony if~~
24 ~~committed by an adult, the child is eligible for ~~discretionary~~ transfer to the appropriate court for~~
25 ~~criminal prosecution. In determining whether to transfer the child for criminal prosecution, the~~
26 ~~juvenile court shall follow the procedures in section 2152.12 of the Revised Code. If the court does~~
27 ~~not transfer the child and if the court adjudicates the child to be a delinquent child for the act~~
28 ~~charged, the court shall issue an order of disposition in accordance with this~~
29 ~~chapter section 2152.11 of the Revised Code.~~

30 **2152.12 Transfer of cases.**

31 ~~(A)~~

32 ~~(1)~~

33 ~~(a) After a complaint has been filed alleging that a child is a delinquent child for committing an~~
34 ~~act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder~~
35 ~~if committed by an adult, the juvenile court at a hearing shall transfer the case if either of the~~
36 ~~following applies:~~

37 ~~(i) The child was sixteen or seventeen years of age at the time of the act charged and there is~~
38 ~~probable cause to believe that the child committed the act charged.~~

39 ~~(ii) The child was fourteen or fifteen years of age at the time of the act charged, section 2152.10 of~~
40 ~~the Revised Code provides that the child is eligible for mandatory transfer, and there is probable~~
41 ~~cause to believe that the child committed the act charged.~~

42 ~~(b) After a complaint has been filed alleging that a child is a delinquent child by reason of~~
43 ~~committing a category two offense, the juvenile court at a hearing shall transfer the case if the~~
44 ~~child was sixteen or seventeen years of age at the time of the act charged and either of the following~~
45 ~~applies:~~

46 ~~(i) Division (A)(2)(a) of section 2152.10 of the Revised Code requires the mandatory transfer of~~
47 ~~the case, and there is probable cause to believe that the child committed the act charged.~~

48 ~~(ii) Division (A)(2)(b) of section 2152.10 of the Revised Code requires the mandatory transfer of~~
49 ~~the case, and there is probable cause to believe that the child committed the act charged.~~

50 ~~(2) The juvenile court also shall transfer a case in the circumstances described in division (C)(5)~~
51 ~~of section 2152.02 of the Revised Code or if either of the following applies:~~

52 ~~(a) A complaint is filed against a child who is eligible for a discretionary transfer under~~
53 ~~section 2152.10 of the Revised Code and who previously was convicted of or pleaded guilty to a~~
54 ~~felony in a case that was transferred to a criminal court.~~

55 ~~(b) A complaint is filed against a child who is domiciled in another state alleging that the child is~~
56 ~~a delinquent child for committing an act that would be a felony if committed by an adult, and, if~~
57 ~~the act charged had been committed in that other state, the child would be subject to criminal~~
58 ~~prosecution as an adult under the law of that other state without the need for a transfer of~~
59 ~~jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.~~

60 ~~(3) If a complaint is filed against a child alleging that the child is a delinquent child and the case~~
61 ~~is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of this section and if the child~~
62 ~~subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed~~
63 ~~or disposition to be made of the child shall be determined in accordance with section 2152.121 of~~
64 ~~the Revised Code.~~

65 ~~(B) Except as provided in division (A) of this section,~~

66 (A) After a complaint has been filed alleging that a child is a delinquent child for committing an
67 act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer
68 the case if the court finds all of the following:

69 (1) The child was fourteen years of age or older at the time of the act charged.

70 (2) There is probable cause to believe that the child committed the act charged.

71 (3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of
72 the community may require that the child be subject to adult sanctions. In making its decision
73 under this division, the court shall consider ~~whether~~ the applicable factors under division (C) of
74 this section, ~~indicating that the case should be transferred outweigh the applicable factors under~~
75 ~~division (E) of this section indicating that the case should not be transferred.~~ The record shall
76 indicate the specific factors that were applicable and that the court weighed.

77 (B) Before considering a transfer under division (B) of this section, the juvenile court shall order
78 an investigation into the child's social history, education, family situation, and any other factor
79 bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination
80 of the child by a public or private agency or a person qualified to make the examination. The
81 investigation shall be completed and a report on the investigation shall be submitted to the court
82 as soon as possible but not more than forty-five calendar days after the court orders the
83 investigation. The court may grant one or more extensions for a reasonable length of time. The
84 child may waive the examination required by this division if the court finds that the waiver is
85 competently and intelligently made. Refusal to submit to a mental examination by the child
86 constitutes a waiver of the examination.

87 (C) In considering whether to transfer a child under division (B) of this section, the juvenile court
88 shall consider the following relevant factors, ~~and any other relevant factors, in favor of a transfer~~
89 ~~under that division:~~

90 (1) The risk level of the child as determined by a standardized, evidence-based risk assessment
91 tool as endorsed by the Ohio Department of Youth Services and administered by a trained court
92 professional;

93
94 (2) The level of harm to the victim in the alleged act of the child, including:

95
96 (a) The level of physical, psychological, or serious economic harm suffered by the victim or
97 whether the child did not cause physical harm to any person or property, or have reasonable cause
98 to believe that harm of that nature would occur;

99
100 (b) Whether the physical or psychological harm suffered by the victim was exacerbated because
101 of the physical or psychological vulnerability or age of the victim;

102
103 (3) The role of the victim, including:

104
105 (a) Whether the child's relationship with the victim facilitated the act charged

106 (b) Whether the victim induced or facilitated the act charged or the child acted under provocation
107 in allegedly committing the act charged.

108 (4) The circumstances of the offense, including:

109
110 (a) The child was not the principal actor in the act charged, or, at the time of the act charged, the
111 child was under the negative influence or coercion of another person.

112
113 (b) The child allegedly committed the act charged or hire or as part of a gang;

114
115 (c) The child did or did not have a firearm on or about the child's person or under the child's
116 control at the time of the act charged, the act charged is not a violation of section 2923.12 of the
117 Revised Code, and the child, during the commission of the act charged, allegedly used or
118 displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm

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

122 (6) The availability of a reasonable and appropriate juvenile sanction or program that has not been
123 utilized.

124
125 (7) The child's individual developmental characteristics, including whether:

126
127 (a) The child is emotionally, physically, or psychologically mature enough for transfer;

128
129 (b) The child has a behavioral health issue, including a mental illness, substance abuse disorder,
130 or developmental disability;

131
132 (c) The child's background, including family and environment, and trauma history; and

133
134 (d) There is sufficient time to rehabilitate the child within the juvenile system.

135 ~~(1) The victim of the act charged suffered physical or psychological harm, or serious economic~~
136 ~~harm, as a result of the alleged act.~~

137 ~~(2) The physical or psychological harm suffered by the victim due to the alleged act of the child~~
138 ~~was exacerbated because of the physical or psychological vulnerability or the age of the victim.~~

139 ~~(3) The child's relationship with the victim facilitated the act charged.~~

140 ~~(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized~~
141 ~~criminal activity.~~

142 ~~(5) The child had a firearm on or about the child's person or under the child's control at the time~~
143 ~~of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and~~

144 ~~the child, during the commission of the act charged, allegedly used or displayed the firearm,~~
145 ~~brandished the firearm, or indicated that the child possessed a firearm.~~

146 ~~(6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent~~
147 ~~child, was under a community control sanction, or was on parole for a prior delinquent child~~
148 ~~adjudication or conviction.~~

149 ~~(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the~~
150 ~~child will not occur in the juvenile system.~~

151 ~~(8) The child is emotionally, physically, or psychologically mature enough for the transfer.~~

152 ~~(9) There is not sufficient time to rehabilitate the child within the juvenile system.~~

153 ~~(E) In considering whether to transfer a child under division (B) of this section, the juvenile court~~
154 ~~shall consider the following relevant factors, and any other relevant factors, against a transfer under~~
155 ~~that division:~~

156 ~~(1) The victim induced or facilitated the act charged.~~

157 ~~(2) The child acted under provocation in allegedly committing the act charged.~~

158 ~~(3) The child was not the principal actor in the act charged, or, at the time of the act charged, the~~
159 ~~child was under the negative influence or coercion of another person.~~

160 ~~(4) The child did not cause physical harm to any person or property, or have reasonable cause to~~
161 ~~believe that harm of that nature would occur, in allegedly committing the act charged.~~

162 ~~(5) The child previously has not been adjudicated a delinquent child.~~

163 ~~(6) The child is not emotionally, physically, or psychologically mature enough for the transfer.~~

164 ~~(7) The child has a mental illness or is a mentally retarded person.~~

165 ~~(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of~~
166 ~~security available in the juvenile system provides a reasonable assurance of public safety.~~

167 ~~(F) *Note: there is a pending Ohio Supreme Court case on this language* If one or more~~
168 ~~complaints are filed alleging that a child is a delinquent child for committing two or more acts that~~
169 ~~would be offenses if committed by an adult, if a motion is made alleging that division (A) of this~~
170 ~~section applies and requires that the case or cases involving one or more of the acts charged be~~
171 ~~transferred for, and if a motion also is made requesting that the case or cases involving one or more~~
172 ~~of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in~~
173 ~~deciding the motions, shall proceed in the following manner:~~

174 (1) Initially, the court shall decide the motion alleging that division (A) of this section applies and
175 requires that the case or cases involving one or more of the acts charged be transferred.

176 (2) If the court determines that division (A) of this section applies and requires that the case or
177 cases involving one or more of the acts charged be transferred, the court shall transfer the case or
178 cases in accordance with that division. After the transfer pursuant to division (A) of this section,
179 the court shall decide, in accordance with division (B) of this section, whether to grant the motion
180 requesting that the case or cases involving one or more of the acts charged be transferred pursuant
181 to that division. Notwithstanding division (B) of this section, prior to transferring a case pursuant
182 to division (A) of this section, the court is not required to consider any factor specified in division
183 (D) or (E) of this section or to conduct an investigation under division (C) of this section.

184 (3) If the court determines that division (A) of this section does not require that the case or cases
185 involving one or more of the acts charged be transferred, the court shall decide in accordance with
186 division (B) of this section whether to grant the motion requesting that the case or cases involving
187 one or more of the acts charged be transferred pursuant to that division.

188 (4) No report on an investigation conducted pursuant to division (C) of this section shall include
189 details of the alleged offense as reported by the child.

190 (G) The court shall give notice in writing of the time, place, and purpose of any hearing held
191 pursuant to division (A) or (B) of this section to the child's parents, guardian, or other custodian
192 and to the child's counsel at least three days prior to the hearing.

193 (H) A child who has been found not amenable to care or rehabilitation within the juvenile system
194 under division (B) of this section has a right to appeal the transfer under R.C. 2505.02(B)(8). Upon
195 issuing the order for transfer, the juvenile court shall immediately stay the transfer for a period of
196 fourteen days, unless waived by the child.

197 (HI) No person, either before or after reaching eighteen years of age, shall be prosecuted as an
198 adult for an offense committed prior to becoming eighteen years of age, unless the person has been
199 transferred as provided in division (A) or (B) of this section or unless division (J) of this section
200 applies. Any prosecution that is had in a criminal court on the mistaken belief that the person who
201 is the subject of the case was eighteen years of age or older at the time of the commission of the
202 offense shall be deemed a nullity, and the person shall not be considered to have been in jeopardy
203 on the offense.

204 (IJ) Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall
205 state the reasons for the transfer on the record, and shall order the child to enter into a recognizance
206 with good and sufficient surety for the child's appearance before the appropriate court for any
207 disposition that the court is authorized to make for a similar act committed by an adult. The transfer
208 abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the
209 complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be
210 discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to
211 which it is transferred as described in division (H) of section 2151.23 of the Revised Code.

212 (JK) If a person under eighteen years of age allegedly commits an act that would be a felony if
213 committed by an adult and if the person is not taken into custody or apprehended for that act until
214 after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to
215 hear or determine any portion of the case charging the person with committing that act. In those
216 circumstances, divisions (A) and (B) of this section do not apply regarding the act, and the case
217 charging the person with committing the act shall be a criminal prosecution commenced and heard
218 in the appropriate court having jurisdiction of the offense as if the person had been eighteen years
219 of age or older when the person committed the act. All proceedings pertaining to the act shall be
220 within the jurisdiction of the court having jurisdiction of the offense, and that court has all the
221 authority and duties in the case as it has in other criminal cases in that court.

JUVENILE JUSTICE COMMITTEE WORK CHART

<u>Category</u>	<u>Issue</u>	<u>Last Action</u>	<u>Project Status</u>	<u>Responsible Person</u>	<u>Next Action</u>
3-6 month	Mandatory bindovers – eliminate or limit	Discussion	Pending	Jo Ellen Erin Davies	Draft language for consideration at August meeting
3-6 month	Mandatory sentences	Discussion	Pending	Jo Ellen Erin Davies	Discussion at August committee meeting
6-12 Month	Probation (Length of time)	Discussion	Pending	Jill Beeler	Discussion at August meeting
6-12 Month	Post-Dispositional Detention Time	Discussion	Pending	Kathleen Hamm	Need further clarification of the issue.
6-12 month	Sexting	Discussion	Pending	Members	Wait on Ohio Criminal Justice Recodification Committee proposals
6-12 Month	Truancy		Pending	Jo Ellen Scott Lundregan	Monitor HB 410

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<u>Category</u>	<u>Issue</u>	<u>Last Action</u>	<u>Project Status</u>	<u>Responsible Person</u>	<u>Next Action</u>
6-12 Month	Juvenile Records - sealing, expungement	Discussion	Pending		Gather information

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<u>Category</u>	<u>Issue</u>	<u>Last Action</u>	<u>Project Status</u>	<u>Responsible Person</u>	<u>Next Action</u>
COMPLETED	Address juvenile court costs – assessment & collection	Restitution language approved.	COMPLETED	Jo Ellen	
COMPLETED	Extended sentence review (Juvenile)	SB 272 introduced in February 2016	COMPLETED	Jo Ellen Jill Beeler-Andrews	
COMPLETED	Juvenile confinement credit	Language approved by committee	COMPLETED	Jo Ellen Director Reed	
COMPLETED	JSORN	Committee decided not to make any recommendations to Recodification Committee	COMPLETED	Jo Ellen	
COMPLETED	Mandatory shackling	Comment on proposed Sup.R. 5.01 re: juvenile restraints submitted	COMPLETED	Members	Sup.R. 5.01 adopted by Supreme Court (Eff. 7/1/16)