



OHIO

CRIMINAL SENTENCING COMMISSION

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

Juvenile Justice Subcommittee

April 21, 2016

Meeting Notes

Attending:	Erin Davies, Vice-Chair	Jill Beeler
	Ron Burkitt	Jim Cole
	Rep. Hearcel Craig	Judge Robert DeLamatre
	Judge Robert Fragale	Kathleen Hamm
	Teresa Lampl	Ashon McKenzie
	Rep. Dorothy Pelanda	Kyle Petty
	Director Harvey Reed	Senator Cecil Thomas
	Judge Nick Selvaggio	Kathy Wellington
	David Roper	Judge Ken Spanagel
	Sara Andrews, OCSC	Jo Ellen Cline, OCSC

1. Vice-Chair Davies called the meeting to order at 10:00 a.m.
2. Upon motion and second the meeting notes from the March 3, 2016 were approved as submitted.
3. Ms. Cline corrected a misprint on the next full Commission meeting date. The correct date is June 23, 2016. Ms. Cline updated the committee on work of the Juvenile Justice committee of the Supreme Court Advisory Committee on Children and Families. Finally Ms. Cline noted that sponsor testimony on S.B. 272 (Juvenile LWOP) had been given by Senators Eklund and Thomas and was well received by the Senate State and Government Oversight Committee.
4. Ms. Beeler updated the committee on the oral argument held in *State v. Aalim* on April 20, 2016.
5. The committee turned its attention to mandatory bindovers. The discussion began with a provision in the proposed draft that allows a juvenile to pursue an interlocutory appeal of the bindover decision. Judges expressed concern that the provision would cause a significant delay in the proceedings subjecting a juvenile to extended time in detention while awaiting the Court of Appeals decision. Ms. Beeler acknowledged that the drafters were cognizant of the same concern and suggested that the interlocutory appeal be subject to placement on the accelerated docket at the Court of Appeals. Discussion regarding the effectiveness of that remedy ensued. Upon a motion to approve the interlocutory appeal language and a second, the motion carried 7 – 6.



6. The committee next discussed the factors a judge should consider in mitigation of the decision to transfer a juvenile to adult court. The committee unanimously agreed to the proposed revisions to (E)(1) which simply combined two previously separate factors. The committee next discussed the addition of language to (E)(3) which would have the court consider if the child had an adult codefendant. Concerns were raised that the situation is already covered by the existing language. Discussion continued about adding an age limit because a 19 or 20 year old might be influenced by a 17 year old even though they are an "adult". Upon motion and second to include the language as proposed, the motion failed 4 – 9.
7. The committee discussed new division (6) which adds consideration of a program or sanction existing that had not been utilized. A concern was expressed regarding the breadth of the language. Proponents argued that it adds protection for the juvenile judge. Another concern was expressed that the proponents were adding language already covered by other factors – in this case the ninth factor which requires consideration of whether there is sufficient time to rehabilitate the child in the juvenile system. Ms. Beeler argued that the ninth factor is generally just a number and not whether available programs had been utilized. Upon motion and second the language was approved with the addition of "reasonable and appropriate" before the word "program" (12 -1).
8. The committee discussed division (8) which changes the phrase "mentally retarded person" to "has a developmental disability". Discussion ensued surrounding the inclusiveness of that phrase and also whether or not substance abuse should be included. Ms. Lampl was helpful in explaining how various terms are used in the mental health field. Upon motion and second the proposed language was amended to say "The child has a behavioral health issue including mental illness, substance use disorder, and/or a developmental disability" and accepted unanimously.
9. The committee then turned its attention to the factors that were drafted by Ms. Davies. The first significant suggestion was to put all of the factors into one list instead of separating them, as they are now, into aggravating and mitigating factors. After lengthy discussion it was decided that a side-by-side comparison with the changes to the existing statute already agreed to by the committee would be helpful. Ms. Davies and Ms. Beeler will prepare the comparison for the May meeting. In discussing some of the specific new factors included in Ms. Davies draft the committee had a discussion of the Ohio Youth Assessment System (OYAS). There was consensus that risk level may be something that should be considered if the factors are considered into one list. The committee



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also discussed a suggested factor regarding the child's background and home environment and any trauma in the child's history. Ms. Lampl indicated that "trauma" can have many different meanings to different groups of people. Finally, committee discussed inclusion of consideration of the impact of transferring a youth to the adult system. There was a lengthy discussion of the lack of resources for treating juveniles and the difficulties associated with multi-system youth.

10. With no further business, the committee adjourned at 12:33 p.m.

DRAFT

**Proposed Bindover Factors:
April 2016**

Issue	Current Factors + April Mtg. Changes	Combined Factors + New Suggestions
<p>Victim</p> <p>(D) for transfer (E) against transfer</p>	<p>(D)(1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act- <u>or t</u></p> <p>(2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.</p> <p>(D)(3) The child's relationship with the victim facilitated the act charged.</p> <p>(E)(1) The victim induced or facilitated the act charged.</p> <p>(E)(2) The child acted under provocation in allegedly committing the act charged.</p> <p>E)(4) 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, in allegedly committing the act charged.</p>	<p>(2) The level of harm to the victim in the alleged act of the child, including:</p> <p>(a) The level of physical, psychological, or serious economic harm suffered by the victim 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;</p> <p>(b) Whether the physical or psychological harm suffered by the victim was exacerbated because of the physical or psychological vulnerability or age of the victim;</p> <p>(3) The role of the victim, including:</p> <p>(a) Whether the child's relationship with the victim facilitated the act charged</p> <p>(b) Whether the victim induced or facilitated the act charged or the child acted under provocation in allegedly committing the act charged.</p>
<p>Offense circumstances</p>	<p>(D)(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.</p> <p>(D)(5) The child had 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 a violation of section <u>2923.12</u> of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.</p> <p>(E)(3) The child was not the principal 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.</p>	<p>(4) The circumstances of the offense, including:</p> <p>(a) The child was not the principal 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.</p> <p>(b) The child allegedly committed the act charged or hire or as part of a gang;</p> <p>(c) The child had 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 a violation of section <u>2923.12</u> of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm</p>

Issue	Current Factors + April Mtg. Changes	Combined Factors + New Suggestions
Prior court involvement	<p>(D)(6) At the time of the act charged, the child 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.</p> <p>(D)(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.</p> <p>(E)(5) The child previously has not been adjudicated a delinquent child.</p> <p><u>NEW: (E)(6) The availability of a reasonable and appropriate juvenile sanction or program that has not been utilized.</u></p>	<p>(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 juvenile court and the availability of a reasonable and appropriate juvenile sanction or program that has not yet been utilized;</p>
Child's characteristics	<p>(D)(8) The child is emotionally, physically, or psychologically mature enough for the transfer.</p> <p>(D)(9) There is not sufficient time to rehabilitate the child within the juvenile system.</p> <p>(E)(6) The child is not emotionally, physically, or psychologically mature enough for the transfer.</p> <p>(E)(7) The child has a <u>behavioral health issue, including a mental illness, substance abuse disorder, or developmental disability. mental illness or is a mentally retarded person.</u></p> <p>(E)(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.</p>	<p>(6) The child's individual developmental characteristics, including:</p> <p>(a) Whether the child is emotionally, physically, or psychologically mature enough for transfer;</p> <p>(b) The child has a <u>behavioral health issue, including a mental illness, substance abuse disorder, or developmental disability. mental illness or is a mentally retarded person</u></p> <p>(c) The child's background, including family and environment, and trauma history.</p>
Risk level		<p>(1) The risk level of the child as determined by the Ohio Youth Assessment System administered by a trained court professional;</p>
Overall youth development		<p>(6) The overall developmental characteristics of children, including:</p> <p>(a) General characteristics of adolescent development, including diminished culpability, decreased deterrence,</p>

Issue	Current Factors + April Mtg. Changes	Combined Factors + New Suggestions
		<p>underdeveloped sense of responsibility, heightened risk taking and impulsivity, the transitory nature of children's character, and vulnerability to negative influence;</p> <p>(b) The relative ability of the juvenile justice system and the adult criminal justice system to provide age-appropriate programming and safety for the youth and the negative impacts of involvement in the adult criminal justice system, including the lack of access to age-appropriate program, the higher likelihood of sexual and physical abuse, and the likelihood of increased reoffending.</p> <p>Alternative framing: In considering whether to transfer a child under division (B) of this section, the court shall take into consideration the general characteristics of adolescent development, including children's diminished culpability, decreased deterrence, underdeveloped sense of responsibility, heightened risk taking and impulsivity, the transitory nature of children's character, and vulnerability to negative influence, and the relative ability of the juvenile justice system and the adult criminal justice system to provide age-appropriate programming and safety for the youth, including the adult system's lack of access to age-appropriate program, the higher likelihood of sexual and physical abuse, and the likelihood of increased reoffending. In addition, the juvenile court shall consider the following relevant factors, and any other relevant factors:</p>
Bright line restrictions		<p>(D) No child shall be transferred if the following factors are present:</p> <p>(1) The child has a developmental disability or intelligence quotient of less than 70; or</p> <p>(2) The child is not accused of a felony level offense.</p>



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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	Finalize for June OCSC meeting
3-6 month	Mandatory sentences	Discussion	Pending	Jo Ellen Erin Davies	Discussion at April committee meeting
6-12 month	Sexting	Discussion	Pending	Members	Gather information
6-12 Month	Truancy	Update on HB 410 given by John Ryan @ February meeting	Pending	Jo Ellen John Ryan Scott Lundregan	Monitor HB 410
6-12 Month	Probation (Length of time)	Discussion	Pending	Jill Beeler	Gather information
6-12 Month	Post-Dispositional Detention Time	Discussion	Pending	Kathleen Hamm	Gather information



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6-12 Month	Juvenile Records - sealing, expungement	Discussion	Pending		Gather information



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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)