



Ohio Legislative Service Commission

Bill Analysis

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H.B. 235

128th General Assembly
(As Introduced)

Reps. Heard, Domenick, Foley, Murray, Harris, Hagan, S. Williams, Newcomb, Boyd, Letson

BILL SUMMARY

- Replaces the provisions that authorize or, in certain cases, require a juvenile court to transfer an alleged delinquent child for criminal prosecution with provisions that authorize or require such a transfer only in the following circumstances: (1) if a child is alleged to be a delinquent child for committing an act that would be a felony offense of violence if committed by an adult, the juvenile court at a hearing may transfer the case for criminal prosecution if it finds that the child was 14 or older at the time of the act charged, there is probable cause to believe that the child committed the act charged, and the child is not amenable to care or rehabilitation within the juvenile system and the safety of the community may require that the child be subject to adult sanctions, (2) if a complaint is filed against a person who is deemed not to be a child either because the person previously was convicted of a felony in a case that was transferred to criminal court or because the person previously was adjudicated a delinquent child, had a serious youthful offender dispositional sentence imposed for that act, and had the adult portion of that sentence invoked, the juvenile court must transfer the case for criminal prosecution.
- Replaces the provisions that pertain to the eligibility of a child for a mandatory or discretionary serious youthful offender dispositional sentence with a provision that specifies that a child is eligible for a serious youthful offender disposition only if the child is adjudicated a delinquent child for committing an act that would be a felony offense of violence if committed by an adult, was 14 or older when the act was committed, and was not transferred to an appropriate court for criminal prosecution under the provisions described in the preceding dot point.
- Replaces a provision that specifies that a juvenile court does not have jurisdiction, after the transfer, to hear or determine a case of a child who is charged with an act

that would be an offense if committed by an adult, who was 14 or older and under 18 at the time of the alleged act, and whose case is transferred for criminal prosecution with a provision that specifies that a juvenile court does not have jurisdiction, after the transfer, to hear or determine the case of a child if either of the following applies: (1) the child is charged with an act that would be a felony offense of violence if committed by an adult, the child was 14 or older and under 18 at the time of the alleged act, and the case is transferred for criminal prosecution as described in the third preceding dot point, or (2) a complaint is filed against a person and the case is transferred for criminal prosecution in the circumstances described in clause (2) of the third preceding dot point.

- Makes the commitment of a delinquent child to the Department of Youth Services (DYS) for firearm-related and aggravated vehicular homicide-related specifications discretionary, specifies that they apply only if the court commits the delinquent child to the Department for the underlying delinquent act, eliminates the mandatory minimum from the commitments that currently provide a mandatory minimum, and replaces the current "accomplice" commitment provision with a new "complicity" commitment provision.
- Makes the commitment of a delinquent child to DYS for a criminal gang activity-related specification discretionary, eliminates the requirement that the court also commit the child to DYS for the underlying delinquent act, and eliminates the mandatory one-year minimum from the commitment.
- Specifies that a delinquent child who is committed to DYS for a firearm-related specification, an aggravated vehicular homicide-related specification, a criminal gang activity-related specification, or a body armor-related specification is eligible for judicial release from DYS during the commitment for the specification and the commitment for the underlying offense in accordance with new provisions for determining judicial release eligibility described in the next three dot points.
- Provides that a child committed to DYS, DYS, or the child's parent, when the child has not been institutionalized for the prescribed period of time imposed for a delinquent act that would be aggravated murder or murder if committed by an adult (until the child attains 21 years of age), the prescribed minimum period of time imposed for a delinquent act that would be any other felony, or the definite period or periods of commitment imposed for a specification plus the prescribed minimum period of time imposed as described in the preceding clause for the delinquent act that would be a felony, may request the court that committed the child to order a judicial release to court supervision or a judicial release to DYS supervision, and the child may be released from institutionalization in accordance with the provisions described in the next two dot points.

- Modifies the specified periods during which a delinquent child in DYS's custody is eligible for judicial release to court supervision so that: (1) except as provided in clause (3) of this paragraph, if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of age 21, the court may grant judicial release to court supervision during the first half of that prescribed minimum period of commitment, (2) except as provided in clause (4) of this paragraph, if the child was committed until the child attains age 21, the court may grant judicial release to court supervision during the first half of the prescribed period of commitment that begins on the first day of that commitment and ends on the child's 21st birthday, (3) if the child was committed for both one or more definite periods imposed for a specification, as described in the second preceding dot point, and a period of the type described in clause (1) of this paragraph, all of the prescribed periods of commitment imposed for a specification and the prescribed minimum period of commitment of the type described in clause (1) are aggregated and the court may grant judicial release to court supervision during the first half of that aggregate minimum period of commitment, and (4) if the child was committed for both one or more definite periods imposed for a specification, as described in the second preceding dot point, and a period of the type described in clause (2) of this paragraph, the court may grant judicial release to court supervision during the first half of the prescribed minimum period of commitment that begins on the first day of the first prescribed definite period of commitment imposed for a specification and ends on the child's 21st birthday.
- Modifies the specified periods during which a delinquent child in DYS's custody is eligible for judicial release to DYS supervision so that: (1) except as provided in clause (3) of this paragraph, if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of age 21, the court may grant judicial release to DYS supervision at any time after the expiration of the first half of that prescribed minimum period of commitment, (2) except as provided in clause (4) of this paragraph, if the child was committed until the child attains age 21, the court may grant judicial release to DYS supervision during the second half of the prescribed period of commitment that begins on the first day of that commitment and ends on the child's 21st birthday, (3) if the child was committed for both one or more definite periods imposed for a specification, as described in the third preceding dot point, and a period of the type described in clause (1) of this paragraph, all of the prescribed definite periods of commitment imposed for a specification and the prescribed minimum period of commitment of the type described in clause (1) are aggregated and the court may grant judicial release to DYS supervision at any time after the expiration of the first half of that aggregate minimum period of commitment, and (4) if the child was committed to DYS for both one or more definite periods imposed for a specification, as described

in the third preceding dot point, and a period of the type described in clause (2) of this paragraph, the court may grant judicial release to DYS supervision during the second half of the prescribed minimum period of commitment that begins on the first day of the first prescribed definite period of commitment imposed for a specification and ends on the child's 21st birthday.

- Adds an additional criterion that must be satisfied before DYS may assign a child to a home, facility, or other place for treatment or rehabilitation, after the child has been institutionalized for the prescribed minimum period of time under the applicable commitment, so that, in addition to the existing criteria, DYS may not assign a child to a home, facility, or other place under the provision until after the expiration of any term of commitment imposed on the child for a specification.
- Provides that DYS's Release Authority cannot release a child from institutional care and cannot discharge the child or order the child's release on supervised release prior to the expiration of the prescribed minimum period of time imposed (other than for an act that would be aggravated murder or murder) that specifies a minimum period of commitment for a child committed to DYS, prior to the expiration of all definite periods of commitment imposed for a specification plus the prescribed minimum period of time imposed as described in the preceding clause, or prior to the child's attainment of age 21, whichever is applicable under the order of commitment, other than pursuant to a judicial release.
- Regarding the discharge of a child, specifies that if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of age 21 and has been institutionalized for the prescribed minimum periods of time under the commitments, or was committed to DYS for both a definite period for a specification and for a prescribed minimum period and maximum period as described in the preceding clause and has been institutionalized for all of the definite periods for the specifications plus the prescribed minimum period, whichever is applicable, and if the Release Authority is satisfied that the discharge without the child being placed on supervised release would be consistent with the welfare of the child and protection of the public, the Release Authority, without approval of the court that committed the child, may discharge the child from DYS's custody and control without placing the child on supervised release.
- Specifies that, if a child is granted an emergency release from DYS, the child thereafter is considered to have been institutionalized for the prescribed minimum period of time imposed (other than for an act that would be aggravated murder or murder) that specifies a minimum period of commitment for a child committed to DYS, or all definite periods of commitment imposed for a specification plus the

prescribed minimum period of time imposed as described in the preceding clause of this sentence, whichever is applicable.

- Specifies that all of its amendments to existing law and its repeals of existing law apply only to a child who is charged with an act that allegedly was committed on or after its effective date, and that the versions of the sections it amends or repeals in effect immediately prior to its effective date apply to a child who is charged with an act allegedly committed prior to its effective date.

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CONTENT AND OPERATION

Transfer of alleged delinquent child for criminal prosecution

Eligibility for transfer

Existing law

Existing law provides that a child who is alleged to be a delinquent child is eligible for "mandatory transfer" (see "**Definitions repealed by the bill,**" below) to an appropriate court for criminal prosecution and must be transferred as provided in the provisions described below in "**Transfer procedures**" in any of the following circumstances (R.C. 2152.10(A)):

(1) The child is charged with a "category one offense" (see "**Definitions retained or enacted by the bill,**" below) and either the child was 16 years of age or older at the time of the act charged or the child was 14 or 15 years of age at the time of the act charged and previously was adjudicated a delinquent child for committing an act that is a "category one offense" or "category two offense" (see "**Definitions retained or enacted by the bill,**" below) and was committed to the legal custody of the Department of Youth Services (DYS) upon the basis of that adjudication.

(2) The child is charged with a "category two offense," other than a violation of R.C. 2905.01, the child was 16 years of age or older at the time of the commission of the act charged, and either the child previously was adjudicated a delinquent child for committing an act that is a "category one offense" or a "category two offense" and was committed to the legal custody of DHS on the basis of that adjudication or the child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

(3) The child is eligible for discretionary transfer, as described below, and previously was convicted of or pleaded guilty to a felony in a case that was transferred to criminal court.

(4) The child previously was adjudicated a delinquent child, had a "serious youthful offender dispositional sentence" (see "**Serious youthful offender disposition,**" below) imposed for that act, and had the adult portion of that sentence invoked.

(5) The child is domiciled in another state, is charged with an act that would be a felony if committed by an adult, and, if the act had been committed in that other state,

the child would be subject to criminal prosecution as an adult in that other state without the need for a transfer of jurisdiction from a juvenile court to a criminal court.

Existing law also provides that, unless the child is subject to mandatory transfer as described above, if a child is 14 years of age or older at the time of the act charged and if the child is charged with an act that would be a felony if committed by an adult, the child is eligible for "discretionary transfer" (see "**Definitions repealed by the bill,**" below) for criminal prosecution. In determining whether to transfer the child for criminal prosecution, the juvenile court must follow the procedures described below in "**Transfer procedures.**" If the court does not transfer the child and if the court adjudicates the child to be a delinquent child for the act charged, the court must issue an order of disposition in accordance with R.C. 2152.11. (R.C. 2152.10(B).)

Operation of the bill

The bill repeals most of the existing provisions that define eligibility for transfer of a child for criminal prosecution, and provides only two sets of circumstances in which a child is eligible for such a transfer. Under the bill, a child who is alleged to be a delinquent child is eligible for "transfer" (see "**Definitions retained or enacted by the bill,**" below) only in the following two circumstances (R.C. 2152.10(A) and (B)):

(1) A child who is alleged to be a delinquent child, who is 14 years of age or older at the time of the act charged, and who is charged with an act that would be a *felony "offense of violence"* (see **COMMENT 1** for definition) if committed by an adult is eligible for transfer, and, in accordance with specified procedures, the case may be transferred to the appropriate court for criminal prosecution. As under existing law, in determining whether to transfer the child for criminal prosecution, the juvenile court must follow the procedures described below in "**Transfer procedures.**" If the court does not transfer the child and if the court adjudicates the child to be a delinquent child for the act charged, the court must issue an order of disposition in accordance with the Juvenile Code.

(2) If a complaint is filed against a person who is deemed not to be a child either because the person previously was convicted of or pleaded guilty to a felony in a case that was transferred to criminal court or because the person previously was adjudicated a delinquent child, had a serious youthful offender dispositional sentence imposed for that act, and had the adult portion of that sentence invoked, the person is eligible for transfer and the case must be transferred to the appropriate court for criminal prosecution.

Transfer procedures

Existing law

Under existing law, if a complaint is filed against a child alleging that the child is a delinquent child, the juvenile court must transfer the case of the child to the appropriate court for criminal prosecution in the following circumstances (R.C. 2152.12(A)):

(1) The court at a hearing must transfer the case if the delinquent act charged would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the child was 16 or 17 at the time of the act charged, and there is probable cause to believe that the child committed the act charged.

(2) The court at a hearing must transfer the case if the child was 14 or 15 at the time of the delinquent act charged, the provisions described above in "**Eligibility for transfer**" specify that the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged.

(3) The court at a hearing must transfer the case if the delinquent act charged is a "category two offense," the provisions described above in "**Eligibility for transfer**" require the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(4) The court must transfer the case if the person is deemed not to be a child either because the person previously was convicted of or pleaded guilty to a felony in a case that was transferred to criminal court or because the person previously was adjudicated a delinquent child, had a serious youthful offender dispositional sentence imposed for that act, and had the adult portion of that sentence invoked.

(5) The court must transfer the case if the provisions described above in "**Eligibility for transfer**" specify that the child is eligible for discretionary transfer and the child previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court, or if the child is domiciled in another state, the delinquent act charged would be a felony if committed by an adult, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile court to a criminal court.

Under existing law, subject to the mandatory transfer provisions described in the preceding paragraph, if a complaint is filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case to the appropriate court for criminal prosecution if it

finds that the child was 14 years of age or older at the time of the delinquent act charged, there is probable cause to believe that the child committed the act charged, and the child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision, the court must consider whether the applicable factors specified by statute that indicate that the case should be transferred outweigh the applicable factors specified by statute that indicate that the case should not be transferred (see **COMMENT 2**). The record must indicate the specific factors that were applicable and that the court weighed. Before considering a transfer under this provision, the court must order an investigation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The child may waive the examination if the court finds that the waiver is competently and intelligently made. A child's refusal to submit to a mental examination constitutes a waiver of the examination. (R.C. 2152.12(B) and (C).)

Existing law provides a mechanism for determining the transfer of a case when one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, a motion is made alleging that the mandatory transfer procedures apply and require that the case or cases involving one or more of the acts charged be transferred, and a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to the discretionary transfer procedures (R.C. 2152.12(F)).

The court must give notice in writing of the time, place, and purpose of any hearing held pursuant to the mandatory or discretionary transfer procedures to the child's parents, guardian, or custodian and to the child's counsel at least three days prior to the hearing. No person, either before or after reaching 18 years of age, may be prosecuted as an adult for an offense committed prior to becoming 18 years of age unless the person has been transferred as provided in the mandatory or discretionary transfer procedures or unless the provision described in the next paragraph applies. Any prosecution undertaken in a criminal court on the mistaken belief that the person who is the subject of the case was 18 years of age or older at the time of the commission of the offense is deemed a nullity, and the person is not considered to have been in jeopardy on the offense. Upon the transfer of a case under the mandatory or discretionary transfer procedures, the juvenile court must state the reasons for the transfer on the record and order the child to enter into a recognizance with surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged

must be discontinued in the juvenile court and the case then is within the jurisdiction of the court to which it is transferred. (R.C. 2152.12(G) through (I).)

If a person under 18 years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains 21 years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. The case charging the person with committing the act must be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been 18 years of age or older at the time of the act. All proceedings pertaining to the act are within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case as it has in other criminal cases in that court. (R.C. 2152.12(J).)

Operation of the bill

The bill repeals all but one of the existing mandatory transfer procedures and modifies the existing discretionary transfer procedures. Under the bill:

(1) If a complaint is filed alleging that a child is a delinquent child for committing an act that would be a *felony "offense of violence"* if committed by an adult, the juvenile court at a hearing may transfer the case for criminal prosecution if it finds all of the factors that must be found under existing law in order for a court to transfer a case under the discretionary transfer procedures. The bill retains without change the existing provisions regarding the court's consideration and weighing of the factors specified by statute that indicate that the case should be transferred and the factors specified by statute that indicate that the case should not be transferred, the indication on the record of the specific factors that were applicable and weighed, the conduct of an investigation including a mental examination, and the waiver of the examination, and the provisions apply regarding the bill's discretionary transfer procedures. (R.C. 2152.12(A)(1) and (B) to (D).)

(2) Independent of the authority to transfer a case under the discretionary procedure described in (1), above, the juvenile court must transfer a case if the person is deemed not to be a child either because the person previously was convicted of or pleaded guilty to a felony in a case that was transferred to criminal court or because the person previously was adjudicated a delinquent child, had a serious youthful offender dispositional sentence imposed for that act, and had the adult portion of that sentence invoked (R.C. 2152.12(A)(2)).

(3) All of the existing mandatory transfer procedures, other than the one described in (2), above, are repealed (repeal of existing R.C. 2152.12(A)(1) and (F) and most of (A)(2); conforming change in R.C. 2151.23(I)).

Serious youthful offender disposition

Eligibility for serious youthful offender disposition

Existing law

Existing law provides that a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult is eligible for a particular type of disposition under the provisions described in this paragraph and in (1) to (6), below, if the child was not transferred to an appropriate court for criminal prosecution under the provisions described above in **"Transfer of alleged delinquent child for criminal prosecution."** Existing law specifies three "enhancement factors" that are relevant in determining whether a delinquent child is eligible for a restrictive disposition. The enhancement factors are that the act charged against the child would be an "offense of violence" if committed by an adult ("offense of violence enhancement factor"), that, during the commission of the act, the child used, displayed, or brandished a firearm or indicated that the child possessed and actually did possess a firearm (firearm enhancement factor), and that the child previously was admitted to a DYS facility for the commission of an act that would have been aggravated murder, murder, a felony of the first or second degree if committed by an adult or an act that would have been a felony of the third degree and an offense of violence if committed by an adult (prior DYS admission enhancement factor). If the complaint, indictment, or information charging the delinquent act includes one or more of the enhancement factors, the act is considered to be enhanced, and the child is eligible for a more restrictive disposition as follows (R.C. 2152.11):

(1) If the child is adjudicated a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult, the child is eligible for: (a) mandatory serious youthful offender disposition ("mandatory SYO"), if the act allegedly was committed when the child was 14 or 15, (b) discretionary serious youthful offender disposition ("discretionary SYO"), if the act was committed when the child was 10, 11, 12, or 13, or (c) "traditional juvenile disposition" (see **"Definitions repealed by the bill,"** below, for definitions of terms in quotes), if clauses (a) and (b) of this paragraph do not apply.

(2) If the child is adjudicated a delinquent child for committing an act that would be attempted aggravated murder or attempted murder if committed by an adult, the child is eligible for: (a) mandatory SYO if the act allegedly was committed when the child was 14 or 15, (b) discretionary SYO if the act was committed when the child was

10, 11, 12, or 13, or (c) traditional juvenile disposition if clauses (a) and (b) of this paragraph do not apply.

(3) If the child is adjudicated a delinquent child for committing an act that would be a felony of the first degree if committed by an adult, the child is eligible for: (a) mandatory SYO if the act allegedly was committed when the child was 16 or 17, and the act is enhanced by the "offense of violence enhancement factor" and either the "firearm enhancement factor" or the prior "DYS admission enhancement factor," (b) discretionary SYO if the act was committed when the child was 16 or 17 and clause (a) of this paragraph does not apply, if the act was committed when the child was 14 or 15, if the act was committed when the child was 12 or 13 and the act is enhanced by any of the three enhancement factors, or if the act was committed when the child was 10 or 11 and the act is enhanced by the "offense of violence enhancement factor" and either the "firearm enhancement factor" or the prior "DYS admission enhancement factor," or (c) traditional juvenile disposition if clauses (a) and (b) of this paragraph do not apply.

(4) If the child is adjudicated a delinquent child for committing an act that would be a felony of the second degree if committed by an adult, the child is eligible for: (a) discretionary SYO if the act was committed when the child was 14, 15, 16, or 17, (b) discretionary SYO if the act was committed when the child was 12 or 13 and the act is enhanced by any of the three enhancement factors, or (c) traditional juvenile disposition if clauses (a) and (b) of this paragraph do not apply.

(5) If a child is adjudicated a delinquent child for committing an act that would be a felony of the third degree if committed by an adult, the child is eligible for: (a) discretionary SYO if the act was committed when the child was 16 or 17, (b) discretionary SYO if the act was committed when the child was 14 or 15 and the act is enhanced by any of the three enhancement factors, or (c) traditional juvenile disposition if clauses (a) and (b) of this paragraph do not apply.

(6) If a child is adjudicated a delinquent child for committing an act that would be a felony of the fourth or fifth degree if committed by an adult, the child is eligible for: (a) discretionary SYO if the act was committed when the child was 16 or 17 and the act is enhanced by any of the three enhancement factors or (b) traditional juvenile disposition if clause (a) of this paragraph does not apply.

Operation of the bill

The bill repeals all of the existing provisions that pertain to the enhancement factors and to the eligibility of a child for "a more restrictive disposition" consisting of mandatory SYO or discretionary SYO (repeal of R.C. 2152.11, in Section 2). It replaces the repealed provisions with a provision that specifies that a child is eligible for a

"serious youthful offender disposition" (see "**Definitions retained or enacted by the bill,**" below) only if the child is adjudicated a delinquent child for committing an act that would be a *felony "offense of violence"* if committed by an adult, was 14 years of age or older when the act was committed, and was not transferred to an appropriate court for criminal prosecution (R.C. 2152.13(A)(1)).

Serious youthful offender disposition procedures

Existing law

Under existing law, a juvenile court may impose a serious youthful offender dispositional sentence on a child only if the prosecuting attorney initiates the process against the child and the child is an alleged delinquent child who is eligible for the dispositional sentence. The prosecuting attorney may initiate the process by doing any of the following: (1) obtaining an indictment of the child as a serious youthful offender, (2) if the child waives the right to indictment, charging the child in a bill of information as a serious youthful offender, (3) until an indictment or information is obtained, requesting a serious youthful offender dispositional sentence in the original delinquent child complaint, or (4) until an indictment or information is obtained, if the original complaint does not request a serious youthful offender dispositional sentence, filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within a specified period of time.

If an alleged delinquent child is not indicted or charged by information as described in the preceding paragraph and if a notice or complaint as described in that paragraph indicates that the prosecuting attorney intends to pursue a serious youthful offender dispositional sentence in the case, the juvenile court must hold a preliminary hearing to determine if there is probable cause that the child committed the act charged and is by age eligible for, or required to receive, a serious youthful offender dispositional sentence. A child for whom a serious youthful offender dispositional sentence is sought has the right to a grand jury determination (impaneled by the court of common pleas or the juvenile court) of probable cause that the child committed the act charged and that the child is eligible by age for a serious youthful offender dispositional sentence.

Once a child is indicted, or charged by information or the juvenile court determines that the child is eligible for a serious youthful offender dispositional sentence, the child is entitled to an open and speedy trial by jury in juvenile court and to be provided with a transcript of the proceedings. Existing law provides that the Criminal Code's time period within which the trial must be held commences on one of three specified dates. If the child is detained awaiting adjudication, upon indictment or being charged by information, the child has the same right to bail as an adult charged

with the offense the alleged delinquent act would be if committed by an adult. Except as provided in R.C. 2152.14(D) regarding the invoking of the adult portion of a serious youthful offender dispositional sentence (see **COMMENT 3**), all provisions of the Criminal Code and the Criminal Rules apply in the case and to the child. The juvenile court must afford the child all rights afforded a person who is prosecuted for committing a crime including the right to counsel and the right to raise the issue of competency. The child may not waive the right to counsel.

If a child is adjudicated a delinquent child for committing an act under circumstances that require the juvenile court to impose upon the child a serious youthful offender dispositional sentence, all of the following apply: (1) the juvenile court *must* impose upon the child under the Criminal Sentencing Law a sentence available for the violation as if the child were an adult, except that it cannot impose on the child a sentence of death or life imprisonment without parole, (2) the court also *must* impose upon the child one or more traditional juvenile dispositions, and (3) the court *must* stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

If a child is adjudicated a delinquent child for committing an act under circumstances that allow, but do not require, the juvenile court to impose on the child a serious youthful offender dispositional sentence, all of the following apply: (1) if the juvenile court on the record makes a finding that given the nature and circumstances of the violation and the history of the child the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in the Delinquent Child Law will be met, the court *may* impose upon the child under the Criminal Sentencing Law a sentence available for the violation as if the child were an adult, except that the court cannot impose on the child a sentence of death or life imprisonment without parole, (2) if a sentence is imposed under the provision described in clause (1) of this paragraph, the court also *must* impose upon the child one or more traditional juvenile dispositions, and (3) the court *must* stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed. If the juvenile court does not find that a sentence should be imposed under the provision described in clause (1) of the preceding sentence, the juvenile court may impose one or more traditional juvenile dispositions.

A child upon whom a serious youthful offender dispositional sentence is imposed has a right to appeal under R.C. 2953.08(A)(1), (3), (4), (5), or (6) the adult portion of the serious youthful offender dispositional sentence when any of those divisions apply. The child may appeal the adult portion, and the court must consider

the appeal as if the adult portion were not stayed. (R.C. 2152.13; confirming changes in R.C. 2151.31(A)(6)(b), 2151.314(A), and 2152.021(A)(1).)

Operation of the bill

The bill conforms the existing serious youthful offender disposition procedures to the changes in the bill regarding the repeal of the existing provisions that pertain to mandatory SYO and discretionary SYO and regarding the new provision that specifies that a child is eligible for a serious youthful offender disposition only if the child is adjudicated a delinquent child for committing an act that would be a *felony "offense of violence"* if committed by an adult, was 14 years of age or older when the act was committed, and was not transferred to an appropriate court for criminal prosecution. In doing this, it: (1) repeals all references in the existing procedures to mandatory SYO, (2) it replaces all references in the existing procedures to "discretionary SYO" with a simple reference to a serious youthful offender disposition, and (3) removes reference to court determinations as to an alleged delinquent child's eligibility "by age" for a serious youthful offender disposition. (R.C. 2152.13.)

Jurisdiction of juvenile court, as affected by transfer for criminal prosecution or by serious youthful offender dispositional sentence

Existing law

Under existing law, a juvenile court has exclusive original jurisdiction under the Revised Code over many different types of actions or proceedings, including actions and proceedings concerning any child who on or about the date specified in the complaint, indictment, or information is alleged to have violated R.C. 2151.87 or an order issued under that section or to be a juvenile traffic offender or a delinquent, unruly, abused, neglected, or dependent child and, based on and in relation to the allegation pertaining to the child, concerning the parent, guardian, or other person having care of a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant. However, if a child who is charged with an act that would be an offense if committed by an adult was 14 years of age or older and under 18 years of age at the time of the alleged act and if the case is transferred for criminal prosecution: (1) the juvenile court does not have jurisdiction to hear or determine the case subsequent to the transfer, and (2) the court to which the case is transferred for criminal prosecution pursuant has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court. (R.C. 2151.23(A)(1) and (H).)

Also, a child whose case is transferred for criminal prosecution and who subsequently is convicted of or pleaded guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has an SYO

dispositional sentence imposed for that act, and whose adult portion of the dispositional sentence is invoked is deemed after the transfer or invocation not to be a "child" in any case in which a complaint is filed against the person (R.C. 2152.02(C)(5)).

Operation of the bill

The bill modifies the existing exception to the jurisdiction of a juvenile court that is described above. Under the bill, if a child who is charged with an act that would be a felony offense of violence if committed by an adult was 14 years of age or older and under 18 years of age at the time of the alleged act and the case is transferred for criminal prosecution, or if a complaint is filed against a person and the case is transferred for criminal prosecution, the juvenile court does not have jurisdiction to hear or determine the case subsequent to the transfer and the court to which the case is transferred for criminal prosecution pursuant has jurisdiction. (R.C. 2151.23(H).)

Commitment to Department of Youth Services for a specification

Several provisions in the Delinquent Child Law pertain to the commitment of a delinquent child to DYS for a specified period of time if the juvenile court, in addition to adjudicating the child a delinquent child, determines that if the child was an adult the child would be guilty of a "specification" that charges certain aggravating facts regarding the child's delinquent act (e.g., the child possessed, brandished, used, etc., a firearm, was participating in a criminal gang, or wore body armor).

Firearm-related and aggravated vehicular homicide-related specifications

Existing law

Under existing law, if a child is adjudicated a delinquent child for committing an act other than the offense of carrying concealed weapons that would be a felony if committed by an adult and if the court determines that if the child was an adult the child would be guilty of a specification of any type described in (1) to (4), below, in addition to any commitment or other disposition the court imposes for the underlying delinquent act, all of the following apply (R.C. 2152.17(A) and (B)):

(1) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.141, the court *may* commit the child to DYS for the specification *for a definite period of up to one year*. The specification set forth in existing R.C. 2941.141 charges that the delinquent child had a firearm on or about the child's person or under the child's control while committing the delinquent act.

(2) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.145, or if the delinquent act is a violation of R.C. 2903.06(A)(1) or (2) and the court determines that the child would be guilty of a specification of the

type set forth in R.C. 2941.1415, the court *must* commit the child to DYS for the specification *for a definite period of not less than one and not more than three years*, and it also *must* commit the child to DYS for the underlying delinquent act under the general disposition provisions of the Delinquent Child Law (see **COMMENT 4**). The specification set forth in existing R.C. 2941.145 charges that the delinquent child possessed a firearm while committing the delinquent act and displayed, brandished, or indicated possession of the firearm or used it to facilitate the offense. Existing R.C. 2903.06(A)(1) and (2) set forth the offense of aggravated vehicular homicide committed in specified circumstances, and the specification set forth in existing R.C. 2941.1415 charges that the delinquent child, within 20 years of committing the delinquent act, previously had been found to be a delinquent child for five or more equivalent offenses.

(3) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.144, 2941.146, or 2941.1412 or if the delinquent act is a violation of R.C. 2903.06(A)(1) or (2) and the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.1414, the court *must* commit the child to DYS for the specification *for a definite period of not less than one and not more than five years*, and it also *must* commit the child to DYS for the underlying delinquent act under the general disposition provisions of the Delinquent Child Law. The specification set forth in existing R.C. 2941.144 charges that the delinquent child possessed a firearm while committing the delinquent act and that the firearm was an automatic firearm or was equipped with a firearm muffler or silencer. The specification set forth in existing R.C. 2941.146 charges that the delinquent child discharged a firearm in a specified manner from a motor vehicle while committing the delinquent act. The specification set forth in existing R.C. 2941.1412 charges that the delinquent child discharged a firearm at a peace officer or corrections officer while committing the delinquent act. The specification set forth in existing R.C. 2941.1414 charges that the victim of the aggravated vehicular homicide delinquent act was a peace officer.

(4) The provisions of (1) to (3), above, also apply to a child who is an accomplice to the same extent the firearm specifications would apply to an adult accomplice in a criminal proceeding.

Operation of the bill

The bill modifies the provisions regarding DYS commitments for firearm-related and aggravated vehicular homicide-related specifications by making all of them discretionary, specifying that they apply only if the court commits the delinquent child to DYS for the underlying delinquent act, eliminating the mandatory minimum from the commitments that currently provide a mandatory minimum, and replacing the "accomplice" commitment provision with a new "complicity" commitment provision. Under the bill (R.C. 2152.17(A) and (B), and conforming change in R.C. 5139.05(A)(3)):

(1) If a child is adjudicated a delinquent child for committing an act other than the offense of carrying concealed weapons that would be a felony if committed by an adult and if the court determines that if the child was an adult the child would be guilty of a specification of any type described in (a) to (c), below, *and if the court commits the child to DYS for the underlying delinquent act under the general disposition provisions of the Delinquent Child Law*, in addition to that commitment and any other disposition the court imposes for the underlying delinquent act, all of the following apply:

(a) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.141, the court *may* commit the child to DYS for the specification *for a definite period of up to one year* (same as existing law).

(b) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.145, or if the delinquent act is a violation of R.C. 2903.06(A)(1) or (2) and the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.1415, the court *may* commit the child to DYS for the specification *for a definite period of not more than three years*.

(c) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.144, 2941.146, or 2941.1412 or if the delinquent act is a violation of R.C. 2903.06(A)(1) or (2) and the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.1414, the court *may* commit the child to DYS for the specification *for a definite period of not more than five years*.

(2) If a child is adjudicated a delinquent child for committing an act, other than the offense of carrying concealed weapons that would be a felony if committed by an adult, if the court determines that the child is complicit in another person's conduct that is of such a nature that, if the other person was an adult, the other person would be guilty of a specification of any type described in (1)(a) to (c), above, if the other person's conduct relates to the child's underlying delinquent act, and if the court commits the child to DYS for the underlying delinquent act under the general disposition provisions of the Delinquent Child Law, in addition to that commitment and any other disposition the court imposes for the underlying delinquent act, the court *may* commit the child to DYS for the specification *for a definite period of not more than one year*.

Criminal gang activity-related specification

Existing law

Existing law provides that, if a child is adjudicated a delinquent child for committing an act that would be aggravated murder, murder, or a first, second, or third degree felony offense of violence if committed by an adult and if the court determines that if the child was an adult the child would be guilty of a specification of the type set

forth in R.C. 2941.142 in relation to the act for which the child was adjudicated a delinquent child, the court *must* commit the child for the specification to the legal custody of DYS for institutionalization in a secure facility *for a definite period of not less than one and not more than three years*, and it also *must* commit the child to DYS for the underlying delinquent act. The specification set forth in existing R.C. 2941.142 charges that the delinquent child committed the delinquent act while participating in a criminal gang. (R.C. 2151.17(C).)

Operation of the bill

The bill modifies the provision regarding DYS commitments for a criminal gang activity-related specification so that it provides that, if a child is adjudicated a delinquent child for committing an act that would be aggravated murder, murder, or a first, second, or third degree felony offense of violence if committed by an adult and if the court determines that if the child was an adult the child would be guilty of a specification of the type set forth in R.C. 2941.142 in relation to the act for which the child was adjudicated a delinquent child, the court *may* commit the child for the specification to the legal custody of DYS for institutionalization in a secure facility *for a definite period of not more than three years*. It eliminates the current requirement that the court also commit the child to DYS for the underlying delinquent act. (R.C. 2151.17(C), and conforming change in R.C. 5139.05(A)(3).)

General provisions related to commitment for a specification

Existing law

A court that imposes a period of commitment for a firearm-related specification or an aggravated vehicular homicide-related specification is not precluded from imposing an additional period of commitment for any of the other types of specifications, a court that imposes a period of commitment for a criminal gang activity-related specification is not precluded from imposing an additional period of commitment for any of the other types of specifications, and a court that imposes a period of commitment for a body armor-related specification is not precluded from imposing an additional period of commitment for any of the other types of specifications.

Any commitment imposed for a specification is in addition to, and must be served consecutively with and prior to, a period of commitment ordered under the general disposition provisions of the Delinquent Child Law for the underlying delinquent act, and each commitment imposed for a specification is in addition to, and must be served consecutively with, any other period of commitment imposed for a specification. If a commitment is imposed for a firearm-related specification or an aggravated vehicular homicide-related specification and a commitment also is imposed

for a criminal gang activity-related specification, the former period must be served prior to the latter period. (R.C. 2152.17(D)(2) and (E).)

Operation of the bill

The bill modifies the existing general provisions related to the commitment of a delinquent child to DYS for a specification in two ways. First, in the provision that currently specifies that a court that imposes a period of commitment for a firearm-related specification, an aggravated vehicular homicide-related specification, a criminal gang activity-related specification, or a body armor-related specification is not precluded from imposing a period of commitment for another of the types of specifications so that the provision also includes a reference to a period of commitment imposed under the bill's "complicity" provision. Second, it adds language stating that a delinquent child who is committed to DYS for a specification is eligible for judicial release during the commitment for the specification and the commitment for the underlying offense in accordance with its new provisions for determining judicial release eligibility that are described below in "**Judicial release from DYS facility.**" (R.C. 2152.17(D)(2) and (E), and conforming change in R.C. 5139.05(A)(3).)

Judicial release from DYS facility

Under existing law, when a delinquent child is committed to the legal custody of DYS, except in a few specified situations, the juvenile court relinquishes control with respect to the child so committed. DYS cannot release the child from its facilities and as a result cannot discharge the child or order the child's release on supervised release prior to the expiration of the minimum period specified by the court under the general disposition provisions of the Delinquent Child Law and any term of commitment imposed for a specification, or prior to the child's attainment of 21 years of age, except upon the order of a court pursuant to provisions governing "judicial release to court supervision" and "judicial release to DYS supervision" (see "**Definitions retained or enacted by the bill,**" below), both described below, or in accordance with a R.C. 5139.54, which pertains to the medical release or discharge of a delinquent child from DYS custody and which is not in the bill. (R.C. 2152.22(A).)

Request for judicial release to court supervision or for judicial release to DYS supervision

Existing law

Under existing law, when a child has been committed to DYS, it must: place the child in an appropriate institution under the condition that it considers best designed for the training and rehabilitation of the child and the protection of the public, consistent with the order committing the child, and maintain the child in institutional

care or institutional care in a secure facility for the required period of institutionalization in a manner consistent with the statutory provisions governing dispositions to it. When a child committed to DYS has not been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time, including, but not limited to, a prescribed period of time until the child attains 21 years of age imposed for an act that would be aggravated murder or murder if committed by an adult, DYS, the child, or the child's parent may request the court that committed the child to order a judicial release to court supervision or a judicial release to DYS supervision, and the child may be released from institutionalization or institutionalization in a secure facility in accordance with the provisions described below in "**Judicial release to court supervision**" and "**Judicial release to DYS supervision**," whichever is applicable. A child in those circumstances cannot be released from institutionalization or institutionalization in a secure facility except in accordance with those provisions or existing provisions, not in the bill, governing the transfer in limited circumstances of a child from DYS institutionalization to a community facility. (R.C. 5139.06(B).)

Operation of the bill

The bill revises the provisions regarding an application for judicial release to court supervision or a judicial release to DYS supervision of a child committed to DYS, made by DYS, the child, or the child's parent. Under the bill, when a child committed to DYS has not been institutionalized or institutionalized in a secure facility for the prescribed period of time (until the child attains 21 years of age) imposed under R.C. 2152.16 for an act that would be aggravated murder or murder if committed by an adult, the prescribed minimum period of time imposed under R.C. 2152.16 that specifies a minimum period of commitment for a child committed to DYS for an act that would be any other felony, or the definite period or periods of commitment imposed under R.C. 2152.17 for a specification plus the prescribed minimum period of time imposed under R.C. 2152.16 as described in the preceding clause, DYS, the child, or the child's parent may request the court that committed the child to order a judicial release to court supervision or a judicial release to DYS supervision, and the child may be released from institutionalization or institutionalization in a secure facility in accordance with the provisions described below in "**Judicial release to court supervision**" and "**Judicial release to DYS supervision**," whichever is applicable. (R.C. 5139.06(B).)

Judicial release to court supervision

Existing law

Existing law provides that the court that commits a delinquent child to DYS may grant judicial release of the child to court supervision during the first half of the prescribed minimum term for which the child was committed to DYS or, if the child

was committed to DYS until the child attains 21 years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, provided any commitment imposed for a specification has ended.

If DYS desires to release a child during a period specified in the preceding paragraph, it must request the court that committed the child to grant a judicial release of the child to court supervision. During whichever of those periods is applicable, the child or the parents of the child also may request that court to grant a judicial release of the child to court supervision. Upon receipt of a request from DYS, the child, or the child's parent, or upon its own motion, the court that committed the child must approve the release, schedule within 30 days after the request is received a time for a hearing on whether the child is to be released, or reject the request without conducting a hearing. If the court rejects an initial request by the child or the child's parent, the child or the child's parent, not earlier than 30 days after the filing of that request, may make one additional request for a judicial release to court supervision within the applicable period. Upon the filing of a second request, the court either must approve or disapprove the release or schedule within 30 days after the request is received a time for a hearing on whether the child is to be released.

If a court schedules a hearing to decide a request as described in the preceding paragraph, it may order DYS to deliver the child to the court on the date set for the hearing and to present to the court a report on the child's progress in the institution to which the child was committed and recommendations for conditions of supervision of the child by the court after release. The court may conduct the hearing without the child being present, and must determine at the hearing whether the child should be granted a judicial release to court supervision.

If the court approves a judicial release to court supervision, it must order its staff to prepare a written treatment and rehabilitation plan for the child that may include any conditions of the child's release that were recommended by DYS and approved by the court. The committing court must send the juvenile court of the county in which the child is placed a copy of the recommended plan. The court of the county in which the child is placed may adopt the recommended conditions set by the committing court as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is granted a judicial release to court supervision, the release discharges the child from the DYS's custody. (R.C. 2152.22(B); also R.C. 5139.06(B).)

Operation of the bill

The bill modifies the specified periods during which a delinquent child in DYS's custody is eligible for judicial release to court supervision. It does not change the other

existing provisions regarding the determination of judicial release to court supervision or the treatment of a child who violates the conditions of such a judicial release. Under the bill, the court that commits a delinquent child to DYS may grant judicial release of the child to court supervision for any of the following periods of time (R.C. 2152.22(B)):

(1) Except as otherwise provided in paragraph (3), below, if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years of age, the court may grant judicial release of the child to court supervision during the first half of that prescribed minimum period of commitment.

(2) Except as otherwise provided in paragraph (4), below, if the child was committed to DYS until the child attains 21 years of age, the court may grant judicial release of the child to court supervision during the first half of the prescribed period of commitment that begins on the first day of that commitment and ends on the child's 21st birthday.

(3) If the child was committed to DYS for both one or more definite periods imposed for a specification and a period of the type described in paragraph (1), above, all of the prescribed definite periods of commitment imposed for a specification and the prescribed minimum period of commitment of the type described in paragraph (1), above, are aggregated for judicial release to court supervision purposes, and the court may grant judicial release of the child to court supervision during the first half of that aggregate minimum period of commitment.

(4) If the child was committed to DYS for both one or more definite periods imposed for a specification and a period of the type described in paragraph (2), above, the court may grant judicial release of the child to court supervision during the first half of the prescribed minimum period of commitment that begins on the first day of the first prescribed definite period of commitment imposed for a specification and ends on the child's 21st birthday.

Judicial release to DYS supervision

Existing law

Existing law provides that the court that commits a delinquent child to DYS may grant judicial release of the child to DYS supervision during the second half of the prescribed minimum term for which the child was committed to DYS or, if the child was committed to DYS until the child attains 21 years of age, during the second half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, provided any commitment imposed for a specification has ended.

If DYS desires to release a child during a period specified in the preceding paragraph, it must request the court that committed the child to grant a judicial release to DYS supervision. During whichever of those periods is applicable, the child or the child's parent also may request the court that committed the child to grant a judicial release to DYS supervision. Upon receipt of a request, the child, or the child's parent, or upon its own motion at any time during that period, the court must approve the release, schedule a time within 30 days after receipt of the request for a hearing on whether the child is to be released, or reject the request without conducting a hearing. If the court rejects an initial request by the child or the child's parent, the child or the child's parent may make one or more subsequent requests for a release within the applicable period, but may make no more than one request during each period of 90 days that the child is in a secure DYS facility after the filing of a prior request for early release. Upon the filing of a request subsequent to an initial request, the court either must approve or disapprove the release or schedule a time within 30 days after receipt of the request for a hearing on whether the child is to be released.

If a court schedules a hearing to decide a request as described in the preceding paragraph, it may order DYS to deliver the child to the court on the date set for the hearing and must order DYS to present to the court at that time a treatment plan for the child's post-institutional care. The court may conduct the hearing without the child being present, and must determine at the hearing whether the child should be granted a judicial release to DYS supervision.

If the court approves the judicial release to DYS supervision, DYS must prepare a written treatment and rehabilitation plan for the child (see **COMMENT 5**) that must include the conditions of the child's release, must send a copy to the committing court and the juvenile court of the county in which the child is placed, and must perform other functions prior to the child's release (see **COMMENT 5**). The court of the county in which the child is placed may adopt the conditions set by DYS as an order of the court and may add any additional consistent conditions it considers appropriate, provided that the court may not add any condition that decreases the level or degree of supervision specified by DYS in its plan, that substantially increases the financial burden of supervision that DYS will experience, or that alters the placement specified by DYS in its plan. If the court of the county in which the child is placed adds to DYS's plan any additional conditions, it must enter those additional conditions in its journal and send to DYS a copy of the journal entry of the additional conditions. If the court approves the judicial release, the actual date on which DYS must release the child is contingent upon DYS finding a suitable placement for the child. If the child is to be returned to the child's home, DYS must return the child on the date that the court schedules for the release or bear the expense of any additional time the child remains in a DYS facility. If the child is unable to return to the child's home, DYS must exercise

reasonable diligence in finding a suitable placement, and the child must remain in a DYS facility while it finds the suitable placement. (R.C. 2152.22(C); also R.C. 5139.06(B).)

Operation of the bill

The bill modifies the specified periods during which a delinquent child in DYS's custody is eligible for judicial release to DYS supervision. Under the bill, the court that commits a delinquent child to DYS may grant judicial release of the child to DYS supervision for any of the following periods of time (R.C. 2152.22(C)):

(1) Except as otherwise provided in paragraph (3), below, if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years of age, the court may grant judicial release of the child to DYS supervision at any time after the expiration of the first half of that prescribed minimum period of commitment.

(2) Except as otherwise provided in paragraph (4), below, if the child was committed to DYS until the child attains 21 years of age, the court may grant judicial release of the child to DYS supervision during the second half of the prescribed period of commitment that begins on the first day of that commitment and ends on the child's 21st birthday.

(3) If the child was committed to DYS for both one or more definite periods imposed for a specification and a period of the type described in paragraph (1), above, all of the prescribed definite periods of commitment imposed for a specification and the prescribed minimum period of commitment of the type described in paragraph (1), above, are aggregated for judicial release to DYS supervision purposes and the court may grant judicial release of the child to DYS supervision at any time after the expiration of the first half of that aggregate minimum period of commitment.

(4) If the child was committed to DYS for both one or more definite periods imposed for a specification and a period of the type described in paragraph (2), above, the court may grant judicial release of the child to DYS supervision during the second half of the prescribed minimum period of commitment that begins on the first day of the first prescribed definite period of commitment imposed for a specification and ends on the child's 21st birthday.

Assignment by DYS to a family home, group care facility, etc.

Existing law

Under existing law, if a child has been committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years of age and the child has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under the applicable commitments, DYS may assign the child to a family home, a group care facility, or other place maintained under public or private auspices, within or without Ohio, for necessary treatment and rehabilitation, the costs of which may be paid by DYS, provided that DYS must notify the committing court, in writing, of the place and terms of the assignment at least 15 days prior to the scheduled date of the assignment (R.C. 5139.06(C)(4)).

Operation of the bill

The bill adds an additional criterion that must be satisfied before DYS may assign a child to a home, facility, or place. Under the bill, in addition to the existing criteria, DYS may not assign a child to a home, facility, or place under the provision until after the expiration of any term of commitment imposed on the child for a specification (R.C. 5139.06(C)(4)).

Supervised release or discharge by DYS

Existing law

Existing law establishes a Release Authority within DYS and specifies that the Release Authority cannot release a child who is in DYS's custody from institutional care or institutional care in a secure facility and cannot "discharge" the child or order the child's release on "supervised release" (see "**Definitions retained or enacted by the bill,**" below) prior to the expiration of the prescribed minimum period of institutionalization or institutionalization in a secure facility or prior to the child's attainment of 21 years of age, whichever is applicable under the order of commitment, other than as is described above in "**Judicial release from DYS facility.**" The Release Authority may conduct periodic reviews of the case of each child who is in DYS's custody and who is eligible for supervised release or discharge after completing the prescribed minimum period of time in an institution. At least 30 days prior to conducting a periodic review of the case of a child regarding the possibility of supervised release or discharge and at least 30 days prior to conducting a release review, a release hearing, or a discharge review, the Release Authority must give notice of the review or hearing to the court that committed the child, to the prosecuting attorney in the case, and to the victim of the delinquent act for which the child was committed or the victim's representative. Existing law provides procedures that must

be satisfied before a child may be placed on supervised release or discharged and requirements and standards that apply when a child is on supervised release or discharged.

When the Release Authority decides to place a child on supervised release, DYS must prepare a written supervised release plan that specifies the terms and conditions upon which the child is to be released from an institution on supervised release and, at least 30 days prior to the release of the child on the supervised release, must send to the committing court and the juvenile court of the county in which the child will be placed a copy of the plan and the terms and conditions of release. The juvenile court of the county in which the child will be placed, within 15 days after its receipt of the copy of the supervised release plan, may add to the plan any additional consistent terms and conditions it considers appropriate, provided it may not add any term or condition that decreases the level or degree of supervision specified in the plan, that substantially increases the financial burden of supervision that will be experienced by DYS, or that alters the placement specified by the plan.

Existing law specifies that if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years of age and has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under the commitments and if the Release Authority is satisfied that the discharge of the child without the child being placed on supervised release would be consistent with the welfare of the child and protection of the public, the Release Authority, without approval of the court that committed the child, may discharge the child from DYS's custody and control without placing the child on supervised release. Additionally, the Release Authority may discharge a child in DYS's custody without the child being placed on supervised release if the child is removed from the jurisdiction of Ohio by a court order of a court of Ohio, another state, or the United States, or by any agency of Ohio, another state, or the United States, if the child is convicted of or pleads guilty to any criminal offense, or as otherwise provided by law. (R.C. 5139.51.)

Operation of the bill

The bill revises the provisions that specify the period of time a child committed to DYS must be in its custody before it may place the child on supervised release or discharge the child. Under the bill, DYS's Release Authority cannot release a child who is in DYS's custody from institutional care or institutional care in a secure facility and cannot discharge the child or order the child's release on supervised release prior to the expiration of the prescribed minimum period of time imposed under R.C. 2152.16 (other than for an act that would be aggravated murder or murder) that specifies a minimum period of commitment for a child committed to DYS, prior to the expiration of all

definite periods of commitment imposed under R.C. 2152.17 for a specification plus the prescribed minimum period of time imposed under R.C. 2152.16 as described in the preceding clause, or prior to the child's attainment of 21 years of age, whichever is applicable under the order of commitment, other than as is described above in "**Judicial release from DYS facility.**"

Also, regarding the discharge of a child, the bill specifies that if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years of age and has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under the commitments, or was committed to DYS for both a definite period under R.C. 2152.17 for a specification and for a prescribed minimum period and maximum period as described in the preceding clause and has been institutionalized or institutionalized in a secure facility for all of the definite periods for the specifications plus the prescribed minimum period, whichever is applicable, and if the Release Authority is satisfied that the discharge of the child without the child being placed on supervised release would be consistent with the welfare of the child and protection of the public, the Release Authority, without approval of the court that committed the child, may discharge the child from DYS's custody and control without placing the child on supervised release. (R.C. 5139.51(A) and (C); conforming change in R.C. 5139.05(B)(1).)

Emergency release by DYS

Existing law

Existing law specifies that, notwithstanding any other Revised Code provision that sets forth the minimum periods or period for which a child committed to DYS is to be institutionalized or institutionalized in a secure facility or the procedures for the judicial release to court supervision or judicial release to DYS, DYS may grant emergency releases to children confined in state juvenile institutions if the Governor, upon request of DYS's Director authorizes the Director, in writing, to issue a declaration that an emergency overcrowding condition exists in all of the institutions in which males are confined, or in all of the institutions in which females are confined, that are under DYS's control. The Director cannot issue a declaration that an emergency overcrowding condition exists unless the director determines that no other method of alleviating the overcrowding condition is available.

An emergency release granted pursuant to this provision must consist of one of the following: (1) a supervised release under terms and conditions that DYS believes conducive to law-abiding conduct, (2) a discharge of the child from DYS's custody and control if DYS is satisfied that the discharge is consistent with the welfare of the individual and protection of the public, or (3) an assignment to a family home, a group

care facility, or another place maintained under public or private auspices, within or without Ohio, for necessary treatment or rehabilitation. If a child is granted an emergency release pursuant to the provision, the child thereafter is considered to have been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time imposed under R.C. 2152.16 (other than for an act that would be aggravated murder or murder) that specifies a minimum period of commitment for a child committed to DYS or under R.C. 2152.17 for a specification. DYS retains legal custody of a child so released until it discharges the child or until its custody is terminated as otherwise provided by law. (R.C. 5139.20.)

Operation of the bill

The bill modifies the emergency release provision so that it specifies that, if a child is granted an emergency release pursuant to the provision, the child thereafter is considered to have been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time imposed under R.C. 2152.16 (other than for an act that would be aggravated murder or murder) that specifies a minimum period of commitment for a child committed to DYS, or all definite periods of commitment imposed under R.C. 2152.17 for a specification plus the prescribed minimum period of time imposed under R.C. 2152.16 as described in the preceding clause of this sentence, whichever is applicable. (R.C. 5139.20(D).)

Definitions retained or enacted by the bill

The bill retains or enacts definitions of the following terms that are used in this analysis:

"Category one offense" means a violation of R.C. 2913.01 or 2913.02, or a violation of R.C. 2923.02 involving an attempt to commit a violation of R.C. 2903.01 or 2903.02 (R.C. 5139.01(A)(17), relocated from R.C. 2152.02(BB)).

"Category two offense" means any of the following: (1) a violation of R.C. 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11, (2) a violation of R.C. 2903.04 that is a felony of the first degree, or (3) a violation of R.C. 2907.12 as it existed prior to September 3, 1996 (R.C. 5139.01(A)(33), relocated from R.C. 2152.02(CC)).

"Child" means a person who is under 18 years of age, except as otherwise provided in clauses (1) to (5) of this paragraph (R.C. 2152.02(C)): (1) subject to clause (2) of this paragraph, any person who violates a federal or state law or a municipal ordinance prior to attaining 18 years of age is deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held, (2) any person who, while under 18 years of age, commits an act that would be a felony if committed by an adult and who is not taken

into custody or apprehended for that act until after the person attains 21 years of age is not a child in relation to that act, (3) any person whose case is transferred for criminal prosecution pursuant to R.C. 2152.12 is deemed after the transfer not to be a child in the transferred case, (4) any person whose case is transferred for criminal prosecution pursuant to R.C. 2152.12 and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has an SYO dispositional sentence imposed for the act pursuant to R.C. 2152.13, and whose adult portion of the dispositional sentence is invoked pursuant to R.C. 2152.14 deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person, and (5) the juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining 18 years of age until the person attains 21 years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated a delinquent child or juvenile traffic offender is deemed a "child" until the person attains 21 years of age. (R.C. 2152.02(C).)

"Judicial release to court supervision" means a release of a child from institutional care or institutional care in a secure facility that is granted by a court pursuant to R.C. 2152.22(B) during the period specified in that division (R.C. 5139.01(A)(26)).

"Judicial release to DYS supervision" means a release of a child from institutional care or institutional care in a secure facility that is granted by a court pursuant to R.C. 2152.22(C) during the period specified in that division (R.C. 5139.01(A)(27)).

"Serious youthful offender disposition" means a case in which the juvenile court, in the court's discretion, may impose a serious youthful offender dispositional sentence under R.C. 2152.13 (R.C. 2152.02(G)).

"Serious youthful offender" means a person who is eligible for a serious youthful offender disposition but who is not transferred to adult court under a mandatory or discretionary transfer (R.C. 2152.02(S)).

"Supervised release" means the event of the release of a child under R.C. Chapter 5139. from an institution and the period after that release during which the child is supervised and assisted by a DYS employee under specific terms and conditions for reintegration of the child into the community (R.C. 5139.01(A)(22)).

"Traditional juvenile disposition" means a disposition under R.C. 2152.16, 2152.17, 2152.19, and 2152.20 in a case that is not transferred to adult court under R.C. 2152.12 (R.C. 2152.02(U)).

"Transfer" means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be a felony offense of violence if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense or the transfer for criminal prosecution of a case when the person charged with the case is deemed not to be a child in the circumstances described in clause (4) under the definition of **"child"** set forth above from the juvenile court to the appropriate court that has jurisdiction of the offense in the case. (R.C. 2152.02(V), under existing law, the definition of the term is set forth in R.C. 2152.02(AA) and provides that the term means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense).

Definitions repealed by the bill

The bill repeals definitions of the following terms that are used in the portions of this analysis that discuss current law:

"Discretionary serious youthful offender" means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer (R.C. 2152.02(G)).

"Discretionary SYO" means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under R.C. 2152.13 (R.C. 2152.02(H)).

"Discretionary transfer" means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of R.C. 2152.12 (R.C. 2152.02(I)).

"Mandatory serious youthful offender" means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer (R.C. 2152.02(P)).

"Mandatory SYO" means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under R.C. 2152.13 (R.C. 2152.02(Q)).

"Mandatory transfer" means that a case is required to be transferred for criminal prosecution under division (A) of R.C. 2152.12 (R.C. 2152.02(R)).

"Traditional juvenile" means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under R.C. 2152.16, 2152.17, 2152.19, and 2152.20, and that is not eligible for a disposition under R.C. 2152.13 (R.C. 2152.02(Z)).

Application of certain provisions of the bill

The bill specifies that all of the amendments it makes to existing law and the repeals it makes of existing law apply only to a child who is charged with an act that allegedly was committed on or after the bill's effective date. The versions of the sections amended or repealed by the bill in effect immediately prior to the bill's effective date apply to a child who is charged with an act that allegedly was committed prior to the bill's effective date. (Section 3 of the bill.)

COMMENT

1. Existing R.C. 2901.01, not in the bill, defines "offense of violence" for purposes of the Revised Code. Some of the offenses of violence always are felonies, one (the offense of riot) always is a misdemeanor, and some are felonies in certain circumstances and misdemeanors in other circumstances. The offenses of violence that always are felonies, or that are felonies in certain circumstances, are:

(a) Aggravated murder; murder; voluntary manslaughter; involuntary manslaughter; felonious assault; aggravated assault in certain circumstances; permitting child abuse; aggravated menacing in certain circumstances; menacing by stalking in certain circumstances; menacing in certain circumstances; kidnapping; abduction; extortion; rape; sexual battery; gross sexual imposition; aggravated arson; arson in certain circumstances; terrorism; aggravated robbery; robbery; aggravated burglary; inciting to violence in certain circumstances; aggravated riot; inducing panic in certain circumstances; domestic violence in certain circumstances; intimidation; intimidation of an attorney, victim, or witness in a criminal case in certain circumstances; escape in certain circumstances; improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function; burglary in certain circumstances; endangering children in certain circumstances; or the former offense of felonious sexual penetration;

(b) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any offense listed in (1), above, when the violation is a felony;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons, when the offense is a felony;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense under **COMMENT** 1(a), (b), or (c), above, when the conspiracy, attempt, or complicity is a felony.

2. Existing R.C. 2152.12 requires a juvenile court that is considering whether to transfer a child to the appropriate court for criminal prosecution under the current discretionary transfer procedures to consider whether the applicable factors specified by statute that indicate that the case should be transferred outweigh the applicable factors specified by statute that indicate that the case should not be transferred. The specified factors are as follows (R.C. 2152.12(D) and (E), unchanged by the bill except for being redesignated as R.C. 2152.12(C) and (D)):

(a) **Factors in favor of a discretionary transfer.** The court must consider the following relevant factors, and any other relevant factors, in favor of a discretionary transfer: (i) the victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the act, (ii) the physical or psychological harm suffered by the victim due to the act was exacerbated because of the physical or psychological vulnerability or the age of the victim, (iii) the child's relationship with the victim facilitated the act, (iv) the child allegedly committed the act for hire or as a part of a gang or other organized criminal activity, (v) the child had a firearm at the time of the act, the act is not a violation of R.C. 2923.12, and the child, during the commission of the act, allegedly used, displayed, or brandished the firearm or indicated that the child possessed a firearm, (vi) at the time of the act, 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, (vii) the results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system, (viii) the child is emotionally, physically, or psychologically mature enough for the transfer, and (ix) there is not sufficient time to rehabilitate the child within the juvenile system.

(b) **Factors against a discretionary transfer.** The court must consider the following relevant factors, and any other relevant factors, against a discretionary transfer: (i) the victim induced or facilitated the act charged, (ii) the child acted under provocation in allegedly committing the act, (iii) the child was not the principal actor in the act, or, at the time of the act, was under the negative influence or coercion of another person, (iv) 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, (v) the child previously has not been adjudicated a delinquent child, (vi) the child is not emotionally, physically, or psychologically mature enough for the transfer, (vii) the child has a mental illness or is a mentally retarded person, and (viii) 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.

3. Existing R.C. 2152.14, unchanged by the bill except for the addition in divisions (A)(1) and (B) of the section of cross-references to R.C. 2152.13, sets forth procedures for invoking the adult portion of an SYO dispositional sentence. The director of DYS may request the prosecuting attorney of the county in which is located the juvenile court that imposed an SYO dispositional sentence upon a person to file a motion with that juvenile court to invoke the adult portion of the dispositional sentence if the person is at least 14 years of age, the person is in the institutional custody, or an escapee from the custody, of DYS, and the person is serving the juvenile portion of the SYO dispositional sentence. The motion must state that there is reasonable cause to believe that either of the following misconduct has occurred and shall state that at least one incident of misconduct of that nature occurred after the person reached 14 years of age: (a) the person committed an act that is a violation of the rules of the institution and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult, or (b) the person has engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim.

Also, if a person is at least 14 years of age, is serving the juvenile portion of an SYO dispositional sentence, and is on parole or aftercare from a DYS facility, or on community control, the director of DYS, the juvenile court that imposed the SYO dispositional sentence on the person, or the probation department supervising the person may request the prosecuting attorney of the county in which is located the juvenile court to file a motion with the juvenile court to invoke the adult portion of the dispositional sentence. The prosecuting attorney may file a motion to invoke the adult portion of the dispositional sentence even if no request is made. The motion generally must state the same beliefs and information described in the preceding paragraph regarding a motion of the type described in that paragraph.

If the prosecuting attorney declines a request to file a motion that was made by DYS or the supervising probation department under either provision described above or fails to act on a request made under either provision by DYS within a reasonable time, DYS or the supervising probation department may file such a motion with the juvenile court to invoke the adult portion of the SYO dispositional sentence. If the prosecuting attorney declines a request to file a motion that was made by the juvenile court under the provision described in the preceding paragraph or fails to act on a request from the court under that provision within a reasonable time, the juvenile court may hold the hearing described below on its own motion.

Upon the filing of a motion under any provision described above, the juvenile court may hold a hearing to determine whether to invoke the adult portion of a person's

SYO dispositional sentence. The court cannot invoke the adult portion of the sentence without a hearing. At the hearing the person who is the subject of the SYO disposition has the right to be present, to receive notice of the grounds upon which the adult sentence portion is sought to be invoked, to be represented by counsel including appointed counsel, to be advised on the procedures and protections set forth in the Juvenile Rules, and to present evidence on the person's own behalf, including evidence that the person has a mental illness or is a mentally retarded person. The person may not waive the right to counsel. The hearing must be open to the public. If the person presents evidence that the person has a mental illness or is a mentally retarded person, the juvenile court must consider that evidence in determining whether to invoke the adult portion of the SYO dispositional sentence.

The juvenile court may invoke the adult portion of a person's SYO dispositional sentence if the juvenile court finds all of the following by clear and convincing evidence: (a) the person is serving the juvenile portion of an SYO dispositional sentence, (b) the person is at least 14 years of age and has been admitted to a DYS facility, or criminal charges are pending against the person, and (c) the person engaged in the conduct or acts charged, as described above, and the person's conduct demonstrates that the person is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction. The court may modify the adult sentence the court invokes to consist of any lesser prison term that could be imposed for the offense and, in addition to the prison term or in lieu of the prison term if the prison term was not mandatory, any community control sanction that the offender was eligible to receive at sentencing. If a juvenile court invokes the adult portion of an SYO dispositional sentence, the juvenile portion of the sentence terminates, and DYS must transfer the person to the Department of Rehabilitation and Correction (DRC) or place the person under another sanction imposed as part of the sentence. The time the person must serve on a prison term imposed under the adult portion of the dispositional sentence is reduced by the total number of days the person has been held in detention or in a DYS facility under the juvenile portion of the sentence, plus any additional days the person is held in detention after the order is issued and before the person is transferred to DRC's custody. In no case may the total prison term as calculated under this provision exceed the maximum prison term available for an adult who is convicted of violating the same Revised Code sections. (R.C. 2152.14.)

4. Existing R.C. 2152.16, which is not in the bill, provides that, if a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court may commit the child to the legal custody of DYS for secure confinement as follows: (a) for an act that would be aggravated murder or murder if committed by an adult, until the child attains 21 years of age, (b) for a violation of R.C. 2923.02 that involves an attempt to commit an act that would be

aggravated murder or murder if committed by an adult, for a minimum period of six to seven years as prescribed by the court and a maximum period not to exceed the child's attainment of 21 years of age, (c) for a violation of R.C. 2903.03, 2905.01, 2909.02, 2911.01, or 2903.04(A), or for a violation of any provision of R.C. 2907.02, other than division (A)(1)(b) of that section when the sexual conduct or insertion involved was consensual and when the victim of the violation of division (A)(1)(b) of that section was older than the delinquent child, was the same age as the delinquent child, or was less than three years younger than the delinquent child, for an indefinite term consisting of a minimum period of one to three years as prescribed by the court and a maximum period not to exceed the child's attainment of 21 years of age, (d) if the child is adjudicated a delinquent child for committing an act that is not described in clause (b) or (c) of this paragraph and that would be a felony of the first or second degree if committed by an adult, for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed the child's attainment of 21 years of age, and (e) for committing an act that would be a felony of the third, fourth, or fifth degree if committed by an adult or for a violation of R.C. 2923.211(A), for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of 21 years of age.

In each case in which a court makes a disposition as described in the preceding paragraph, the court retains control over the commitment for the minimum period specified by the court in clause (a) to (e) of that paragraph. During the minimum period, DYS cannot move the child to a nonsecure setting without the permission of the court that imposed the disposition.

5. Under existing law, unchanged by the bill, prior to the release of a child under a judicial release to DYS supervision, DYS must do all of the following (R.C. 2152.22(E)): (a) after reviewing the child's rehabilitative progress history and medical and educational records, prepare a written treatment and rehabilitation plan for the child that includes conditions of the release, (b) completely discuss the conditions of the plan and the possible penalties for violation of the plan with the child and the child's parents, guardian, or legal custodian, (c) have the plan prepared signed by the child, the child's parents, legal guardian, or custodian, and any authority or person that is to supervise, control, and provide supportive assistance to the child at the time of the child's release, and (d) prior to the child's release, file a copy of the treatment plan with the committing court and the juvenile court of the county in which the child is to be placed. Under existing R.C. 2152.22(F), unchanged by the bill, DYS must file a written progress report with the committing court regarding each child released under a judicial release to DYS supervision at least once every 30 days unless specifically directed otherwise by the court. The report must indicate the treatment and rehabilitative progress of the child and the child's family, if applicable, and include any suggestions for altering the

program, custody, living arrangements, or treatment. DYS retains legal custody of a child so released until it discharges the child or until the custody is terminated as otherwise provided by law.

HISTORY

ACTION	DATE
Introduced	06-23-09

H0235-I-128.docx/jc