

OHIO CRIMINAL SENTENCING COMMISSION

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Sub. H.B. 393

(Juvenile Sentencing Refinements)

As Passed by the Senate

3-7-02

S.B. 179 (123rd G.A.), sponsored by then Sen. Bob Latta and carried in the House by Rep. Ann Womer Benjamin, authorized blended (juvenile + adult) sentencing for serious young offenders and made other juvenile justice reforms. S.B. 179's effective date was delayed to allow time for training and to identify mechanical issues. This bill, sponsored by Rep. Latta, addresses these and other issues.

KEY POINTS

- Regarding blended sentencing for serious youthful offenders (SYOs):
 - Clarifies how an SYO case begins (§2152.13).
 - Asks the Supreme Court to amend the Juvenile Rules to allow magistrates to handle ministerial aspects of SYO cases (e.g., arraignment and bail), but not trials and sentencing.
 - Clarifies that an offender must be 14 before an adult sentence is invoked, whether from DYS or from a community sanction, and gives the judge more flexibility on the adult sentence (§2152.14).
- Harmonizes S.B. 179 with S.B. 3, the juvenile sex offender registration (J-SORN) Law and clarifies some provisions (§§2152.19, 2152.82, 2152.83, 2152.84, 2950.01, 2950.04, 2950.09, & 2950.14).
 - Clarifies that an SYO's "dispositional sentence" means he or she is "adjudicated delinquent" for purposes of J-SORN (§2950.01(N)).
- Harmonizes S.B. 179 with the body armor spec law (S.B. 222), giving the court discretion to impose up to 2 years (§2152.17(D)(1)).
- Restores a parent's right to inspect a child's juvenile record, while shielding arrest records and witness statements from parental disclosure (§§2151.18(A) & 2152.71(A)).
- Sets the maximum amount of community service by unruly children at 175 hours (§2151.354(A)(2)).
- At DYS's request:
 - Carries over DYS's authority to grant releases for medical reasons, subject to court approval during the "minimum" term (§§2152.16(B)(2) & 5139.05).
 - Allows DYS's Release Authority to delegate power to hearing officers, while removing S.B. 179 language on the Authority's quorums and votes (§5139.50).
 - Makes optional language that currently mandates DYS to designate that some employees carry a firearm (§5139.53).
- Corrects H.B. 11 by specifying that the new court in Muskingum County is a domestic relations, not juvenile, court (§2301.03(AA)).
- At OSU's request, creates a narrow exception to the juvenile tobacco law (S.B. 218) to allow legitimate research (§2151.87 & 2927.02).

SECTION-BY-SECTION SUMMARY

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§2151.18 P.2 Parental Right to Inspect Child's Records

S.B. 179 removed a parent's right to inspect his or her child's juvenile court record. This was done in anticipation of legislation to clarify the cases in which the interests of parents and children might conflict (e.g., certain domestic violence, truancy/educational neglect, sex offense, and abuse, neglect, and dependency cases). However, those refinements did not become part of S.B. 179. Since there was no intent to completely limit parents' rights to inspect records, the bill restores pre-S.B. 179 law in cases falling under Ch. 2151 (e.g., abuse, neglect, dependency, unruly).

§2151.28 P.2 Summons

§2151.314 P.8 Detention Hearing

Technical. Corrects cross-references.

§2151.354 P.10 Dispositions for Unruly Children

S.B. 179 makes clear a juvenile court can place an unruly child under community control sanctions, including community service under §2152.19(A)(3). However, the hour limits in that section relate only to delinquency offenses. The bill provides that the maximum amount of community service for an unruly act would be 175 hours.

§2151.38 P.14 DYS Release Authority

Technical. Removes language covered by §2152.22.

§2151.87 P.14 Youth Tobacco Violations

At Ohio State University's request, creates an exception to the prohibition against youth accepting, using, or possessing tobacco products. The exception would cover youth participating in a research protocol if all of the following apply: the child's parent, guardian, or custodian consents in writing; an human subjects protection review board approved the research; and the child participates at a location specified in the research protocol (div.(E)(3)). For adult penalties, see §2927.02.

§2152.10 P.17 Eligibility for Transfer to Adult Court

Technical. In transferring mandatory transfer language to new Ch. 2152, "and brandish" was left out of §2152.10(A)(2)(b)'s firearm spec. The bill reinserts it to parallel §2152.11.

§2152.13 P.18 Serious Youthful Offenders ("SYOs")

Technical. This section lays out what appear to be coequal ways to begin an SYO case (indictment, information, complaint, or notice). Since the right to indictment trumps the others, the bill clarifies that, while a complaint or notice can "initiate" the case by giving grounds for holding the juvenile, an indictment or information still must be obtained (div.(A)). Reletters divisions and cross-references. Capitalizes a reference to the Criminal Rules (div.(C)(2)).

S.B. 179 contained an unintended inconsistencies in sentencing the juvenile parts of mandatory (MSYO) and discretionary serious youthful offender (DSYO) cases. The bill clarifies that the court, in imposing the juvenile part of the blended sentence, has the full range of

traditional juvenile choices under §§2152.16 (DYS terms), 2152.17 (gun specs, etc.), 2152.19 (community dispositions), and 2152.20 (financial dispositions). This applies in MSYO cases (div.(D)(1)(b)), DSYO cases (div.(D)(2)(a)(ii)), and cases where a DYSO finding is not made (div.(D)(2)(b)).

§2152.14 P.22 Invoking Adult Portion of SYO Sentence

When triggered by misconduct in a DYS facility, div.(A)(2) says at least one incident must occur after the child reaches age 14. Through oversight, div.(B)'s language on invoking from a community setting does not contain parallel language. The bill corrects the error.

Once invoked, there is some question about the duration of the adult sentence. The bill clarifies that the court has discretion to invoke the prison term initially imposed or, if warranted (and when the prison term is not mandatory), a shorter prison term or some type of community control (div.(E)(2)). Renumbers divisions.

§2152.16 P.26 DYS Terms: Medical Releases

S.B. 179 failed to carry over DYS's authority to grant supervised releases or discharges for medical reasons. These include terminal illness, medical incapacity, and being subject to commitment for mental illness or retardation (whatever that means in the juvenile context). At DYS's request, the bill again gives DYS this power, but requires court approval for release during the "minimum" term (div.(B)(2)).

Technical. Makes clearer that DYS cannot move a child to a nonsecure setting without the permission of the committing court during the "minimum" term specified by the court (divs.(A)(2)&(B)(1)).

§2152.17 P.29 Surpenalties

Harmonizes the body armor spec bill (S.B. 122 of the 123rd) with S.B. 179, specifying that the juvenile court can add up to 2 years for committing a felony act while wearing body armor (div.(D)(1)). Reletters divisions and corrects cross-references.

Technical. Specifies that the court retains control over commitments under this section (foreclosing releases by DYS) (div.(E)).

§2152.18 P.32 Community Dispositions

Technical. Corrects a cross-reference.

§2152.19 P.36 Delinquency Dispositions

Here and elsewhere, harmonizes S.B. 179 with S.B. 3 of the 123rd G.A. (the juvenile sex offender registration and notice bill or "J-SORN"). Currently, DYS *must* provide treatment for certain sex offenders. Yet, S.B. 3 said treatment is the "*preferred* course of action". The bill clarifies that treatment is the preferred course if the court does not otherwise specifically require treatment in DYS (div.(G)(1)&(2)).

§2152.22 P.45 Judicial Release from DYS

Under S.B. 179, the committing court would supervise an offender released during the first 90 days imposed for an F-3, F-4, or F-5 level delinquency and during the first 180 days imposed for an F-1 or F-2. DYS would supervise the offender granted judicial release after this 90 or 180 day period. Since the dividing line between local and DYS

supervision is half the period of court control, the bill substitutes "half" for the 90 and 180 day thresholds (divs.(B)(1)&(C)(1)).

Technical. Makes clearer that DYS cannot discharge a child without judicial approval before the "minimum" term specified by the court and during any surpenalty (gun spec, etc.) time (div.(A)).

§2152.71 P.53 Parental Right to Inspect Child's Records

Parallel's the change discussed in §2151.18, above, for cases falling under Ch. 2152 (e.g., bindover, SYOs, other delinquents, and juvenile traffic offenders).

Adds that the right to inspect records does not require release, or authorize inspection of, arrest or incident reports, law enforcement investigatory records, or witness statements (div.(A)).

§2152.82 P.56 Juvenile Sex Offender Registrants

S.B. 3 requires juvenile courts to classify as juvenile sex offender registrants certain offenders who previously were adjudicated delinquent. However, it did not mention prior criminal convictions. The bill fills the gap (div.(A)). It also rearranges and clarifies language to improve readability (divs.(A)&(B)).

§2152.83 P.58 Juvenile Sex Offender Duty to Register

Technical. Rearranges and clarifies S.B. 3 language (divs.(A)-(C)).

§2152.84 P.63 Sex Offender Registrant "Call Back" Hearing

Under S.B. 3, after a juvenile sex offender with a duty to register completes his or her disposition, the court must hold a hearing to review it. The bill streamlines language and clarifies that the hearing is to determine the child's risk of reoffending (div.(A)(1)).

As now, the court can continue, modify, or terminate a sex offender's classification. The bill makes clear that a court reclassifying a child must send a copy of the order to BCI&I. The Bureau must promptly notify the registration sheriff of any reclassification (div.(B), last ¶). Also, clarifies cross-references and makes other mechanical changes.

§2301.03 P.67 Common Pleas Judges

Clarifies that the new common pleas judgeship in Muskingum County is a domestic relations court, not a juvenile court (div.(AA)).

§2927.02 P.101 Youth Tobacco Violations by Adults

At OSU's request, creates an exception to the prohibition against an adult providing a child with tobacco products if done for research subject to the limitations noted in §2151.87 above (div.(E)).

§2950.01 P.104 Sex Offender Registration Definitions

Re S.B. 3, clarifies that a "habitual sex offender" includes an adult who was classified as a sex offender registrant for a prior juvenile adjudication and juveniles have out-of-state "adult" convictions (div.(B)(2)).

Similarly, fills gaps in S.B. 3's definition of "sexually oriented offenses" by:

- Generally having the juvenile definition more closely track the adult definition (div.(D)(2)).

- Clearly including attempt, complicity, and conspiracy to commit certain sex offenses, & certain F-5s, by juveniles (div.(D)(2)(g)).
- Clarifying that prior violations include violating any substantially equivalent former Ohio law or law of another state, the U.S., a municipality, the military, or an Indian tribe (div.(D)(2)(f)).
- Otherwise reorganizing the definition (div.(D)(1)&(2)).

Makes clear that a person "adjudicated delinquent" for purposes of the sex offender registration law includes a person who receives a "dispositional sentence" as a serious youthful offender (div.(N)).

Specifies the date of earlier amendments (div.(B)(1), (G)(5), (J), & (L)), tying the effective date of the J-SORN law to that of S.B. 179. Also, reletters divisions and makes other mechanical changes.

§2950.04 P.112 Sex Offender Required to Register with Sheriff
 Technical. Improves readability, updates cross-references, and specifies the effective date of an earlier amendment.

§2950.09 P.117 Sexual Predators
 Clarifies that prior offenses include delinquency adjudications (div.(E)(1)). Reorganizes and clarifies language to improve readability (div.(B)(1)&(2), (D), & (E)(1)&(2)).

§2150.14 P.133 DYS Duty before Sex Offender's Release
 S.B. 3 required DYS to provide certain information to BCI&I before releasing a child committed for a sexually oriented offense. The bill clarifies that this applies when the child has been classified as a juvenile sex offender registrant based on that adjudication. Specifies the effective date of an earlier amendment (div.(A)).

§5139.05 P.135 Commitments to DYS: Medical Release
 Technical. Makes clearer that the Release Authority cannot release an offender until the "minimum" period of court control over the commitment ends, including any surpenalty time (gun specs, etc.) (div.(A)(1)&(B)(1)). Also, at the behest of DYS, the bill recognizes releases under §5139.54's medical discharge provisions (see §2152.16, above) (div.(B)(1)).

§5139.06 P.142 DYS's Duties on Receiving an Offender
 Technical. Corrects a cross-reference.

§5139.50 P.146 DYS Release Authority Creation & Members
 S.B. 179 provided that the Release Authority cannot delegate its authority to make final decisions. On DYS's suggestion, the bill makes clear that the Authority can delegate to hearing officers or other designated staff, but cannot otherwise delegate its authority (div.(G)).

S.B. 179 contained language suggested by DYS on the Authority's quorums and votes (div.(D)). On DYS's request, the bill removes that language.

§5139.53 P.149 DYS Arrest Powers
 Current law (not changed by S.B. 179) requires the Director DYS to designate that some employees carry a firearm. At the behest of DYS, the bill makes the requirement optional (div.(A)(2)).

Section 2 P.152 Repeals Clause

Repeals current versions of sections amended by the bill.

Section 3 P.152 Suggested Juvenile Rules Amendments

Because the stakes are higher in SYO cases, S.B. 179 asked the Supreme Court to amend the Juvenile Rules to make clear that only judges could impose sentences in SYO cases. Based on this, the Court amended Juvenile Rule 40(C)(1)(a)(i) to say that a magistrate may hear a "pretrial or post-judgment motion in any case, except a case involving the determination of a child's status as a serious youthful offender." This prevents magistrates from trying and sentencing SYOs, as intended. But it also seems to keep them from arraigning and setting bond in these cases. Div.(A) asks the Court to revise the rules to allow these ministerial functions.

Section 4 P.153 Filing for Muskingum County Judgeship

In light of the correction made in §2301.03, sets an 8/22/02 deadline for filing a nominating a petition with 50 valid signatures for the new judgeship (div.(B)). Those who file petitions for the open judgeship before the act's effective date do not have to refile (div.(A)).

Sections 5 & 6 P.154 Harmonizations

Harmonizes various versions of statutes that earlier appeared in multiple bills at about the same time.