



**HB 394 Testimony to the Ohio House Criminal Justice Committee
March 20, 2018**

Thank you Chairman Manning, Vice-Chair Rezabek and Ranking Member Celebrezze, and House Criminal Justice Committee members.

My name is Gabriella Celeste and I am the Policy Director of the Schubert Center for Child Studies at Case Western Reserve University. As a Center focused on bridging research with policy, practice and education for the well-being of children and families, I offer this testimony as an interested party in legislation concerning matters that impact children in or at risk of entering the justice system, specifically HB 394. My comments focus on the bindover and parole eligibility portions of the bill.

I have been involved in child policy and practice for over 25 years, in California, Louisiana, and for the last dozen years in Ohio. I have particular concern about transfer, as it was one of the first issues we looked at in Louisiana back in 1998. We saw, in a statute remarkably similar to Ohio's transfer law, the devastating consequences of transferring 15-, 16- and 17-year old children to adult jails to await trials. We could tell then, that the outcome was dangerously wrong; but we didn't have the evidence to explain why. In the 20 years since, there has been an abundant amount of research rejecting reliance solely on the elements of a crime rather than the circumstances of the child (and the case) to decide which child goes to adult court.

Ohio's mandatory bindover law:

- (1) Fails to recognize the unique neurological, cognitive and social-emotional development of youth, including the impact of trauma and abuse, peer-influence, and other critical markers of adolescence.
- (2) Removes children from a system with expertise in addressing the circumstances of adolescence and places them in a system designed to deal with adults. It not only keeps juvenile judges with their special training and expertise from applying their knowledge, but it ties the hands of prosecutors as well who cannot present evidence addressing the unique circumstances of a particular child.
- (3) Endangers children who may be more effectively treated in the juvenile system, without any consideration of the psychological and physical danger that a child faces in the adult system. Housing children with adult offenders also increases, rather than reduces the potential harm to the community, by increasing the risk of recidivism upon release.

Let me say a little more about each of these concerns.

First, mandatory bindover fails to take any understanding of adolescence into account by literally creating a legal fiction of "adulthood" to justify applying adult expectations and lifetime consequences onto a child. This legal fiction is codified in Ohio Revised Code where it mandates: "any such person shall be deemed after the transfer *not to be a child* in the transferred case." (2152.02(C)(4))

But the law is not a magic wand.

Of course, the “person” is still under 18 years of age and still very much a child when it comes to their development. Regardless of what the law “deems” for legal purposes, the reality is that the child still has a child’s brain and cognitive function;
a child’s social emotional capacity;
a child’s limited ability to understand future consequences;
a child’s tendency to overestimate potential rewards and underestimate risks;
a child’s desire to fit in and belong that makes them vulnerable to social influences; and,
a child’s limited maturity overall.

Combined, these realities of adolescence make a child very susceptible to poor decision-making, not only in the behavior that led to the criminal charge, but in the course of the legal case. This is borne out, for example, in the substantial risk of false confessions in childhood.¹ A false confession by a child in the adult context can of course result in significantly more serious consequences than if the child remains in the juvenile system.

Holding youth accountable for their actions requires age-appropriate interventions in order to be effective but these don’t exist in a system designed for adults. Transfer laws are meant to deter youth from criminal behavior but not only have they have been found to have little or no deterrent effect but, more importantly, bound over youth are actually more likely to reoffend compared to similar youth maintained in the juvenile system.² Moreover, research shows that the vast majority of young people, even serious juvenile offenders, grow up and out of crime as they mature to adulthood.³ Using adult sanctions and corrections interventions for youth is more likely to impede maturation and development and increase the likelihood of future criminal activity given the child’s exposure to an ineffective or even harmful adult system.

This is why it is so critical that before we deem a child an “adult” for criminal prosecution purposes, we have the expertise needed to take into account the unique circumstances of the child and the case to determine the most effective justice system response. Juvenile judges have a specialized role in our legal system to take an individualized approach in determining the best course of action with a specific child. Indeed, our state requires juvenile judges to “provide for the care, protection, and mental and physical development of children...whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety.” (ORC 2151.01)

The mandatory bindover statute prevents judges from assessing the unique circumstances of youth. It considers neither the size of a child before transferring to adult court, nor the capacity of the child’s mind. Juvenile judges are, and must be, the most informed experts to decide which child is susceptible to rehabilitation, who requires deep psychological treatment, which conduct is particularly derived from the transience of youth. These questions are not answered by looking at the elements of a crime, but at the circumstances of the child.

Mandatory bindover undermines the entire justice system’s ability to take the individual child’s circumstances into consideration as the law requires transfer wherever the basic elements of an alleged offense are met. By removing the opportunity for juvenile judges, and even prosecutors, to

¹ U.S. Department of Justice (USDOJ), Office of Juvenile Justice and Delinquency Prevention (OJJDP) and International Association of Chiefs of Police, *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation* (September 2012). Retrieved at: <http://www.theiacp.org/Portals/0/pdfs/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf>

² Redding, R. *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* USDOJ OJJDP Juvenile Justice Bulletin (June 2010). Retrieved at: <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>

³ Steinberg, L., Cauffman, E. and Monahan, K. *Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders*, USDOJ OJJDP Bulletin (March 2015). Retrieved at: <https://www.ojjdp.gov/pubs/248391.pdf>

have any meaningful role in determining a child's fate, mandatory bindover simply does not do justice. HB 394 would ensure that the juvenile judge, as the impartial decision-maker, has the appropriate discretion to make the critical decision of whether a child offender would be more appropriately handled by an adult criminal justice system.

Which leads to my final point: **children face real harm in the adult system. Youth in adult prisons were five times more likely to be sexually assaulted, twice as likely to be beaten by staff and 50% more likely to be attacked with a weapon than youth in juvenile facilities.**⁴ **And the suicide rate is eight times higher for youth in adult facilities.**⁵ Even arguably the "worst" child offenders should not be subject to the victimization they risk experiencing in the adult system. Mandatory bindover laws fail to even allow a court to consider whether possible victimization is a potential concern with a child. This serves neither the child's nor the public's interests.

Those with the expertise best suited to assess the most appropriate course of action for each accused child offender are juvenile court judges. HB 394 still allows prosecutorial input but puts the ultimate decision back in the measured hands of judges.

HB 394 also addresses parole eligibility for those youth who have been transferred to adult court. A juvenile sentence of life without a meaningful opportunity for parole is a sentence to death in prison for a young person. Let's be clear, this is not about being soft on crime - youth who have caused harm will still be punished severely. All of the arguments I made in the context of transfer are also relevant in considering whether a child, even one who commits a serious, violent offense, should at least have a genuine chance for parole, after serving significant time in prison.

HB 394 creates at least a small window of opportunity for a former young offender. Only after having served significant prison time for the offense committed in childhood, would he or she then be eligible for a parole hearing, at which they would still need to demonstrate their worthiness, showing a sincere understanding of the harm they caused, authentic growth during their confinement and, despite all the violence and difficulties they may have endured, that they are not a danger to others.

HB 394 is an important step to returning incarceration to a place not only of proportional punishment but a chance for personal transformation. All people, but especially those in the turmoil of adolescence, are more than their worst deed – HB 394 creates the possibility that a convicted young person may yet, one day, grow into their best self and perhaps even have something of value to offer society.

Thank you for your consideration.

⁴ Forst, M., Fagan, J., and Vivona, T.S. 1989. "Youth in Prisons and State Training Schools." *Juvenile and Family Court Journal* 39:1-14.

⁵ Community Research Center. 1980. *Juvenile Suicides in Adult Jails*. Juvenile Justice Transfer Series. Washington, DC: USDOJ OJJDP.