

## RESEARCH CONTEXT

Research has shown that transferring a youth to adult court can have long-lasting negative impacts, including increased recidivism, a higher likelihood of physical and sexual abuse throughout their stay in prison, a significantly increased risk of suicide, inability to access appropriate education, and being subjected to harmful isolation. Research recommends transferring youth to the adult court system rarely.<sup>1</sup>

## EVIDENCE

The application of rules of evidence in bindover proceedings currently is undecided.



Attorney Representation: Any child charged with a SYO or bindover offense must be represented by counsel.  
[R.C. 2152.13(C)(2)]; [Juv.R. 4(A)]

## SERIOUS YOUTHFUL OFFENDERS (SYO)

In Ohio, a child can be given a blended juvenile and adult court sentence under the Serious Youthful Offender (SYO) statute. Under SYO, a child receives a juvenile court disposition, as well as a stayed adult court sentence; this stayed adult court sentence can only be invoked under certain circumstances as described below. SYO originally was created to serve as an alternative to bindover and must take into account the purpose of the juvenile court, which includes individual treatment, accountability, and rehabilitation.<sup>2</sup>

### Housing

Youth who are filed as SYOs must be retained in a juvenile detention facility if they are not released on bond. [R.C. 2151.31(C)(2)] and [R.C. 2152.13(C)(2)]

### SYO Process Initiation

A prosecutor must initiate the SYO process by:

- 1) Obtaining an SYO indictment;
- 2) If an indictment is waived, charging the child in a bill of information as an SYO; or
- 3) Until an indictment or information is obtained, either:

- Requesting a SYO dispositional sentence in the original complaint; or
- If the original complaint does not request a SYO dispositional sentence, filing a written notice of intent to seek an SYO sentence within 20 days after the later of the following (unless time is extended for good cause):
  - The first juvenile court hearing on the complaint;
  - The date the juvenile court determines not to transfer the case.
- Under the circumstances in 3) above, the court must hold a preliminary hearing to determine probable cause that the child committed the act charged and is age eligible or required to receive a SYO sentence. [R.C. 2152.13(B)]
- Once this notice is given, the juvenile court shall serve a copy of the notice on the child and advise the child of the prosecutor's intent to seek an SYO disposition. [R.C. 2152.13(A)]

### Unique Rights for Youth Charged with SYO

- A child subject to an SYO proceeding has the right to:
  - A **grand jury** determination of probable cause for the offense and that the child is eligible for an SYO based on age. The grand jury may be impaneled by the court of common pleas, general division, or the juvenile court.
  - A **transcript** of the proceedings.
  - An open and speedy **jury trial** that begins upon the filing of the indictment or information, the original complaint, or the written notice.
  - **Bail** and all rights of adult court, including the right to raise the issue of competency. [R.C. 2152.13(C)]

<sup>1</sup> For more information, see Children's Law Center, *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System* (2012), available at [nicic.gov/library/026406](http://nicic.gov/library/026406).

<sup>2</sup> *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9

## **SYO SENTENCING STRUCTURE** [R.C. 2152.13(D)]

### **Mandatory SYO** [R.C. 2152.13(D)(1)]

- The court shall:
  - Impose an adult sentence for the violation under [R.C. Chapter 2929](#), except a sentence of death or life imprisonment without parole.
  - Impose one or more traditional juvenile dispositions under sections [R.C. 2152.16](#), [R.C. 2152.19](#), and [R.C. 2152.20](#), and, if applicable, [R.C. 2152.17](#).
  - Stay the adult portion of the sentence pending the successful completion of the traditional juvenile dispositions imposed.

### **Discretionary SYO** [R.C. 2152.13(D)(2)]

- The court:
  - May impose an adult sentence for the violation under [R.C. Chapter 2929](#) (except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole), if the juvenile court makes a finding on the record 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 [R.C. 2152.01](#) will be met.
  - Shall impose one or more traditional juvenile dispositions under sections [R.C. 2152.16](#), [R.C. 2152.19](#), and [R.C. 2152.20](#) and, if applicable, [R.C. 2152.17](#), either in addition to or in lieu of an adult sentence, depending on the court's ruling above.
  - If an adult sentence is imposed, the court shall stay the adult portion of the SYO sentence pending the successful completion of the traditional juvenile dispositions imposed.

### **Appeal** [R.C. 2152.13(D)(3)]

- A child can appeal the adult portion of the SYO sentence under [R.C. 2953.08\(A\)\(1\)](#), (3), (4), or (5), when applicable, and the court shall consider the appeal as if the adult portion were not stayed.

## **Invoking the Adult Portion of an SYO Disposition** [R.C. 2152.14]

- The motion to invoke the SYO must be filed by the prosecuting attorney either with or without a request from DYS, the juvenile court that imposed the SYO, or the youth's probation department. However, if the prosecutor gets a request to file the motion and denies it, any of those entities also may file a motion or hold the hearing. The motion must show reasonable cause that – after the age of 14 – the youth:
  1. Committed a violation of institutional rules that could be a felony or first-degree misdemeanor; **AND**
  2. Engaged in conduct that creates a substantial risk to the safety or security of the institution, community, or victim.
- In invoking the SYO sentence, the court must find that all of the following apply:
  - The child is serving the juvenile portion of an SYO disposition;
  - The child is at least 14;
  - The child has been admitted to DYS or criminal charges are pending;
  - The child – after the age of 14 – committed a violation of institutional rules that could be a felony or first-degree misdemeanor or engaged in conduct that creates a substantial risk to the safety or security of the institution, community, or victim; **AND**
  - The child's conduct demonstrates the child is unlikely to be rehabilitated under juvenile court jurisdiction.
- If the adult sentence is invoked:
  - The juvenile court can modify the sentence to a lesser prison term or community control.
  - The juvenile court must transfer jurisdiction to adult court with the total number of days the child has been held in detention or a DYS facility, for which the youth must be given credit.

## BINDOVER

- Youth ages 14 and up in Ohio can be bound over – or transferred – to the adult-court system. The bindover process can be either mandatory or discretionary. The juvenile court’s bindover proceedings determine the case’s jurisdiction and whether it remains in juvenile court or is transferred to adult court, not the merits of the case.

Category One & Two Offenses <a href="#">[R.C. 2152.02(BB) - (CC)]</a>	
Category-One offense	Murder, aggravated murder, or attempts of either of these offenses
Category-Two offense	Voluntary manslaughter, involuntary manslaughter (felony-1 Level), aggravated robbery, aggravated burglary, rape, or aggravated arson. <b>NOTE:</b> Although kidnapping also is a Category-Two offense, it is not included in mandatory-bindover laws.

### Housing [\[R.C. 2152.26\(F\)\(4\)\]](#)

- Children who are boundover may be placed in detention pursuant to the standard set forth in the Detained Youth bench card. Any child facing bindover charges must be held in a juvenile detention facility until the child is transferred to an adult court (after determination in a post-amenability hearing).
- If the child turns 18 while the bindover is pending, the judge may move the child to an adult jail if:
  - The judge determines the youth is a **threat to the safety and security of the facility**, based on whether the child has injured/created imminent danger, escaped more than once, or has a written record showing a pattern of disruptive behavior.
  - A hearing is held that takes into account the factors listed in [R.C. 2152.26\(F\)\(1\)\(4\)\(c\)](#).
- If a child is moved to jail, they can petition the court for a review to be placed back into detention every 30 days or by emergency petition. While in jail, the child must be separated by sight and sound from adults [\[R.C. 2152.26\(F\)\(1\)\]](#) and the fact the child is placed in the jail must be kept confidential and not made a public record, unless the child is convicted or pleads guilty to an adult sentence. [\[R.C. 2152.26\(G\)\]](#)

### Bindover Process

- Children in the juvenile court can be boundover if:
  - **STEP #1:** A complaint is filed under [Juv.R. 30](#) requesting a transfer of jurisdiction to adult court. This transfer can be either mandatory or discretionary; the process for each of these types of bindover is laid out next with discretionary outlined first.

### Discretionary Bindover

- **STEP #2:** Is the child eligible for bindover?
- The child must be both:
  - 14 or older; **AND**
  - Charged with a felony
- **Process STEP #3:**
- Three steps: [\[R.C. 2152.12\(B\) - \(E\)\]](#)
  - Does the child qualify for discretionary bindover above? **AND**
  - Is there probable cause to believe the child committed the act charged? **AND**
  - Is the child amenable to the care or rehabilitation within the juvenile system or does the safety of the community require the child to be boundover?
- To answer this question the judge must:
  - Conduct an investigation and receive a report within 45 days (with one extension allowed) regarding the child’s social history, education, family situation, and any other

factor. This report may be knowingly and intelligently waived and cannot be used to determine whether the factors in favor of transfer outweigh factors against transfer.

- The factors generally include the role of and impact on the victim, presence of a firearm, prior juvenile court involvement, the child's individual characteristics, and whether there is sufficient time to rehabilitate the child.



Record shall indicate that the court weighed the specific factors that were applicable, and shall state the reasons for transfer.

### Mandatory Bindover

- **STEP #2:** Is the child eligible for bindover?

#### Category-One Offense

- Charged with a Category One Offense and **EITHER:**
  - 16 or older [\[R.C. 2152.10\(A\)\(1\)\]](#); **OR**
  - Meets all three of the following requirements:
    - 14 or 15 years old; **AND**
    - Previously adjudicated delinquent for a Category-One or -Two offense; **AND**
    - Committed to DYS for that adjudication.

#### Category-Two Offense

- Charged with a Category-Two Offense (other than kidnapping) and **BOTH:**
  - 16 or older; **AND**
  - Meets at least one of the following requirements:
    - Previously adjudicated delinquent for a Category-One or -Two offense **AND** committed to DYS for that adjudication;
    - Alleged to have a firearm on person or under control **AND** displayed/brandished/indicated possession/used the firearm.

### Other Circumstances that Require Mandatory Bindover [\[2152.12\(A\)\(2\)\]](#)

- The child **previously has been boundover** under [R.C. 2152.12](#) **AND** is convicted of or pleads guilty to a felony in adult court.
- The child had the **adult portion of a SYO invoked** (this section does not apply to reverse-waiver child whose SYO sentence is not invoked).
- The child is from **another state** whose laws would require bindover.

### Process **STEP #3**

- Two steps: [\[2152.12\(A\)\(1\)\]](#)
  - Does the child fall into one of the mandatory-bindover categories above?
  - Is there probable cause to believe the child committed the act charged?

### Reverse waiver [\[R.C. 2152.121\]](#) **STEP #4:**

- Reverse waiver applies to mandatory-bindover children because they were 16 or 17 at the time of the offense and either were charged with a Category-One offense **OR** charged with a Category-Two offense with a firearm.
- Under reverse waiver, a child can return to the juvenile court depending on the adult court's decision:
- If a child is returned to juvenile court under reverse waiver, the court must impose an SYO disposition on the child giving preference to the sentence to the adult-court judge. The child can be transferred back to adult court if:
  - Within 14 days of the journal entry filing, the prosecutor objects to the youth remaining in juvenile court; **AND**
  - The court holds an amenability hearing as described in Step #3 of discretionary bindover; **AND**
  - The court determines, as described in Step #3 of discretionary bindover, that the child is not amenable to rehabilitation in the juvenile court system. If the child remains in juvenile court, the SYO disposition shall apply.

YOUTH CONVICTED IN ADULT COURT OF:	RESULT
Non-Bindover Offense	Child is returned to juvenile court and adult court records must be expunged
Mandatory-Bindover Offense	Child remains in adult court
Discretionary-Bindover Offense	Child is returned to juvenile court <b>BUT</b> can return to adult court (after prosecutor objection and judicial amenability hearing). If the child remains in juvenile court, he/she must receive an SYO adjudication.



Court should receive an entry from adult court with outcome of adult case.

### Final Step

- If child is boundover for any reason listed previously, the court must state the reasons for transfer on the record.

