

**Research Context:** Research has shown that placing a youth in detention for any amount of time can cause negative impacts, including increased recidivism,<sup>1</sup> substance abuse, and decreased educational attainment, and employability.<sup>2</sup>

### NOTE

Given the negative impacts of detention, national leaders recommend holding youth in detention only if they are a flight risk or the youth is a danger to others.

### DETENTION STANDARD

Detention or shelter care is required as follows: [\[R.C. 2151.31\(C\)\]](#); [\[Juv.R. 7\]](#)

#### Non-Delinquency Offense

- To protect the child from immediate or threatened physical or emotional harm. (Detention required under [Juv.R. 7\(A\)](#))
- Because the child is a danger or threat to one or more other persons **AND** is charged with violating a section of the Revised Code that may be violated by an adult.
- Because the child may abscond or be removed from the jurisdiction of the court.
- Because the child has no parents, guardian, custodian, or other person able to provide supervision and care for the child and return the child to the court when required.
- Because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.

#### Delinquency Offense

- May be held up to 90 days. [\[R.C. 2151.31\(C\)\(2\)\]](#); [\[R.C. 2152.04\]](#)

#### SYO Offense

- No specific standard; use delinquency standard. If confined, the child may be held in detention if not released on bond. [\[R.C. 2151.31\(C\)\(2\)\]](#)

#### Bindover Offense

- No specific standard; use delinquency standard. If confined, the child must be held in detention until after amenability hearing (discretionary bindover) or probable cause hearing (mandatory bindover).

After these hearings, a youth must be held in juvenile detention until a guilty plea or conviction in adult court, unless the juvenile court transfers the youth to an adult jail using the process described in the chart on page 4.

### DETENTION PROCESS

- The detention process involves several distinct steps, including:
  1. Taking a child into custody and immediate detention;
  2. An initial detention review; and
  3. A detention hearing.

#### STEP 1 – Custody and Immediate Pre-Hearing Detention

- A child only can be taken into custody:
  - If the child has run away from parents/guardian/custodian.
  - If a complaint has been filed **AND** there are reasonable grounds to believe the child may abscond or be removed from the court jurisdiction.
  - Pursuant to an order of the court.
  - Pursuant to the law of arrest.
  - If the child's removal is necessary to prevent immediate or threatened physical or emotional harm due to the child's surroundings, abuse, or neglect.
  - If the child's conduct, conditions, or surroundings are endangering the child's health, welfare, or safety. [\[R.C. 2151.31\(A\)\]](#); [\[Juv.R. 6\]](#)

<sup>1</sup> Uberto Gatti, et al., Latrogenic Effect of Juvenile Justice, 50 J. Child Psychol. & Psychiatry 991, 994 (2009).

<sup>2</sup> Two Decades of JDAI from Demonstration Project to National Standard, the Annie E. Casey Foundation (2009).

- Once a youth is in custody, the person taking the youth into custody shall: hold a probable cause hearing no later than 72 hours after custody; and with all reasonable speed, either:
  - Release the child to the child's parents, guardians, or custodian **OR**
  - If detention is warranted or required, take the child to court or detention and give the admissions officer a signed report stating why the child was taken into custody and why the child was not released and assisting the admissions officer, if necessary, in notifying the parent, guardian, or custodian. [\[R.C. 2151.311\(A\)\]](#); [\[Juv.R. 6-7\]](#)

### STEP 2 - Initial Detention Review

- Immediately; prior to detention hearing
- If a youth is taken into custody and taken to detention, the intake or other authorized court officer shall immediately investigate and release or detain the child using the standard in [R.C. 2151.31\(C\)](#) listed above (detention standard – pre-adjudication). [\[R.C. 2151.314\]](#); [\[Juv.R. 7\(D\)\]](#)
- After admission, the admissions officers shall do all of the following:
  - Prepare a report with the time and reasons for admitting the child to detention.
  - Advise the child of the time, place, and purpose of the detention hearing and his/her right to phone parents and counsel immediately and at reasonable times thereafter.
  - Use reasonable diligence to contact the child's parent, guardian, or custodian to advise them about the place and reasons for detention and visitation, as well as the time, place, purpose of the detention hearing, and the right to counsel and appointed counsel in the case of indigency. [\[Juv.R. 7\(E\)\]](#)

### STEP 3: Detention Hearing

- 72 hours or the next day, whichever is earlier.
- If the youth is not released, a complaint must be filed and the court must hold an informal detention hearing the following business day, or

no later than 72 hours, to determine whether detention is required using the standard in [R.C. 2151.31\(C\)](#).

#### NOTE

The court may consider diversion at this time. See Diversion Bench Card.

### Before the Hearing

- The youth and his/her parent/guardian/custodian (if found) must have reasonable oral or written notice of the time, place, and purpose of the hearing, right to counsel, right to remain silent, and contact information of a court employee to arrange for counsel. The court also shall inform the parties of their right to counsel if indigent. [\[R.C. 2151.314\(A\)\]](#); [\[Juv.R. 7\(F\)\]](#) Each court must have one court employee to assist people who are indigent in obtaining counsel. [\[R.C. 2151.314\(D\)\]](#)

### Right to Counsel

- If child is facing the potential loss of liberty, the child shall be informed on the record of the child's right to counsel and the disadvantages of self-representation. If a child is charged with a felony offense, the court shall not allow any waiver of counsel unless the child has met privately with an attorney to discuss the child's right to counsel and the disadvantages of self-representation. [\[Juv.R. 3\(B\) - \(C\)\]](#)
- Any waiver of counsel must be made in open court, recorded, and in writing. In determining whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court shall look to the totality of the circumstances, including, but not limited to:
  - The child's age;
  - Intelligence;
  - Education;
  - Background and experience generally and in the court system specifically;
  - The child's emotional stability;
  - The complexity of the proceedings.

- The court shall ensure that a child consults with a parent, custodian, guardian, or guardian ad litem (GAL), before any waiver of counsel. However, no parent, guardian, custodian, or other person may waive the child's right to counsel. [\[Juv.R. 3\(D\)\]](#)

#### Evidence

- During the hearing, the court may consider any evidence, including reports filed by the person who took the youth into custody and the admissions officer, without regard to formal evidence rules. [\[Juv.R. 7\(F\)\(3\)\]](#)

#### Rehearing Required

- The court must hold a rehearing promptly if the parent, guardian, or custodian did not receive notice and did not appear or waive appearance at the hearing. After a child is placed in detention care, any party and the child's GAL may file a motion requesting the child's release and a hearing must be held within 72 hours. [\[Juv.R. 7\(G\)\]](#)

#### STEP 4 - Adjudicatory Hearing

- Scheduled in 72 hours; held within 15 days.
- The court must schedule an adjudicatory hearing within 72 hours of the complaint being filed. [\[R.C. 2151.28\(A\)\]](#) If a youth is being held in detention, the hearing must be scheduled for no later than 15 days after the complaint filing, but may be extended for a showing of good cause. [\[R.C. 2151.28\(A\)\(3\)\]](#); [\[Juv.R. 29\]](#)

#### DETENTION CONDITIONS

- Each detention center should have policies in place that do all of the following:
  - Establishes an **admittance policy** that includes an intake record. [\[Ohio Adm.Code 5139-37-09 & -17\]](#); [\[Juv.R. 7\(I\) - \(J\)\]](#)
  - Limits the use of **physical force and aerosol sprays**, including evaluations and reports when used. [\[Ohio Adm.Code 5139-37-11\(A\) & \(F\)\]](#)

- Outlines when youth can be searched utilizing the least intrusive **search** possible, including frisk, hygiene, and body-cavity searches. [\[Ohio Adm.Code 5139-37-11\(B\)\]](#)
- Provides **medical and health care services**, including the use of psychotropic drugs. [\[Ohio Adm.Code 5139-37-14\]](#)
- Ensures that youth have access to **basic rights**, such as privacy, due process, adequate education, programming, and access to the courts. [\[Ohio Adm.Code 5139-37-15\]](#)
- Relies on appropriate **discipline and behavior management**. [\[Ohio Adm.Code 5139-37-15 & 5139-37--16\(A\)-\(D\)\]](#)
- Minimizes the use of **isolation**, including room confinement, medical isolation, and self-confinement. [\[Ohio Adm.Code 5139-37-16\(E\)\]](#)
- Provides adequate and appropriate **programming** for youth, such as education, recreation, and religious programs. [\[Ohio Adm.Code 5139-37-18\]](#)
- Allows access to **visitation and communication**, including with the youth's attorney, family, and other supports, in person, through mail, and phone calls. Youth should be notified of visitors before meeting with them. [\[Ohio Adm.Code 5139-37-19\]](#); [\[Juv.R. 7\(I\) - \(J\)\]](#)
- Provides for the **hiring and training of staff** and **youth-to-staff ratios**. [\[Ohio Adm.Code 5139-37-05, -06, and -11\(D\)\]](#)

## WHERE AND WHEN CAN CHILDREN BE HELD

These are maximums, which are not recommended for best practice.

	Prior to Adjudication Hearing (Alleged)	Post-Adjudication Hearing (Adjudicated)
Delinquent (under age 18)	Can be held in: <ul style="list-style-type: none"> <li>Detention up to 90 days <a href="#">[R.C. 2152.26(B)]</a> and under the factors established above in the “Detention Standard” section.</li> <li>If alleged chronic or repeat habitual truant, detention only if the youth has violated a valid court order. <a href="#">[R.C. 2152.26(B)]</a></li> </ul>	Can be held in detention for up to 90 days. <a href="#">[R.C. 2152.19(A)(3)]</a> Credit for time detained prior to disposition may be applied.
Delinquent (18 and over)	The above parameters apply. However, the youth also can be transferred to an adult facility if the court finds the transfer is in the best interest of the child. <i>See Youth in Adult Court Bench Card – housing section.</i>	The above parameters apply. However, the youth also can be transferred to an adult facility if the court finds the transfer is in the best interest of the child. <i>See Youth in Adult Court Bench Card – housing section.</i>
Traffic Offender	Can be held in: <ul style="list-style-type: none"> <li>Detention for less than 24 hours <a href="#">[R.C. 2152.26(C)(2)]</a></li> <li>An adult facility<sup>+</sup> for under 3 hours for processing.* <a href="#">[R.C. 2151.31(C)(1)(b)]</a></li> </ul>	Can be held in detention: <ul style="list-style-type: none"> <li>If adjudicated delinquent of an OVI, for 5 days. <a href="#">[R.C. 2152.21(A)(5)(a)(i)]</a>, but must be kept separate and apart from alleged delinquent children. <a href="#">[R.C. 2152.41(B)]</a></li> <li>If a youth is adjudicated delinquent of a traffic offense and the court subsequently finds the child failed to comply with the court’s orders and the child’s operation of the motor vehicle makes the child a danger to self/others, for 24 hours. <a href="#">[R.C. 2152.21(A)(6)]</a></li> </ul>
SYO	<i>See Youth in Adult Court Bench Card</i>	<i>See Youth in Adult Court Bench Card</i>
Bindover	<i>See Youth in Adult Court Bench Card</i>	<i>See Youth in Adult Court Bench Card</i>
Unruly	Best practice indicates that youth charged with unruly or status offenses should not be detained. Therefore, the circumstances listed below should be exceptions to standard practice. Can be held in: <ul style="list-style-type: none"> <li>Detention for up to 24 hours. <a href="#">[R.C. 2151.312(B)(2)]</a></li> <li>Detention for more than 24 hours if taken into custody on a Saturday, Sunday, or legal holiday. <a href="#">[R.C. 2151.312(B)(3)]</a></li> <li>An adult facility<sup>+</sup> for under 3 hours for processing* <a href="#">[R.C. 2151.331(C)(1)(b)]</a></li> </ul> <p>(Note: Federal law does not permit unruly youth to be held in an adult jail, putting it in conflict with Ohio law.)</p>	Cannot be held in detention. <a href="#">[R.C. 2151.354]</a>

+ If a youth is held in a facility that holds adults, the youth must be sight-and-sound separated from adult inmates, visually supervised, and not handcuffed or physically secured to a stationary object. (**Note:** Ohio law requires “beyond-the-range-of-touch” separation from adults, while federal law requires “sight-and-sound” separation.)

\* Processing, as defined in the Revised Code includes fingerprinting and photographing the youth in a secure area or interrogation, contacting the child’s parent/guardian, arranging placement, and arranging for transfer of child in a nonsecure area. [\[R.C. 2151.311\(D\)\]](#)

## Relevant Detention Statutes

- [R.C. 2151.28](#) - Adjudicatory hearing - determining shelter care placement.
- [R.C. 2151.31](#) - Taking child into custody.
- [R.C. 2151.311](#) - Procedure upon taking child into custody.
- [R.C. 2151.312](#) - Facilities for holding unruly, neglected, abused or dependent child.
- [R.C. 2151.314](#) - Hearing on detention or shelter care.
- [R.C. 2151.331](#) - Options for placement of alleged or adjudicated abused, neglected, dependent or unruly child.
- [R.C. 2151.353](#) - Orders of disposition of abused, neglected or dependent child.
- [R.C. 2151.354](#) - Orders of disposition of unruly child.
- [R.C. 2152.04](#) - Confining delinquent child for purposes of preparing social history.
- [R.C. 2152.13](#) - Serious youthful dispositional sentence and serious youthful offender dispositional sentence.
- [R.C. 2152.19](#) - Disposition orders.
- [R.C. 2152.21](#) - Dispositions for child adjudicated juvenile traffic offender.
- [R.C. 2152.26](#) - Places of detention for delinquent child or juvenile traffic offender.
- [R.C. 2152.41](#) - Detention facilities.