

March 20, 2018

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze and members of the House Criminal Justice Committee,

Thank you for the opportunity to testify in support of House Bill 394. My comments today relate solely to the proposed elimination of the mandatory bindover provision.

I begin by clarifying that I write this statement from my own perspective and experience. I do not appear here today as a representative or agent for any organization or committee. Therefore, the opinions and comments expressed herein should not be considered to be those of the Ohio Supreme Court, the Ohio Judicial Conference, the Ohio Association of Juvenile Court Judges, or even of my colleagues on the Franklin County Juvenile Court Branch.

I have been a juvenile court judge since January 2007. During that period of time I have presided over approximately 510 cases involving discretionary or mandatory bindovers. These cases involved approximately 305 different youth. Out of those 305 youth approximately 85% were African American males.

Pursuant to ORC §2152.01, the juvenile court is directed to “protect the public interest and safety, hold the offender accountable for the offender’s actions, restore the victim, and rehabilitate the offender.” This is a charge which every juvenile judge must apply in every delinquency disposition and to do so in a manner that “provide(s) for the care, protection and mental and physical development of children” subject to these dispositions.

In the last 20 or 30 years, great strides have been made in understanding the causes of juvenile delinquency, including the understanding that the human brain is not fully developed until 18 to 25 years of age, the effects of trauma on brain development, advancements in pharmaceutical and therapeutic treatments of mental illnesses, the creation of validated risk assessment tools and overall collection and analysis of data to understand what factors increase the likelihood of recidivism and what factors are indicative of the likelihood for rehabilitation.

I support HB 394 in the elimination of mandatory bindovers. At the same time, I commend the drafters for their acknowledgment and understanding of what we have learned about juvenile delinquent behavior over the last 20 to 30 years. In making a determination that a child is not amenable to care or rehabilitation within the juvenile system and that the safety of the community may require that the child be subject to adult sanctions, the proposed amendment in Section 2152.12(C) outlines very specific and relevant factors. I believe these factors (which are supported by data), properly considered and applied allow for better overall outcomes for our communities. [These factors](#) look to achieve the best overall way to provide for the long-term safety of our community by providing the best chance for an individual to not re-offend. Data suggests that most youth mature out of delinquent or criminological behavior and correspondingly supports the contention that detention overall does not achieve the desired result of rehabilitation and a safer community.

To be clear, there are youth that should be transferred to the adult court for prosecution. In fact, I have transferred many youth under the current discretionary statute and factors. I have also transferred many, many youth under the mandatory statute. I would like to tell you about three individuals that I think

epitomize the real-life implications of laws that do not allow judges to take into account the individual circumstances and evidence, and why this bill is so important.

GM. GM was a young lady from one of Columbus' suburban neighborhoods. Both of her parents were involved in her life. GM was 17 and an average high school student when she was charged with three counts of aggravated robbery, two counts of kidnapping and one count of complicity to aggravated robbery. The actions which led to these charges occurred over a 12-day period in mid-March 2009. Prior to these charges, GM had only an unruly for refusing to follow the rules of her home and a teen traffic violation. Right before the events that brought her to juvenile court, GM became involved and infatuated with a new boyfriend. She had a car. He and his friends did not. One day they asked GM to take them to a mini mart. While GM waited in the car, they robbed three people at gun point. It was not clear if GM knew what the plan was before the boys went into the store, but when they came running out, she drove them away in her car. GM was mandatorily transferred to adult court and was sentenced to 8 years. She served 5 years before being released on community control for the balance of her term. Data suggests GM's ability to be gainfully employed will be impacted by her adult felony record. But for a speeding ticket and failure to wear a seat belt, GM has not re-offended.

NO. NO was a 17-year-old high school drop out in May of 2007. His parents were married and involved in his life. The family attended church regularly on Sundays and Wednesdays. NO was socially inept and had few friends. As I recall, he tested as having a lower intelligence. His family is of low economic status. In 2007 the parents were forced to move to a new neighborhood because of their family economics and NO was befriended by a local group of young men. In a matter of four days, between May 28 and June 1, NO's life would change forever when in an effort to "be cool" to his new friends he was talked into attempting to rob a video store and a mini mart. His friends supplied him with the weapons to use. During one attempt he had a paint ball gun. In another he had an actual gun. NO was charged with two counts of attempted robbery and one count of aggravated robbery with gun specifications. NO had very distinctive physical characteristics and he was easily identified by all of the witnesses. Because two of the counts were not mandatory and were separate from the aggravated robbery, a psychological evaluation for purposes of determining amenability and a PSI were conducted. Prior to these charges, NO had never been involved in the juvenile court system. Despite dropping out, there was no evidence that he had been a behavior problem in school. The results of his discretionary bindover evaluation strongly indicated that the safety of the community could be achieved by keeping him in the juvenile system and that the likelihood of recidivism was very low. However, because of the mandatory charge there was no time for the juvenile court to attempt rehabilitation and NO was transferred to the adult court for prosecution. He was sentenced to a total of 38 years and an additional 1 year on the gun specification. Despite numerous Motions for early release, he remains incarcerated. Data suggests that ultimately NO's ability to acclimate to adult life, to obtain employment and to not be re-incarcerated due to parole violations will be precarious in light of his years in prison and his adult felony record. (Note: Under HB 394, NO may receive parole review after serving 15 years, which should qualify him for additional programming in DRC, and a second chance at life.)

DJ. In 2013, DJ was charged with two counts of aggravated robbery and two counts of felonious assault with a gun specification. He was 17 years at the time. Prior to this charge, DJ had a long list of juvenile court involvement going back to when he was 12. In fact, the court records show that he was charged with something from school attendance, to possession of drugs, to assault to weapons under disability every year between 2009 and 2013. My initial observations and interactions with DJ was that he was an angry, gang involved young man. DJ's mother is a drug addict and was not employed. His father died when he was one year old. Life circumstances had DJ knowing only the streets and required him to bring

in money for his family from a young age. Frankly, even if it was not a mandatory bindover, all indications were that this young man needed to be transferred to adult court. A mandatory bindover motion was filed and then later dismissed by the prosecutor. DJ pled to the two counts of aggravated robbery and was permanently committed to the Department of Youth (DYS) until his 21<sup>st</sup> birthday. I denied DJ's first request for early release due to continued evidence of gang involvement in DHS, failure to follow rules and no indication of rehabilitation or remorse. The second time DJ filed a Motion for early release in October 2016, my courtroom was filled with individuals, including Counselors, a DHS minister, gang intervention team leader, detention officers and a current private sector employer in support of his request. The reports were unanimous that this young man was a completely different person than when he had entered DHS. Early release was granted. DJ is now working full time and is a student at Columbus State. He provides economic support to his extended family and to his own children. He is actively involved in being a father to his children. He is a talented motivational speaker and of the Spoken Word. He uses these gifts to inspire other young men to find their right path. But for a routine traffic ticket, DJ has not re-offended. Data indicates that DJ's ability to be a productive member of society, to pay child support and be involved in his children's lives would have been gravely impacted if he had an adult criminal record.

I cite the stories of these young lives to exemplify the individuality of each case, the real impact of mandatory laws and why I support the proposed amendment to ORC § 2152.12 for the elimination of mandatory bindovers and the compulsory consideration of factors 1 through 8 for purposes of discretionary bindovers. I have mandatorily bound over youth who only days or weeks before their impulsive actions would have been a discretionary bindover but for the passing of their 16<sup>th</sup> birthday. Left with no discretion, I have had to bind over young African American men with little to no prior juvenile justice involvement therein contributing to the racial and ethnic disparities of the adult criminal justice system. While none of us have a crystal ball, we have learned the importance of making data driven decisions, we have brain development and mental health science advancements and we have validated tools to guide us towards very intentional decisions. As legislators and judges we are tasked with addressing wrongs and making our communities safer. The mechanics of this re-drafted bill makes us do our jobs better. Like cancer, we have learned that there are no routine treatments for juvenile delinquency. Where we once subjected all cancer patients to large doses of radiation and chemo, we now have very specified treatments and correspondingly less overall bad side-effects and enjoy higher success rates. The juvenile justice system is working hard to be better equipped to rehabilitate youth by providing them with the tools they need to get on the right path to a successful adulthood. Again, I do not focus on GM, NO and DJ to invite compassion for them as juvenile offenders but rather to emphasize the need for us to apply the correct dosage to societal ills to provide for overall healthier and safer communities. This bill is about being very intentional in assessing and addressing juvenile delinquency behaviors. This bill is about being smarter on crime.

Again, thank you for allowing me to testify today and for considering my comments. I appreciate the hard work you are doing here. I am happy to take any questions you may have.

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