



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Support of SB64 Juvenile Mandatory Bindovers Sponsor Senator Thomas

Chairman Bacon, Vice Chair Dolan, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to testify on behalf of the Ohio Public Defender in support of Senate Bill 64. I am Niki Clum, the legislative liaison for the OPD.

This bill is about judicial discretion. SB64 requires the juvenile court to have a hearing before transferring a child's case to the adult court system. The bill directs the juvenile courts to weigh eight factors when making this determination, including the child's background, any history of trauma, and the child's emotional, physical, and psychological maturity. SB64 also requires juvenile courts to weigh the harm to the victim and the circumstances surrounding the offense, including whether the child was the principal actor and whether a weapon was used. Under this bill, each child facing transfer will have the opportunity to have a judge determine if the child should remain in the juvenile system to receive rehabilitative services or be bound over to the adult court.

The Ohio Public Defender supports SB64 because it allows juvenile courts to make an independent determination based on the specifics of each case. Mandatory bindovers, under current law, ignore the expertise of juvenile courts. SB64, however, recognizes that juvenile judges are uniquely positioned to make determinations regarding a child's amenability to rehabilitation. Social and behavioral science related to juveniles is continually changing and progressing. Since juvenile judges interact with this science and juveniles every day, they are best suited to make fact specific determinations regarding a child's amenability based on the most up to date science.

Existing law eliminates all judicial discretion in certain circumstances. Presently, bindovers from the juvenile court are mandatory based on the offense the child is charged, the child's age, and if there is probable cause to believe the child committed the offense. Regardless of the child's developmental abilities or the circumstances of the offense, these juveniles are denied the opportunity to be rehabilitated. Current law ignores years of guidance from social science and the courts. The U.S. Supreme Court has acknowledged that juveniles' personalities are not as "well formed" as adults¹, and they have greater capacity for change.²

Furthermore, not all crimes are created equal, especially when the perpetrator is a minor. Ohio Supreme Court Chief Justice O'Connor wrote that, "minors are less mature and responsible than adults...they are lacking in experience, perspective, and judgment, and...they

¹ *Roper v. Simmons*, 543 U.S. 551, 570, 125 S.Ct. 1183 (2005).

² *Graham v. Florida*, 560 U.S. 48, 77, 130 S.Ct. 2011 (2010).

are more vulnerable and susceptible to the pressures of peers than are adults."³ Many children accused of crimes have developmental disabilities or mental health issues. It is not unusual to have instances where a child was manipulated by an adult. Since each case is distinct and each child is unique, every case should be considered by a judge before the determination that a child is not amenable to rehabilitation can be made.

Because judges will weigh the eight factors outlined in the bill, any concern that a tragic crime will not be adequately punished is unwarranted. The judges making these decisions are elected to their position and are accountable to their community. Juvenile judges can weigh these factors and make a determination that balances the victim's right to see justice in their case, the development of the child, and the opportunity to offer rehabilitative services.

Furthermore, SB64 is good policy for all Ohioans regardless of whether they have a connection to the juvenile justice system. Every Ohioan benefits from juveniles receiving mental health assistance, counseling, and education so that they can become contributing members of society. Whereas no one benefits from ignoring the developmental needs of youth and having tax dollars spent to imprison children.

In the first *Aalim* majority opinion Former Justice Lanzinger wrote that "[s]ince its origin, the juvenile justice system has emphasized individual assessment, the best interest of the child, treatment, and rehabilitation, with a goal of reintegrating juveniles back into society."⁴ Daily, juvenile judges make decisions regarding the treatment, rehabilitation, and reintegration of children who commit crimes. Because of this experience and expertise, juvenile judges are the most qualified to determine if a child's case should be bound over or remain in the juvenile justice system. SB64 gives judges this needed discretion, and for this reason, the Ohio Public Defender asks that you support SB64.

Thank you for the opportunity to testify in support of SB64. I am happy to answer any questions.

³ *State v. Aalim*, 2017-Ohio-2956, ¶109 (O'Connor, dissenting), quoting *State v. Long*, 138 Ohio St.3d 478, ¶133 (O'Connor, concurring).

⁴ *State v. Aalim*, 2016-Ohio-8278, ¶16, quoting *State v. Hanning*, 89 Ohio St.3d 86, 88, 2000 Ohio 436, (2000).

