



# Ohio Prosecuting Attorneys Association

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House Bill 394  
Opponent Testimony  
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Chairman Manning, Vice-Chair Rezabek, Ranking Member Celebreeze and members of the House Criminal Justice Committee, thank you for the opportunity to provide opponent testimony on House Bill 394. My name is Andy Wilson. I am the Clark County Prosecuting Attorney and an Officer of the Ohio Prosecuting Attorneys Association. While Ohio prosecutors recognize that juveniles deserve some special consideration in the justice system due to lack of mental development and lack of maturity, we are opposed to House Bill 394 out of concern for victims and for public safety.

I want to focus my testimony today on the provisions of the bill to eliminate mandatory bindovers, except in cases of aggravated murder, and eliminate mandatory serious youthful offender designations, except in cases of reverse bindovers.

Ohio's mandatory bindover statute was enacted in 1996. It was precipitated by some very serious, highly publicized, cases in which prosecutors' motions for bindover were denied. It was also a time of rampant juvenile crime. In 1997, there were 17,122 felony adjudications and 2,722 commitments to the Department of Youth Services. By 2015, there were only 5,193 felony adjudications and 432 commitments to DYS. While other factors undoubtedly led to this decline in juvenile crime, the deterrent effect of the mandatory bindover statute certainly played a part. Public safety improved.

We also feel it necessary to highlight the very serious offenses that lead to a mandatory bindover. In category one cases, cases where a juvenile is charged with aggravated murder, murder, or an attempt to commit either of those offenses the juvenile is subject to mandatory bindover only if he or she was 16 or 17 years of age or 14 or 15 years of age and has previously been adjudicated guilty of and committed to DYS for a category one or two offense. In category two cases, cases where a juvenile is charged with voluntary manslaughter, kidnapping, rape, aggravated arson, aggravated robbery, aggravated burglary, or involuntary manslaughter that is a felony of the first degree, the juvenile is subject to mandatory bindover only if he or she was 16 or 17 years of age and has previously been adjudicated guilty of and committed to DYS for a category one or two offense, or committed the offense while armed with a firearm.

These are all murder offenses or, with the exception of kidnapping where the victim is released in a safe place unharmed, first degree felonies. These are the ten most serious offenses in our criminal code and to qualify, the offender must have a serious prior record, have committed the offense with a firearm, or been 16 or 17

and committed murder or attempted murder. In these circumstances the current law properly makes public safety the overriding concern.

The enactment of the mandatory SYO statute in 2001 was a follow-up effort to the enactment of the mandatory bindover statute a few years earlier. Mandatory SYOs, a method of blending juvenile and adult sentences encourage rehabilitation for certain juveniles who are not boundover, but who are nevertheless sent to DYS for a very serious offense. Mandatory SYOs are required only for 14 or 15 year olds adjudicated for aggravated murder, murder, or the attempt of either, or 16 or 17 year olds adjudicated for an offense of violence with either a gun specification or a previous admission to DYS for aggravated murder, murder, a first degree felony, a second degree felony, of third degree felony offense of violence.

While the SYO *designation* is mandatory in these cases, the *invocation* of the adult portion of the sentence is not. The adult portion is not invoked unless the Director of DYS requests that it be invoked due to a violation of institutional rules that could be charged as a felony or a first degree misdemeanor offense of violence, or due to conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim. If the juvenile is under community supervision, the juvenile judge or the prosecutor may request that an adult sentence be invoked for the same reasons. The decision to request that the adult portion of the sentence be invoked is discretionary. SYO designations incentivize good behavior and rehabilitation. The repeal of mandatory SYOs removes this major incentive. It will allow many juveniles, who have already committed one or even two very serious offenses, to commit additional offenses without the threat of any real punishment. Juveniles who continue to commit crimes or threaten institutional safety while in DYS or threaten public safety while on community supervision are not demonstrating that they are amenable to care or rehabilitation in the juvenile system.

While House Bill 394 is portrayed as a bill about judicial discretion, we have mandatory bindovers and mandatory SYOs for the same reason we have mandatory sentences for certain offenses committed by adults – because as a matter of policy, certain crimes demand a certain amount of justice. The mandatory bindover statute and the mandatory SYO statute are Ohio’s recognition that the philosophy of juvenile justice is not solely about the rehabilitation of the juvenile. The statutes are a recognition that for the most serious crimes the philosophy *must* include protecting the public, holding the offender accountable, and restoring the victim.

I’ll close just by noting that DYS’s 2016 recidivism report, their most recent, cites a 39.6% two-year recidivism rate and 46.5% three-year recidivism rate for youth released from DYS facilities. This is without their housing the most serious offenders, who have been mandatorily boundover. Our great concern is that under House Bill 394 youth adjudicated for offenses like murder, rape, aggravated robbery and aggravated burglary, will spend a short time in DYS and then become one of the almost 50% of releasees who commit a new crime within three years. This threatens public safety and places future victims at risk.

Thank you for your consideration of these comments and I would be happy to answer any questions.