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Rules and Reference  
Ways and Means  
Finance Subcommittee on Higher Education

**Cecil Thomas**  
State Senator  
9th District

**Date:** September 19, 2017

**To:** Members of Judiciary Committee

### **Sponsor Testimony**

#### **SB 64: Eliminate Mandatory Bindovers of Juveniles to Adult Court**

Chairman Bacon, Vice Chair Dolan, and members of the committee. Thank you for the opportunity to testify on SB 64.

This legislation changes Ohio law to prohibit the mandatory transfer of juvenile offenders to adult court. This legislation is necessary to reconcile Ohio law with two Ohio Supreme Court decisions on the same case.

The Ohio Supreme Court took up the issue of the mandatory bindover, or transfer, of juveniles to adult court in the State v. Aalim case. On December 22, 2016, the Supreme Court ruled that that the practice of a mandatory bindover is unconstitutional as it violates a juvenile's right to due process as provided by the Ohio Constitution. I will refer to that case as "Aalim 1".

Then in 2017, the Ohio Supreme Court granted a reconsideration of Aalim 1 and reversed itself, stating that the General Assembly has the exclusive authority to define the jurisdiction of the courts, and as of the date of that ruling (May 2017) had failed to change the mandatory bindover code section. I will refer to this reversal as "Aalim 2".

SB 64 will change Ohio law to align with the principles stated in the original ruling of Aalim 1 by making Ohio law clear on the subject of juvenile bindovers, which satisfies the issue raised in Aalim 2.

Matthew Aalim was 16 at the time he was charged with 2 counts of aggravated robbery with a gun specification. His case started in the Juvenile Division of the Montgomery County Court of Common Pleas. The prosecutor filed a motion to transfer Matthew to adult court to be tried as an adult.

In a mandatory transfer, the court only needs to determine that the juvenile meets the age and offense requirements, and the probable cause threshold that the juvenile committed the offense. Under 2152.10, a child is eligible for a mandatory transfer is:

1. The child is charged with a category 1 offense and either of the following applies:
  - (a) The child was 16 years of age or older at the time of the act charged.
  - (b) The child was 14 or 15 years of age at the time of the act charged and previously was adjudicated a delinquent child for committing an act that is a category 1 or category 2 offense and was committed to DYS upon that adjudication.

**OR**

2. The child is charged with a category 2 offense, the child was 16 or older at the time, and either or both of the following apply:
  - (a) The child was previously was adjudicated a delinquent child for committing an act that is a category 1 or category 2 offense and was committed to DYS upon that adjudication.
  - (b) The child is alleged to have had a firearm while committing the act.

After conducting the cursory hearing, the court found that there was probable cause to believe he committed the offenses and automatically transferred his case to adult court. After many appeals the case made its way to the Ohio Supreme Court.

It is recognized by the U.S. Supreme Court and the Ohio Supreme Court that juveniles are given a special status and they are entitled to special consideration. Age should not be the only factor in the decision to transfer a juvenile to adult court.

In Aalim 1, Justice Lanzinger wrote: "The mandatory transfer statutes preclude a juvenile court judge from taking any individual circumstances into account before automatically sending a child who is 16 or older to adult court. This one-size-fits-all approach runs counter to the aims and goals of the juvenile system, and even those who would be amenable to the juvenile system are sent to adult court. Juvenile court judges must be allowed the discretion that the General Assembly permits for other children. They should be able to distinguish between those children who should be treated as adults and those who should not."

In Aalim 2 the court reversed its opinion. Justice Kennedy wrote the opinion stating, "Our decision in Aalim 1 therefore usurped the General Assembly's exclusive constitutional authority to define the jurisdiction of the courts of common pleas by impermissibly allowing a juvenile-division judge discretion to veto the legislature's grant of jurisdiction to the general division of a court of common pleas over this limited class of juvenile offenders. Therefore, we grant the state's motion for reconsideration."

Justice O'Donnell concurred and stated, "It may well be a good idea to end all mandatory bindovers. But it is not our call to make. Nothing in our constitution ordains that we, rather than the people's elected representatives, get to make that decision."

Chief Justice O'Connor dissented in Aalim 2. I suggest reading her opinion as it is a thorough review of how the punitive aspect of sentencing is at odds with the "rehabilitative hallmarks of the juvenile-justice system."

SB 64 addresses mandatory bindovers. The discretionary transfer of juveniles older than 14 to adult court will remain unchanged. That section of the ORC satisfied the due process guarantee under the Ohio Constitution. RC 2152.12 specifically requires the juvenile court to investigate certain factors (family situation, education, social history), and not just the juvenile's age (14 or older) and offense before transferring the juvenile to adult court. This more intensive review by the court aids the court in its determination of whether the juvenile is amenable to rehabilitation in the juvenile justice system.

I have attached a letter that has been signed by 14 organizations in support of eliminating mandatory bindovers. This letter is still being distributed and we expect more groups to sign on.

Thank you, Mr. Chairman, and I am happy to take questions.