



# Ohio Judicial Conference

The Voice of Ohio Judges

## House Criminal Justice Committee Judge Jan Michael Long Proponent Testimony on House Bill 394

Chair Manning, Vice Chair Rezabek, Ranking Member Celebrezze, and members of the House Criminal Justice Committee, I thank you for this opportunity to submit proponent testimony for House Bill 394 on behalf of the Ohio Judicial Conference.

I am Judge Jan Michael Long. I have served on the Pickaway County Common Pleas Court Probate/Juvenile Division since 1996. Previously, I served in the Ohio Senate for 10 years where I represented at various times the counties of Athens, Gallia, Jackson, Lawrence, Meigs, Pickaway, Ross, Scioto and Vinton. I am the Co-Chair of the Ohio Judicial Conference's Probate Law & Procedure Committee, member of the OJC's Juvenile Law and Procedure Committee and Past President of the Ohio Association of Probate Judges. I have served as an Adjunct Professor for the Columbus State Community College, teaching courses in Criminal Law, Government and the Law, Juvenile Procedure and Probate Practice and Procedure, and as an Assistant Prosecuting Attorney for Pickaway County and Assistant Law Director for the City of Circleville.

The Ohio Judicial Conference supports H.B. 394 for the opportunity to improve Ohio's juvenile justice system. For the sake of brevity I will focus my testimony on several of the bill's key provisions and provide a suggestion on how the bill may be improved.

### **Elimination of Mandatory Bindovers**

H.B. 394 would eliminate mandatory bindovers and make all bindover decisions discretionary. Elimination of mandatory bindovers does not mean juveniles will no longer be transferred to adult court. It means that some undeserving juveniles will not be automatically transferred without an amenability hearing. Courts will still determine that some juveniles should have their case transferred to adult court. But amenable juveniles will get a second chance at rehabilitation in the juvenile system.

The Supreme Court of Ohio has ruled that mandatory bindovers were unconstitutional. The Court then reconsidered its previous decision stating that the Court "failed ... to consider the General Assembly's exclusive constitutional authority to define the jurisdiction of the courts of common pleas under Article IV, Section 4(B) of the Ohio Constitution." In his concurrence, Justice DeWine 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."

Like the Supreme Court of Ohio, the Ohio Judicial Conference respects the authority of the General Assembly to set public policy on this issue. But we request that you consider allowing judges to exercise their discretion on who does or does not belong in the adult criminal justice system.

## **Juvenile Life and Extended Sentences Review**

H.B. 394 would create a statutory framework for parole board review of certain juvenile life and extended sentences. A juvenile sentence review procedure is required by the Eighth Amendment to the United States Constitution. In 2010, the Supreme Court of the United States decided *Graham v. Florida*, 560 U.S. 48, which held that juvenile offenders cannot be sentenced to life imprisonment without parole for non-homicide offenses. In 2012, the Supreme Court decided *Miller v. Alabama*, 567 U.S. 460, which held that mandatory sentences of life without parole for juvenile offenders, even in cases of murder, are unconstitutional. In *Montgomery v. Louisiana*, 577 U.S. \_\_\_\_ (2016), the Supreme Court determined that *Miller* must be applied retroactively. And in 2016's *State v. Moore*, 2016-Ohio-8288, the Supreme Court of Ohio held that, pursuant to *Graham*, a "term-of-years" prison sentence that exceeds a defendant's life expectancy is unconstitutional when it is imposed on juvenile non-homicide offenders.

In her concurrence to *Moore*, Justice Lanzinger noted that "no statute is on point," and implored the General Assembly to address the issue. H.B. 394 would create the framework for parole board review of juvenile extended sentences, as the Constitution requires.

## **Court-Initiated PPLA**

Under current law, a court may only order a Planned Permanent Living Arrangement (PPLA) if a public children services agency requests the placement, and the court finds by clear and convincing evidence that a PPLA is in the best interest of the child. H.B. 394 would permit a juvenile court or a child's guardian ad litem to file a motion to place a child in a PPLA. This will permit the court, in the best interest of the child, the discretion to either grant permanent custody of the child to children services or in the alternative, order a PPLA when the other existing statutory criteria are met.

## **Interlocutory Appeal**

One way H.B. 394 could be improved is to eliminate the interlocutory appeal provision that would allow a juvenile to immediately appeal their bindover decision. We believe this provision, although well-intended, is a solution in search of a problem and may create unintended consequences with potentially disruptive juveniles in local detention facilities awaiting their appeal. We recommend that this provision be removed from the bill. In the alternative, we are more than willing to help develop appropriate alternative language or work with the sponsor on proposing changes to the Ohio Rules of Appellate Procedure to expedite these appeals.

Thank you for the opportunity to testify in support of H.B. 394. We thank the sponsor, Representative Rezabek, and caucus staff for considering our previous feedback, and we look forward to working with them and members of this Committee to continue improving this bill. I am available to answer any questions you may have.