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TO: Senate Judiciary – Criminal Justice Committee

FROM: Jill Beeler, Juvenile Section Supervisor

DATE: May 7, 2007

RE: The Adam Walsh Act and juvenile sex offenders

The stated purpose of the Adam Walsh Child Protection and Safety Act of 2006 is to protect the public, in particular children, from violent sex offenders. Current Ohio law, which allows for the transfer of certain juvenile cases to adult criminal court and for serious youthful offender dispositions, provides mechanisms to identify juvenile sex offenders who are not amenable to treatment in the juvenile system or who pose the greatest threat to public safety. Current Ohio law respects the discretion of juvenile court judges, allows for decisions to be made about individual juveniles as they appear in court, recognizes children's amenability to treatment, and provides full due process protections to children facing adult sanctions.

Because its current transfer and serious youthful offender laws will allow Ohio to apply the Adam Walsh Act to juvenile sex offenders who are found to be not amenable to treatment and who are deemed to be ongoing threats to public safety, Ohio can exempt traditional juvenile dispositions from the public registry of the Adam Walsh Act and still substantially comply with the new federal law.

**Mandatory and discretionary bindover**

Under current Ohio law, any child age 14 or older can be transferred ("bound over") to adult criminal court if the child is charged with any act that would be a felony if committed by an adult.<sup>1</sup> If a child is charged with a category one offense,<sup>2</sup> the juvenile court must transfer the case to adult criminal court if the child is 16 or 17 years old, or if the child is 14 or 15 years old and has previously been adjudicated of and committed to DYS for the commission of a category one or category two offense.<sup>3</sup>

A 16 or 17-year-old child charged with a category two offense<sup>4</sup> also must be bound over to adult criminal court if the child has previously been adjudicated of and committed to DYS for the commission of a category one or category two offense, or if the child is alleged to have had a firearm during the commission of the offense.<sup>5</sup> In mandatory bindover cases, the juvenile court must transfer the child to adult criminal court if there is probable cause to believe that the child committed the act charged.

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<sup>1</sup> ORC §2152.10(B)

<sup>2</sup> ORC §2152.02(BB): Aggravated murder, murder, or attempt to commit aggravated murder or murder.

<sup>3</sup> ORC §2152.10(A)(1)

<sup>4</sup> ORC §2152.02(CC): Voluntary manslaughter, rape, aggravated arson, aggravated robbery, aggravated burglary, F1 involuntary manslaughter.

<sup>5</sup> ORC §2152.10(A)(2)

In all other cases in which a child age 14 or older has been charged with an offense that would be a felony if committed by an adult, the juvenile court has discretion to transfer the case to adult criminal court. In discretionary transfer cases, the juvenile court may transfer the case if, at a hearing, the court determines that there is probable cause to believe that the child committed the act, and that “the child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions.”<sup>6</sup> Discretionary bindover proceedings can be initiated by the court or by the prosecuting attorney.<sup>7</sup>

Once a child is transferred to adult criminal court, that child is treated as though he/she were an adult at the time the offense was committed, is subject to adult criminal sanctions, and is afforded the same due process protections enjoyed by adult criminal defendants, including the right to trial by jury.

### **Serious youthful offender dispositions**

Current Ohio law also provides for children to receive serious youthful offender dispositions (known as SYO or blended sentences). Children as young as 10 can be eligible for discretionary SYO dispositions, and children age 14 and older can be eligible for discretionary or mandatory SYO dispositions, depending on the factors present in the alleged offense.<sup>8</sup> Serious youthful offender proceedings are initiated by the prosecuting attorney.<sup>9</sup>

When a child receives a serious youthful offender disposition, the juvenile court imposes on that child both a traditional juvenile disposition, which is served upon disposition, and an adult criminal sentence, which is stayed pending successful completion of the traditional juvenile disposition.<sup>10</sup> The adult portion of an SYO disposition may be invoked if the child, after reaching the age of 14, commits any felony or a first degree misdemeanor offense of violence, or engages in conduct that creates a substantial risk to the safety or security of an institution, the community, or the victim.<sup>11</sup>

A child who is amenable to treatment in the juvenile system, who commits no further offenses while under the supervision of the juvenile system, and who is successfully rehabilitated can be released once that child has successfully completed the traditional juvenile disposition.

Children who face serious youthful offender dispositions are expressly granted the same protections afforded to adult criminal defendants, including the right to a grand jury determination of probable cause, the right to an open and speedy trial by jury, the right to bail, and the right to raise the issue of competency. Children facing serious youthful offender dispositions may not waive their right to counsel.<sup>12</sup>

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<sup>6</sup> ORC §2152.12(B)

<sup>7</sup> Juv.R. 30

<sup>8</sup> The list of factors that make children of certain ages eligible for discretionary or mandatory SYO dispositions can be found in ORC §2152.11.

<sup>9</sup> ORC §2152.13(A)

<sup>10</sup> ORC §2152.13(D)(1) & (2)

<sup>11</sup> ORC §2152.14

<sup>12</sup> ORC §2152.13(C)

### **Senate Bill 10 & case examples**

Under the most recent version of Senate Bill 10 available at this time, a juvenile court must classify a child a public registry-qualified juvenile offender registrant if:

- The child is 14, 15, 16, or 17 years old at time of offense, and
- The child is adjudicated for committing, attempting to commit, conspiring to commit, or complicity in committing:
  - Rape (ORC §2907.02)
  - Gross sexual imposition, victim under 13 (ORC §2907.05(A)(4))
  - Aggravated murder, with sexual motivation (ORC §2903.01)
  - Murder, with sexual motivation (ORC §2903.02)
  - Kidnapping, with sexual motivation (ORC §2905.01)<sup>13</sup>

At a glance, this list of five offenses may seem like it targets only the “worst of the worst” of juvenile sex offenders. But the offenses of rape and gross sexual imposition each include a wide range of behaviors and are, unfortunately, common adjudications in juvenile court.<sup>14</sup>

I had a client several years ago, B.H., a 16-year-old boy. On the school bus, B.H. was seated next to a 15-year-old girl who he had dated previously. B.H. touched his former girlfriend’s breasts through her clothes, and attempted, unsuccessfully, to put his hand down her pants. B.H. was adjudicated delinquent for attempted rape and gross sexual imposition.

In another example of a client my office represented, Z.C., a 14-year-old boy, and several other children had been at a friend’s house without parental supervision. Z.C. and some of the boys had stolen bottles of alcohol, and the girls had set up a tent in the yard. At some point in the evening, Z.C. and a 10-year-old girl, who “had become boyfriend and girlfriend earlier that day,” were lying on their sides next to each other in the tent. Z.C. put his arm over the girl’s midsection and touched her “below her beltline” but “did not put his hand in between her legs.” Z.C. was adjudicated delinquent for gross sexual imposition on a victim under the age of 13.

These case examples are given not to excuse or condone the behavior of the children involved, but to emphasize the fine lines between normal adolescent behavior, borderline behavior that may warrant juvenile court intervention so that it will not recur, and behavior that, under the Adam Walsh Act, would brand children as young as 14 as violent sexual predators who will be treated as threats to society for the rest of their lives.

Additionally, children who appear in juvenile court and receive traditional juvenile dispositions (i.e. those who are not bound over to adult criminal court and who are not given a serious youthful offender disposition) are not afforded all of the due process protections enjoyed by adult criminal defendants. Under the current version of Senate Bill 10, though, these children would face an adult sanction—inclusion on the public registry—without the same due process protections afforded to adult defendants.

### **Substantial compliance with the Adam Walsh Act**

If Senate Bill 10 is passed in its current form, without exempting traditional juvenile dispositions from the public registry requirements, twenty years from now, law enforcement will still be required to track the 36-year-old man who, as a 16-year-old boy, groped his on-again, off-again

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<sup>13</sup> LSC 127 0370-5, Sec. 2152.86, beginning at line 2840

<sup>14</sup> According to the May 2 letter from Bryan Brown of the Ohio Association of Child Caring Agencies to this Committee, 76% of the juveniles in DYS for sex offenses and 90% of the juveniles in sex offender treatment programs run by OACCA’s providers would be Tier III registrants.

girlfriend on the school bus and was adjudicated for attempted rape, as well as the 34-year-old man who, as a 14-year-old boy, put his arm around a 10-year-old girl's midsection and was adjudicated for gross sexual imposition on a child under the age of 13. Law enforcement will expend the same amount of resources to track those men as they will expend to track another man who, as an adult, sexually abused young children and who poses an actual ongoing threat to public safety.

Bogging down the public registry of sex offenders with 14-year-old kids dilutes the effectiveness of the registration and notification system, does nothing to enhance public safety, and wastes the limited and valuable resources of the law enforcement personnel who must track the registrants.

It should be left to those who interact with each child individually—specifically, juvenile court personnel working in conjunction with treatment providers—to determine whether the child's offense was a youthful indiscretion, a manifestation of a mental illness or other behavioral health problem, or a sign of a child who is not amenable to treatment and who poses an ongoing threat to public safety.

Current Ohio law provides juvenile courts the tools they need to meet the stated purpose of the Adam Walsh Act: protecting the public from violent sex offenders. If a court is faced with a juvenile who is not amenable to treatment or who committed a particularly violent act, upon the motion of the prosecutor or the court, the judge can transfer the case to adult criminal court. If it is uncertain whether a particular juvenile may be amenable to treatment, the prosecutor can request, and the judge can impose a serious youthful offender disposition on the child.

Under current Ohio law, juveniles who are bound over to adult criminal court or who receive serious youthful offender dispositions and have the adult portion of their sentences invoked would be placed on the public registry of the Adam Walsh Act. Juveniles who are amenable to treatment and who are successfully rehabilitated—either through traditional juvenile dispositions or through successful completion of the juvenile portion of a serious youthful offender disposition—have no place on a public registry of violent adult sex offenders.

Because of its current transfer and serious youthful offender laws, Ohio can exempt traditional juvenile dispositions from the public registry requirements of the Adam Walsh Act and still substantially comply with and meet the stated purpose of the new federal law.

Senate Bill 10 should be amended to exempt children who serve traditional juvenile dispositions from the public registry requirements of the Adam Walsh Act. Doing so would improve upon the overall function of the Adam Walsh Act, maintaining the Act's essential elements and, at the same time, protecting the juvenile who is redeemable. Doing so would maintain the essence of SB 10, but separate from it the aspects that are inconsistent with the state's efforts to rehabilitate juveniles. Doing so benefits not just the juvenile, but the system.