

FALLING THROUGH THE CRACKS: UPDATE

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INTRODUCTION

In May 2012, the Children's Law Center, Inc. (CLC) released two publications on Ohio youth prosecuted in the adult criminal justice system or placed in adult jails or prisons. The first publication was a report entitled *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System*,ⁱ which examined data and research on youth in the adult criminal justice system both nationally and in Ohio. The second publication – *In Their Own Words*ⁱⁱ – was a collection of stories from Ohio youth who had been involved in the adult system and their families.

The purpose of this updated report is threefold. First, since the release of *Falling Through the Cracks*, there have been several developments on the issue of youth in the adult criminal justice system both in Ohio and at the national level. Part I describes these changes and includes updated statewide data on Ohio youth prosecuted in adult court.

Second, Part II goes beyond the national and statewide perspective presented in *Falling Through the Cracks* and focuses on local practices for prosecuting Ohio youth in adult court, specifically under Ohio's bindover and serious youthful offender (SYO) laws.

Third, since the release of *In Their Own Words*, CLC created a web version of this publication that has expanded versions of the stories included in the publication as well as new stories from other youth and family members. These stories are available in full and organized by categories at <http://ohiobindover.wordpress.com/>.

PART I: OHIO AND NATIONAL UPDATES

Since the release of *Falling Through the Cracks* in May 2012, several changes have occurred at the national level and in Ohio for youth who become involved in the adult criminal justice system or are placed in adult jails and prisons.

U.S. SUPREME COURT CASE LAW

Miller v. Alabama:ⁱⁱⁱ In June 2012, the U.S. Supreme Court added another decision to its line of cases on adult criminal justice system involved youth (*Falling Through the Cracks*, pg. 2 – U.S. Supreme Court). In *Miller*, the Court held that youth who commit an offense before turning 18 cannot be given a *mandatory* life without parole sentence (LWOP). Instead, courts can only give youth an LWOP sentence after considering individual

characteristics, including the youth's age and family or home environment, as well as the circumstances of the offense, such as the youth's level of participation and the role of peer pressure.

Ohio law currently permits mandatory LWOP sentences for youth in certain circumstances in violation of *Miller*; however, Ohio law also contains a “backstop” provision if LWOP sentences are found to be unconstitutional, as they partially were in *Miller*. Under this provision, any individual serving an LWOP sentence that is later found to be unconstitutional must have a resentencing hearing in the trial court that imposed the LWOP sentence. At the hearing, the individual can be resentenced to life in prison with the possibility of parole after the individual serves either 25 or 30 full years in prison.^{iv} This blanket alternative sentencing scheme may be problematic under *Miller*, which at its core requires an individualized sentencing determination for youth under the age of 18.

OHIO BINDER LAW CHANGES

Waiver of amenability hearings - *In re: D.W.*^v In *D.W.*, the Ohio Supreme Court determined that youth facing discretionary bindover to adult court can waive their amenability hearing in juvenile court (see *Falling Through the Cracks*, pg. 5 – Discretionary Bindover). However, before the youth can waive this hearing, the judge must talk directly with the youth to make sure the youth is knowingly, intelligently, and voluntarily waiving the hearing. As the Ohio Rules of Juvenile Procedure provide, the youth must be represented by counsel throughout this proceeding as well as throughout other bindover proceedings.^{vi}

Youth in adult jails - SB 337^{vii} In September 2012, Ohio changed its law on when youth can be held in adult jails (see *Falling Through the Cracks*, pg. 5 – Housing of Bindover Youth). Under prior law, youth under the age of 18 who were bound over to adult court and youth ages 18-21 who were under the juvenile court's jurisdiction (i.e. had not committed a new offense, but had violated the terms of their parole or probation or had not completed their juvenile court sentence) could be sent to adult jails.

SB 337 changed this law to create a presumption that these two groups of youth remain in a juvenile detention facility unless the juvenile court holds a hearing and finds that 1) the youth is a threat to the safety and security of the juvenile detention facility, and 2) that the adult jail would be an appropriate place of confinement for the youth. If a youth is transferred to an adult jail, SB 337 provides that these youth (even if they are over the age of 18) must be kept “sight and sound separated” from adults, be supervised at all times, and be able to petition the juvenile court to be returned to the juvenile detention facility.

FEDERAL AND INTERNATIONAL DEVELOPMENTS

PREA standards^{viii} In June 2012, the U.S. Department of Justice issued final standards for the Prison Rape Elimination Act (PREA). The PREA standards contain three requirements that apply to youth under the age of 18 in adult jails and prisons: 1) youth cannot be placed in a housing unit where they can have contact with adults in common spaces, shower areas, or sleeping quarters, 2) when they are not in housing units (for example, in a cafeteria or recreation room), youth must be “sight and sound” separated from adults unless they are directly supervised by staff, and 3) facilities should not put youth in isolation to comply with the PREA requirements, and, if youth are put in isolation, they must be given access to education, exercise, and other programs and work opportunities to the extent possible. Although the PREA standards went into effect immediately, states were required to begin auditing their facilities for PREA compliance starting in September 2013. Failure to do so may result in states losing a portion of their federal funding for justice programs.

IACHR hearing^{ix} In March 2013, the Inter-American Commission on Human Rights (IACHR) held a hearing and issued findings on U.S. youth in adult court. The IACHR found that – under U.S. international treaty obligations – youth under the age of 18 should not be tried as adults, incarcerated in adult facilities (where youth are at risk and cannot access developmentally appropriate services), or placed in solitary confinement in either juvenile or adult facilities. These findings were bolstered by the release of a report on solitary

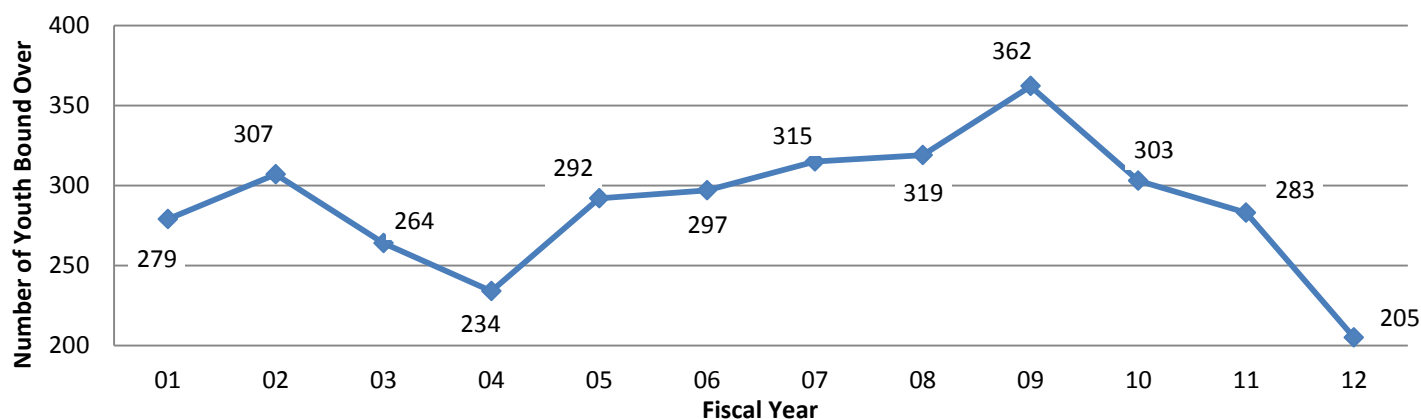
confinement practices for youth in adult jails and prisons that highlighted the psychological, physical, and developmental harm of solitary confinement for youth in adult facilities and offered isolation alternatives.^x

UPDATED OHIO STATISTICS

Since the release of the original *Falling Through the Cracks* report (see pp. 6-8 & 12), new data^{xi} has become available that sheds light on Ohio trends on youth in adult court, including initial data on HB 86 and SB 337.

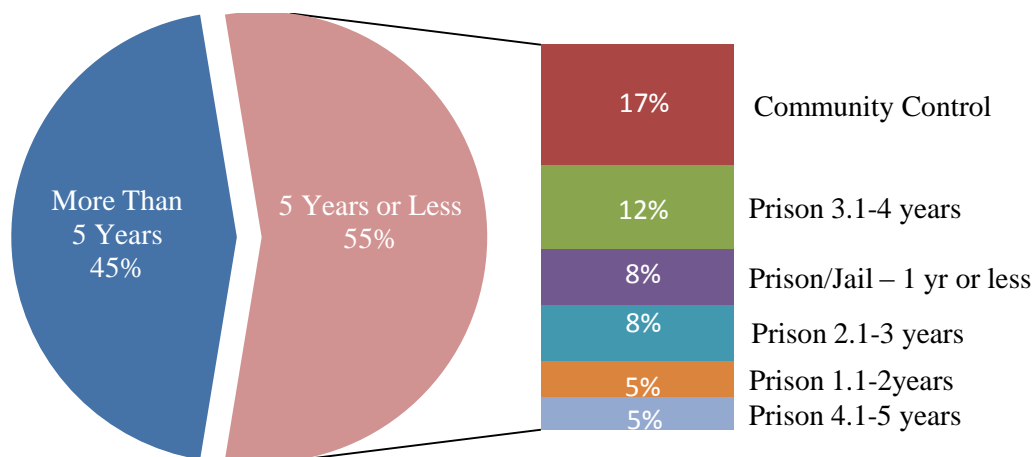
Updated Ohio data on bindover, SYO, and youth in the juvenile justice system: The most encouraging new data is that in FY12 the bindover numbers in Ohio fell to 205. This number is an historic 12-year low and an important milestone for Ohio, which had a historically high bindover number of 362 youth only three years before. Several counties had significant bindover reductions in FY12, including Butler, Clark, Cuyahoga, and Hamilton counties. Unfortunately, while the number of bound over youth declined, racial disparities actually increased; in FY10, non-White youth comprised 80% of the bindover population, while in FY12 non-White youth made up nearly 88% of bindovers.

Ohio Bindovers

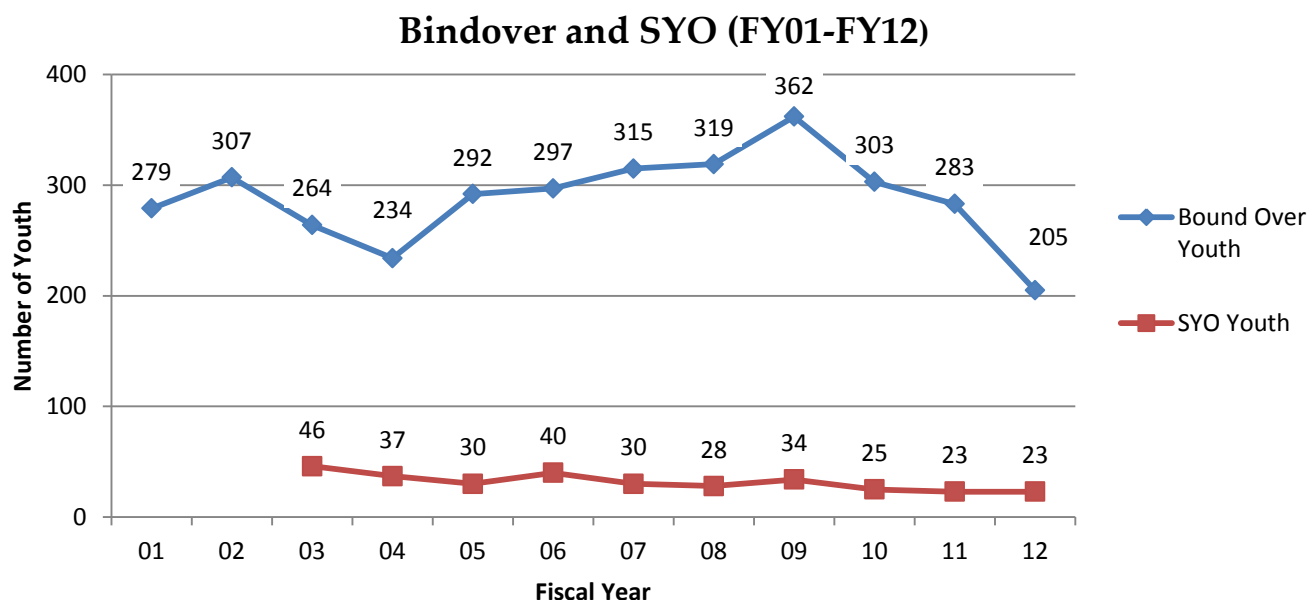


CLC also tracked the outcomes of bindover youth in adult court and found that youth bound over in FY12 were convicted in adult court of the same – if not slightly lower – level of felony offenses than youth bound over in FY10. Additionally, adult court sentences for youth bound over in FY12 also show that over half (55%) of bound over youth receive a sentence of five years or less in adult court. This percentage is down from 67% in FY10, but still indicates that bound over youth are receiving relatively short adult court sentences.

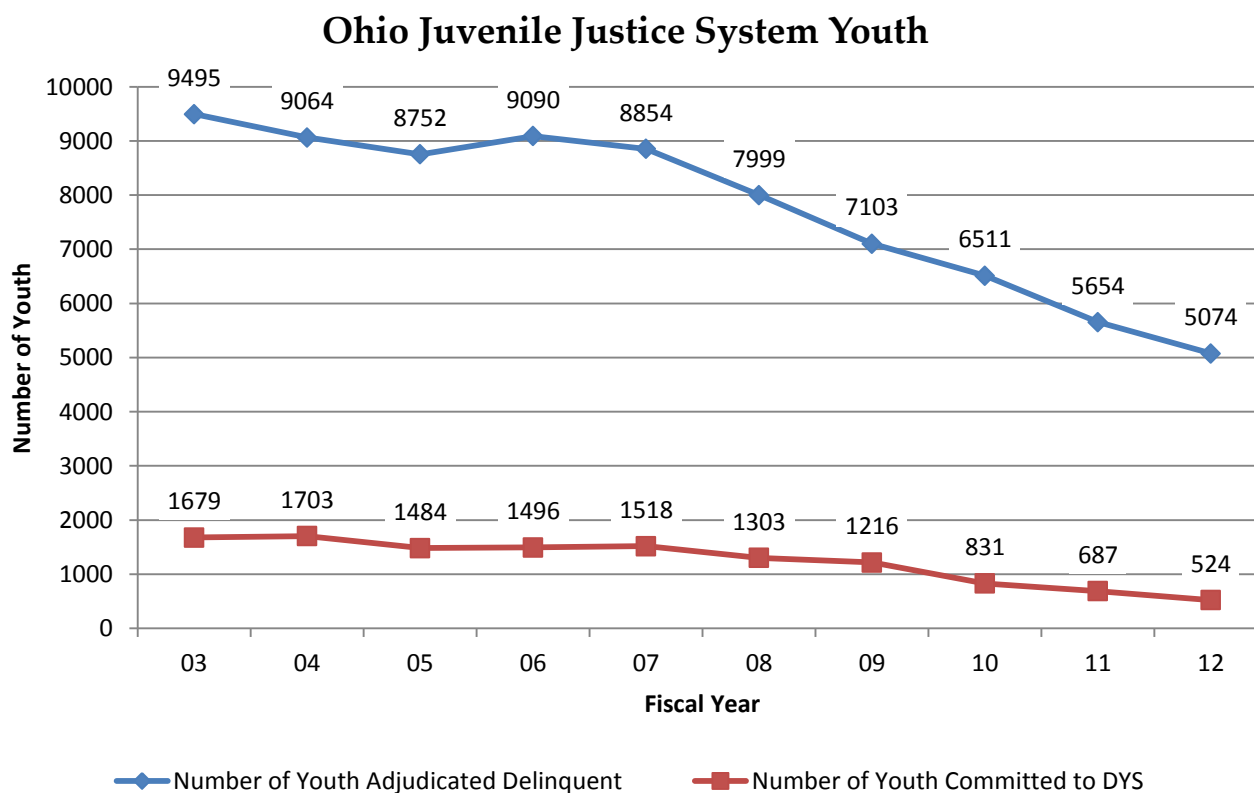
Adult Outcomes – FY12 Bindover Youth



With regard to SYO offenses, in FY11 and FY12, the chart below shows that SYO cases reached their lowest levels since Ohio's SYO law was enacted in 2003 (see *Falling Through the Cracks*, pg. 11-12):

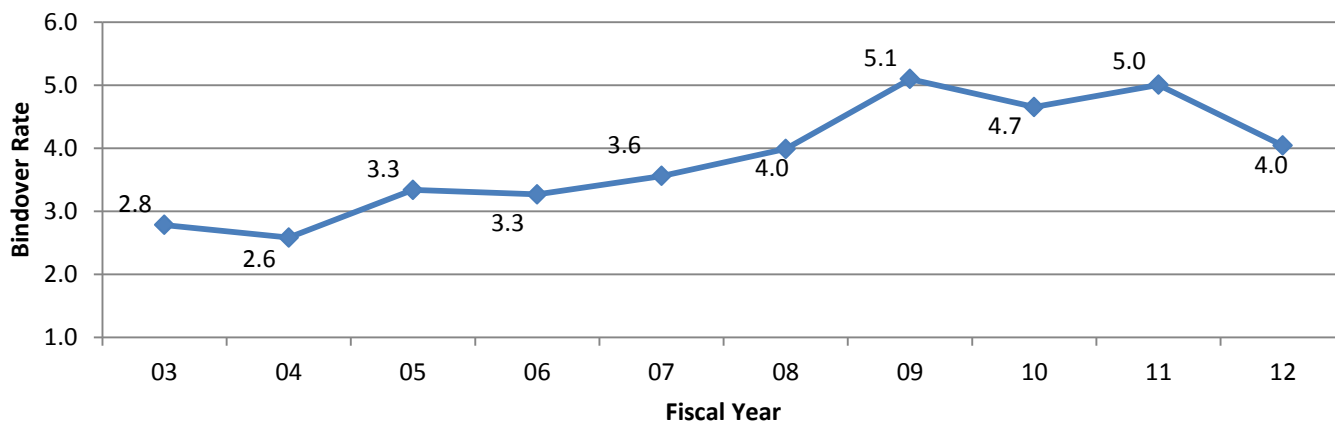


Finally, the numbers of youth adjudicated of felonies and placed in DYS facilities continued to decline:



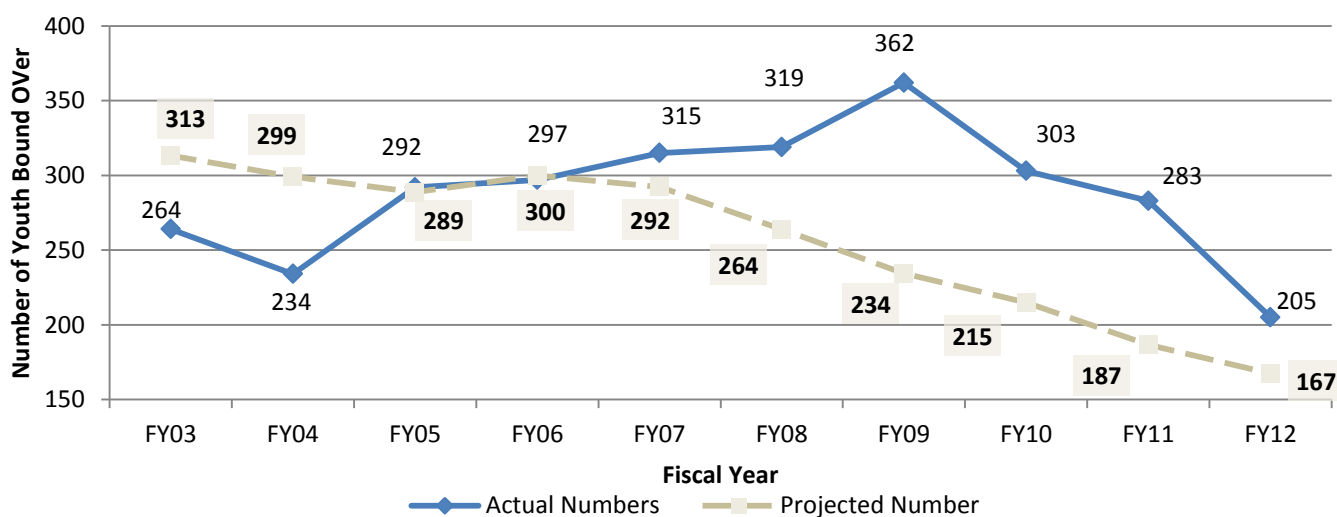
The data also permits an analysis of the rate at which youth with felony level offenses are bound over to adult court versus retained in the juvenile court system. The data shows that – although the raw numbers of both bound over youth and youth adjudicated delinquent of felonies are dropping – youth are being bound over at a higher rate.

Rate of Bindovers to Felony Adjudications



To illustrate this point more clearly, the chart below compares the actual number of youth bound over to adult court to a projected number of youth bound over to adult court based on a consistent rate. The consistent rate utilized for the chart is 3.3, the average rate of bindover from FY03-FY08; the Targeted RECLAIM initiative began in FY09. As the chart shows, although Ohio’s bindover numbers have decreased significantly, they are not decreasing as steeply as they should be based on the decrease in felony adjudications for youth in juvenile court. This smaller-than-expected decrease in bindover numbers and the bindover rate increase shown in the chart above may reveal a gap in Ohio’s RECLAIM formula, which aims to keep youth out of DYS facilities. Because RECLAIM is not designed to keep youth out of adult court, the RECLAIM formula does not account for youth who are bound over to adult court. Therefore, the RECLAIM formula may inadvertently be creating a financial disincentive for courts to retain youth in the juvenile court system, where they may be sent to a DYS facility and count against the court’s RECLAIM numbers. Part II of this report will further examine this rate analysis on an individualized county level.

Bindover Numbers: Projected Versus Actual



Data on changes in HB 86 and SB 337: Both HB 86 and SB 337 contained provisions that affected youth in the criminal justice system by creating the reverse waiver process (HB 86) and a presumption that youth in adult court would be kept in juvenile detention facilities instead of jails (SB 337).

With regard to reverse waiver, youth in FY10 (pre-reverse waiver) and youth in FY12 (post-reverse waiver) were charged equally with mandatory and discretionary bindover offenses; in both FY10 and FY12, 51% of youth were charged with mandatory bindover and 49% were charged with discretionary bindover offenses. However, as the chart below shows, FY12 youth were less likely to be eligible for reverse waiver:

Youth Charged with Mandatory Bindover Offenses			
Convicted of:	FY10	FY12	% Change
Mandatory Bindover – Category 1 Offense	5.1%	11.8%	+6.7%
Mandatory Bindover – Category 2 Offense	52.6%	55.3%	+2.7%
Discretionary Bindover Offense (Reverse Waiver Eligible)	42.3%	32.9%	-9.4%

HB 86's reverse waiver provision seems to be creating a scenario under which fewer youth are being offered plea deals that would allow them to be eligible for the reverse waiver process; therefore, more post-reverse waiver youth are being convicted of higher level felony offenses than their pre-reverse waiver counterparts. In addition, of the 28 youth who were eligible for reverse waiver in FY12, CLC was only able to identify two youth who were retained by the juvenile justice system; the remaining 26 youth were transferred back to adult court. Therefore, HB 86's reverse waiver provisions seem to be 1) reducing plea bargain opportunities for youth, resulting in youth being convicted of higher level offenses in adult court, and 2) largely unsuccessful in retaining youth in juvenile court.

Youth in adult court also are being caught up in the interplay between the juvenile and adult provisions of HB 86 and SB 337. For example, the adult sentencing reform provisions of HB 86 modified Ohio law to create a presumption that adults convicted of felony level four (F4) and five (F5) offenses will receive only community control or probation time instead of prison time. At the same time, HB 86's reverse waiver provisions provide that mandatory bindover youth can be returned to juvenile court jurisdiction if they plea to a lower level offense, such as an F4 or F5.

Therefore, reverse waiver youth can be faced with a decision to either: 1) return to the juvenile court and face an indeterminate sentence in a DYS correctional facility until their 21st birthday, but not have an adult conviction on their record or 2) have a determinate sentence of probation – not prison – in adult court, but have the long-term collateral consequences of an adult felony record. As adolescent development research has shown, youth often have difficulty weighing long-term consequences, making this is an extremely difficult decision for youth, particularly if the youth's attorney does not help the youth weigh these short- and long-term consequences.

Conclusion: Over the past four years in Ohio, the number of bindovers decreased from a high of 362 youth in FY09 to a historic low of 205 youth in FY12 – a 43% decline. Last year alone, bindovers decreased by 28%. This decrease is an impressive move in the right direction for Ohio's youth and the communities in which they live. However, it is difficult to determine exactly why this decline is occurring. For example, the decrease could be attributed to overall declining juvenile crime rates, personnel changes within counties, or a reduction in the use of bindover by prosecutors or juvenile court judges who have been influenced by the changes in HB 86 and SB 337.

While this decrease in bindovers is impressive, Ohio may benefit from a more comprehensive analysis of how to remove youth from the adult criminal justice system. First, since the reverse waiver law went into effect, data indicates that prosecutors may be charging youth with higher level offenses or not offering plea deals that

would allow youth to be reverse waived to juvenile court. Second, while Ohio has taken positive steps with adult criminal justice system reform, these changes may be making the adult criminal justice system and its short-term benefits, such as serving only community control, look more enticing to youth. Third, youth in FY12 were bound over for similar levels of felony offenses compared to FY10 youth, meaning courts are not necessarily reserving bindover for higher level felony offenses.

In order to align with best practices and research and better protect youth and their communities, Ohio must continue to build on its positive, nationally recognized efforts on juvenile and adult criminal justice reforms and engage in a concerted effort to comprehensively and meaningfully reduce the number of youth who come in contact with the adult criminal justice system.



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PART TWO: NEW INFORMATION ON OHIO YOUTH IN ADULT COURT AND ADULT JAILS

Although *Falling Through the Cracks* examined the issue of youth involved in the adult criminal justice system at the statewide level, Ohio is a “home rule” state, meaning each of the juvenile courts in Ohio’s 88 counties have a high level of independence as to how decisions are made and what data is collected. Given the high level of local control for juvenile courts in Ohio, an in-depth examination of local, county-based practices is necessary to get a more complete picture of Ohio youth in adult court.

In order to examine local practices on bindover, CLC gathered information through two processes:

- ❖ County level data analysis – *Falling Through the Cracks* contained some data analysis on counties throughout Ohio; this report will go further by examining county data more closely in terms of courts’ decisions on which youth are sent to adult court.
- ❖ Interviews with juvenile courts – CLC conducted interviews of juvenile court stakeholders – including prosecutors, defense attorneys, and juvenile court judges – in several counties throughout the state with varying rates of bindover regarding their courts’ bindover practices.

COUNTY LEVEL DATA ANALYSIS

Introduction: *Falling Through the Cracks* contained an analysis of the rate of bindover per county in Ohio compared to county's youth population. The analysis in this update will look more closely at youth who become involved in juvenile court for high level felonies – defined here as a Felony 2, Felony 1, or aggravated murder or murder charges – and compare the rates of youth charged with these levels of offenses who were retained in the juvenile justice system versus bound over to adult court over the past five years.^{xii}

Note: Due to limitations in Ohio's data on bindover motions, it is unknown how many of these youth were mandatory bindovers – meaning the juvenile court made only a probable cause finding without any individualized analysis of the youth's case before the bindover – versus discretionary bindovers. Therefore, these numbers may reflect the charging decisions of prosecutors rather than juvenile judges' decisions.

Data Analysis: In comparing the rate of youth adjudicated delinquent of high level felony offenses to bound over youth, no clear “justice by geography” patterns or trends emerge based on the population of youth in the county or the rate of bindover per 100,000 youth in the county (i.e. on average, smaller counties do not bindover higher rates of youth charged with high level felonies). However, the data indicates that counties have very different ways of utilizing bindover, meaning two youth charged with the same level of offense may have different outcomes – juvenile or adult court – depending on the county in which they are charged.

For example, for counties that have more than ten youth per year who are bound over or adjudicated delinquent for high level felony offenses, the average likelihood that a youth will be bound over for that offense is 17%. However, counties' bindover rates range between a high of 48% – meaning a high level felony offense will be bound over almost half the time – to a low of 0% – meaning a high level felony offense will never or almost never be bound over; italicized counties represent counties whose stakeholders were interviewed for Part III:

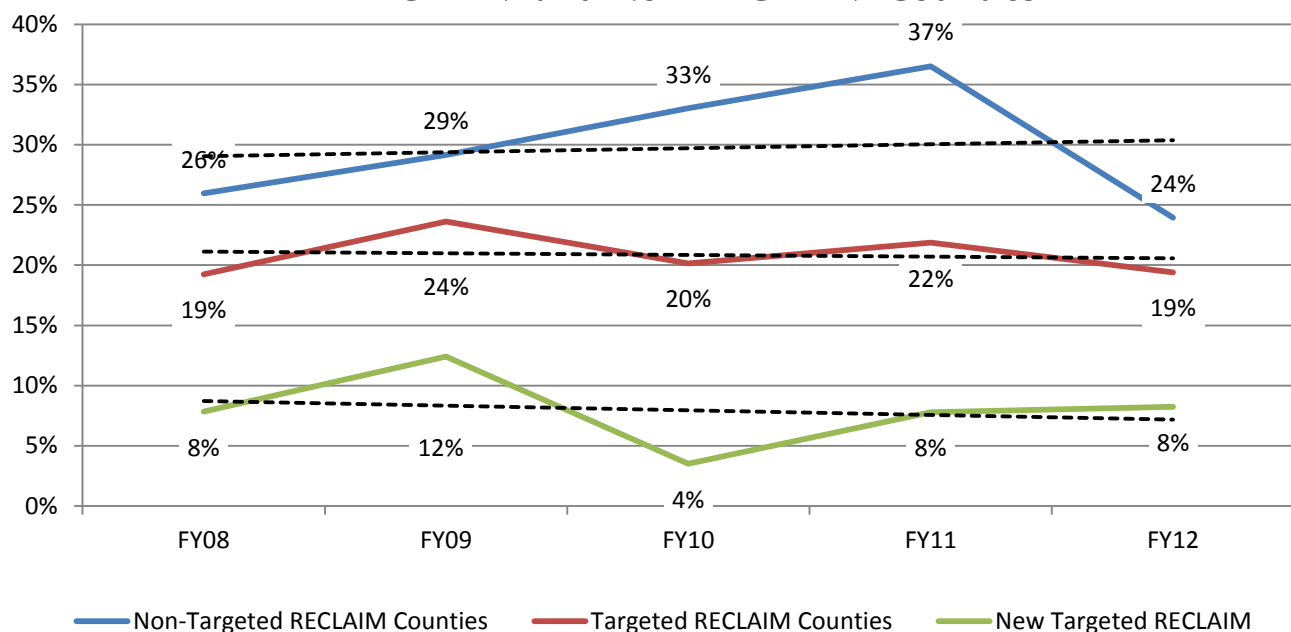
Bindover Likelihood	# of Counties	Counties
40+%	2	<i>Clark</i> (48%), <i>Butler</i> (44%)
30-39%	1	<i>Hamilton</i> (32%)
20-29%	4	<i>Marion</i> (25%), <i>Cuyahoga</i> (24%), <i>Montgomery</i> (22%), <i>Franklin</i> (20%)
10-19%	6	<i>Summit</i> and <i>Licking</i> (15%), <i>Mahoning</i> and <i>Lorain</i> (14%), <i>Richland</i> (12%), <i>Lucas</i> (11%), <i>Allen</i> (10%)
1-9%	2	<i>Stark</i> (8%), <i>Clermont</i> (5%)
0%	3	<i>Lake</i> , <i>Trumbull</i> , and <i>Warren</i>

The range is even starker for counties with fewer than ten youth adjudicated delinquent or bound over for high level felonies per year. In these counties, the average percentage of bindover is lower at 12%, but the range of likelihood to be bound over by county is greater: from a high of 63% to a low of 0%:

Bindover Likelihood	# of Counties	Counties
60-69%	2	<i>Clinton</i> and <i>Preble</i>
50-59%	1	<i>Geauga</i>
40-49%	1	<i>Morrow</i>
30-39%	1	<i>Noble</i>
20-29%	11	<i>Ashland</i> , <i>Athens</i> , <i>Defiance</i> , <i>Erie</i> , <i>Fairfield</i> , <i>Fulton</i> , <i>Holmes</i> , <i>Morgan</i> , <i>Pike</i> , <i>Ross</i> , and <i>Shelby</i>
10-19%	14	<i>Auglaize</i> , <i>Brown</i> , <i>Guernsey</i> , <i>Hancock</i> , <i>Highland</i> , <i>Jefferson</i> , <i>Pickaway</i> , <i>Portage</i> , <i>Ottawa</i> , <i>Scioto</i> , <i>Seneca</i> , <i>Van Wert</i> , <i>Wayne</i> , and <i>Wood</i>
1-9%	12	<i>Ashtabula</i> , <i>Crawford</i> , <i>Darke</i> , <i>Delaware</i> , <i>Henry</i> , <i>Huron</i> , <i>Medina</i> , <i>Mercer</i> , <i>Miami</i> , <i>Muskingum</i> , <i>Perry</i> , and <i>Williams</i>
0%	26	Remaining Counties

In examining the rates of bindover in Targeted RECLAIM counties, an interesting trend emerges. All six of the original Targeted RECLAIM counties – including Cuyahoga, Hamilton, Franklin, Summit, Montgomery, and Lucas Counties – bind over an average of ten or more youth per year and on the whole, youth in these counties have a higher likelihood of being bound over: 21% compared to 12% for all non-Targeted RECLAIM counties. However, this comparison includes many counties that bind over very few youth. When compared to counties that bind over similar numbers of youth,^{xiii} Targeted RECLAIM counties have a much lower average bindover rate. In addition, Targeted RECLAIM counties showed a slightly decreasing five-year trend in binding youth over to adult court, while non-Targeted RECLAIM counties with similar bindover numbers showed a slightly increasing trend. In the next year, Targeted RECLAIM is expanding to eight additional counties; these new Targeted RECLAIM counties have a very low bindover average of 8%.

Bindover Rate Trends: RECLAIM and Non-RECLAIM Counties



Conclusion: The charts above show that bindover is utilized inconsistently across counties. One argument for binding youth over to adult court is that if youth know they can get bound over to adult court, they will be less likely to commit an offense. However, one Ohio study has shown that 100% of the youth interviewed were not aware they could receive adult sentences for their offense.^{xiv} Second, the lack of consistency may result in vastly different results for a youth depending on which county an offense is committed. For example, a youth who commits a high level felony offense in Clinton County is much more likely to be bound over than a youth who commits a similar offense in neighboring Highland County. Third, the data seems to indicate that counties participating in Targeted RECLAIM have a lower bindover rate compared to similar non-Targeted RECLAIM counties. In addition, the new Targeted RECLAIM counties, which have a significantly lower bindover rate, may be able to assist the current Targeted RECLAIM counties and other counties in continuing to decrease their bindover rates.

COUNTY INTERVIEWS

In order to get a clearer picture of how Ohio's bindover laws are implemented at the local level, CLC attorneys, in coordination with several lawyers experienced with bindovers – spent several months conducting interviews in seven Ohio counties with varying bindover rates – Clark, Cuyahoga, Franklin, Hamilton, Lake, Lucas, and Summit – and evaluating the responses. In each of the counties, CLC requested interviews with a juvenile

court judge, a prosecuting attorney, and a defense attorney who works with youth charged with bindover offenses.

The interviews covered topics including data collection, how attorneys are assigned to bindover cases, the decision-making process around filing a bindover and sending a youth to adult court, reverse waivers, plea bargains, the use of Ohio's Serious Youthful Offender (SYO) law, and housing bound over youth in juvenile detention or adult jails. The summary below compiles the results of these interviews along with recommendations on how counties should address each of these issues.

Data collection: Counties were split on bindover data collection, with four counties collecting relatively extensive annual data and three counties collecting minimal information or not creating an annual summary of data. If data is collected, it is typically collected by the juvenile court, which may or may not share the data with attorneys working on bindover cases. In some counties, prosecutors and defense attorneys collect independent bindover statistics.

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Almost every county collected the total annual number of bindovers and two counties tracked more detailed bindover trends, including five-year trends and monthly statistics that were compared to the prior year's data. For the counties that collect more extensive data, the data collected includes:

Youth characteristics: The youth's sex, race/ethnicity (Caucasian, African American, and Latino; or Black, White, Unknown and whether the youth is of Hispanic or Latino origin), age, date of birth, and zip code.

Bindover process:

- ❖ Number of bindover petitions or motions filed;
- ❖ Number of youth bound over to adult court versus retained in juvenile court;
- ❖ The offense or category of offense for which the youth was bound over [i.e. by 1) category of offense (murder, attempted murder, aggravated robbery, or felonious assault) , 2) corresponding ORC code section, or 3) felony level)];
- ❖ Date of transfer;
- ❖ Whether the bindover was mandatory or discretionary; and
- ❖ Number of youth who choose to be bound over to adult court instead of remaining in juvenile court (for example, to try to get a lighter sentence or because they pick up a new charge in adult court).

Adult court outcomes: Since the passage of the reverse waiver provisions in HB 86 and the jail removal provisions in SB 337, one county has continued to collect data on bindover youth through the completion of the case in adult court. This information has allowed the county to track how long youths' cases are taking in adult court and assess the impact on the county's juvenile detention center's population. The county has included the following data points regarding adult court outcomes for bindover youth:

*[Collecting data] through the **completion of the case in adult court** [has] allowed the county to track how long youths' cases are taking in adult court and assess the impact on the county's juvenile detention center's population.*

- ❖ The date of the youth's bindover to adult court;
- ❖ The charge on which the youth was bound over;
- ❖ The date and substance of the youth's plea in adult court and adult court sentence;
- ❖ If the youth was reverse waived to juvenile court and, if so,

the dates of the youth's referral to probation for social history and investigation, the date of the investigation's completion, and the date of the youth's amenability hearing; and

- ❖ The outcome of the youth's case (juvenile disposition, SYO blended sentences, or adult sentence).

Assignment of defense attorneys to bindover cases:

Type of attorney: In bindover cases, as in other juvenile court cases, three types of attorneys can represent youth: public defenders, court-appointed attorneys (who can be private attorneys or public defenders), or attorneys privately retained by the youth or their family. The counties interviewed were nearly evenly split on the type of attorney handling bindover cases if youth did not hire their own attorney:

*The counties interviewed were **nearly evenly split** on the type of attorney handling bindover cases if youth did not hire their own attorney.*

- ❖ Three counties rely mostly on court-appointed attorneys (in one county, the public defenders' contract does not cover bindover cases, but public defenders are appointed to handle bindovers in 50% of cases);
- ❖ Three counties refer all bindovers to the public defender's office unless the youth retains an attorney or the public defender's office has a conflict of interest. In one county, the court reported that more public defenders are choosing to remain in the juvenile division and becoming more experienced in juvenile law, which the prosecutor's office is pursuing as well, and;
- ❖ In one county, the type of attorney – whether public defender or court-appointed attorney – depends upon the courtroom in which the bindover takes place as different judges have different appointment rules in each courtroom.

Attorney assignment: In counties where the public defender handles bindover cases, the attorney is assigned within the public defender office. For court-appointed attorneys, all counties have a standing list of attorneys who meet the qualifications discussed in the section below and who may be assigned to bindover cases. The court then selects an attorney for each case either by the judge reviewing the case and selecting a specific attorney or by the judge going down the list of qualified attorneys and appointing the next qualified attorney in turn (although in recent months one county that uses this practice has been assigning bindovers to qualified attorneys who come to the court on certain days to await court assignment on preliminary hearings).

Bindover specific qualifications: The attorney qualifications for bindovers are determined by the juvenile court (five counties), the county bar association (one county), or the public defender's office (one county).

*One county has established **specific, written guidelines** for attorneys...to represent youth in SYO and bindover cases*

For the five counties in which the court sets qualifications for bindover attorneys, courts vary in terms of the formality of their requirements. In four of the five counties, the juvenile court judges individually place attorneys on the list of bindover qualified attorneys. Judges in these counties reported only adding attorneys to the bindover list based on 1) the attorney's juvenile court experience and 2) if the attorney has experience in or specifically is qualified to represent clients in adult court and can follow the youth's case over to adult court, which one judge indicated was helpful in the plea bargaining process.

In the fifth county in which the court sets bindover attorney standards, the county has established specific, written guidelines for attorneys to become qualified to represent youth in SYO and bindover cases. To meet these qualifications, the attorney must have served as lead counsel or co-counsel on three cases involving Category One offenses or the offenses defined in ORC § 2152.02. As lead counsel, the attorney must have represented the youth in probable cause hearings in juvenile court to determine whether the youth should be bound over to adult court and the case must have ended in a trial either in juvenile or adult court. Also, the attorney must participate in six continuing legal education (CLE) hours that specifically address juvenile court

issues. When these guidelines were first introduced, the qualifications were met with some resistance for attorneys who did not wish to participate in the CLE hours and several attorneys opted not to be included on the list for this reason.

In the county in which the county bar association maintains the list of qualified bindover attorneys, the bar association sends an annual questionnaire to ensure that attorneys on the list have fulfilled their qualifications, including taking a local criminal defense seminar.

In the final county, the public defender's office determines whether attorneys are qualified to take court-appointed bindovers. To be placed on the list, attorneys must submit applications to the public defender's office. The public defender's office then reviews the applications, conducts interviews with the attorney's colleagues and examines the attorney's juvenile law experience and knowledge of local and state juvenile court rules and laws (such as the recent changes in competency, HB 86, and SB 337).

Attorney continuity between juvenile and adult court:

*One county has...
established a formal
partnership with the
adult public defender's
office to ensure attorney
continuity.*

Prosecutors: In five of the seven counties, the juvenile prosecuting attorney does not follow the youth's case to adult court; in these counties, the prosecutor will remain in contact with the adult prosecuting attorney by 1) reviewing plea deals, especially in cases that could result in reverse waiver, 2) sending over a summary sheet and juvenile court reports, 3) being available to coordinate and assist on the case, or 4) staying on and assisting even if the attorney is not formally taking the case. However, two counties use a vertical prosecution system where the prosecuting attorneys follow the youth's case from intake through resolution in adult court.

Defense attorneys: In many counties, defense attorneys are more likely to follow youth from juvenile to adult court and, in one county, if a youth has multiple cases in juvenile court, the court tries to ensure consistent representation between cases as well as throughout the bindover process. Some juvenile court judges try to appoint attorneys who are qualified in both juvenile and adult court to ensure continuity of representation. However, continuity between juvenile and adult court does not always occur for several reasons, including:

- ❖ Adult court judges maintaining their own appointment list. One county reported that adult court judges generally keep the same attorney that represented the youth in juvenile court, but another county stated that the adult court judges will only occasionally use the juvenile attorney.
- ❖ Defense attorneys deciding not to follow youth to adult court. In one county, the public defender's office does not follow youth to adult court, but court-appointed counsel may; however, in another county the opposite is true.

One county has taken a different approach to attorney continuity and has established a formal partnership with the adult public defender's office to ensure attorney continuity. In this county, the juvenile and adult defense attorney co-counsel throughout the bindover process and, if a youth is not indicted in the General Division by the grand jury within a certain time frame, the youth's attorney will file a motion to dismiss the case.

Filing bindover charges: Determining whether to file a bindover charge differs between counties; however, there are some common themes that emerge. In interviews, stakeholders often used the term "high level felony" to describe the charges for which youth are typically bound over. However, the definition of high level felony varied from county to county and ranged from 1) robberies with gun specifications and attempted murder or murder to 2) robberies or burglaries that include the use of a gun or a very serious injury with a knife, to 3) felonious assault or theft/breaking and entering charges that

*The definition of [what
constitutes a] high level
felony varied from county
to county.*

include violence in the commission of the offense. In one county, some stakeholders felt that youth with discretionary bindovers were very similar to youth being sent to DYS, including some first-time offenders.

Several counties reported that bindovers are typically filed anytime the charges qualify as a mandatory bindover charge, even if it is the youth's first charge in the juvenile justice system. When making bindover decisions, counties presented several factors that weigh into bindover decisions, including:

- ❖ The youth's age (the older the youth, the more likely they are to have a bindover motion filed against them);
- ❖ Whether a weapon was involved in the commission of the offense;
- ❖ If the current offense is a high level felony (as defined by the county); and
- ❖ If the youth has prior DYS commitments or lengthy juvenile court involvement.
- ❖ With regard to youth charged with lower level felonies and sexual assault offenses, courts took the following approaches with these youth:
 - ❖ Typically not binding over these youth (two counties);
 - ❖ Binding these youth over if they are older, have a lengthy record and have served time in a DYS facility; or
 - ❖ Binding these youth over if they have a long record of court involvement and have not responded to various programs.

One county reported that bindover – as well as sending youth to DYS facilities – is used infrequently because there are so many local treatment and rehabilitation options available to youth in the county. The court's philosophy is that "every youth gets every possible chance" in the county before being sent to DYS or adult court. The court has worked with community stakeholders to build an array of local treatment options for youth that involve the youth's family, including anger management, family therapy, parenting classes, victim awareness programs, and a wraparound services program used for youth with felony level offenses. For example, the court invited a local rotary to tour its juvenile detention facility. During the tour, the rotary noted that the center did not have computers and donated 15 computers for youth to utilize while in detention.

*One county reported that bindover...is used infrequently because there are so many **local treatment and rehabilitation options** available to youth in the county [and a] philosophy that "every youth gets every possible chance."*

Reverse waiver: Counties reported a range of experiences with reverse waiver. Two counties reported no reverse waiver cases. One county has had several youth eligible for reverse waiver, but none of the youth have been retained in juvenile court; this is due to the county requiring youth to stipulate that they are not amenable for the juvenile justice system before accepting any plea bargain in adult court.

The remaining four counties reported varying outcomes for reverse waiver. One county's stakeholders noted that, in making the decision to reverse waive a youth, one judge typically considers the youth's history and any prior court record, but one of the most important factors is whether the youth has turned 18, in which case they are normally returned to adult court.

Several stakeholders viewed reverse waiver as positive, including that it has reduced the overcharging of youth in juvenile court. However, others expressed that reverse waiver has complicated or handcuffed plea bargaining for youth charged with mandatory bindover offenses, making it less likely that the youth will receive a plea deal before getting bound over to adult court.

Finally, in several counties, youth who are eligible for reverse waiver have chosen to be processed in adult court and to waive the reverse waiver process. This decision is made for several reasons, including the youth receiving a short sentence or probation in adult court. However, in one county, a reverse waiver youth was retained in juvenile court and given a disposition of only probation in juvenile court; the adult court had given the youth a short jail sentence and probation, but the juvenile court permitted the youth to serve his probation time in the juvenile system.

Juvenile court judges in many of the counties recommended eliminating mandatory bindover, which would eliminate the reverse waiver process and make all bindovers to adult court discretionary. Several judges expressed that judges should be able to consider the factors in discretionary bindovers cases in all bindovers to determine a particular youth's amenability to rehabilitation. Judges also stated that they are best equipped and trained to make individualized decisions about youth, particularly with regard to youths' developmental needs and thought processes, which differ from adults. In addition, several judges expressed concerns that adult courts are not familiar with juvenile procedure, which can result in the adult court neglecting to send a reverse waiver youth back to juvenile court or assuming the youth has been "found guilty" by being bound over. However, several judges expressed that they appreciate the guidelines created by the mandatory bindover statute, including that it helps maintain consistency with bindovers and provides guidelines to judges. One judge stated that they would be in favor of eliminating mandatory bindover if the legislature created guidelines on the type of youth that should be bound over.

Juvenile court judges in many counties recommended eliminating mandatory bindover...[because], they are best equipped and trained to make individualized decisions about youth.

In [one] county, stakeholders reported that nine out of ten youth charged with a bindover waive their probable cause and amenability hearings to accept a plea to an adult sentence.

Plea bargains: After a bindover motion is filed, prosecutors vary in their approaches to moving cases forward. The bindover motion may be dropped either due to the prosecutor withdrawing the motion or through the plea bargain process. In two counties, once a bindover motion is filed, it is rarely withdrawn; in one of these counties, the prosecutor's office will not entertain withdrawing the bindover motion or negotiating plea deals until the judge determines whether the youth will be sent to adult court. However, in other counties, the bindover motion may be withdrawn more readily, depending on the results of the amenability report or due to the changing nature of the

case. One county reported that about a third of its bindover motions are withdrawn because the prosecutor has time to consider the facts and reverse waiver options, learn more about the youth, and – if the youth had an adult co-defendant – see what the co-defendant's outcome was in adult court.

County practices vary widely in terms of how and when pleas are offered and to what charges youth plead. Stakeholders in four counties reported that, on the whole, youth are more likely to receive a plea deal if they are charged with a discretionary bindover than a mandatory bindover. In different counties, youth typically plea to one of three options: only to juvenile disposition (two counties), juvenile or SYO dispositions (three counties), or mainly SYO dispositions (one county). However, in the final county, stakeholders reported that nine out of ten youth charged with a bindover waive their probable cause and amenability hearings to accept a plea to an adult sentence while their case is pending in juvenile court.

At least one stakeholder suggested it was more difficult to get a plea in adult court and in one county, the court reported that some youth request to be sent to adult court, including some youth that believe they will be cleared of their charges if witnesses do not appear. In one juvenile court, some judges require a full sentencing recommendation for any plea deal and deny any pleas that do not allow for early release from DYS facilities.

Use of SYO: No county interviewed consistently uses the SYO process as a charging tool and, in several counties, SYO is not even used as a plea bargaining tool in juvenile court. However, several counties use SYO as an alternative plea deal to bindover and only one county reported having several youth whose adult SYO sentences have been invoked.

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Several stakeholders expressed issues with the SYO process, including that:

- ❖ The case is automatically terminated when the youth turns 21 and many bound over youth are close to age 18, leaving little time for the youth to serve in a DYS facility;
- ❖ The adult portion of the SYO sentence can be invoked only if very specific charges are filed against the youth during their time in a DYS facility, which one county stated makes the process have too many procedural hoops to jump through for a speculative imposition of an adult sentence;
- ❖ The SYO process is very technical, confusing, and an unfamiliar process for juvenile courts, making it easier for the court to make an error, such as how to advise youth in a way that would be similar to how the youth would be treated in adult court;
- ❖ The juvenile court is not designed to have frequent jury trials, which take a lot of time to prepare; one county reported that the one SYO trial held in the county took one and a half to two years to prepare; and
- ❖ A history of juries not convicting youth under SYO proceedings.

Several juvenile court judges stated that they would like to see the SYO process utilized as an alternative to bindover, because the SYO process gives youth a last chance to improve.

*In [one] count[y], public defenders **do not waive either probable cause or amenability hearings**... [in other counties they are] waived relatively frequently as part of plea deals.*

Probable cause and amenability hearings:

Probable cause hearings: Probable cause hearings differed between counties both in terms of how frequent the hearings are held, and the content of the hearings. In terms of frequency, in two counties, probable cause hearings are rarely or never waived by youth. In one of these counties, public defenders do not waive either probable cause or amenability hearings; however, appointed counsel has been known to waive these hearings (even waiving probable cause hearings in mandatory bindover cases), which results in no transcript being sent to adult court. In two other

counties, probable cause is waived relatively frequently as part of plea deals, including up to 50% of the time in one county.

The content of probable cause hearings ranged from no witnesses to having brief police officer or victim testimony to a mini-trial over several hours with various witnesses – including victim testimony, testimony from the county coroner, and expert witnesses testifying about gun operability – and other evidence (such as video surveillance tapes).

Amenability hearings - expert report and evaluation: Each court has a process in place for amenability evaluations in discretionary bindover hearings, with amenability reports prepared by different individuals in the counties, including a court diagnostic clinic, a court diagnostic services program, and a mental health professional contracted or hired by the court specifically for this purpose. One court also has specific experts available if a youth has a history of sexual abuse. In many counties, these experts usually testify at amenability hearings, but several counties reported that the expert typically does not take the stand. On the whole,

stakeholders did not report defense attorneys requesting independent experts to perform evaluations; however, independent evaluations were common practice in two counties and judges in other counties stated they would consider allowing independent evaluations of youth. Two counties reported that, in addition to the amenability evaluation, the court's probation department prepares a social history report on each youth.

Amenability hearings - content of hearing: Many courts stated that the expert evaluation and testimony is the center of the amenability hearing. In addition, although one county reported that defense attorneys rarely put on witnesses beyond the mental health expert, all other counties reported the defense putting on evidence, including witnesses (parents, relatives, pastors, teachers, counselors, probation officers, community members, caseworkers, and GALs who have worked with the youth), youth's school records, the youth's juvenile court history (including the lack of a youth's involvement in juvenile court), services available to the youth in juvenile court, and services lacking in adult court. The extensiveness of amenability hearings varied: one county reported that amenability hearings can be inconsistent and depend on which defense attorney handles the bindover, while another reported doing very individualized amenability hearings and reported an over 50% success rate for showing that youth are amenable to rehabilitation in juvenile court. One judge stated that they prefer the expert's report to be verified by outside witnesses who have more extensive knowledge about the youth.

In making determinations on amenability, judges varied greatly on what they factor into amenability decisions, including:

- ❖ The youth's record, family background, and maturity level, the current offense, and whether there are services that have not been previously made available to the youth;
- ❖ The youth's age, prior programming and placements in the juvenile system, prior offenses, and prior DYS commitments; and
- ❖ The youth's history, whether the youth is capable or willing to change, what the youth will do differently, and if the youth will rise above his or her childhood.

Detention center versus jail: Since the passage of SB 337, which created a presumption that youth be placed in juvenile detention centers rather than adult jails, courts have reacted differently to youth in adult jails and fall into three general categories:

- ❖ Judges have or will continue to *routinely place bindover youth in adult jails* (two counties);
- ❖ Courts have *kept many youth accused of bindover charges in the juvenile detention center* (three counties). These counties expressed that there have been a few youth who have had problems in detention, and several youth have been moved over to the jail under SB 337's safety and security test, but that on the whole the transition has been manageable. One county reported that youth over the age of 18 were not receiving education in the detention center; while another county raised concerns about the court's budget and the cost associated with maintaining youth in detention.
- ❖ Making *active efforts to retain youth in juvenile facilities* (two counties). In the first county, the court traditionally kept bound over youth under 18 in the detention center instead of the jail due to 1) jail overcrowding, 2) the youth being able to stay with other youth and getting more access to education in detention, and 3) the youth not yet being adjudicated delinquent or found guilty of an offense. The only exception was if a youth was acting out violently or having severe discipline problems.

*The detention center has made positive changes, including **changing the visitation rules**...to allow the youth's children to visit once per week.*

*The detention staff also **actively engages with youth** in the facility - many of whom express an interest in being sent over to the adult jail – to try to keep them in the juvenile detention center.*

In the second county, stakeholders reported that the changes have had a very limited effect on the court's operations. In this county, the detention center has made positive changes, including changing the visitation rules for youth who stay longer in the detention facility to allow the youth's children to visit once per week. The detention staff also actively engages with youth in the facility - many of whom express an interest in being sent over to the adult jail – to try to keep them in the juvenile detention center. In the detention center, the curriculum is aligned with the public school system, which allows youth to automatically transfer any credits earned while in detention, and youth can get college work from a local community college. As a result, very few youth have been sent over to the jail from the detention center; however, if a youth over the age of 18 requests to be held in the jail, the court makes a finding that the youth is a threat to the safety and security of the facility. This finding can have a negative impact on the youth's case in adult court, including decisions regarding bond and sentencing.

Other procedures or issues of interest: In addition to the categories above, several counties have unique practices with regard to bindover, including:

- ❖ Working to reduce delays for bindovers, including limiting continuances in bindover cases;
- ❖ Holding a monthly juvenile court judges meeting to discuss court policies;
- ❖ Utilizing the court-hired psychologist who conducts amenability evaluations to work with and talk to youth facing bindover charges as they go through the bindover process, including addressing issues like hopelessness about going to adult prison.
- ❖ Appointing GALs in bindovers in certain circumstances, particularly when the youth's parents or family members are involved in the case (for example, if the youth is charged with domestic violence against a parent).
- ❖ Considering how many youth charged with bindover offenses have a formal children's services file for an abuse, neglect, or dependency case, which the court estimates is about 90% of bindover youth.

Finally, in one county, a judge expressed a dislike for the bindover process and stated that bindover is utilized due to frustration with the indeterminate length of sentences for DYS commitments for youth, meaning they last 90 days or less, particularly if a youth has earned credit for time in a locked facility, such as a detention center. The judge expressed an interest in being able to give a sentencing "range" for youth in DYS facilities.



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RECOMMENDATIONS

While the research on and recognition of the short- and long-term negative impacts on youth in the adult criminal justice system and their communities continues to grow, Ohio has taken positive steps in the right direction with regard to youth in adult court. Over the past several years, Ohio's bindover numbers have dropped dramatically and Ohio's legislature has approved laws to reduce the placement of youth in adult jails and prisons.

These changes are significant steps in the right direction and Ohio should continue to build on these reforms to improve outcomes for Ohio's youth and communities by reducing youths' contact with the adult criminal justice system. However, in building on these reforms, data and experience indicate that changes in the juvenile and adult criminal justice systems must be carefully considered in the context of youth in adult court and how the changes would apply to this particular population of youth. Three examples of reforms that should be reconsidered in light of youth in adult court are:

- ❖ Ohio's reverse waiver law and whether it is having the intended effect of keeping youth in juvenile court, particularly when data indicates that it may be encouraging prosecutors to file higher charges against youth and not offer plea deals that could reverse waive youth;
- ❖ The combined juvenile and adult system reforms in HB 86 and SB 337 that have resulted in youth having to make a difficult decision between 1) being sent to a DYS facility for an indeterminate amount of time, but having no adult record or 2) a short, probation-only adult court sentence, but long-term negative impact of having an adult felony record; and
- ❖ Ohio's extremely successful RECLAIM and Targeted RECLAIM programs, which do not take into account youth who are bound over to adult court.

With this context in mind and as research against prosecuting youth in adult court and placing youth in adult jails continues to expand, Ohio should pursue the following recommendations:

RECOMMENDATION #1: Ohio stakeholders should engage in a concerted statewide effort to reduce the number of Ohio youth bound over to adult court and seek alternatives to involving youth in the adult criminal justice system.

Ohio should actively and collectively engage in implementing purposeful, effective policies to continue significant reductions in the number of youth who come into contact with adult court or are placed in adult jails or prisons in order to reduce both short-term and long-term negative impact and to spend Ohio taxpayer dollars more efficiently.

- ❖ *Legislators:* When considering any reforms to Ohio's juvenile and adult justice systems, legislators should rely on evidence-based practices and developmental psychology to gauge the potential impact on youth who are involved in adult criminal justice system and their communities. In addition, legislators should:
 - Based on interviews with juvenile court judges, eliminate mandatory bindover, and therefore reverse waiver, and instead give judges discretion in bindover cases based on research-based guidelines for whether or when youth should be prosecuted in adult court; and
 - Eliminate or modify Ohio's SYO law, which is currently not utilized by juvenile courts, to ensure that juvenile courts have access to and consistently utilize a viable alternative to bindover that would allow courts to keep youth in juvenile court while giving them one last chance for rehabilitation before being sent to the adult criminal justice system. This alternative should protect youths' constitutional rights and should not increase the number of youth sent to adult court, but should instead serve the function

the SYO process originally was designed to create – a stopgap measure before any youth is sent to adult court. Some examples include blended sentencing or second chance laws in Kentucky^{xv} and Indiana^{xvi}.

- ❖ *DYS:* DYS should take a more active role in reducing the use of bindover in Ohio by:
 - Tracking uniform, statewide data on youth who are bound over to adult court, including the mechanism by which the youth become involved in adult court (i.e. SYO, discretionary bindover, or mandatory bindover) and youth's adult court outcomes. Uniform data is crucial to inform both juvenile and adult court stakeholders on bindover trends in the state and to potentially identify how statewide resources could best be utilized for this population.
 - Engaging and holding dialogues with county stakeholders to ensure that bindover is being utilized consistently throughout the state, particularly in counties with high numbers or rates of bound over youth. DYS should work with these counties to address why the bindover rates are particularly high and provide technical assistance to counties to help reduce Ohio's bindover population, assess bindover decisions, and identify alternatives to placing youth in adult court. DYS should also identify and support counties, particularly the newly added Targeted RECLAIM counties, utilizing bindover infrequently and disseminate best practices based on these counties' efforts.
 - Reevaluating the RECLAIM and Targeted RECLAIM initiatives and recommending changes to these programs to ensure they are not incentivizing counties to bind youth over to adult court and make any pertinent recommendations to the legislature.
 - Evaluating the SYO process, and coordinating and providing training to juvenile court stakeholders on the SYO process and how to use SYO effectively as an alternative to bindover, while ensuring it is not used as a vehicle to push additional youth into the adult criminal justice system who would otherwise receive only a juvenile court disposition.
- ❖ *Juvenile courts:* Juvenile courts should actively engage in efforts to reduce the number of youth that become involved in the adult criminal justice system by:
 - Creating county-wide dialogues on how to reduce the number of youth sent to adult court, including additional programming options that would allow the youth currently being bound over to the adult system to be retained in the juvenile justice system.
 - Actively making efforts to retain youth in juvenile detention facilities instead of adult jails, including reexamining detention center policies with these youth – who will likely be in juvenile detention for a longer timeframe – in mind. Some policymakers have expressed concerns that adult jails offer programming, such as substance abuse treatment, not offered in juvenile detention facilities. However, given the other harms youth face in adult jails, including increased risk of suicide and the frequent use of isolation, courts should ensure that youth do not have to be placed in adult jails to have access to needed programming such as substance abuse programming, particularly when the juvenile detention center should be offering similar programming for youth.
 - Utilizing the SYO process more effectively as an alternative to bindover, particularly for youth who have never been placed in a DYS facility, not to expand the number of youth subject to adult court.
- ❖ *Prosecutors:* Given the long-term research on adult court involvement as increasing the likelihood for youth to recidivate, prosecutors should aim to reduce the number of bindover motion filings for youth in juvenile court, particularly for youth who are facing first-time involvement with the court system.

RECOMMENDATION #2: Ensure that youth involved in the juvenile and adult criminal justice system have access to attorneys specifically qualified to provide zealous representation in bindover cases.

Over the past two years, Ohio's laws on youth in the adult criminal justice system have become increasingly complex. At the same time, research and courts throughout the country have continued to recognize the unique developmental needs of youth, which include difficulty in weighing short-term versus long-term consequences. These two factors make it critical that youth are counseled by attorneys who can properly guide youth through the adult criminal justice process, including being able to weigh various plea decisions.

Fortunately, standards on this type of representation have been developed at both the national level by the National Juvenile Defender Center (NJDC) and in Ohio by the Office of Ohio Public Defender (OPD). The standards recommend that:

- ❖ **OPD:** SYO or bindover attorneys should: 1) have experience in adult criminal proceedings, including procedure and sentencing, 2) understand the purposes and legal issues of probable cause and amenability hearings, 3) for amenability hearings, thoroughly investigate the social, psychological, and educational history of the child and utilize professionals to convey information to the court, and 4) meet the following experience qualifications or co-counsel with an attorney who has: for bindover cases, litigated at least two criminal jury trials and for SYO cases, litigated two criminal jury trials or two SYO jury trials.
- ❖ **NJDC:** ^{xvii} Attorneys should be: 1) familiar with relevant statutes and case law on the interplay between juvenile and adult court including timing, process, and required findings to send a youth to adult court, 2) aware of the relative ability of adult facilities to provide services and programming to youth, including medical and mental health care, rehabilitative programming, and education, 3) trained in child and adolescent development, and 4) able to educate adult court stakeholders, including adult defense counsel, on the youth's unique attributes, including lessened culpability and rehabilitative sentencing options.

In addition, attorneys should be able to adequately explain to youth the potential direct and collateral consequences of an adult court conviction, particularly during the plea bargaining process. Based on this information, Ohio stakeholders should adhere to the following recommendations:

- ❖ **Entities that qualify bindover attorneys:** The entity that chooses what attorneys are qualified for SYO and bindover cases should create standards based upon OPD and NJDC standards to ensure that attorneys who represent youth facing adult court consequences are qualified to do so. In addition, the entity should maintain a specific list of attorneys who meet these criteria and have some way of removing attorneys who fail to continue to meet these requirements. In making requirements, stakeholders should consult with defense attorneys to create a balance that ensures the requirements are manageable and will not push away experienced attorneys who may be interested in SYO or bindover cases, but for whom the requirements are overly cumbersome.
- ❖ **Juvenile courts:** Juvenile courts should ensure that attorneys representing youth in bindover and SYO cases meet the qualifications set forth by the qualifying entity.
- ❖ **Defenders:** Given the gravity of the possibility of adult court involvement, attorneys who represent youth facing bindover or SYO charges in either juvenile or adult court should fully understand and follow the standards outlined above before agreeing to take a youth's case.

RECOMMENDATION #3: Ensure that bindover proceedings in juvenile court are given full and proper consideration.

Given the small number of hearings in juvenile court in bindover cases and the grave impact of transfer to adult court, the probable cause and amenability hearings in juvenile court are critical. As such, court stakeholders should follow these recommendations:

- ❖ *Defenders:* Attorneys representing youth in bindover proceedings should only waive probable cause and amenability hearings in limited circumstances based on a strategic decision by the youth as informed by a bindover qualified attorney. In probable cause proceedings, defense counsel should – as appropriate – reiterate that the burden lies with the state to prove each element of the offense and particular care should be given to probable cause hearings for mandatory bindover cases, which should only be waived in very rare circumstances. Common practice for amenability hearings should include 1) requesting an independent expert evaluation, 2) cross examination of the expert who wrote the amenability report, and 3) presenting witnesses and research to support the youth staying in juvenile court.
- ❖ *Juvenile courts:* Juvenile courts should ensure that probable cause hearings are conducted in a way that places the burden on the state to show probable cause, including presenting evidence on each element of the alleged offense. In addition, the court should follow Ohio Rules of Juvenile Procedure during these hearings to ensure the youth’s constitutional due process rights. For amenability hearings, court should grant defense requests for independent expert evaluations.
- ❖ *Prosecutors:* Prosecutors should receive training on adolescent development and the long-term consequences of prosecuting youth in adult court, including youths’ relative long-term recidivism. This training would help inform decisions on whether bringing a bindover motion against a particular youth is supported by research, particularly in light of interpreting amenability reports provided to the court.

RECOMMENDATION #4: Increase coordination between juvenile and adult courts for bindover cases.

Given the unique nature and complexity of bindover cases, it is critical that stakeholders from both court systems –juvenile and adult – understand the procedures and implications of the bindover process (particularly in reverse waiver cases in terms of both substance and the placement of youth in the detention center or jail). Lack of coordination can negatively impact youth and their case; for example, one stakeholder relayed a story of a youth who was bound over, but who was not picked up by an attorney in adult court. The youth languished in the jail for several months before the adult court realized the youth was on their docket.

- ❖ *Defense attorneys:* Counties should strive to ensure attorney continuity for youth between juvenile and adult court by either having the same attorney follow the youth’s case from juvenile to adult court or by creating a co-counsel relationship between youth and adult court attorneys. This continuity would allow attorneys to help youth make big picture strategic decisions throughout the bindover process. Attorneys representing youth in adult court should be familiar with the unique developmental differences between youth and adults and utilize these differences to advocate for their clients.
- ❖ *Juvenile and adult court judges:* Both juvenile and adult court judges should allow attorney continuity for bindover cases. In addition, adult court judges should be familiar with the developmental differences between youth and adults and take these differences into account during the guilt and sentencing phases of the adult court process.

- ❖ *Juvenile and adult court prosecutors:* Like defense attorneys, prosecutors should have some continuity between juvenile and adult court to ensure that bindover cases are continually evaluated to determine whether they should proceed in juvenile or adult court.
- ❖ *Court support staff:* Counties should ensure data tracking and sharing between juvenile and adult courts on bindover youth. This information could help inform both the juvenile and adult court by 1) ensuring that no youth get lost in the transition between juvenile and adult court, 2) identifying the outcomes youth have in adult court, including sentences youth receive in adult court and the long-term recidivism rates of bindover youth, and 3) helping courts assess the resources needed for bindover youth, including the cost of holding the youth in detention and other case costs (such as attorneys and experts) for bindovers. On a larger scale, demographic and geographic data (like zip code) could help the county to identify populations of youth or communities that may need higher levels of positive services or community-based programming to prevent youth from becoming deeper involved in the juvenile or adult systems.

This data should be shared with all stakeholders in a county, including prosecuting and defense attorneys, as it could help influence or inform attorneys' decisions throughout the bindover process and make bindovers more consistent within the county.

ⁱ Available at <http://www.childrenslawky.org/wp-content/uploads/2012/07/Falling-Through-The-Cracks-A-New-Look-at-Ohio-Youth-in-the-Adult-Criminal-Justice-System-May-2012.pdf>.

ⁱⁱ Available at <http://www.childrenslawky.org/wp-content/uploads/2012/07/In-Their-Own-Words-May-2012.pdf>.

ⁱⁱⁱ *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

^{iv} R.C. §§ 2909.24(A)(1)-(4), (B)(3), 2971.03(A), and 2971.01(B) & (F) and R.C. § 2929.06(C).

^v *In re D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894.

^{vi} Ohio Rules of Juvenile Procedure, Rule 3(A).

^{vii} Am. Sub. S.B. 337, 129th General Assembly (As Passed by the General Assembly), effective September 28, 2012; codified at R.C. § 2152.26(F)(4). For more information, see Children's Law Center, *SB 337 Juvenile Provisions - Placement of Youth in Jails: Fact Sheet* (September 2012), available at <http://www.childrenslawky.org/resources/sb-337-jail-placement-fact-sheet-9-13-12/>.

^{viii} 28 CFR Part 115 (2012), see also U.S. Department of Justice, National Standards to Prevent, Detect, and Respond to Prison Rape: Executive Summary, pp. 4-5, available at http://www.ojp.usdoj.gov/programs/pdfs/prea_executive_summary.pdf and Campaign for Youth Justice, Fact Sheet - No Excuses: The Prison Rape Elimination Act (PREA), available at <http://www.campaignforyouthjustice.org/documents/prea%20fact%20sheetfinal2013.pdf>.

^{ix} IACHR, Annex to the Press Release Issued at the Close of the 147th Session (April 5, 2013), available at

http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp.

^x Human Rights Watch and ACLU, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012) available at <http://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf>.

^{xi} Ohio Department of Youth Services, *Profile of Youth Transferred to Adult Court: Fiscal Year 2012* (March 2013), available at

<http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=DiDFTwCMV44%3d&tabid=117&mid=890> and adult court outcome data collected by CLC.

^{xii} Over the past 5 years, the vast majority - 86% - of youth bound over to adult court were accused of committing a high level felony offense. It is important to note that these numbers compare youth at two different points in the process; the felony adjudication numbers reflect the offenses for which a youth has been adjudicated (the end of the delinquency process), while the bindover numbers reflect what a youth is originally charged with in determining to send the case to adult court (the beginning of the bindover process). Although this is an imperfect comparison, the analysis should show trends between youth being retained in juvenile court versus youth sent to adult court.

^{xiii} Only two non-original Targeted RECLAIM counties bindover 10 or more youth per year - Clark and Butler counties. Therefore, this comparison includes two additional non-original Targeted RECLAIM counties that bind over more than 5 youth per year - Mahoning and Lorain Counties.

^{xiv} Karen Miner-Romanoff, Ph.D., J.D., *Juveniles Sentenced and Incarcerated as Adults: Findings from a Qualitative Analysis of Their Knowledge, Understanding, and Perceptions of Their Sentences*, 9 Justice Policy Journal 1 (2012), p. 24.

^{xv} Under Kentucky's Youthful Offender (YO) law, the juvenile court can hold a youthful offender hearing, which determines if there is probable cause that the offense was committed and whether transfer to the adult court is appropriate. If the court sentences the youth as a YO, the youth is committed to the juvenile justice department until age 18. When the youth turns 18, the juvenile court can order the youth to 1) return juvenile correctional facility for a certain amount of time, 2) adult probation or parole, or 3) be placed in adult corrections system. While the youth is in the custody of the juvenile court system, he or she may be committed to an adult correctional facility if the youth: 1) injured or endangers the life or health of a youth or staff member, 2) escaped, 3) caused disruption, including encouraging other youth to engage in violent behavior that injured or endangered others, 4) smuggled or caused contraband to be smuggled into the facility, or 5) established a disruptive pattern of behavior not conducive to the program policies and procedures.

^{xvi} Indiana recently passed a blended sentencing law. Under this new law, judges can place youth convicted as adults in juvenile correctional facilities until age 18. When the youth turns 18, the judge can re-evaluate the youth's sentence and 1) send the youth to an adult prison, 2) place the youth in home detention, community corrections or probation, or 3) discharge the youth.

^{xvii} National Juvenile Defender Center, *National Juvenile Defense Standards*, Part VIII (2013), available at <http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf>.