HB 86 Juvenile Provisions
Reverse Waiver: Fact Sheet

On September 30, 2011, the provisions of HB 86 go into effect. For attorneys who represent youth transferred to the adult criminal justice system, these provisions could make a major difference at the sentencing phase.

To which cases do the reverse waiver provisions apply?

The changes in HB 86 apply only *16- and 17-year olds* who were subject to mandatory bind over with one of the following offenses:
- Aggravated murder;
- Murder;
- Attempted aggravated murder;
- Attempted murder; or
- Category two offenses, except kidnapping, committed with a firearm (voluntary manslaughter, involuntary manslaughter F1, aggravated robbery, aggravated burglary, rape, or aggravated arson).

It is important to note that the reverse waiver provisions *do not* apply to 1) any 14- or 15-year olds, or 2) 16- and 17-year olds transferred to the adult system under a discretionary waiver.

At what phase in the process do the provisions apply?

The sentencing phase after the youth is *convicted of or pleads guilty to a lesser offense* in adult court in a case originating with the charges listed above.

How are these youth sentenced?

After the youth has been convicted of or pleads guilty under the circumstances above, the adult court judge looks at the offense the youth has been convicted of or pled guilty to and determines whether the youth could have originally be prosecuted in the adult criminal justice system. The court *cannot* look at the youth's amenability to transfer, only the offense.

If the offense the youth is ultimately convicted of or pleads guilty to would:

- <u>Not trigger a transfer to the adult system:</u> The youth must be transferred back to the juvenile court and the juvenile court must impose a traditional juvenile disposition.
- <u>Trigger a mandatory transfer:</u> The adult court applies an adult sentence for the youth under ORC 2929.
- <u>Trigger a discretionary transfer:</u> The process on the next page is followed.

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Reverse Waiver: Discretionary Transfer Chart

Adult court determines what the adult sentence would be under ORC 2929, then imposes and stays that sentence and sends the case back to **juvenile court**.

Juvenile court imposes a SYO dispositional sentence under ORC 2152.13(D)(1), considering and giving preference to the sentence imposed by the adult court for the adult portion of the sentence.

The prosecutor can then file a motion in **juvenile court** objecting to the SYO sentence and requesting only the adult sentence be served.

Prosecutor files motion

Prosecutor does not file motion

Juvenile court holds an **unwaivable** hearing to determine whether the youth is amenable to care and rehabilitation in the juvenile system or the safety of the community requires imposition of the adult sentence. The determination is based on the weighing of factors in 2152.12(D) and (E).

Juvenile court grants the prosecutor's motion and determines the youth is not amenable to treatment/is a threat to the safety of the community.

Juvenile court denies the prosecutor's motion and determines the youth is amenable to treatment/is not a threat to the safety of the community.

The youth is transferred back to **adult court** where the adult court's stayed sentence is invoked.

Juvenile court 1) gives the youth theSYO dispositional sentence and 2) notifies the adult court.

Adult court must expunge the conviction and records as if the transfer never occurred and the process took place solely in the juvenile justice system.