



OHIO

CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

Juvenile Justice Committee

January 21, 2016

Agenda

- I. Call to Order
 - II. Approval of Meeting Notes of December 15, 2015 meeting
 - III. Restitution
 - Finalize draft for March meeting
 - IV. Mandatory Bindovers
 - Approval of draft language
 - V. Juvenile SORN
 - Discussion of recommendations to forward to Criminal Recodification Committee
 - VI. Adjourn
-

Upcoming Meetings

Ohio Criminal Sentencing Commission March 17, 2016

Juvenile Justice committee February 18, 2016

1 **Sec. 2152.10.** (A) A child who is alleged to be a delinquent child is eligible for
2 ~~mandatory transfer and shall be transferred as provided in section 2152.12 of the~~
3 ~~Revised Code in any of the following circumstances:~~

4 ~~(1) The child is charged with a category one offense and either of the following~~
5 ~~apply:~~

6 ~~(a) The child was sixteen years of age or older at the time of the act charged.~~

7 ~~(b) The child was fourteen or fifteen years of age at the time of the act charged~~
8 ~~and previously was adjudicated a delinquent child for committing an act that is a~~
9 ~~category one or category two offense and was committed to the legal custody of the~~
10 ~~department of youth services upon the basis of that adjudication.~~

11 ~~(2) The child is charged with a category two offense, other than a violation of~~
12 ~~section 2905.01 of the Revised Code, the child was sixteen years of age or older at the~~
13 ~~time of the commission of the act charged, and either or both of the following apply:~~

14 ~~(a) The child previously was adjudicated a delinquent child for committing an~~
15 ~~act that is a category one or a category two offense and was committed to the legal~~
16 ~~custody of the department of youth services on the basis of that adjudication.~~

17 ~~(b) The child is alleged to have had a firearm on or about the child's person or~~
18 ~~under the child's control while committing the act charged and to have displayed the~~
19 ~~firearm, brandished the firearm, indicated possession of the firearm, or used the~~
20 ~~firearm to facilitate the commission of the act charged.~~

21 ~~(3) Division (A)(2) of section 2152.12 of the Revised Code applies.~~

22 ~~(B) Unless the child is subject to mandatory transfer, if a child is, who~~
23 ~~is fourteen years of age or older at the time of the act charged, and if the child who is~~
24 ~~charged with an act that would be a felony if committed by an adult, the child is~~
25 ~~eligible for discretionary transfer to the appropriate court for criminal prosecution. In~~
26 ~~determining whether to transfer the child for criminal prosecution, the juvenile court~~
27 ~~shall follow the procedures in section 2152.12 of the Revised Code. If the court does~~
28 ~~not transfer the child and if the court adjudicates the child to be a delinquent child for~~
29 ~~the act charged, the court shall issue an order of disposition in accordance with section~~
30 ~~2152.11 of the Revised Code this chapter.~~

31 ~~(B) If a complaint is filed against a person who is deemed not to be a child in~~
32 ~~the circumstances described in division (C)(5) of section 2152.02 of the Revised~~
33 ~~Code, the person is eligible for transfer, and the case shall be transferred to the~~
34 ~~appropriate court for criminal prosecution.~~

35

36 **Sec. 2152.12.** ~~(A)(1)(a) After a complaint has been filed alleging that a child~~
37 ~~is a delinquent child for committing an act that would be aggravated murder, murder,~~
38 ~~attempted aggravated murder, or attempted murder if committed by an adult, the~~
39 ~~juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen~~
40 ~~years of age at the time of the act charged and there is probable cause to believe that~~
41 ~~the child committed the act charged. The juvenile court also shall transfer the case at a~~
42 ~~hearing if the child was fourteen or fifteen years of age at the time of the act charged,~~
43 ~~if section 2152.10 of the Revised Code provides that the child is eligible for~~
44 ~~mandatory transfer, and if there is probable cause to believe that the child committed~~
45 ~~the act charged.~~

46 ~~(b) After a complaint has been filed alleging that a child is a delinquent child~~
47 ~~by reason of committing a category two offense, the juvenile court at a hearing shall~~
48 ~~transfer the case if section 2152.10 of the Revised Code requires the mandatory~~
49 ~~transfer of the case and there is probable cause to believe that the child committed the~~
50 ~~act charged.~~

51 ~~(2) The juvenile court also shall transfer a case in the circumstances described~~
52 ~~in division (C)(5) of section 2152.02 of the Revised Code or if either of the following~~
53 ~~applies:~~

54 ~~(a) A complaint is filed against a child who is eligible for a discretionary~~
55 ~~transfer under section 2152.10 of the Revised Code and who previously was convicted~~
56 ~~of or pleaded guilty to a felony in a case that was transferred to a criminal court.~~

57 ~~(b) A complaint is filed against a child who is domiciled in another state~~
58 ~~alleging that the child is a delinquent child for committing an act that would be a~~
59 ~~felony if committed by an adult, and, if the act charged had been committed in that~~
60 ~~other state, the child would be subject to criminal prosecution as an adult under the~~
61 ~~law of that other state without the need for a transfer of jurisdiction from a juvenile,~~
62 ~~family, or similar noncriminal court to a criminal court.~~

63 ~~(B) Except as provided in division (A) of this section, after After a complaint~~
64 ~~has been filed alleging that a child is a delinquent child for committing an act that~~
65 ~~would be a felony if committed by an adult, the juvenile court at a hearing may~~
66 ~~transfer the case if the court finds all of the following:~~

67 ~~(1)(a) The child was fourteen years of age or older at the time of the act~~
68 ~~charged.~~

69 ~~(2)(b) There is probable cause to believe that the child committed the act~~
70 ~~charged.~~

71 ~~(3)~~(c) The child is not amenable to care or rehabilitation within the juvenile
72 system, and the safety of the community may require that the child be subject to adult
73 sanctions. In making its decision under this division, the court shall consider whether
74 the applicable factors under division ~~(D)~~(C) of this section indicating that the case
75 should be transferred outweigh the applicable factors under division ~~(E)~~(D) of this
76 section indicating that the case should not be transferred. The record shall indicate the
77 specific factors that were applicable and that the court weighed.

78 (2) Independent of the authority to transfer a case under division (A)(1) of this
79 section, the juvenile court shall transfer a case when the person charged is deemed not
80 to be a child in the circumstances described in division (C)(5) of section 2152.02 of
81 the Revised Code.

82 ~~(C)~~(B) Before considering a transfer under division ~~(B)~~(A)(1) of this section,
83 the juvenile court shall order an investigation, including a mental examination of the
84 child by a public or private agency or a person qualified to make the examination. The
85 child may waive the examination required by this division if the court finds that the
86 waiver is competently and intelligently made. Refusal to submit to a mental
87 examination by the child constitutes a waiver of the examination.

88 ~~(D)~~(C) In considering whether to transfer a child under division ~~(B)~~(A)(1) of
89 this section, the juvenile court shall consider the following relevant factors, and any
90 other relevant factors, in favor of a transfer under that division:

91 (1) The victim of the act charged suffered physical or psychological harm, or
92 serious economic harm, as a result of the alleged act.

93 (2) The physical or psychological harm suffered by the victim due to the
94 alleged act of the child was exacerbated because of the physical or psychological
95 vulnerability or the age of the victim.

96 (3) The child's relationship with the victim facilitated the act charged.

97 (4) The child allegedly committed the act charged for hire or as a part of a gang
98 or other organized criminal activity.

99 (5) The child had a firearm on or about the child's person or under the child's
100 control at the time of the act charged, the act charged is not a violation of section
101 2923.12 of the Revised Code, and the child, during the commission of the act charged,
102 allegedly used or displayed the firearm, brandished the firearm, or indicated that the
103 child possessed a firearm.

104 (6) At the time of the act charged, the child was awaiting adjudication or
105 disposition as a delinquent child, was under a community control sanction, or was on
106 parole for a prior delinquent child adjudication or conviction.

107 (7) The results of any previous juvenile sanctions and programs indicate that
108 rehabilitation of the child will not occur in the juvenile system.

109 (8) The child is emotionally, physically, or psychologically mature enough for
110 the transfer.

111 (9) There is not sufficient time to rehabilitate the child within the juvenile
112 system.

113 ~~(E)~~(D) In considering whether to transfer a child under division ~~(B)~~(A)~~(1)~~ of
114 this section, the juvenile court shall consider the following relevant factors, and any
115 other relevant factors, against a transfer under that division:

116 (1) The victim induced or facilitated the act charged.

117 (2) The child acted under provocation in allegedly committing the act charged.

118 (3) The child was not the principal actor in the act charged, or, at the time of
119 the act charged, the child was under the negative influence or coercion of another
120 person.

121 (4) The child did not cause physical harm to any person or property, or have
122 reasonable cause to believe that harm of that nature would occur, in allegedly
123 committing the act charged.

124 (5) The child previously has not been adjudicated a delinquent child.

125 (6) The child is not emotionally, physically, or psychologically mature enough
126 for the transfer.

127 (7) The child has a mental illness or is a mentally retarded person.

128 (8) There is sufficient time to rehabilitate the child within the juvenile system
129 and the level of security available in the juvenile system provides a reasonable
130 assurance of public safety.

131 ~~(F) If one or more complaints are filed alleging that a child is a delinquent child~~
132 ~~for committing two or more acts that would be offenses if committed by an adult, if a~~
133 ~~motion is made alleging that division (A) of this section applies and requires that the~~
134 ~~case or cases involving one or more of the acts charged be transferred for, and if a~~
135 ~~motion also is made requesting that the case or cases involving one or more of the acts~~
136 ~~charged be transferred pursuant to division (B) of this section, the juvenile court, in~~
137 ~~deciding the motions, shall proceed in the following manner:~~

138 ~~(1) Initially, the court shall decide the motion alleging that division (A) of this~~
139 ~~section applies and requires that the case or cases involving one or more of the acts~~
140 ~~charged be transferred.~~

141 ~~(2) If the court determines that division (A) of this section applies and requires~~
142 ~~that the case or cases involving one or more of the acts charged be transferred, the~~

143 court shall transfer the case or cases in accordance with that division. After the
144 transfer pursuant to division (A) of this section, the court shall decide, in accordance
145 with division (B) of this section, whether to grant the motion requesting that the case
146 or cases involving one or more of the acts charged be transferred pursuant to that
147 division. Notwithstanding division (B) of this section, prior to transferring a case
148 pursuant to division (A) of this section, the court is not required to consider any factor
149 specified in division (D) or (E) of this section or to conduct an investigation under
150 division (C) of this section.

151 ~~(3)~~ If the court determines that division (A) of this section does not require that
152 the case or cases involving one or more of the acts charged be transferred, the court
153 shall decide in accordance with division (B) of this section whether to grant the
154 motion requesting that the case or cases involving one or more of the acts charged be
155 transferred pursuant to that division.

156 ~~(G)~~(E) The court shall give notice in writing of the time, place, and purpose of
157 any hearing held pursuant to division (A) ~~or (B)(1)~~ of this section to the child's
158 parents, guardian, or other custodian and to the child's counsel at least three days prior
159 to the hearing.

160 ~~(H)~~(F) No person, either before or after reaching eighteen years of age, shall be
161 prosecuted as an adult for an offense committed prior to becoming eighteen years of
162 age, unless the person has been transferred as provided in division (A)(1) ~~or (B)~~ of
163 this section or unless division ~~(J)~~(H) of this section applies. Any prosecution that is
164 had in a criminal court on the mistaken belief that the person who is the subject of the
165 case was eighteen years of age or older at the time of the commission of the offense
166 shall be deemed a nullity, and the person shall not be considered to have been in
167 jeopardy on the offense.

168 ~~(I)~~(G) Upon the transfer of a case under division (A)(1) or ~~(B)~~(2) of this
169 section, the juvenile court shall state the reasons for the transfer on the record, and
170 shall order the child to enter into a recognizance with good and sufficient surety for
171 the child's appearance before the appropriate court for any disposition that the court is
172 authorized to make for a similar act committed by an adult. The transfer abates the
173 jurisdiction of the juvenile court with respect to the delinquent acts alleged in the
174 complaint, and, upon the transfer, all further proceedings pertaining to the act charged
175 shall be discontinued in the juvenile court, and the case then shall be within the
176 jurisdiction of the court to which it is transferred as described in division (H) of
177 section 2151.23 of the Revised Code.

178 (~~J~~)(H) If a person under eighteen years of age allegedly commits an act that
179 would be a felony if committed by an adult and if the person is not taken into custody
180 or apprehended for that act until after the person attains twenty-one years of age, the
181 juvenile court does not have jurisdiction to hear or determine any portion of the case
182 charging the person with committing that act. In those
183 circumstances, ~~divisions~~ division (A) ~~and (B)~~ of this section ~~do~~ does not apply
184 regarding the act, and the case charging the person with committing the act shall be a
185 criminal prosecution commenced and heard in the appropriate court having
186 jurisdiction of the offense as if the person had been eighteen years of age or older
187 when the person committed the act. All proceedings pertaining to the act shall be
188 within the jurisdiction of the court having jurisdiction of the offense, and that court
189 has all the authority and duties in the case as it has in other criminal cases in that
190 court.
191