

### **2152.10 ~~Mandatory and discretionary transfers~~ Transfers.**

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

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

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

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

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

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

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

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

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

### **2152.12 Transfer of cases.**

~~(A) (1) (a) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated~~

~~murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if either of the following applies:~~

~~(i) The child was sixteen or seventeen years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged.~~

~~(ii) The child was fourteen or fifteen years of age at the time of the act charged, section 2152.10 of the Revised Code provides that the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged.~~

~~(b) After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and either of the following applies:~~

~~(i) Division (A)(2)(a) of section 2152.10 of the Revised Code requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.~~

~~(ii) Division (A)(2)(b) of section 2152.10 of the Revised Code requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.~~

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

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

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

~~(3) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of this section and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined in accordance with section 2152.121 of the Revised Code.~~

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

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

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

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

~~(C)~~ (B) Before considering a transfer under division ~~(B)~~ (A) of this section, the juvenile court shall order an investigation into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The investigation shall be completed and a report on the investigation shall be submitted to the court as soon as possible but not more than forty-five calendar days after the court orders the investigation. The court may grant one or more extensions for a reasonable length of time. The child may waive the examination required by this division if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination.

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

(1) ~~The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act~~ The risk level of the child as determined by a standardized, evidence-based risk assessment tool as endorsed by the department of youth services and administered by a trained court professional.

(2) ~~The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim~~ The level of harm to the victim in the alleged act of the child, including:

(a) The level of physical, psychological, or serious economic harm suffered by the victim or whether the child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur;

(b) Whether the physical or psychological harm suffered by the victim was exacerbated because of the physical or psychological vulnerability or age of the victim.

~~(3) The child's relationship with the victim facilitated the act charged~~ The role of the victim, including:

(a) Whether the child's relationship with the victim facilitated the act charged;

(b) Whether the victim induced or facilitated the act charged or the child acted under provocation in allegedly committing the act charged.

~~(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity~~ The circumstances of the offense, including:

(a) The child was not the principle actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person;

(b) The child allegedly committed the act charged for hire or as part of a gang;

(c) The child did or did not have a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

~~(5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm~~ The child's prior experience in the juvenile court, including the presence or lack of any prior or current cases and rehabilitative efforts by the juvenile court and the availability of a reasonable and appropriate juvenile sanction or program that has not yet been utilized.

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

~~(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system. The child's individual developmental characteristics, including whether:~~

~~(a) The child is emotionally, physically, or psychologically mature enough for transfer;~~

~~(b) The child has a behavioral health issue, including a mental illness, substance abuse disorder, or developmental disability;~~

~~(c) The child's background, including family and environment, and trauma history; and~~

~~(d) There is sufficient time to rehabilitate the child within the juvenile system.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(2) If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the court shall transfer the case or cases in accordance with that division. After the transfer pursuant to division (A) of this section, the court shall decide, in accordance with division (B) of this section, whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division. Notwithstanding division (B) of this section, prior to transferring a case pursuant to division (A) of this section, the court is not required to consider any factor specified in division (D) or (E) of this section or to conduct an investigation under division (C) of this section.~~

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

~~(4) No report on an investigation conducted pursuant to division (C) of this section shall include details of the alleged offense as reported by the child.~~

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

(E) A child who has been found not amenable to care or rehabilitation within the juvenile system under division (B) of this section has a right to appeal the transfer under R.C. 2505.02(B)(8). Upon issuing the order for transfer, the juvenile court shall immediately stay the transfer for a period of fourteen days, unless waived by the child.

~~(H) (F)~~ No person, either before or after reaching eighteen years of age, shall be prosecuted as an adult for an offense committed prior to becoming eighteen years of

age, unless the person has been transferred as provided in division (A) ~~or (B)~~ of this section or unless division ~~(H)~~ (H) of this section applies. Any prosecution that is had in a criminal court on the mistaken belief that the person who is the subject of the case was eighteen years of age or older at the time of the commission of the offense shall be deemed a nullity, and the person shall not be considered to have been in jeopardy on the offense.

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

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

## **2505.02 Final orders.**

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged

matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as 5164.07 by H.B. 59 of the 130th general assembly), and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

(8) An order for transfer pursuant to R.C. 2152.10.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

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