

State of Arkansas

77th General Assembly

A Bill

HOUSE BILL

Third Extraordinary Session, 1989

CALL ITEM 1037

By: Representatives Lipton, Newman, Glover, Forgey and Arrington

For An Act To Be Entitled

"AN ACT TO AMEND SECTION 17 OF ACT 273 OF 1989 TO AUTHORIZE THE JUVENILE COURT TO WAIVE JURISDICTION OVER JUVENILES BELOW AGE FOURTEEN WHEN ACCUSED OF CERTAIN CRIMES; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 17 of Act 273 of 1989 is hereby amended to read as follows:

"SECTION 17. Waiver and Transfer of Juvenile Cases.

(a) Except as set forth below, waiver of juvenile court jurisdiction and transfer to a circuit court is not available when a case involves a juvenile:

(1) less than age fourteen (14) at the time the alleged delinquent act occurred;

(2) less than age eighteen (18) at the time the alleged delinquent act occurred and the alleged act would not constitute a felony if committed by an adult; or

(3) age fourteen (14) or age fifteen (15) and the alleged act, if committed by an adult, would constitute a misdemeanor or a felony, other than those felonies specifically enumerated in sections (b) (1) and (c) (1).

(b) (1) When a case involves a juvenile less than age fourteen (14) at the time the alleged delinquent act occurred, the prosecuting attorney or the alleged delinquent juvenile through his attorney may file a motion for a hearing, or the juvenile division court upon its own motion may set a hearing, on waiving juvenile court jurisdiction and transferring the case to circuit court for an alleged act which constitutes capital murder, murder in the first degree, murder in the second degree, kidnapping in the first degree, aggravated robbery, rape, burglary, arson, battery in the first degree, or the manufacture, delivery or possession with intent to manufacture or deliver a

controlled substance.

(2) The juvenile court shall hold a hearing no later than ninety (90) days of the filing of the petition to determine whether to retain jurisdiction of the juvenile or to waive jurisdiction and transfer the case to circuit court.

(c) (1) When a case involves a juvenile age fourteen (14) or fifteen (15) at the time the alleged delinquent act occurred, the prosecuting attorney has the discretion to file charges in circuit court for an alleged act which constitutes capital murder, murder in the first degree, murder in the second degree, kidnapping in the first degree, aggravated robbery, rape, burglary, arson, battery in the first degree, or the manufacture, delivery or possession with intent to manufacture or deliver a controlled substance.

(2) The circuit court shall hold a hearing within ninety (90) days of the filing of charges to determine whether to retain jurisdiction of the juvenile in circuit court or to waive jurisdiction and transfer the case to juvenile court.

(d) When a case involves a juvenile age sixteen (16) or above at the time the alleged delinquent act occurred and the alleged act would constitute a felony if committed by an adult, the prosecuting attorney has the discretion to file a petition in juvenile court alleging delinquency or to file charges in circuit court and to prosecute as an adult.

(e) Upon the motion of the court or of any party, the judge of the court in which a delinquency petition or criminal charges have been filed shall conduct a hearing to determine whether to retain jurisdiction or to transfer the case to another court having jurisdiction.

(f) In making the decision to retain jurisdiction or to transfer the case, the court shall consider the following factors:

(1) The seriousness of the offense and whether violence was employed by the juvenile in the commission of the offense;

(2) Whether the offense is part of a repetitive pattern of adjudicated offenses which would lead to the determination that the juvenile is beyond rehabilitation under existing rehabilitation programs, as evidenced by past efforts to treat and rehabilitate the juvenile and the response to such efforts; and

(3) The prior history, character traits, mental maturity, and any other factor which reflects upon the juvenile's prospects for rehabilitation.

(g) Upon a finding by clear and convincing evidence that a juvenile should be tried as an adult, the court shall enter an order to that effect.

(h) If the case is transferred to another court, any bail or appearance bond given for the appearance of the juvenile shall continue in effect in the court to which the case is transferred.

(i) Any party may appeal from an order granting or denying the transfer of a case from one court to another court having jurisdiction over the matter.

SECTION 2. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 3. All laws and parts of laws in conflict with this act are hereby repealed.