

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**

# A Bill

**ACT 797 OF 1995**  
**SENATE BILL 239**

4 **By: Senator Brown**  
5 ***By: Representative Thomas***

6  
7  
8

## **For An Act To Be Entitled**

9 "AN ACT TO AMEND ARKANSAS CODE § 9-21-318 TO PRESCRIBE THE  
10 CONDITIONS UNDER WHICH JUVENILES MAY QUALIFY AS HABITUAL  
11 JUVENILE OFFENDERS AND MAY BE CHARGED OR WILL BE CHARGED  
12 AS ADULTS IN CIRCUIT COURT; AND FOR OTHER PURPOSES."

13  
14

## **Subtitle**

15 "TO PRESCRIBE THE CONDITIONS UNDER WHICH  
16 A JUVENILE MAY QUALIFY AS HABITUAL  
17 JUVENILE OFFENDER AND CAN BE CHARGED AS  
18 AN ADULT IN CIRCUIT COURT."

19

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

21

22 SECTION 1. Arkansas Code § 9-27-318 is amended to read as follows:

23 "9-27-318. Waiver and transfer to circuit court.

24 (a) A juvenile court has exclusive jurisdiction when a delinquency case  
25 involves a juvenile:

26 (1) Less than fourteen (14) years old when the alleged delinquent  
27 act occurred;

28 (2) Less than sixteen (16) years old when he engages in conduct  
29 that, if committed by an adult, would be any felony not listed in subdivision  
30 (b)(2) of this section or the offense in subdivision (b)(3) of this section or  
31 would not qualify as a habitual juvenile offender under the conditions  
32 prescribed by subdivision (b)(4) of this section;

33 (3) Less than eighteen (18) years old when he engages in conduct  
34 that, if committed by an adult, would be any misdemeanor.

35 (b) A circuit court and a juvenile court have concurrent jurisdiction  
36 and a prosecuting attorney may charge a juvenile in either court when a case

1 involves a juvenile:

2           (1) At least sixteen (16) years old when he engages in conduct  
3 *that, if committed by an adult, would be any felony;*

4           (2) Fourteen (14) or fifteen (15) years old when he engages in  
5 conduct that, if committed by an adult would be:

6           (A) Capital murder, § 5-10-101;

7           (B) Murder in the first degree, § 5-10-102;

8           (C) Murder in the second degree, § 5-10-103;

9           (D) Kidnapping, § 5-11-102;

10          (E) Aggravated robbery, § 5-12-103;

11          (F) Rape, § 5-14-103;

12          (G) Battery in the first degree, § 5-13-201;

13          (H) Battery in the second degree in violation of

14 § 5-13-202 (a) (2), (3), or (4);

15          (I) Possession of a handgun on school property,

16 § 5-73-119 (a) (2) (A);

17          (J) Aggravated assault, § 5-13-204;

18          (K) Terroristic act, § 5-13-310;

19          (L) Unlawful discharge of a firearm from a vehicle,

20 § 5-74-107;

21          (M) Any felony committed while armed with a firearm;

22          (N) Soliciting a minor to join a criminal street gang,

23 § 5-74-203;

24          (O) Criminal use of prohibited weapons, § 5-73-104; or

25          (P) A felony attempt, solicitation, or conspiracy to commit

26 any of the following offenses:

27           (i) Capital murder, § 5-10-101;

28           (ii) Murder in the first degree, § 5-10-102;

29           (iii) Murder in the second degree, § 5-10-103;

30           (iv) Kidnapping, § 5-11-102;

31           (v) Aggravated robbery, § 5-12-103;

32           (vi) Rape, § 5-14-103; and

33           (vii) Battery in the first degree, § 5-13-201;

34          (3) At least fourteen (14) years old when he engaged in conduct

35 that constitutes a felony under § 5-73-119 (a) (1) (A).

1           (4) At least fourteen (14) years old when he engages in conduct  
2 that, if committed by an adult, constitutes a felony and has *within the*  
3 *preceding two (2) years* three (3) times been adjudicated as a delinquent  
4 juvenile for acts that would have constituted a felony if they had been  
5 committed by an adult.

6           (c) If a prosecuting attorney can file charges in circuit court for an  
7 act allegedly committed by a juvenile, the prosecutor may file any other  
8 criminal charges that arise out of the same act or course of conduct in the  
9 same circuit court case if, after a hearing before the juvenile division of  
10 chancery court, a motion to transfer is so ordered.

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

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

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

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

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

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

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

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

34

35           SECTION 2. All provisions of this act of general and permanent nature

1 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
2 Revision Commission shall incorporate the same in the Code.

3

4 SECTION 3. If any provisions of this act or the application thereof to  
5 any person or circumstance is held invalid, the invalidity shall not affect  
6 other provisions or applications of the act which can be given effect without  
7 the invalid provisions or application, and to this end the provisions of this  
8 act are declared to be severable.

9

10 SECTION 4. All laws and parts of laws in conflict with this act are  
11 hereby repealed.

12

13

*/s/Brown*

14

15

APPROVED: 3-27-95

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

- 1
- 2
- 3