

1 **State of Arkansas**

2 **78th General Assembly**

3 **Regular Session, 1991**

4 **By: Representatives Flanagan, Shaver and Cunningham**

5

6

7

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §9-27-318 TO LIST
9 ADDITIONAL CRIMES FOR WHICH CHARGES MAY BE BROUGHT IN
10 CIRCUIT COURT AGAINST JUVENILES; AND FOR OTHER PURPOSES."

11

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

13

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

16 "9-27-318. Waiver and transfer to circuit court.

17 (a) Waiver of juvenile court jurisdiction and transfer to a circuit
18 court is not available when a case involves a juvenile:

19 (1) Less than age fourteen (14) years at the time the alleged
20 delinquent act occurred;

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

24 (3) Age fourteen (14) years or age fifteen (15) years and the
25 alleged act, if committed by an adult, would constitute a misdemeanor or a
26 felony, other than those felonies specifically enumerated in subdivision
27 (b)(1) of this section.

28 (b)(1) When a case involves a juvenile age fourteen (14) years or
29 fifteen (15) years at the time the alleged delinquent act occurred, the
30 prosecuting attorney has the discretion to file charges in circuit court for
31 an alleged act which constitutes capital murder, murder in the first degree,
32 murder in the second degree, kidnapping in the first degree, *aggravated*
33 *robbery, rape or battery in the first degree.*

34 (2) The circuit court shall hold a hearing within ninety (90)
35 days of the filing of charges to determine whether to retain jurisdiction of

1 the juvenile in circuit court or to waive jurisdiction and transfer the case
2 to juvenile court.

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

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

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

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

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

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

23

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

26

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

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

33

34 SECTION 2. All provisions of this act of a general and permanent nature
35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code

1 Revision Commission shall incorporate the same in the Code.

2

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

8

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

11

12 */s/ Pat Flanagan et al*

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34