

As Engrossed: 2/11/93

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1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Hopkins**

A Bill

SENATE BILL 79

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7 **For An Act To Be Entitled**

8 "AN ACT TO ESTABLISH AS AN ADDITIONAL ENUMERATED OFFENSE
9 THE CRIME OF SELLING OR DELIVERING A CONTROLLED SUBSTANCE,
10 CLASSIFIED IN SCHEDULES I, II, OR III OF THE CONTROLLED
11 SUBSTANCES ACT, WHEN COMMITTED BY A JUVENILE FOURTEEN OR
12 FIFTEEN YEARS OF AGE; AND TO ESTABLISH AS AN ADDITIONAL
13 ENUMERATED OFFENSE, THE CRIME OF POSSESSION WITH THE
14 INTENT TO DELIVER A CONTROLLED SUBSTANCE CLASSIFIED IN
15 SCHEDULE I, II, OR III OF THE CONTROLLED SUBSTANCES ACT
16 WHEN SUCH CRIME IS COMMITTED BY A JUVENILE FOURTEEN OR
17 FIFTEEN YEARS OF AGE; AND FOR OTHER PURPOSES."

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Subtitle

20 "TO ESTABLISH ADDITIONAL OFFENSE OF SELLING, DELIVERING,
21 OR POSSESSING CONTROLLED SUBSTANCES WHEN COMMITTED BY
22 PERSONS 14 OR 15 YEARS OF AGE."

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

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26 SECTION 1. Ark. Code Ann. § 9-27-318 is amended to read as follows:
27 "9-27-318. Waiver and transfer to circuit court.

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

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

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

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

5 (b) (1) When a case involves a juvenile age fourteen (14) years or
6 fifteen (15) years at the time the alleged delinquent act occurred, the
7 prosecuting attorney has the discretion to file charges in circuit court for
8 an alleged act which constitutes capital murder, murder in the first degree,
9 murder in the second degree, kidnapping in the first degree, aggravated
10 robbery, rape, battery in the first degree.

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

15 (3) (A) When a case involves a juvenile age fourteen (14) or fifteen
16 (15) years when an alleged delinquent act occurred, and the alleged act
17 constitutes sale or delivery of a controlled substance classified in Schedules
18 I, II, III, or possession with intent to deliver a controlled substance
19 classified in Schedules I, II, III, the prosecuting attorney may file a motion
20 to have the case transferred to circuit court.

21 (B) The juvenile court shall hold a hearing within ninety (90)
22 days of the filing of the motion to transfer to determine whether to retain
23 jurisdiction of the juvenile in juvenile court or to waive jurisdiction and
24 transfer the case to circuit court.

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

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

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

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

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

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

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

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

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

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

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

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

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32 */s/ Senator Hopkins*

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