

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 28*

Select Committee on Juveniles/Prevention Committee Substitute Adopted 3/2/94

Short Title: Trans. Juv. to Sup. Ct./Hearing/Records.

(Public)

Sponsors:

Referred to: Appropriations.

February 9, 1994

A BILL TO BE ENTITLED

AN ACT TO TRANSFER JURISDICTION OF CERTAIN JUVENILES TO SUPERIOR COURT, PROVIDE FOR A PROBABLE CAUSE HEARING, AND RETAIN RECORDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-608 reads as rewritten:

"§ 7A-608. Transfer of jurisdiction of juvenile to superior court.

(a) Discretionary Transfer. – The court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile 14 years of age or older to superior court if either of the following conditions is met:

(1) ~~the~~ The alleged offense would be a felony if committed by an adult and the juvenile was 14 years of age or older at the time ~~he~~ the juvenile allegedly committed an offense which would be a felony if committed by an adult the offense.

(2) The alleged offense would be a violent felony, as defined by subsection (c), if committed by an adult and the juvenile was 13 years of age but not yet 14 years of age at the time the juvenile allegedly committed the offense.

(b) Mandatory Transfer. – If the alleged felony ~~constitutes~~ would be a Class A felony-violent felony, as defined in subsection (c), if committed by an adult, the juvenile was 14 years of age or older at the time the juvenile allegedly committed the felony, and the judge-court finds probable cause, the judge-court shall transfer the case to the superior court for trial as in the case of adults.

1 Notwithstanding the provisions of this subsection, the court shall not be required to
2 transfer jurisdiction over the juvenile to the superior court for trial as in the case of
3 adults if the court finds:

- 4 (1) That the juvenile's sole role in the offense was being an accessory
5 before or after the fact of one of the offenses listed in subsection (c); or
6 (2) That the juvenile did not (i) instigate the alleged offense, (ii) actively
7 participate in the alleged offense, or (iii) possess a firearm during the
8 commission of the offense.

9 (c) Violent Felony Defined. – For the purpose of this section, a violent felony is
10 any of the following felonies:

- 11 (1) First degree murder, G.S. 14-17.
12 (2) First degree rape by force and against the will of the other person, G.S.
13 14-27.2(a)(2).
14 (3) First degree sexual offense by force with a deadly weapon, inflicting
15 serious injury, or aided and abetted by another, G.S. 14-27.4(a)(2).
16 (4) Second degree murder, G.S. 14-17.
17 (5) Killing adversary in duel, G.S. 14-20.
18 (6) Adulterated or misbranded food, drugs, etc., with intent to cause
19 serious injury or death, G.S. 14-34.4(a).
20 (7) Second degree rape, G.S. 14-27.3.
21 (8) Second degree sexual offense against a mentally defective, mentally
22 incapacitated, or physically helpless person, G.S. 14-27.5(a)(2).
23 (9) Malicious castration, G.S. 14-28.
24 (10) First degree kidnapping, G.S. 14-39.
25 (11) Assault with deadly weapon with intent to kill inflicting serious injury,
26 G.S. 14-32(a).
27 (12) Assault with deadly weapon with intent to kill on handicapped person,
28 G.S. 14-32.1(b) and (d).
29 (13) Malicious maiming, G.S. 14-30.
30 (14) Malicious damage of occupied property by use of explosive or
31 incendiary, G.S. 14-49.1.
32 (15) First degree burglary, G.S. 14-51.
33 (16) First degree arson, G.S. 14-58.
34 (17) Burning of mobile home, manufactured-type house, or recreational
35 trailer home, G.S. 14-58.2.
36 (18) Robbery with firearms or other dangerous weapons, G.S. 14-87, but
37 only if a firearm is used.
38 (19) Malicious injury to another by explosive or incendiary device, G.S. 14-
39 49(a).
40 (20) Burglary with explosives, G.S. 14-57.
41 (21) Malicious throwing of corrosive acid or alkali, G.S. 14-30.1.
42 (22) Assault with a deadly weapon inflicting serious injury, G.S. 14-32(b),
43 but only if a firearm is used.

1 (23) Assault with a deadly weapon with intent to kill, G.S. 14-32(c), but
2 only if a firearm is used.

3 (24) Discharging certain barrelled weapons or a firearm into occupied
4 property, G.S. 14-34.1."

5 Sec. 2. G.S. 7A-609(a) reads as rewritten:

6 "(a) ~~The judge-cour~~ shall conduct a hearing to determine probable cause in all
7 felony cases ~~in which a juvenile was 14 years of age or older when the offense was allegedly~~
8 ~~committed unless counsel as provided in G.S. 7A-608. Counsel for the juvenile waives~~
9 may waive in writing his-the right to the hearing and stipulates-stipulate to a finding of
10 probable cause. The ~~judge-cour~~ may exclude the public from the hearing unless the
11 juvenile moves that the hearing be open, which motion shall be granted."

12 Sec. 3. G.S. 7A-610(a) reads as rewritten:

13 "(a) If probable cause is ~~found,~~ found and transfer to superior court is not required
14 by G.S. 7A-608, the prosecutor or the juvenile may move that the case be transferred to
15 the superior court for trial as in the case of adults. ~~If the alleged felony does not constitute~~
16 ~~a capital offense, the~~ The judge may proceed to-shall determine whether the needs of the
17 juvenile or the best interest of the State will be served by transfer of the case to superior
18 court for trial as in the case of adults. When the case is transferred to superior court, the
19 superior court has jurisdiction over that felony, any offense based on the same act or
20 transaction or on a series of acts or transactions connected together or constituting parts
21 of a single scheme or plan of that felony, and any greater or lesser included offense of
22 that felony."

23 Sec. 4. G.S. 7A-601(3) reads as rewritten:

24 "(3) If a juvenile ~~14-13~~ years of age or older is found to have committed a
25 delinquent act ~~which-that~~ would be a felony if committed by an adult,
26 all records resulting from a nontestimonial order may be retained in the
27 court file. Special precautions shall be taken to ensure that these
28 records will be maintained in such a manner and under such safeguards
29 as to limit their use to inspection for comparison purposes by law-
30 enforcement officers only in the investigation of a crime."

31 Sec. 5. This act becomes effective May 1, 1994, and applies to offenses
32 committed on or after that date.