

House Bill 269

By: Representatives Ragas of the 64th and Martin of the 47th

A BILL TO BE ENTITLED
AN ACT

1 To provide for procedures concerning the transfer of cases involving certain children from
2 the superior court to the juvenile court and for the consideration of children tried and
3 convicted in superior courts by the Board of Pardons and Paroles; to amend Code Section
4 15-11-28 of the Official Code of Georgia Annotated, relating to jurisdiction of the juvenile
5 court, so as to provide that the superior court shall transfer to the juvenile court certain cases
6 involving a child of a specified age who is alleged to have committed any of certain offenses
7 if the court determines that the child is committable as mentally ill or mentally retarded or
8 amenable to treatment or rehabilitation and the interests of the child and the community
9 require the transfer to juvenile court; to authorize a district attorney to decline to prosecute
10 in superior court a juvenile of a specified age who has committed any of specified offenses
11 in certain circumstances; to provide for right to counsel; to amend Chapter 9 of Title 42 of
12 the Official Code of Georgia Annotated, relating to pardons and paroles, so as to provide
13 specific powers and duties of the Board of Pardons and Paroles concerning children who
14 have been tried and convicted in superior court; to repeal conflicting laws; and for other
15 purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Code Section 15-11-28 of the Official Code of Georgia Annotated, relating to jurisdiction
19 of the juvenile court, is amended by striking in its entirety paragraph (2) of subsection (b)
20 and inserting in its place the following:

21 "(2)(A) The superior court shall have exclusive jurisdiction over the trial of any child
22 13 to 17 years of age who is alleged to have committed any of the following offenses:

- 23 (i) Murder;
- 24 (ii) Voluntary manslaughter;
- 25 (iii) Rape;
- 26 (iv) Aggravated sodomy;

1 (v) Aggravated child molestation;

2 (vi) Aggravated sexual battery; or

3 (vii) Armed robbery if committed with a firearm.

4 (A.1) The granting of bail or pretrial release of a child charged with an offense
5 enumerated in subparagraph (A) of this paragraph shall be governed by the provisions
6 of Code Section 17-6-1.

7 (B) After indictment, the superior court ~~may after investigation and for extraordinary~~
8 ~~cause transfer any case involving a child 13 to 17 years of age alleged to have~~
9 ~~committed any offense enumerated in subparagraph (A) of this paragraph which is not~~
10 ~~punishable by loss of life, imprisonment for life without possibility of parole, or~~
11 ~~confinement for life in a penal institution. Any such transfer shall be appealable by the~~
12 ~~State of Georgia pursuant to Code Section 5-7-1. Upon such a transfer by the superior~~
13 ~~court, jurisdiction shall vest in the juvenile court and jurisdiction of the superior court~~
14 ~~shall terminate. Any case transferred by the superior court to the juvenile court~~
15 ~~pursuant to this subparagraph shall be subject to the designated felony provisions of~~
16 ~~Code Section 15-11-63 and the transfer of the case from superior court to juvenile court~~
17 ~~shall constitute notice to the child that such case is subject to the designated felony~~
18 ~~provisions of Code Section 15-11-63 shall transfer to the juvenile court any case~~
19 ~~involving a child 13 to 17 years of age alleged to have committed any offense~~
20 ~~enumerated in subparagraph (A) of this paragraph if the court in its discretion~~
21 ~~determines that:~~

22 (i) The child is committable to an institution for the mentally retarded or mentally ill;

23 or

24 (ii) The child is amenable to treatment or rehabilitation by the juvenile court and the
25 interests of the child and the community require the transfer to the juvenile court.

26 (C) Before indictment, the district attorney may, ~~after investigation and for~~
27 ~~extraordinary cause,~~ decline prosecution in the superior court of a child 13 to 17 years
28 of age alleged to have committed an offense specified in subparagraph (A) of this
29 paragraph if the district attorney in the district attorney's discretion determines that:

30 (i) The child is committable to an institution for the mentally retarded or mentally ill;

31 or

32 (ii) The child is amenable to treatment or rehabilitation by the juvenile court and the
33 interests of the child and the community require the transfer to the juvenile court.

34 Upon declining such prosecution in the superior court, the district attorney shall
35 immediately withdraw the case and lodge it in the appropriate juvenile court for
36 adjudication. Any case transferred by the district attorney to the juvenile court pursuant
37 to this subparagraph shall be subject to the designated felony provisions of Code

1 Section 15-11-63 and the transfer of the case from superior court to juvenile court shall
 2 constitute notice to the child that such case is subject to the designated felony
 3 provisions of Code Section 15-11-63.

4 (D) The superior court may transfer any case involving a child 13 to 17 years of age
 5 alleged to have committed any offense enumerated in subparagraph (A) of this
 6 paragraph and convicted of a lesser included offense not included in subparagraph (A)
 7 of this paragraph to the juvenile court of the county of the child's residence for
 8 disposition. Upon such a transfer by the superior court, jurisdiction shall vest in the
 9 juvenile court and jurisdiction of the superior court shall terminate.

10 (E) Within 30 days of any proceeding in which a child 13 to 17 years of age is
 11 convicted of certain offenses over which the superior court has exclusive jurisdiction
 12 as provided in subparagraph (A) of this paragraph or adjudicated delinquent on the
 13 basis of conduct which if committed by an adult would constitute such offenses, the
 14 superior court shall provide written notice to the school superintendent or his or her
 15 designee of the school in which such child is enrolled or, if the information is known,
 16 of the school in which such child plans to be enrolled at a future date. Such notice shall
 17 include the specific criminal offense that such child committed. A local school system
 18 to which the child is assigned may request further information from the court's file.

19 (F) At the first appearance before a judge of a child subject to this paragraph and at all
 20 subsequent proceedings before the superior court, the child shall have the right to
 21 counsel as described in Code Section 15-11-30."

22 SECTION 2.

23 Chapter 9 of Title 42 of the Official Code of Georgia Annotated, relating to pardons and
 24 paroles, is amended by inserting a new Code section to be designated Code Section 42-9-23
 25 to read as follows:

26 "42-9-23.

27 Notwithstanding any other provision of law including mandatory sentences, the board shall
 28 have the power to release on pardon or parole individuals tried and convicted as adults
 29 pursuant to paragraph (2) of subsection (b) of Code Section 15-11-28 if the board finds:

30 (1) The individual is committable to an institution for the mentally retarded or mentally
 31 ill; or

32 (2) The individual is amenable to treatment or rehabilitation and the interest of the
 33 individual and the community require the pardon or parole."

34 SECTION 3.

35 All laws and parts of laws in conflict with this Act are repealed.