

1 SB324  
2 173208-2  
3 By Senators Figures, Coleman-Madison, Dunn, Singleton, Sanders  
4 and Smitherman  
5 RFD: Judiciary  
6 First Read: 03-MAR-16

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8 SYNOPSIS: Under existing law, a minor who has attained  
9 16 years of age may be charged, arrested, and tried  
10 as an adult for capital offenses, other specified  
11 felonies, and certain lesser included offenses.

12 This bill would repeal this provision and  
13 would allow for the transfer of a child 14 years of  
14 age or more from the juvenile court to the circuit  
15 court if the child is alleged to have committed a  
16 capital offense, other specified felonies, and  
17 certain lesser included offenses.

18 This bill would also specify that the  
19 transfer of a case from juvenile court to circuit  
20 court does not prohibit a circuit court judge from  
21 granting an individual youthful offender status.

22 Existing law also specifies who may be  
23 detained or confined in secure custody and when a  
24 child may be detained in a jail or other facility  
25 for the detention of adults.

26 This bill would provide that a child 14  
27 years of age or older whose case was transferred

1 from the juvenile court to the circuit court may be  
2 detained or confined in secure custody and would  
3 prohibit a person under the age of 18 from being  
4 detained or confined with adult inmates except for  
5 a period of up to six hours during the processing  
6 of the child's case.

7  
8 A BILL  
9 TO BE ENTITLED  
10 AN ACT

11  
12 To amend Sections 12-15-203 and 12-15-208, Code of  
13 Alabama 1975, and Section 12-15-208.1, Code of Alabama 1975,  
14 as last amended by Act 2015-185, 2015 Regular Session,  
15 relating to juvenile proceedings, to allow for the transfer of  
16 a child 14 years of age or more from the juvenile court to the  
17 circuit court if the child is alleged to have committed  
18 certain criminal offenses; to specify that the transfer of a  
19 case from juvenile court to circuit court does not prohibit a  
20 circuit judge from granting an individual youthful offender  
21 status; to provide that a child 14 years of age or older whose  
22 case was transferred from the juvenile court to the circuit  
23 court may be detained or confined in secure custody; and to  
24 prohibit certain persons under the age of 18 from being  
25 detained or confined with adult inmates except under certain  
26 conditions; to provide for retroactive application; and to  
27 repeal Section 12-15-204, Code of Alabama 1975, relating to

1 acts for which a person who has attained age 16 shall be  
2 charged, arrested, and tried as an adult.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 12-15-203 and 12-15-208, Code of  
5 Alabama 1975, and Section 12-15-208.1, Code of Alabama 1975,  
6 as last amended by Act 2015-185, 2015 Regular Session, are  
7 amended to read as follows:

8 "§12-15-203.

9 "(a) A prosecutor, before a hearing on a delinquency  
10 petition on its merits and after notifying, verbally or in  
11 writing, the juvenile probation officer, may file a motion  
12 requesting the juvenile court judge to transfer a child for  
13 criminal prosecution to the circuit ~~or district~~ court, if the  
14 child was 14 or more years of age at the time of the conduct  
15 charged and is alleged to have committed ~~an act which would~~  
16 ~~constitute a criminal offense as defined by this code if~~  
17 ~~committed by an adult.~~ one or more of the following acts:

18 "(1) A capital offense.

19 "(2) A Class A felony.

20 "(3) A felony which has as an element thereof the  
21 use of a deadly weapon.

22 "(4) A felony which has as an element thereof the  
23 causing of death or serious physical injury.

24 "(5) A felony which has an element thereof the use  
25 of a dangerous instrument against any person who is one of the  
26 following:

27 "a. A law enforcement officer or official.

1           "b. A correctional officer or official.

2           "c. A parole or probation officer or official.

3           "d. A juvenile court probation officer or official.

4           "e. A district attorney or other prosecuting officer  
5 or official.

6           "f. A judge or judicial official.

7           "g. A court officer or official.

8           "h. A person who is a grand juror, juror, or witness  
9 in any legal proceeding of whatever nature when the offense  
10 arises from, is caused by, or is related to, the role of the  
11 person as a juror, grand juror, or witness.

12           "i. A teacher, principal, or employee of the public  
13 education system of this state.

14           "(6) Trafficking in drugs in violation of Section  
15 13A-12-231.

16           "(7) Any lesser included offense of one of the  
17 offenses enumerated in this subsection or any lesser felony  
18 offense charged arising from the same facts and circumstances  
19 and committed at the same time as the offenses listed in this  
20 subsection. Notwithstanding the foregoing, the juvenile court  
21 shall maintain original jurisdiction over the lesser included  
22 offense if the grand jury fails to indict for any of the  
23 offenses enumerated in subdivisions (1) to (6), inclusive, or  
24 those charges are otherwise dismissed. The juvenile court  
25 shall maintain original jurisdiction over the lesser included  
26 offenses, subject to double jeopardy limitations, if the court  
27 handling the criminal offenses dismisses all charges for

1 offenses enumerated in subdivisions (1) to (6), inclusive. The  
2 juvenile court shall maintain jurisdiction for future charges  
3 not enumerated in subdivisions (1) to (6), inclusive, if  
4 charges are filed pursuant to this section but the grand jury  
5 fails to indict or the charges are otherwise dismissed.

6           "(b) The juvenile court judge shall conduct a  
7 hearing on all motions for the purpose of determining whether  
8 it is in the best interests of the child or the public to  
9 grant the motion. Only if there are no reasonable grounds to  
10 believe the child is committable to an institution,  
11 department, or agency for individuals with an intellectual  
12 disability or mental illness, may the juvenile court judge  
13 order the case transferred for criminal prosecution.

14           "(c) When there are grounds to believe that the  
15 child is committable to an institution, department, or agency  
16 for individuals with an intellectual disability or mental  
17 illness, the juvenile court judge shall order an examination  
18 pursuant to Section 12-15-130.

19           "(d) Evidence of the following and other relevant  
20 factors shall be considered in determining whether the motion  
21 shall be granted:

22           "(1) The nature of the present alleged offense.

23           "(2) The extent and nature of the prior delinquency  
24 record of the child.

25           "(3) The nature of past treatment efforts and the  
26 nature of the response of the child to the efforts.

27           "(4) Demeanor.

1           "(5) The extent and nature of the physical and  
2 mental maturity of the child.

3           "(6) The interests of the community and of the child  
4 requiring that the child be placed under legal restraint or  
5 discipline.

6           "(e) Prior to a hearing on the motion by the  
7 prosecutor, a written study and report to the juvenile court  
8 judge, relevant to the factors listed in subsection (d), shall  
9 be made by a juvenile probation officer.

10           "(f) When a child is transferred for criminal  
11 prosecution, the juvenile court judge shall set forth in  
12 writing his or her reasons for granting the motion, which  
13 shall include a finding of probable cause for believing that  
14 the allegations are true and correct.

15           "(g) The finding of probable cause by the juvenile  
16 court judge shall preclude the necessity for a preliminary  
17 hearing subsequent to the transfer of the case for criminal  
18 prosecution, and the court having jurisdiction of the offense  
19 or offenses charged may exercise any authority over the case  
20 and the child, subsequent to the transfer, which is otherwise  
21 applicable to cases involving adult offenders pursuant to  
22 provisions of laws or rules of procedure adopted by the  
23 Supreme Court of Alabama.

24           "(h) A child who is transferred to a court for  
25 criminal prosecution shall be tried as an adult for the  
26 offense charged and all lesser included offenses of the  
27 offense charged.

1           "(i) A conviction or adjudication as a youthful  
2 offender of a child of a criminal offense, with the exception  
3 of a nonfelony traffic offense, shall terminate the  
4 jurisdiction of the juvenile court over that child with  
5 respect to any future delinquent acts and with respect to any  
6 pending allegations of delinquency which have not been  
7 disposed of by the juvenile court at the time of the criminal  
8 conviction or adjudication as a youthful offender. Any pending  
9 or future criminal acts committed by the child shall be  
10 prosecuted as other criminal charges are prosecuted.  
11 Termination of the jurisdiction of the juvenile court over the  
12 child with respect to future criminal charges and pending  
13 allegations of delinquency, as provided herein, shall not  
14 affect the jurisdiction of the juvenile court over the child  
15 with respect to any other matter provided in this chapter,  
16 specifically including any prior allegations of delinquency  
17 which, at the time of the criminal conviction, has been  
18 disposed of by the juvenile court either through informal  
19 adjustment, consent decree, or adjudication. The juvenile  
20 court is specifically authorized, to the extent practicable,  
21 to continue exercising its jurisdiction over the child with  
22 respect to such previously disposed delinquency cases after  
23 the termination of its jurisdiction with respect to other  
24 criminal charges, including jurisdiction to enforce its order  
25 requiring the payment of fines, costs, restitution, or other  
26 money ordered by the juvenile court pursuant to Section  
27 12-15-117.



1           "(j) Nothing in this section shall prohibit a  
2 circuit court judge from granting an individual youthful  
3 offender status.

4           (k) The act adding this amendatory language shall  
5 apply to all cases in which the alleged criminal conduct  
6 occurred after April 14, 1994.

7           "§12-15-208.

8           "(a) Persons who shall not be detained or confined  
9 in secure custody include all of the following:

10           "(1) STATUS OFFENDERS. Effective October 1, 2009,  
11 status offenders, as defined in this article, shall not be  
12 detained or confined in secure custody, except that a status  
13 offender who is charged with or who commits a violation of a  
14 valid court order may be detained in secure custody in a  
15 juvenile detention facility for up to 72 hours in any  
16 six-month period, provided that all conditions set forth in  
17 subdivision (3) of subsection (b) are satisfied. Short-term  
18 secure custody of accused status offenders may be necessary,  
19 such as detention in a juvenile detention facility for a brief  
20 period, not exceeding 24 hours, prior to formal juvenile court  
21 action, for investigative purposes, for identification  
22 purposes, or for the purpose of allowing return of a status  
23 offender to the parent, legal guardian, or legal custodian.  
24 Detention for a brief period of time pursuant to juvenile  
25 court authority may also be necessary in order to arrange for  
26 appropriate shelter care placement. If a petition regarding an  
27 alleged status offender is filed in juvenile court and if it

1 is determined that the alleged status offender is at imminent  
2 risk of being placed in the legal or physical custody of the  
3 Department of Human Resources, the case shall be referred to  
4 the county children's services facilitation team, and the  
5 procedures in Article 5 shall be followed. Upon referral to  
6 the county children's services facilitation team, the juvenile  
7 probation officer shall continue to provide case management to  
8 the status offender unless the county children's services  
9 facilitation team appoints another person to act as case  
10 manager. The juvenile probation officer shall participate in  
11 county children's services facilitation team meetings and  
12 share records information and reports on the status offender  
13 with the county children's services facilitation team.

14 "(2) FEDERAL WARDS. Federal wards held beyond 24  
15 hours in secure custody in state and local juvenile detention  
16 facilities pursuant to a written contract or agreement with a  
17 federal agency and for the specific purpose of affecting a  
18 jurisdictional transfer or appearance as a material witness or  
19 for return to their lawful residence or country of citizenship  
20 shall be reported as violations of the deinstitutionalization  
21 of status offender requirement.

22 "(3) NONOFFENDERS. Nonoffenders, as defined in this  
23 article, shall not be detained or confined in secure custody.

24 "(4) CHILDREN 10 YEARS OF AGE AND YOUNGER. Children  
25 10 years of age and younger shall not be detained or confined  
26 in secure custody, unless the children are charged with  
27 offenses causing death or serious bodily injury to persons or

1 offenses that would be classified as Class A felonies if  
2 committed by adults. Children 11 or 12 years of age may only  
3 be detained or confined in secure custody by orders of  
4 juvenile courts, unless the children are charged with offenses  
5 causing death or serious bodily injury to persons or offenses  
6 that would be classified as Class A felonies if committed by  
7 adults.

8 "(b) Persons who may be detained or confined in  
9 secure custody include all of the following:

10 "(1) Persons who violate the federal law, which  
11 prohibits possession of a handgun by a child under the age of  
12 18 years, or who violate a similar state or municipal law, may  
13 be placed in secure custody in juvenile detention facilities.

14 "(2) Persons in custody pursuant to the Interstate  
15 Compact on Juveniles, contained in Section 44-2-1, et seq.,  
16 may be placed in secure custody in juvenile detention  
17 facilities.

18 "(3) Status offenders who violate a valid court  
19 order. A status offender who is charged with or has committed  
20 a violation of a valid court order may be detained in secure  
21 custody in a juvenile detention facility for up to 72 hours in  
22 any six-month period. Status offenders who violate valid court  
23 orders shall not be committed to the Department of Youth  
24 Services, nor shall they be held in jails or lockups for adult  
25 offenders. For this valid court order exception to apply, the  
26 following actions must occur whenever a status offender is  
27 taken into custody for violating a valid court order:

1            "a. The juvenile detention facility shall  
2 immediately notify the juvenile court intake or probation  
3 officer that the child is being held in secure custody for  
4 violating a valid court order. The notice shall include the  
5 date and time the child entered the juvenile detention  
6 facility.

7            "b. Within the first 24 hours during which a status  
8 offender is held in secure custody for violating a valid court  
9 order, not including weekends or holidays, a juvenile court  
10 intake or probation officer, or an authorized representative  
11 of the department or agency having custody or supervision of  
12 the child, shall interview the child, in person.

13           "c. Within 48 hours of the admission of the status  
14 offender to secure custody for violating a valid court order,  
15 not including weekends or holidays:

16           "1. The individual who interviewed the child shall  
17 submit a written assessment report to the juvenile court  
18 regarding the immediate needs of the child; and

19           "2. If the juvenile court has not yet determined  
20 whether the child has, in fact, violated the order, the  
21 juvenile court shall conduct a hearing to determine whether  
22 there is reasonable cause to believe that the child violated  
23 the order and the appropriate placement of the child pending  
24 disposition of the alleged violation.

25           "(4) A child transferred to the circuit court  
26 pursuant to Section 12-15-203.

1           "(c) (1) Compliance with jail removal. No person  
2 under the age of 18 years shall be detained or confined in any  
3 jail or lockup for adults except ~~for the following exceptions:~~  
4 that a

5           "~~(1)~~ A child may be detained in a jail or lockup for  
6 adults for up to six hours while processing the case of the  
7 child.

8           "~~(2)~~ A child transferred for criminal prosecution  
9 pursuant to Section 12-15-203 may be detained in a jail or  
10 lockup for adults.

11           "~~(3)~~ A person charged pursuant to Section 12-15-204  
12 may be detained in a jail or lockup for adults.

13           "(2) ~~When a case is transferred to another court for~~  
14 ~~criminal prosecution, the person shall be transferred to the~~  
15 ~~appropriate officer or jail or lockup in accordance with the~~  
16 ~~law governing the detention of the person charged with the~~  
17 ~~crime.~~ Jails and lockups used for holding adults shall not  
18 hold status offenders in secure custody at any time. An  
19 accused status offender may be detained in a nonsecure area of  
20 a jail or lockup for processing while waiting transportation  
21 to a nonsecure shelter care facility or a juvenile detention  
22 facility or while waiting for release to a parent, legal  
23 guardian, or legal custodian.

24           "~~Nothing in this subsection shall prohibit a circuit~~  
25 ~~court judge exercising criminal jurisdiction from recommending~~  
26 ~~that a child described in subdivision (2) or (3) should be~~

1 ~~placed in a juvenile detention center instead of an adult jail~~  
2 ~~or lockup.~~

3 "(d) (1) Compliance with separation. Accused or  
4 adjudicated delinquent children or status offenders shall not  
5 have contact with adult inmates, including ~~trusties~~ trustees.  
6 Contact is defined to include any physical or sustained sight  
7 and sound contact. Sight contact is defined as clear visual  
8 contact between adult inmates and accused or adjudicated  
9 delinquent children or status offenders within close proximity  
10 to each other. Sound contact is defined as direct verbal  
11 communication between adult inmates and accused or adjudicated  
12 delinquent children or status offenders. For the purposes of  
13 this subsection "adult inmate" means a person over the age of  
14 18 years.

15 "(2) No child shall enter pursuant to public  
16 authority, for any amount of time, in secure custody in a  
17 secure section of a jail, lockup, or correctional facility for  
18 adults as a disposition of an offense or as a means of  
19 modifying his or her behavior (e.g., Shock Incarceration or  
20 Scared Straight).

21 "(e) Except as provided above, in providing  
22 detention and shelter or other care for children referred to  
23 or coming under the jurisdiction of the juvenile court, the  
24 juvenile court shall utilize only those facilities as have  
25 been established, licensed, or approved by the Department of  
26 Youth Services or Department of Human Resources for those  
27 purposes.

1           "(f) After October 1, 1991, the Department of Youth  
2 Services shall accept all children committed to it within  
3 seven days of notice of disposition.

4           "(g) Except as provided above, the official in  
5 charge of a jail or lockup for the detention of adult  
6 offenders or persons charged with crimes shall inform the  
7 juvenile court immediately when a child, who is or appears to  
8 be a child as defined by this chapter, is received at the jail  
9 or lockup. Upon request, the official shall deliver the child  
10 to the juvenile court or transfer him or her to a juvenile  
11 detention facility designated by the juvenile court.

12           "(h) The Department of Youth Services shall continue  
13 to develop and implement a statewide system of juvenile  
14 detention facilities which shall be licensed by the Department  
15 of Youth Services for the detention of children.

16           "(i) The Department of Youth Services shall  
17 subsidize the detention of children in the juvenile detention  
18 facilities in an amount up to one half the average cost of  
19 detention, which term is defined in this article, the amount  
20 depending on the provision of funds by the Legislature to the  
21 Department of Youth Services. Juvenile detention facilities  
22 may contract with the Department of Youth Services or other  
23 counties for the detention of children.

24           "(j) When a case is transferred to another court for  
25 criminal prosecution, the child shall be transferred to the  
26 appropriate officer or jail or lockup in accordance with the

1 law governing the detention of the person charged with  
2 criminal offenses.

3 "(k) Any law enforcement officer, at the direction  
4 of the juvenile court, shall provide security and  
5 transportation services for the juvenile court in transporting  
6 children to and from juvenile detention facilities.

7 "§12-15-208.1.

8 "(a) No person under the age of 18 years, including  
9 one who has been transferred for criminal prosecution pursuant  
10 to Section 12-15-203 ~~or charged pursuant to Section 12-15-204,~~  
11 ~~shall be detained~~ or confined in any facility under the  
12 control of the Department of Corrections unless the facility  
13 is fully compliant with the sight and sound separation  
14 requirements in subsection (d) of Section 12-15-208. The use  
15 of solitary confinement or other practice resulting in  
16 extended isolation as a method of complying with subsection  
17 (d) of Section 12-15-208 shall be prohibited.

18 "(b) The implementation of this section shall be  
19 contingent on funds being appropriated to accomplish this  
20 provision."

21 Section 2. Section 12-15-204, Code of Alabama 1975,  
22 relating to acts for which a person who has attained age 16  
23 shall be charged, arrested, and tried as an adult, is  
24 repealed.

25 Section 3. This act shall become effective on the  
26 first day of the third month following its passage and  
27 approval by the Governor, or its otherwise becoming law.



