

## **X. TRANSFER (BIDOVER) HEARINGS**

### **A. Code Section: O.C.G.A. §15-11-30.2**

### **B. Uniform Juvenile Court Rule, Form JUV-10**

### **C. Procedure**

1. a. The child subject to the transfer proceeding shall have been at least 15 years old at the time of the alleged delinquent conduct, or the child was 13 or 14 years old and either committed an act for which punishment is loss of life or confinement for life in a penal institution or committed aggravated battery resulting in serious bodily injury to a victim, but is not one over which superior court has exclusive original jurisdiction, or one which superior court and juvenile court have concurrent jurisdiction but superior court has acquired jurisdiction before juvenile court.

b. Notice of the transfer hearing and its time, place and purpose shall be given to the child and parent or custodian at least 3 days before the hearing. The use of Uniform Form JUV-10 Notice of Transfer to Adult Criminal Court is required by the court.

c. At the hearing, the court must find three factors:

(1) Reasonable grounds to believe the child committed the crime that he or she is being charged with;

(2) Reasonable grounds to believe the child is not mentally ill or mentally retarded;  
and

(3) The child's right to be treated as a juvenile must be balanced against the community's interest in treating the child as an adult. In doing so, the amenability of the child to rehabilitation vis-a-vis the egregiousness of the crime must be considered.

See: In the Interest of C.D.B., a child, 214 Ga.App. 655 (1994).  
In Re: R.B., a child, 264 Ga. 602 (1994).

### **2. Case Law:**

a. Acquiring jurisdiction in cases where superior court and juvenile court have concurrent jurisdiction.

Whetstone v. State, 264 Ga. 135 (1994). Juvenile Court acquires jurisdiction of a delinquency case by filing a petition in the interest of the child. Superior Court acquires jurisdiction by indicting the child.

When superior court asserts jurisdiction by indicting a juvenile for an offense over which it has jurisdiction it also gains jurisdiction over related lesser offenses that are part of the same crime. This issue was addressed in Reynolds v. State, 266 Ga. 235 (1996), when superior court indicted a child for aggravated child molestation and the jury convicted him of only child molestation. A motion to transfer the case back to the juvenile court for disposition or other action was properly denied.

b. Notice.

In the Interest of B.A.H., a child, 198 Ga.App. 713 (1991). B.A.H. was charged with five counts of burglary and theft by taking. The state sought to transfer the case to superior court pursuant to O.C.G.A. §15-11-30.2. The juvenile court sent a hearing notice to the minor and his mother; however, the notice failed to state the purpose of the hearing was to inquire into the possibility of a transfer. The child and his mother were aware of the state's intention to transfer, having heard such during the detention hearing. The child's attorney had received proper notice of the transfer hearing.

At the transfer hearing, appellant objected to the transfer on the grounds that proper notice was not given. The court heard evidence establishing reasonable cause to transfer but postponed the transfer hearing for five days. After hearing evidence on that issue, the case was transferred to superior court.

On appeal, the **court held the five day postponement on the transfer issue constituted proper notice and cured the initial defect.**

c. Hearing on the Merits.

In Re: M.E.J., 260 Ga. 805 (1991). M.E.J. was charged with three counts of murder. The state served M.E.J. and his mother with timely notice of intent to transfer the case to superior court. A hearing was held at which the minor, his mother, and attorney were present. The minor's attorney apparently had not received notice of the intent to transfer, and when M.E.J. was asked if he admitted or denied the allegations, attempted to enter an "admission for the purpose of sentencing." The court refused to accept an admission for that purpose and did not entertain additional evidence. Appellant's counsel argued that notice was defective and the court set the hearing for another date, instructing the state to serve M.E.J.'s attorney with notice of the transfer hearing. (Supreme Court noted the code does not require notice be given to child's attorney.)

At the second hearing, appellant's counsel argued that since the appellant previously entered an admission during a hearing on the merits that M.E.J. was placed in jeopardy and a transfer would violate the double jeopardy clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the Georgia Constitution. The juvenile court contended the admission was accepted only to establish "reasonable grounds to believe that ... the child committed the delinquent act alleged." O.C.G.A. §15-11-30.2(a)(3)(A), and that no evidence was heard on the merits.

The Supreme Court affirmed the lower court's decision, **holding it was clear the admission was accepted only for the purpose of transfer and the juvenile court had refused to hear any evidence on the merits or for sentencing purposes. Therefore, the hearing in question was not on the merits and did not place the appellant in jeopardy.**

d. Amenability to Treatment.

In the Interest of E.M., a child, 198 Ga.App. 729 (1991). E.M. was charged in juvenile court with aggravated assault with intent to commit rape and robbery, motor vehicle theft, financial transaction card theft, and financial transaction card fraud. At the transfer hearing, the state argued that the best interests of the child and community would be served by adult probation supervision. No evidence was presented showing the child was not amenable to treatment in the juvenile system.

The court transferred the case to superior court due to the seriousness of the delinquency and that "severe consequences are necessary to correct the conduct of the child, and the child's interest would best be served by the child being placed under legal restraint..."

Appellant argued the juvenile court relied solely upon the juvenile's non-amenable to treatment and did not give the basis for such conclusion. In addition, the state failed to prove non-amenable.

**The Court held that where the state seeks to transfer a case based upon non-amenable, it has the burden of proving such and the court order must reflect the basis for the finding of non-amenable.**

1. Sample Transfer Order

<Style of the Case>

**ORDER ON HEARING TO TRANSFER CASE  
TO SUPERIOR COURT FOR PROSECUTION**

A petition alleging that the above-named child did commit the offenses of Aggravated Assault, and Tampering with Evidence on or about August 8, 1994, in Sample County, Georgia, the alleged victim being Wally White, was filed in the Court on August 19, 1994.

A hearing to determine whether to transfer this charge to the Superior Court was held on November 10, 1994. The child was present, along with his mother, and was represented by counsel, Ms. Betty Davis. The State was represented by I.M. Rocky.

After hearing testimony and admission of documentary evidence from the State and argument of counsel thereon, and after a thorough review of the evidence and the law applicable thereto, the Court, in its discretion, determines that there are grounds to believe that:

1.

John Doe is a legal resident of Sample County, Georgia, being a 15 year old child in the legal custody of his mother, Sally Doe, who resides at 1234 Riverview Road, Sample City, Sample County, Georgia 30341.

2.

Notice in writing of the time, place, and purpose of this hearing was given to the child and his mother in accordance with O.C.G.A. §15-11-30.2(a)(2).

### **FINDINGS OF FACT**

3.

The Court, in its discretion, determines that there are reasonable grounds to believe that the child committed the delinquent acts alleged, based upon the following facts:

On August 8, 1994, the child did commit the offense of Aggravated Assault when he did make an assault upon the person of Wally White with a handgun, a deadly weapon.

The victim had brought a .357 caliber handgun to the defendant's house. The defendant handled the gun, unloading it, and clicking it three times; he then loaded and unloaded the gun again. The defendant engaged in a telephone conversation with a third party, a friend of the victim and the defendant's. The victim picked up the kitchen phone and in response to a question told his friend on the other line that he was "boning" the defendant's mother.

At that point the defendant walked into the kitchen pointing the gun at the victim. The defendant asked the victim what did he say about his mother, and the victim responded he was just playing. The defendant would not accept the explanation and pulled the hammer back on the gun. The victim kept saying he had just been playing and was running side to side to avoid the aiming of the gun. The defendant then pulled the trigger and shot the gun, nearly striking the victim.

This child did on or about August 8, 1994, commit the offense of Tampering with the Evidence when he did, with intent to obstruct prosecution knowingly alter and conceal physical evidence, to wit: a certain .357 caliber handgun by concealing it in a wooded area and removing bullets and shell casing in an attempt to conceal the evidence from police.

4.

The Court, in its discretion, determines that there are reasonable grounds to believe that the child is not committable to an institution for the mentally ill or the mentally retarded. The parties stipulated that said child is not committable to an institution for the mentally ill or the mentally retarded.

The Court finds that the child has previously been adjudicated for the delinquent acts of burglary and violation of probation rules in 1992. Further, while on aftercare and while committed to the Department of Children and Youth Services for forceful robbery of an automobile, the child committed the instant offenses. After testimony from his probation officer and from his court services officer, it is apparent to the Court that the child is a danger to the community and is not amenable to treatment and rehabilitation in the juvenile justice system. His offenses are becoming more violent and he has not been successfully corrected through the resources available in the juvenile justice system.

The Court, in its discretion, determines that there are reasonable grounds to believe that the interests of the child and the community require that the child be placed under legal restraint and that the transfer be made. The child has shown great disregard for the rights of the community and its members by committing the aforementioned offenses. The child pointed a handgun at Wally White at close range and shot at the victim. The child then tried to conceal what he had done.

### CONCLUSIONS OF LAW

Because of the very egregious nature of this offense and the child's past record of failure in the juvenile justice system, the interest of the child to be treated in the juvenile justice system is outweighed by the rights of the community to have this case tried in Superior Court. In Re: J.N.B., 263 Ga. 600 (1993); In Re: T.M., 195 Ga.App. 342 (1990). In addition, the public is entitled to know that some juveniles are involved in very serious criminal offenses. Cases such as this one should be given the benefit of grand jury review, and if indicted, a full, fair, open trial in the Superior Court free from the confidentiality restraints imposed upon the juvenile court.

Based upon the foregoing, and upon all the evidence adduced at the hearing, and the laws and cases applicable thereto, it is hereby ordered that the offenses of Aggravated Assault, and Tampering with Evidence which were both perpetrated on or about August 8, 1993, in Sample County, Georgia, are hereby transferred to the Superior Court of Sample County for prosecution.

This Court relinquishes jurisdiction over the child with respect to an adjudication of delinquency as to the delinquent acts alleged in the petition filed on August 19, 1994.

This 8th day of December, 1994.

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, Judge

Juvenile Court of Sample County