

appropriation, nor can it be considered as 'an item' in an appropriation bill, such as the Governor can veto under section 18 of article IV."

However, in light of the several considerations mentioned above, it must be concluded that the action of the governor in vetoing a proviso in a general appropriations bill does not automatically veto the specific appropriation to which it relates.

Accordingly, pending judicial clarification, your question is answered in the negative.

073-269—August 13, 1973

### JUVENILES

#### JUVENILE DIVISION OF CIRCUIT COURT—WAIVER OF JURISDICTION FOR SEPARATE OFFENSES

To: Richard E. Gerstein, State Attorney, Miami

Prepared by: Reeves Bowen, Assistant Attorney General

#### QUESTION:

May a child who is charged with a felony be tried in the adult division of the circuit court without first being charged in the juvenile division and having jurisdiction of the division waived when the child has been charged in the juvenile division and jurisdiction has been waived for that offense?

#### SUMMARY:

A child cannot be tried as an adult on a criminal charge unless the juvenile division of the circuit court has first waived jurisdiction and certified the case for trial as though the child were an adult. This is so even as to a new criminal charge made after such juvenile division had previously waived jurisdiction as to a former criminal charge and certified it for trial as if the child were an adult.

This question must be answered in the negative.

Section 3 of Ch. 73-231, Laws of Florida, amended §39.02(6)(a), F. S. [now §39.02(5)(a)], to read as follows:

(5)(a) If the judge finds, after a waiver hearing as provided in §39.09, that any child who is fourteen years of age or older and who, if an adult, would be charged with a violation of Florida law should be tried as an adult, the judge may enter an order waiving jurisdiction and *certifying the case for trial as if the child were an adult*, and thereafter the child shall be subject to the jurisdiction of the appropriate court as if the child were an adult. (Emphasis supplied.)

The italicized words in paragraph (5)(a) make it clear that it is "the case" that is to be certified for trial as if the child involved therein were an adult, meaning the case pending before the juvenile division of the circuit court in which the child is charged with being a delinquent child by reason of his alleged violation of the law.

Paragraph (5)(a) does not contemplate the transformation of a child into an adult for any purpose except that of dealing with the specific law violation charge pending against the child in said juvenile division. True, it concludes with the words "and thereafter the child shall be subject to the jurisdiction of the appropriate court as if the child were an adult." However, these last-quoted words must be construed in the light of the immediately preceding words in the same

sentence, "order . . . certifying the case for trial," and, when so construed, they mean nothing more than that after the case is certified for trial as if the child were an adult, he is thereafter to be dealt with as an adult with respect to the alleged law violation certified for trial.

It will be noted that paragraph (5)(a) requires a waiver hearing as provided by §39.09 F. S., before the judge can waive jurisdiction and certify the case for trial as though the child were an adult. As amended by §15 of Ch. 73-231, §39.09(2)(a) and (c), F. S., states:

(2) WAIVER HEARING.—

(a) The state attorney may, within five days of the date a delinquency petition has been filed and before a hearing on the petition on its merits, and following consultation with the intake office, file a motion requesting the court to transfer the child for criminal prosecution if the child was fourteen or more years of age at the time of the conduct charged and is alleged to have committed an act which would be a violation of law if committed by an adult.

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(c) The court shall conduct a hearing on all such motions for the purpose of determining whether there is probable cause to believe the child committed the offense and whether there are reasonable prospects of rehabilitating the child prior to his majority. *If the court finds there is probable cause but that there are no reasonable prospects of rehabilitating the child prior to his majority* and there are no reasonable grounds to believe he is committable to an institution or agency for the mentally retarded or mentally ill, it shall order the case transferred for criminal prosecution. (Emphasis supplied.)

The concluding sentence of said §39.09(2)(c), F. S., reading thusly

If the court finds there is probable cause but that there are no reasonable prospects of rehabilitating the child prior to his majority and that there are no reasonable grounds to believe he is committable to an institution or agency for the mentally retarded or mentally ill, it shall *order the case transferred for criminal prosecution*. (Emphasis supplied.)

reinforces my conclusion that the legislature intended that only "the case" pending in the juvenile division of the circuit court be transferred for criminal prosecution.

Taken together, said §§39.02(5)(a) and 39.09(2)(c), F. S., require that before the judge may waive jurisdiction and certify the case for trial as though the child were an adult, he must find that "there are no reasonable prospects of rehabilitating the child prior to his majority," and some might argue that such a finding is not only applicable to the alleged law violation under consideration by the judge of the juvenile division but that it also ambles forward into time and subjects the child to prosecution as an adult for any subsequent alleged violation of the law without any necessity for a new waiver hearing in accordance with §39.09(2)(c). Any such argument would fly in the teeth of the requirements of §§39.02(5)(a) and 39.09(2)(c) that "the case" (the delinquency case) then pending against the child is the one to be certified for trial as if the child were an adult. Any such argument would also overlook the fact of life that a child who has no present prospects of being rehabilitated prior to reaching his majority may nevertheless acquire such prospects a year or two or three from now and thereby become ineligible to be certified for trial as an adult criminal. The legislature evidently took this fact of life into account when it required a new waiver hearing on each new charge of violating the law.