

HOUSE BILL 786

E3, E2

3lr1917

By: **Delegates Carter, Anderson, Braveboy, and M. Washington**

Introduced and read first time: February 6, 2013

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2013

CHAPTER _____

1 AN ACT concerning

2 **Juvenile Law – ~~Jurisdiction and Detention~~ Task Force on Juvenile Court**
3 **Jurisdiction**

4 FOR the purpose of establishing ~~that the juvenile court has jurisdiction over a certain~~
5 ~~child alleged to have committed certain acts which, if committed by an adult,~~
6 ~~would be certain crimes, or over a certain child who has previously been~~
7 ~~convicted of a felony under certain circumstances; prohibiting a child from~~
8 ~~waiving the right to counsel at a certain waiver hearing; requiring a certain~~
9 ~~person to be transferred to a juvenile facility unless a certain finding has been~~
10 ~~made; prohibiting a child from being transported together with certain adults~~
11 ~~unless a certain finding has been made; repealing certain provisions of law~~
12 ~~governing the transfer of certain criminal cases to juvenile court; making~~
13 ~~stylistic and conforming changes; altering certain requirements relating to~~
14 ~~events that must be reported to the Criminal Justice Information System~~
15 ~~Central Repository; altering certain requirements relating to the fingerprinting~~
16 ~~of a child adjudicated delinquent; providing for the application of this Act; and~~
17 ~~generally relating to juvenile law~~ the Task Force on Juvenile Court Jurisdiction;
18 providing for the composition, chair, and staffing of the Task Force; prohibiting
19 a member of the Task Force from receiving certain compensation, but
20 authorizing the reimbursement of certain expenses; establishing the duties of
21 the Task Force; requiring the Task Force to report its findings and
22 recommendations to the Governor and the General Assembly on or before a
23 certain date; providing for the termination of this Act; and generally relating to
24 the Task Force on Juvenile Court Jurisdiction.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~BY repealing and reenacting, with amendments,
 Article — Courts and Judicial Proceedings
 Section 3-8A-03(d), 3-8A-16, and 3-8A-20(b)
 Annotated Code of Maryland
 (2006 Replacement Volume and 2012 Supplement)~~

~~BY repealing
 Article — Criminal Procedure
 Section 4-202 and 4-202.2
 Annotated Code of Maryland
 (2008 Replacement Volume and 2012 Supplement)~~

~~BY repealing and reenacting, with amendments,
 Article — Criminal Procedure
 Section 4-202.1, 10-215(a)(20), and 10-216(d)
 Annotated Code of Maryland
 (2008 Replacement Volume and 2012 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

~~Article — Courts and Judicial Proceedings~~

~~3-8A-03.~~

~~(d) The court does not have jurisdiction over:~~

~~(1) [A child at least 14 years old alleged to have done an act which, if committed by an adult, would be a crime punishable by death or life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article;~~

~~(2) A child at least 16 years old alleged to have done an act in violation of any provision of the Transportation Article or other traffic law or ordinance, except an act that prescribes a penalty of incarceration;~~

~~[(3)] (2) A child at least 16 years old alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat, except an act that prescribes a penalty of incarceration; OR~~

~~[(4) A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article;~~

~~(i) Abduction;~~

- 1 (ii) ~~Kidnapping;~~
- 2 (iii) ~~Second degree murder;~~
- 3 (iv) ~~Manslaughter, except involuntary manslaughter;~~
- 4 (v) ~~Second degree rape;~~
- 5 (vi) ~~Robbery under § 3-403 of the Criminal Law Article;~~
- 6 (vii) ~~Second degree sexual offense under § 3-306(a)(1) of the~~
7 ~~Criminal Law Article;~~
- 8 (viii) ~~Third degree sexual offense under § 3-307(a)(1) of the~~
9 ~~Criminal Law Article;~~
- 10 (ix) ~~A crime in violation of § 5-133, § 5-134, § 5-138, or § 5-203~~
11 ~~of the Public Safety Article;~~
- 12 (x) ~~Using, wearing, carrying, or transporting a firearm during~~
13 ~~and in relation to a drug trafficking crime under § 5-621 of the Criminal Law Article;~~
- 14 (xi) ~~Use of a firearm under § 5-622 of the Criminal Law Article;~~
- 15 (xii) ~~Carjacking or armed carjacking under § 3-405 of the~~
16 ~~Criminal Law Article;~~
- 17 (xiii) ~~Assault in the first degree under § 3-202 of the Criminal~~
18 ~~Law Article;~~
- 19 (xiv) ~~Attempted murder in the second degree under § 2-206 of the~~
20 ~~Criminal Law Article;~~
- 21 (xv) ~~Attempted rape in the second degree under § 3-310 of the~~
22 ~~Criminal Law Article or attempted sexual offense in the second degree under § 3-312~~
23 ~~of the Criminal Law Article;~~
- 24 (xvi) ~~Attempted robbery under § 3-403 of the Criminal Law~~
25 ~~Article; or~~
- 26 (xvii) ~~A violation of § 4-203, § 4-204, § 4-404, or § 4-405 of the~~
27 ~~Criminal Law Article;~~
- 28 (5) ~~A child who previously has been convicted as an adult of a felony~~
29 ~~and is subsequently alleged to have committed an act that would be a felony if~~

1 committed by an adult, unless an order removing the proceeding to the court has been
2 filed under § 4-202 of the Criminal Procedure Article; or]

3 ~~[(6)] (3)~~ A peace order proceeding in which the victim, as defined in §
4 ~~3-8A-01(cc)(1)(ii)~~ of this subtitle, is a person eligible for relief, as defined in § 4-501 of
5 the Family Law Article.

6 ~~3-8A-16.~~

7 (a) ~~The official in charge of a jail or other facility for the detention of adult~~
8 ~~offenders or persons charged with crime shall inform the court or the intake officer~~
9 ~~immediately when a person, who is or appears to be under the age of 18 years, is~~
10 ~~received at the facility and shall deliver [him] THE PERSON to the court upon request~~
11 ~~or transfer [him] THE PERSON to the JUVENILE facility designated by the intake~~
12 ~~officer or the court, unless [the]:~~

13 (1) ~~THE court has waived its jurisdiction with respect to the person~~
14 ~~[and he];~~

15 (2) ~~THE PERSON is being proceeded against as an adult; AND~~

16 (3) ~~A FINDING HAS BEEN MADE, AFTER A HEARING AND BASED ON~~
17 ~~EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS IN THE CHARGING~~
18 ~~DOCUMENT, THAT THE PERSON:~~

19 (i) ~~CANNOT BE HELD IN A JUVENILE FACILITY; AND~~

20 (ii) ~~IS A THREAT TO THE SAFETY OR SECURITY OF THE~~
21 ~~STAFF OR OTHER JUVENILES IN THE JUVENILE FACILITY.~~

22 (b) ~~When a case is transferred to another court for criminal prosecution, the~~
23 ~~child shall promptly be transferred to the appropriate officer, JUVENILE FACILITY, or~~
24 ~~adult detention facility in accordance with the law governing the detention of persons~~
25 ~~charged with crime.~~

26 (c) ~~A child may not be transported together with adults who have been~~
27 ~~charged with or convicted of a crime unless [the]:~~

28 (1) ~~THE court has waived its jurisdiction [and the];~~

29 (2) ~~THE child is being proceeded against as an adult; AND~~

30 (3) ~~A FINDING HAS BEEN MADE, AFTER A HEARING AND BASED ON~~
31 ~~EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS IN THE CHARGING~~
32 ~~DOCUMENT, THAT THE PERSON:~~

1 ~~(I) CANNOT BE HELD IN A JUVENILE FACILITY; AND~~

2 ~~(II) IS A THREAT TO THE SAFETY OR SECURITY OF THE~~
3 ~~STAFF OR OTHER JUVENILES IN THE JUVENILE FACILITY.~~

4 ~~§ 8A-20.~~

5 ~~(b) (1) Except as provided in paragraph (3) of this subsection, a child may~~
6 ~~not waive the right to the assistance of counsel in a proceeding under this subtitle.~~

7 ~~(2) A parent, guardian, or custodian of a child may not waive the~~
8 ~~child's right to the assistance of counsel.~~

9 ~~(3) After a petition or citation has been filed with the court under this~~
10 ~~subtitle, if a child indicates a desire to waive the right to the assistance of counsel, the~~
11 ~~court may not accept the waiver unless:~~

12 ~~(i) The child is in the presence of counsel and has consulted~~
13 ~~with counsel; and~~

14 ~~(ii) The court determines that the waiver is knowing and~~
15 ~~voluntary.~~

16 ~~(4) In determining whether the waiver is knowing and voluntary, the~~
17 ~~court shall consider, after appropriate questioning in open court and on the record,~~
18 ~~whether the child fully comprehends:~~

19 ~~(i) The nature of the allegations and the proceedings, and the~~
20 ~~range of allowable dispositions;~~

21 ~~(ii) That counsel may be of assistance in determining and~~
22 ~~presenting any defenses to the allegations of the petition, or other mitigating~~
23 ~~circumstances;~~

24 ~~(iii) That the right to the assistance of counsel in a delinquency~~
25 ~~case, or a child in need of supervision case, includes the right to the prompt~~
26 ~~assignment of an attorney, without charge to the child if the child is financially unable~~
27 ~~to obtain private counsel;~~

28 ~~(iv) That even if the child intends not to contest the charge or~~
29 ~~proceeding, counsel may be of substantial assistance in developing and presenting~~
30 ~~material that could affect the disposition; and~~

31 ~~(v) That among the child's rights at any hearing are the right to~~
32 ~~call witnesses on the child's behalf, the right to confront and cross-examine witnesses;~~

~~1 the right to obtain witnesses by compulsory process, and the right to require proof of
2 any charges.~~

~~3 (5) NOTWITHSTANDING PARAGRAPH (3) OF THIS SUBSECTION, A
4 CHILD MAY NOT WAIVE THE RIGHT TO THE ASSISTANCE OF COUNSEL IN A
5 WAIVER HEARING HELD UNDER § 3-8A-06 OF THIS SUBTITLE.~~

~~6 Article—Criminal Procedure~~

~~7 [4-202.~~

~~8 (a) (1) In this section the following words have the meanings indicated.~~

~~9 (2) “Victim” has the meaning stated in § 11-104 of this article.~~

~~10 (3) “Victim’s representative” has the meaning stated in § 11-104 of
11 this article.~~

~~12 (b) Except as provided in subsection (c) of this section, a court exercising
13 criminal jurisdiction in a case involving a child may transfer the case to the juvenile
14 court before trial or before a plea is entered under Maryland Rule 4-242 if:~~

~~15 (1) the accused child was at least 14 but not 18 years of age when the
16 alleged crime was committed;~~

~~17 (2) the alleged crime is excluded from the jurisdiction of the juvenile
18 court under § 3-8A-03(d)(1), (4), or (5) of the Courts Article; and~~

~~19 (3) the court determines by a preponderance of the evidence that a
20 transfer of its jurisdiction is in the interest of the child or society.~~

~~21 (c) The court may not transfer a case to the juvenile court under subsection
22 (b) of this section if:~~

~~23 (1) the child previously has been transferred to juvenile court and
24 adjudicated delinquent;~~

~~25 (2) the child was convicted in an unrelated case excluded from the
26 jurisdiction of the juvenile court under § 3-8A-03(d)(1) or (4) of the Courts Article; or~~

~~27 (3) the alleged crime is murder in the first degree and the accused
28 child was 16 or 17 years of age when the alleged crime was committed.~~

~~29 (d) In determining whether to transfer jurisdiction under subsection (b) of
30 this section, the court shall consider:~~

~~31 (1) the age of the child;~~

1 ~~(2) the mental and physical condition of the child;~~

2 ~~(3) the amenability of the child to treatment in an institution, facility,~~
3 ~~or program available to delinquent children;~~

4 ~~(4) the nature of the alleged crime; and~~

5 ~~(5) the public safety.~~

6 ~~(e) In making a determination under this section, the court may order that a~~
7 ~~study be made concerning the child, the family of the child, the environment of the~~
8 ~~child, and other matters concerning the disposition of the case.~~

9 ~~(f) The court shall make a transfer determination within 10 days after the~~
10 ~~date of a transfer hearing.~~

11 ~~(g) If the court transfers its jurisdiction under this section, the court may~~
12 ~~order the child held for an adjudicatory hearing under the regular procedure of the~~
13 ~~juvenile court.~~

14 ~~(h) (1) Pending a determination under this section to transfer its~~
15 ~~jurisdiction, the court may order a child to be held in a secure juvenile facility.~~

16 ~~(2) A hearing on a motion requesting that a child be held in a juvenile~~
17 ~~facility pending a transfer determination shall be held not later than the next court~~
18 ~~day, unless extended by the court for good cause shown.~~

19 ~~(i) (1) A victim or victim's representative shall be given notice of the~~
20 ~~transfer hearing as provided under § 11-104 of this article.~~

21 ~~(2) (i) A victim or a victim's representative may submit a victim~~
22 ~~impact statement to the court as provided in § 11-402 of this article.~~

23 ~~(ii) This paragraph does not preclude a victim or victim's~~
24 ~~representative who has not filed a notification request form under § 11-104 of this~~
25 ~~article from submitting a victim impact statement to the court.~~

26 ~~(iii) The court shall consider a victim impact statement in~~
27 ~~determining whether to transfer jurisdiction under this section.~~

28 ~~(j) At a bail review or preliminary hearing before the District Court~~
29 ~~involving a child whose case is eligible for transfer under subsection (b) of this section,~~
30 ~~the District Court may order that a study be made under the provisions of subsection~~
31 ~~(e) of this section, or that the child be held in a secure juvenile facility under the~~
32 ~~provisions of subsection (h) of this section, regardless of whether the District Court has~~
33 ~~criminal jurisdiction over the case.†~~

1 ~~[4-202.1.] 4-202.~~

2 (a) ~~In this section, "child" means a defendant who is under the age of 18~~
3 ~~years [and whose case is eligible for transfer under the provisions of § 4-202(b)(1) and~~
4 ~~(2) and (c) of this subtitle].~~

5 (b) ~~If a child remains in custody for any reason after a bail review hearing:~~

6 (1) ~~in the case of a child charged with a felony that is not within the~~
7 ~~jurisdiction of the District Court, the District Court shall:~~

8 (i) ~~clearly indicate on the case file and in computer records that~~
9 ~~the case involves a detained child; and~~

10 (ii) ~~set a preliminary hearing to be held within 15 days after the~~
11 ~~bail review hearing; or~~

12 (2) ~~in the case of a child charged with a crime in the District Court,~~
13 ~~the District Court:~~

14 (i) ~~shall clearly indicate on the case file and in computer~~
15 ~~records that the case involves a detained child; AND~~

16 [(ii) shall set a transfer hearing under § 4-202 of this subtitle to
17 be held within 30 days after the filing of the charging document;

18 (iii) ~~may order that a study be made under § 4-202 of this~~
19 ~~subtitle; and]~~

20 [(iv)] (H) ~~shall require that prompt notice be given to counsel~~
21 ~~for the child, or, if the child is not represented by counsel, to the Office of the Public~~
22 ~~Defender.~~

23 (c) ~~On receipt of a District Court case file that indicates that the case~~
24 ~~involves a child who was detained after a bail review hearing under subsection (b) of~~
25 ~~this section, a circuit court]:~~

26 (1) ~~unless previously set by the District Court under subsection (b)(2)~~
27 ~~of this section, shall set a transfer hearing under § 4-202 of this subtitle to be held~~
28 ~~within 30 days after the filing of the charging document in the circuit court;~~

29 (2) ~~unless previously ordered by the District Court under subsection~~
30 ~~(b)(2) of this section, may order that a study be made under § 4-202 of this subtitle;~~
31 ~~and~~

1 ~~(3) shall require that prompt notice be given to counsel for the child,~~
2 ~~or, if the child is not represented by counsel, to the Office of the Public Defender.~~

3 ~~§ 4-202.2.~~

4 ~~(a) At sentencing, a court exercising criminal jurisdiction in a case involving~~
5 ~~a child shall determine whether to transfer jurisdiction to the juvenile court if:~~

6 ~~(1) as a result of trial or a plea entered under Maryland Rule 4-242,~~
7 ~~all charges that excluded jurisdiction from the juvenile court under § 3-8A-03(d)(1) or~~
8 ~~(4) of the Courts Article do not result in a finding of guilty; and~~

9 ~~(2) (i) pretrial transfer was prohibited under § 4-202(c)(3) of this~~
10 ~~subtitle; or~~

11 ~~(ii) the court did not transfer jurisdiction after a hearing under~~
12 ~~§ 4-202(b) of this subtitle.~~

13 ~~(b) In determining whether to transfer jurisdiction under subsection (a) of~~
14 ~~this section, the court shall consider:~~

15 ~~(1) the age of the child;~~

16 ~~(2) the mental and physical condition of the child;~~

17 ~~(3) the amenability of the child to treatment in an institution, facility,~~
18 ~~or program available to delinquent children;~~

19 ~~(4) the nature of the child's acts as proven in the trial or admitted to in~~
20 ~~a plea entered under Maryland Rule 4-242; and~~

21 ~~(5) public safety.~~

22 ~~(c) The court may not consider transferring jurisdiction to the juvenile court~~
23 ~~under this section if:~~

24 ~~(1) under the terms of a plea agreement entered under Maryland Rule~~
25 ~~4-243, the child agrees that jurisdiction is not to be transferred; or~~

26 ~~(2) pretrial transfer was prohibited under § 4-202(c)(1) or (2) of this~~
27 ~~subtitle.~~

28 ~~(d) (1) A victim or victim's representative shall be given notice of the~~
29 ~~transfer hearing as provided under § 11-104 of this article.~~

30 ~~(2) (i) A victim or victim's representative may submit a victim~~
31 ~~impact statement to the court as provided in § 11-402 of this article.~~

1 (ii) ~~This paragraph does not preclude a victim or victim's~~
2 ~~representative who has not filed a notification request form under § 11-104 of this~~
3 ~~article from submitting a victim impact statement to the court.~~

4 (iii) ~~The court shall consider a victim impact statement in~~
5 ~~determining whether to transfer jurisdiction under this section.~~

6 (e) (1) ~~If the court transfers its jurisdiction to the juvenile court, the court~~
7 ~~shall conduct a disposition under the regular procedures of the juvenile court.~~

8 (2) ~~The record of the hearing and of the disposition shall be~~
9 ~~transferred to the juvenile court, subject to § 3-8A-27 of the Courts Article.]~~

10 ~~10-215.~~

11 (a) ~~The following events are reportable events under this subtitle that must~~
12 ~~be reported to the Central Repository in accordance with § 10-214 of this subtitle:~~

13 (20) ~~an adjudication of a child as delinquent];~~

14 (i)] ~~if the child is at least [14] 16 years old, for an act [described~~
15 ~~in § 3-8A-03(d)(1) of the Courts Article; or~~

16 (ii) ~~if the child is at least 16 years old, for an act described in §~~
17 ~~3-8A-03(d)(4) or (5) of the Courts Article;] THAT, IF COMMITTED BY AN ADULT,~~
18 ~~WOULD BE A CRIME PUNISHABLE BY DEATH, LIFE IMPRISONMENT, OR LIFE~~
19 ~~IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE;~~

20 ~~10-216.~~

21 (d) (1) ~~This subsection only applies to an adjudication of delinquency of a~~
22 ~~child];~~

23 (i) ~~for an act described in § 3-8A-03(d)(1) of the Courts Article~~
24 ~~if the child is at least 14 years old; or~~

25 (ii)] ~~for an act [described in § 3-8A-03(d)(4) or (5) of the Courts~~
26 ~~Article] THAT, IF COMMITTED BY AN ADULT, WOULD BE A CRIME PUNISHABLE BY~~
27 ~~DEATH, LIFE IMPRISONMENT, OR LIFE IMPRISONMENT WITHOUT THE~~
28 ~~POSSIBILITY OF PAROLE if the child is at least 16 years old.~~

29 (2) ~~If a child has not been previously fingerprinted as a result of arrest~~
30 ~~for the delinquent act, the court that held the disposition hearing of the child~~
31 ~~adjudicated delinquent shall order the child to be fingerprinted by the appropriate and~~
32 ~~available law enforcement unit.~~

1 ~~(3) If the child cannot be fingerprinted at the time of the disposition~~
2 ~~hearing held under paragraph (2) of this subsection, the court shall order the child to~~
3 ~~report to a designated law enforcement unit to be fingerprinted within 3 days after~~
4 ~~making a disposition on an adjudication of delinquency.~~

5 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies only to~~
6 ~~an action filed on or after the effective date of this Act.~~

7 ~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
8 ~~October 1, 2013.~~

9 (a) There is a Task Force on Juvenile Court Jurisdiction.

10 (b) The Task Force consists of the following members:

11 (1) one member of the Senate of Maryland, appointed by the President
12 of the Senate;

13 (2) one member of the House of Delegates, appointed by the Speaker of
14 the House;

15 (3) the Secretary of Juvenile Services, or the Secretary's designee;

16 (4) the Secretary of Public Safety and Correctional Services, or the
17 Secretary's designee;

18 (5) the Secretary of State Police, or the Secretary's designee;

19 (6) the Maryland Public Defender, or the Public Defender's designee;

20 (7) a juvenile court judge, appointed by the Chief Judge of the Court of
21 Appeals; and

22 (8) the following members, appointed by the Governor:

23 (i) one representative from the Governor's Office of Crime
24 Control and Prevention;

25 (ii) a Maryland State's Attorney;

26 (iii) a representative of a local correctional facility;

27 (iv) a representative of a local law enforcement agency;

28 (v) a representative from a juvenile justice advocacy group;

- 1 (vi) a representative from a victims' rights advocacy group;
2 (vii) an ex-offender who was charged as an adult for an offense
3 committed as a juvenile;
4 (viii) a youth services provider;
5 (ix) a mental health provider specializing in adolescent mental
6 health; and
7 (x) a national expert on youth justice issues, or the expert's
8 designee.

9 (c) The Governor shall designate the chair of the Task Force.

10 (d) The Governor's Office of Crime Control and Prevention shall provide staff
11 for the Task Force.

12 (e) A member of the Task Force:

13 (1) may not receive compensation as a member of the Task Force; but

14 (2) is entitled to reimbursement for expenses under the Standard
15 State Travel Regulations, as provided in the State budget.

16 (f) The Task Force shall:

17 (1) study current laws relating to the jurisdiction of the juvenile court;

18 (2) review current research on best practices for handling offenses
19 committed by youth in the court system; and

20 (3) make recommendations regarding:

21 (i) whether or not to eliminate the existing exclusionary
22 offenses that automatically result in adult charges for youth and restore juvenile court
23 discretion;

24 (ii) the benefits of retaining youth under the jurisdiction of the
25 juvenile court;

26 (iii) methods to reduce the number of youth in adult detention
27 centers and prisons; and

28 (iv) the long-term fiscal impact of treating youth in the adult
29 criminal system.

1 (g) On or before December 1, 2013, the Task Force shall report its findings
2 and recommendations to the Governor and, in accordance with § 2-1246 of the State
3 Government Article, the General Assembly.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 June 1, 2013. It shall remain effective for a period of 1 year and, at the end of May 31,
6 2014, with no further action required by the General Assembly, this Act shall be
7 abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.