

SENATE BILL 757

E3, E4

4r1947
CF 4r2156

By: **Senators McFadden and Currie**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Juveniles – Transfer Determinations – Confinement in Juvenile Facilities

FOR the purpose of requiring a court exercising criminal jurisdiction in a case involving a child, or the District Court at a bail review or preliminary hearing, to order a certain child to be held in a secure juvenile facility pending a certain transfer determination except under certain circumstances; requiring the District Court at a bail review or preliminary hearing to order that a certain study be made under certain circumstances; and generally relating to the transfer of jurisdiction to the juvenile court and the confinement of juveniles in juvenile facilities.

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 4–202
Annotated Code of Maryland
(2008 Replacement Volume and 2013 Supplement)

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

Article – Criminal Procedure

4–202.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Victim” has the meaning stated in § 11–104 of this article.
- (3) “Victim’s representative” has the meaning stated in § 11–104 of this article.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

(1) the age of the child;

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

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

(4) the nature of the alleged crime; and

(5) the public safety.

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

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

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

(h) (1) [Pending a determination under this section to transfer its jurisdiction,] **IF THE CHILD IS NOT RELEASED ON BAIL, RECOGNIZANCE, OR ON OTHER CONDITIONS OF PRETRIAL RELEASE, the court [may] SHALL order [a] THE child to be held in a secure juvenile facility PENDING A TRANSFER DETERMINATION UNDER THIS SECTION UNLESS THE COURT FINDS, BY CLEAR AND CONVINCING EVIDENCE, THAT DETENTION IN A SECURE JUVENILE FACILITY WOULD POSE A SUBSTANTIAL RISK OF HARM TO THE CHILD OR OTHERS.**

(2) [A hearing on a motion requesting that a child be held in a juvenile facility pending a transfer determination shall be held not later than the next court day, unless extended by the court for good cause shown] **IF THE COURT MAKES A FINDING UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT DETENTION IN A SECURE JUVENILE FACILITY WOULD POSE A SUBSTANTIAL RISK OF HARM TO THE CHILD OR OTHERS, THE COURT SHALL STATE THE REASONS FOR THE FINDING ON THE RECORD.**

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

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

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

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

(j) (1) **[At] REGARDLESS OF WHETHER THE DISTRICT COURT HAS CRIMINAL JURISDICTION OVER THE CASE, AT a bail review or preliminary hearing before the District Court involving a child whose case is eligible for transfer under subsection (b) of this section, the District Court [may] SHALL:**

(I) ON THE REQUEST OF THE DEFENDANT, order that a study be made under the provisions of subsection (e) of this section[, or that the child be held in a secure juvenile facility under the provisions of subsection (h) of this section, regardless of whether the District Court has criminal jurisdiction over the case]; AND

(II) ORDER THE CHILD TO BE HELD IN A SECURE JUVENILE FACILITY PENDING A TRANSFER DETERMINATION UNDER THIS SECTION UNLESS:

1. THE CHILD IS RELEASED ON BAIL, RECOGNIZANCE, OR ON OTHER CONDITIONS OF PRETRIAL RELEASE; OR

2. THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT DETENTION IN A SECURE JUVENILE FACILITY WOULD POSE A SUBSTANTIAL RISK OF HARM TO THE CHILD OR OTHERS.

(2) IF THE COURT MAKES A FINDING UNDER PARAGRAPH (1)(II)2 OF THIS SUBSECTION THAT DETENTION IN A SECURE JUVENILE FACILITY WOULD POSE A SUBSTANTIAL RISK OF HARM TO THE CHILD OR OTHERS, THE COURT SHALL STATE THE REASONS FOR THE FINDING ON THE RECORD.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.