

HOUSE BILL 859

E2

8lr1780

By: **Delegate Clippinger**

Introduced and read first time: February 2, 2018

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Transfer of Cases to Juvenile Court**

3 FOR the purpose of requiring a certain transfer hearing to be held within a certain period
4 of time, except under certain circumstances; authorizing a county administrative
5 judge or a designee of the judge to grant an extension for a transfer hearing under
6 certain circumstances; requiring the county administrative judge or the judge's
7 designee to state certain information on the record under certain circumstances; and
8 generally relating to the transfer of cases to the juvenile court.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Procedure
11 Section 4–202
12 Annotated Code of Maryland
13 (2008 Replacement Volume and 2017 Supplement)

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

16 **Article – Criminal Procedure**

17 4–202.

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

19 (2) “Victim” has the meaning stated in § 11–104 of this article.

20 (3) “Victim’s representative” has the meaning stated in § 11–104 of this
21 article.

22 (b) Except as provided in subsection (c) of this section, a court exercising criminal
23 jurisdiction in a case involving a child may transfer the case to the juvenile court before

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 trial or before a plea is entered under Maryland Rule 4–242 if:

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

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

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

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

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

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

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

16 (1) the age of the child;

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

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

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

21 (5) the public safety.

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

25 **(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A**
26 **TRANSFER HEARING SHALL BE HELD:**

27 **(I) NOT LATER THAN 30 DAYS AFTER A STUDY ORDERED UNDER**
28 **SUBSECTION (E) IS COMPLETED; OR**

29 **(II) IF NO STUDY IS ORDERED, NOT LATER THAN 30 DAYS AFTER**
30 **A MOTION TO TRANSFER THE CASE TO THE JUVENILE COURT IS FILED UNDER**

1 **MARYLAND RULE 4-252(C).**

2 **(2) (I) ON MOTION OF A PARTY, FOR GOOD CAUSE SHOWN, THE**
3 **COUNTY ADMINISTRATIVE JUDGE OR A DESIGNEE OF THE JUDGE MAY GRANT AN**
4 **EXTENSION FOR THE TRANSFER HEARING.**

5 **(II) IF AN EXTENSION IS GRANTED, THE COUNTY**
6 **ADMINISTRATIVE JUDGE OR THE JUDGE'S DESIGNEE SHALL STATE ON THE RECORD:**

7 **1. THE CAUSE THAT REQUIRES THE EXTENSION; AND**

8 **2. THE LENGTH OF THE EXTENSION.**

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

11 **[(g)] (H)** 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 juvenile
13 court.

14 **[(h)] (I)** (1) Pending a determination under this section to transfer its
15 jurisdiction, the court shall order the child to be held in a secure juvenile facility unless:

16 (i) the child is released on bail, recognizance, or other conditions of
17 pretrial release;

18 (ii) there is not available capacity in a secure juvenile facility, as
19 determined by the Department of Juvenile Services; or

20 (iii) the court finds that detention in a secure juvenile facility would
21 pose a risk of harm to the child or others.

22 (2) If the court makes a finding under paragraph (1)(iii) of this subsection
23 that detention in a secure juvenile facility would pose a risk of harm to the child or others,
24 the court shall state the reasons for the finding on the record.

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

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

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

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

3 **[(j)] (K)** (1) Regardless of whether the District Court has jurisdiction over
4 the case, at a bail review or preliminary hearing before the District Court involving a child
5 whose case is eligible for transfer under subsection (b) of this section, the District Court:

6 (i) may order that a study be made under the provisions of
7 subsection (e) of this section; and

8 (ii) shall order that the child be held in a secure juvenile facility
9 pending a transfer determination under this section unless:

10 1. the child is released on bail, recognizance, or other
11 conditions of pretrial release;

12 2. there is not available capacity at a secure juvenile facility
13 as determined by the Department of Juvenile Services; or

14 3. the District Court finds that detention in a secure juvenile
15 facility would pose a risk of harm to the child or others.

16 (2) If the District Court makes a finding under paragraph (1)(ii)3 of this
17 subsection that detention in a secure juvenile facility would pose a risk of harm to the child
18 or others, the District Court shall state the reasons for the finding on the record.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2018.