

SENATE BILL 257

E3, E2

8lr0859

By: **Senators Kelley, Benson, Conway, Currie, Guzzone, Kagan, Lee, Manno, McFadden, Muse, Nathan–Pulliam, Rosapepe, Smith, and Young**

Introduced and read first time: January 19, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Records – Juveniles Charged as Adults**

3 FOR the purpose of establishing that, pending a determination by a court exercising
4 criminal jurisdiction in a case involving a child whether to transfer its jurisdiction to
5 the juvenile court, provisions of law relating to confidentiality of juvenile records
6 apply to all police records and court records concerning the child; repealing
7 provisions of law relating to the expungement of criminal charges transferred to the
8 juvenile court; and generally relating to police records and court records of juveniles.

9 BY repealing and reenacting, without amendments,
10 Article – Courts and Judicial Proceedings
11 Section 3–8A–27(a)(1) and (b)(1)
12 Annotated Code of Maryland
13 (2013 Replacement Volume and 2017 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Procedure
16 Section 4–202(b) and (h)
17 Annotated Code of Maryland
18 (2008 Replacement Volume and 2017 Supplement)

19 BY adding to
20 Article – Criminal Procedure
21 Section 4–202(i)
22 Annotated Code of Maryland
23 (2008 Replacement Volume and 2017 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Criminal Procedure
26 Section 4–202(i) and (j) and 10–105(a)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2008 Replacement Volume and 2017 Supplement)

3 BY repealing
4 Article – Criminal Procedure
5 Section 10–106
6 Annotated Code of Maryland
7 (2008 Replacement Volume and 2017 Supplement)

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

10 **Article – Courts and Judicial Proceedings**

11 3–8A–27.

12 (a) (1) A police record concerning a child is confidential and shall be
13 maintained separate from those of adults. Its contents may not be divulged, by subpoena
14 or otherwise, except by order of the court upon good cause shown or as otherwise provided
15 in § 7–303 of the Education Article.

16 (b) (1) A court record pertaining to a child is confidential and its contents may
17 not be divulged, by subpoena or otherwise, except by order of the court upon good cause
18 shown or as provided in §§ 7–303 and 22–309 of the Education Article.

19 **Article – Criminal Procedure**

20 4–202.

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

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

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

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

30 (h) (1) Pending a determination under this section to transfer its jurisdiction,
31 the court shall order the child to be held in a secure juvenile facility unless:

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

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

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

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

8 **(I) PENDING A TRANSFER DETERMINATION UNDER THIS SECTION, THE**
9 **PROVISIONS OF § 3-8A-27 OF THE COURTS ARTICLE RELATING TO**
10 **CONFIDENTIALITY OF RECORDS APPLY TO ALL POLICE RECORDS AND COURT**
11 **RECORDS CONCERNING THE CHILD.**

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

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

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

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

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

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

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

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

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

32 3. the District Court finds that detention in a secure juvenile

1 facility would pose a risk of harm to the child or others.

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

5 10–105.

6 (a) A person who has been charged with the commission of a crime, including a
7 violation of the Transportation Article for which a term of imprisonment may be imposed,
8 or who has been charged with a civil offense or infraction, except a juvenile offense, as a
9 substitute for a criminal charge may file a petition listing relevant facts for expungement
10 of a police record, court record, or other record maintained by the State or a political
11 subdivision of the State if:

12 (1) the person is acquitted;

13 (2) the charge is otherwise dismissed;

14 (3) a probation before judgment is entered, unless the person is charged
15 with a violation of § 21–902 of the Transportation Article or Title 2, Subtitle 5 or § 3–211
16 of the Criminal Law Article;

17 (4) a nolle prosequi or nolle prosequi with the requirement of drug or
18 alcohol treatment is entered;

19 (5) the court indefinitely postpones trial of a criminal charge by marking
20 the criminal charge “stet” or stet with the requirement of drug or alcohol abuse treatment
21 on the docket;

22 (6) the case is compromised under § 3–207 of the Criminal Law Article;

23 [(7) the charge was transferred to the juvenile court under § 4–202 of this
24 article;]

25 [(8) (7) the person:

26 (i) is convicted of only one criminal act, and that act is not a crime
27 of violence; and

28 (ii) is granted a full and unconditional pardon by the Governor;

29 [(9) (8) the person was convicted of a crime or found not criminally
30 responsible under any State or local law that prohibits:

31 (i) urination or defecation in a public place;

- 1 (ii) panhandling or soliciting money;
- 2 (iii) drinking an alcoholic beverage in a public place;
- 3 (iv) obstructing the free passage of another in a public place or a
4 public conveyance;
- 5 (v) sleeping on or in park structures, such as benches or doorways;
- 6 (vi) loitering;
- 7 (vii) vagrancy;
- 8 (viii) riding a transit vehicle without paying the applicable fare or
9 exhibiting proof of payment; or
- 10 (ix) except for carrying or possessing an explosive, acid, concealed
11 weapon, or other dangerous article as provided in § 7-705(b)(6) of the Transportation
12 Article, any of the acts specified in § 7-705 of the Transportation Article;

13 **[(10)] (9)** the person was found not criminally responsible under any State
14 or local law that prohibits misdemeanor:

- 15 (i) trespass;
- 16 (ii) disturbing the peace; or
- 17 (iii) telephone misuse;

18 **[(11)] (10)** the person was convicted of a crime and the act on which the
19 conviction was based is no longer a crime; or

20 **[(12)] (11)** the person was convicted of possession of marijuana under §
21 5-601 of the Criminal Law Article.

22 **[10-106.**

23 (a) A person may file, and a court shall grant, a petition for expungement of a
24 criminal charge transferred to the juvenile court under § 4-202 or § 4-202.2 of this article.

25 (b) A petition for expungement filed under this section shall be filed in the court
26 of original jurisdiction from which the order of transfer was entered.]

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