



**House Bill (HB) 170 - Minors Convicted as Adults – Sentencing – Transfer to Juvenile Court**

DATE : February 2, 2023

COMMITTEE: House Judiciary

POSITION: UNFAVORABLE

PURPORTED PURPOSE:

- HB170 purports to amend current Criminal Procedural Article § 6-235 provisions when a court sentences a minor convicted as an adult. Under the current provisions of § 6-235 a court when sentencing a juvenile as an adult may impose a sentence less than the minimum and may not sentence a juvenile to life imprisonment. HB170 would add the following provisions:
- Mandatory consideration by a court on the record of a laundry list of factors when sentencing, including, among other things, the ability of the minor to participate in his or her own defense;
- A presumption that a minor convicted as an adult should be transferred to a juvenile court for sentencing;
- Permitting a court to transfer a minor to juvenile court for sentencing if the victim of the minor's offense committed a sex crime against the minor or engaged in the human trafficking of the minor within 3 months of the minor's crime; and
- Mandating that a minor transferred to juvenile court for sentencing under the revised statute receive a juvenile disposition.

NOTE ON PRESUMPTION OF TRANSFER:

Although the Purpose Paragraph of HB170 states:

FOR the purpose of ...establishing a presumption that the sentencing of a minor convicted as an adult should be transferred to the juvenile court, under certain circumstances...

the intent to do so is not affected via language creating such a presumption in the proposed amended text. However, the expressed opposition to HB170 for the House Judiciary to report unfavorably on it assumes that the establishment of such a presumption was intended by the sponsors and drafters.

## REAL-WORLD CONSEQUENCES OF HB170

### *Mandatory Consideration of Factors*

Requiring a court sentencing a minor who has been convicted of an adult to consider various factors included in HB170 on the record is essentially giving a “second bite of the apple” to a minor defendant who has already been waived into adult court via § 3-8A-06 of the Courts Article. Many of the sentencing factors HB170 mandates a court consider on the record in sentencing a minor convicted as an adult have likely already been considered during a prior waiver hearing, that is: “(1) the age of the child; (2) the child’s physical and mental condition; (3) the child’s amenability to treatment in any institution, facility, or programs available to delinquents; (4) the nature of the offense(s); and (5) public safety.”<sup>1</sup>

Md. Rule 11-410(c) mandates that upon the filing of a waiver, the court shall order the Department of Juvenile Services (“DJS”) to make a waiver investigation and prepare a report that addresses the criteria listed in § 3-8A-06. Moreover, in that prior waiver hearing, the State would have had the burden of persuasion to prove by a preponderance of the evidence that “the child is an unfit subject for rehabilitative measures.”<sup>2</sup>

An example of the mandatory consideration of HB170 granting a minor defendant waived into adult court giving “a second bite of the apple”:

**“(B) (1) (VIII) THE ABILITY OF THE MINOR TO MEANINGFULLY PARTICIPATE IN THE MINOR’S LEGAL DEFENSE;”**

One of the continuing major issues in the prosecution of juvenile defendants is assessing his or her competency to stand trial. In juvenile proceedings, Md. Rule 11-416 already allows for a court to order an evaluation of the child’s mental condition per § 3-8A-17.1 of the Courts Article, and that would be considered during a waiver decision under § 3-8A-06.

### *Transfer to Juvenile Court for Sentencing*

One of the problems that HB170 would create, is that if a minor who was found guilty of a crime in adult court was transferred for sentencing to juvenile court under its provisions, you would have two different judges in two different courts rendering a disposition on guilt and sentencing, thereby creating the distinct possibility of incongruous results.

§ 3-8A-07 of the Courts Article, a juvenile court only has jurisdiction over a minor until her or she is 21 years of age. If passed, HB-170 would allow for detention of a minor convicted of an adult crime in a DJS facility until he or she reached 21 and could not supervise him or her after release. For example, consider Lee Boyd Malvo, who, along with John Allen Muhammad, committed a series of murders dubbed the D.C. sniper attacks over a three-week period in October 2002. Malvo was aged 17 during the span of the shootings. If the sentence transfer provisions of

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<sup>1</sup> Courts Article 3-8A-06(d)(2)(e)

<sup>2</sup> Courts Article 3-8A-06(d)(1)

HB170 was in effect when Malvo committed his offenses, it could have applied to him, meaning that at the time of sentencing, the juvenile court could have only ordered him held for less than 4 years or not held at all if he were 21 at the time of sentencing. Attached is a list of examples of some of the crimes committed by juveniles that charged as adults that would have been eligible under the proposed language of HB170 for sentencing in juvenile court with a juvenile disposition.

Also worth noting is that a minor who is convicted in adult court and then transferred to juvenile court for a juvenile disposition shall be detained in a DJS facility with other juveniles who did not commit an adult crime. So, Lee Boyd Malvo would be detained along with a minor who had been adjudicated delinquent for what amounts to simple assault or theft. Hardly the company you should keep if you are seeking to be rehabilitated.

### UPSHOT

Waiver of juveniles into adult court are difficult to obtain, and seldom granted. Our juvenile prosecutor in Carroll, Assistant State's Attorney Katie Wickert, notes that around 5 waiver petitions have been granted in Carroll County since she started at our Office. If a juvenile is eligible for a transfer from adult court to juvenile court, then the entire matter, if eligible under current § 4-202.2 of the Criminal Procedural Article, should be transferred, not just sentencing, and if a waiver from juvenile to adult court was granted under § 3-8A-06 of the Courts Article, sentencing should be done in adult court with adult penalties available, or "Do Big Boy Crime, Be Subject to Big Boy Time."