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By: **Delegate Vallario (Task Force to Examine Maryland's Crime Victims' Rights Laws) and Delegates Amedori, Bartlett, Boschert, Boutin, Bozman, Bronrott, Brown, Burns, Cadden, Clagett, Conway, Cryor, DeCarlo, Dembrow, Dewberry, Doory, Dypski, Edwards, Frush, Fulton, Giannetti, Glassman, Goldwater, Healey, Heller, Hixson, Howard, Hubbard, Hubers, Hutchins, A. Jones, Kach, Klima, Kopp, La Vay, Linton, Love, Mandel, McClenahan, McHale, McKee, Minnick, Moe, Mohorovic, Morhaim, O'Donnell, Owings, Palumbo, Parrott, Patterson, Petzold, Pitkin, Proctor, Rawlings, Redmer, Riley, Rosso, Rudolph, Rzepkowski, Sher, Sophocleus, Swain, Turner, Valderrama, and Zirkin**

Introduced and read first time: February 4, 1999

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Victims' Rights - Juvenile Hearings and Dispositions**

3 FOR the purpose of requiring that certain victims be notified of certain juvenile  
4 proceedings; granting certain victims the right to be present and to address the  
5 court at certain juvenile proceedings; requiring the court to consider certain  
6 information in determining its jurisdiction in certain delinquency proceedings;  
7 requiring the court to consider certain statements from a victim before making  
8 a disposition on a delinquency petition; altering the court's priorities in making  
9 a disposition on a delinquency petition; defining a term; altering a definition of  
10 "victim"; making stylistic changes; and generally relating to victims' rights in  
11 certain juvenile hearings and dispositions.

12 BY repealing and reenacting, with amendments,  
13 Article 27 - Crimes and Punishments  
14 Section 594A  
15 Annotated Code of Maryland  
16 (1996 Replacement Volume and 1998 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article - Courts and Judicial Proceedings  
19 Section 3-801(t), 3-817, and 3-820(b) and (c)  
20 Annotated Code of Maryland  
21 (1998 Replacement Volume)

22 BY repealing and reenacting, without amendments,

1 Article - Courts and Judicial Proceedings  
2 Section 3-801(a), 3-802, and 3-818  
3 Annotated Code of Maryland  
4 (1998 Replacement Volume)

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

7 **Article 27 - Crimes and Punishments**

8 594A.

9 (a) IN THIS SECTION, "VICTIM" HAS THE MEANING STATED IN § 3-801 OF THE  
10 COURTS ARTICLE.

11 (B) In any case, except as provided in [subsection (b)] SUBSECTION (C) OF  
12 THIS SECTION, involving a child who has reached 14 years of age but has not reached  
13 18 years of age at the time of any alleged offense excluded under the provisions of §  
14 3-804(e)(1), (4), or (5) of the Courts and Judicial Proceedings Article, the court  
15 exercising jurisdiction may transfer the case to the juvenile court if a waiver is  
16 believed to be in the interests of the child or society.

17 [(b)] (C) The court may not transfer a case to the juvenile court under  
18 subsection [(a)] (B) OF THIS SECTION if:

19 (1) The child has previously been waived to juvenile court and  
20 adjudicated delinquent;

21 (2) The child was convicted in another unrelated case excluded from the  
22 jurisdiction of the juvenile court under § 3-804(e)(1) or (4) of the Courts and Judicial  
23 Proceedings Article; or

24 (3) The alleged offense is murder in the first degree and the accused  
25 child is 16 or 17 at the time the alleged offense was committed.

26 [(c)] (D) In making a determination as to waiver of jurisdiction the court shall  
27 consider the following:

28 (1) Age of child;

29 (2) Mental and physical condition of child;

30 (3) The child's amenability to treatment in any institution, facility, or  
31 program available to delinquents;

32 (4) The nature of the alleged offense; and

33 (5) The public safety.

1 [(d)] (E) For the purpose of making its determination, the court may request  
2 that a study concerning the child, [his] THE CHILD'S family, [his] THE CHILD'S  
3 environment, and other matters relevant to the disposition of the case be made.

4 [(e)] (F) If the jurisdiction is waived, the court may order the person held for  
5 trial under the regular procedures of the juvenile court.

6 [(f)] (G) The court may order a minor to be held in a juvenile facility pending  
7 a determination under this section to waive jurisdiction over the case involving the  
8 minor to the juvenile court.

9 (H) (1) A VICTIM SHALL HAVE A RIGHT TO:

10 (I) BE PRESENT AT A WAIVER HEARING AS PROVIDED UNDER § 857  
11 OF THIS ARTICLE; AND

12 (II) ADDRESS THE COURT BEFORE THE DETERMINATION AS TO  
13 WHETHER TO WAIVE JURISDICTION.

14 (2) THE COURT SHALL CONSIDER THE STUDY MADE UNDER  
15 SUBSECTION (E) OF THIS SECTION, THE VICTIM IMPACT STATEMENT, AND ANY ORAL  
16 ADDRESS BY THE VICTIM WHEN DETERMINING WHETHER TO WAIVE JURISDICTION.

17 (3) THE VICTIM SHALL BE GIVEN NOTICE OF THE WAIVER HEARING AS  
18 PROVIDED UNDER § 770 OF THIS ARTICLE.

19 **Article - Courts and Judicial Proceedings**

20 3-801.

21 (a) In this subtitle, the following words have the meanings indicated, unless  
22 the context of their use indicates otherwise.

23 (t) (1) "Victim" means a person who suffers direct or threatened physical,  
24 emotional, or financial harm as a result of a delinquent act.

25 (2) "Victim" includes a family member of a minor, [incompetent]  
26 DISABLED, or a [homicide] DECEASED victim.

27 (3) "Victim" includes, if the victim is not an individual, the victim's agent  
28 or designee.

29 3-802.

30 (a) The purposes of this subtitle are:

31 (1) To ensure that the Juvenile Justice System balances the following  
32 objectives for children who have committed delinquent acts:

33 (i) Public safety and the protection of the community;

1 (ii) Accountability of the child to the victim and the community for  
2 offenses committed; and

3 (iii) Competency and character development to assist children in  
4 becoming responsible and productive members of society;

5 (2) To hold parents of children found to be delinquent responsible for the  
6 child's behavior and accountable to the victim and the community;

7 (3) To hold parents of children found to be delinquent or in need of  
8 assistance or supervision responsible, where possible, for remedying the  
9 circumstances that required the court's intervention;

10 (4) To provide for the care, protection, and wholesome mental and  
11 physical development of children coming within the provisions of this subtitle; and to  
12 provide for a program of treatment, training, and rehabilitation consistent with the  
13 child's best interests and the protection of the public interest;

14 (5) To conserve and strengthen the child's family ties and to separate a  
15 child from his parents only when necessary for his welfare or in the interest of public  
16 safety;

17 (6) If necessary to remove a child from his home, to secure for him  
18 custody, care, and discipline as nearly as possible equivalent to that which should  
19 have been given by his parents; and

20 (7) To provide judicial procedures for carrying out the provisions of this  
21 subtitle.

22 (b) This subtitle shall be liberally construed to effectuate these purposes.

23 3-817.

24 (a) The court may waive the exclusive jurisdiction conferred by § 3-804 OF  
25 THIS SUBTITLE with respect to a petition alleging delinquency by:

26 (1) A child who is 15 years old or older; or

27 (2) A child who has not reached his 15th birthday, but who is charged  
28 with committing an act which if committed by an adult, would be punishable by death  
29 or life imprisonment.

30 (b) (1) The court may not waive its jurisdiction until after it has conducted a  
31 waiver hearing, held prior to an adjudicatory hearing and after notice has been given  
32 to all parties as prescribed by the Maryland Rules. The waiver hearing is solely to  
33 determine whether the court should waive its jurisdiction.

34 (2) NOTICE OF THE WAIVER HEARING SHALL BE GIVEN TO THE VICTIM  
35 AS PROVIDED UNDER ARTICLE 27, § 770 OF THE CODE.

1 (3) A VICTIM SHALL HAVE A RIGHT TO BE PRESENT AT THE WAIVER  
2 HEARING AND SHALL HAVE THE RIGHT TO ADDRESS THE COURT PRIOR TO THE  
3 DETERMINATION AS TO WHETHER TO WAIVE ITS JURISDICTION.

4 (c) (1) The court may not waive its jurisdiction unless it determines, from a  
5 preponderance of the evidence presented at the hearing, that the child is an unfit  
6 subject for juvenile rehabilitative measures.

7 (2) For purposes of determining whether to waive its jurisdiction, the  
8 court shall assume that the child committed the delinquent act alleged.

9 (3) IF A STUDY IS MADE UNDER § 3-818 OF THIS SUBTITLE, THE COURT  
10 SHALL CONSIDER THE STUDY AND ANY ORAL ADDRESS OR WRITTEN STATEMENT OF  
11 A VICTIM WHEN DETERMINING WHETHER TO WAIVE ITS JURISDICTION.

12 (d) In making its determination, the court shall consider the following criteria  
13 individually and in relation to each other on the record:

14 (1) Age of the child;

15 (2) Mental and physical condition of the child;

16 (3) The child's amenability to treatment in any institution, facility, or  
17 program available to delinquents;

18 (4) The nature of the offense and the child's alleged participation in it;  
19 and

20 (5) The public safety.

21 (e) If the jurisdiction is waived, the court shall order the child held for trial  
22 under the regular procedures of the court which would have jurisdiction over the  
23 offense if committed by an adult. The petition alleging delinquency shall be  
24 considered a charging document for purposes of detaining the child pending a bail  
25 hearing.

26 (f) An order waiving jurisdiction is interlocutory.

27 (g) If the court has once waived its jurisdiction with respect to a child in  
28 accordance with this section, and that child is subsequently brought before the court  
29 on another charge of delinquency, the court may waive its jurisdiction in the  
30 subsequent proceeding after summary review.

31 3-818.

32 (a) After a petition or a citation has been filed, the court may direct the  
33 Department of Juvenile Justice or another qualified agency to make a study  
34 concerning the child, his family, his environment, and other matters relevant to the  
35 disposition of the case.

1 (b) As part of the study, the child or any parent, guardian, or custodian may be  
2 examined at a suitable place by a physician, psychiatrist, psychologist, or other  
3 professionally qualified person.

4 (c) The report of the study is admissible as evidence at a waiver hearing and  
5 at a disposition hearing, but not at an adjudicatory hearing. However, the attorney for  
6 each party has the right to inspect the report prior to its presentation to the court, to  
7 challenge or impeach its findings and to present appropriate evidence with respect to  
8 it.

9 3-820.

10 (b) The priorities in making a disposition are [the public safety and a program  
11 of treatment, training, and rehabilitation best suited to the physical, mental, and  
12 moral welfare of the child consistent with the public interest] CONSISTENT WITH THE  
13 PURPOSES SPECIFIED IN § 3-802 OF THIS SUBTITLE.

14 (c) (1) In making a disposition on a petition, the court may:

15 (i) Place the child on probation or under supervision in his own  
16 home or in the custody or under the guardianship of a relative or other fit person,  
17 upon terms the court deems appropriate;

18 (ii) Subject to the provisions of paragraph (2) of this subsection,  
19 commit the child to the custody or under the guardianship of the Department of  
20 Juvenile Justice, a local department of social services, the Department of Health and  
21 Mental Hygiene, or a public or licensed private agency on terms that the court  
22 considers appropriate to meet the priorities set forth in [subsection (b) of this section]  
23 § 3-802 OF THIS SUBTITLE, including designation of the type of facility where the child  
24 is to be accommodated, until custody or guardianship is terminated with approval of  
25 the court or as required under § 3-825 of this subtitle; or

26 (iii) Order the child, parents, guardian, or custodian of the child to  
27 participate in rehabilitative services that are in the best interest of the child and the  
28 family.

29 (2) A child committed under paragraph (1)(ii) of this subsection may not  
30 be accommodated in a facility that has reached budgeted capacity if a bed is available  
31 in another comparable facility in the State, unless the placement to the facility that  
32 has reached budgeted capacity has been recommended by the Department of Juvenile  
33 Justice.

34 (3) THE COURT SHALL CONSIDER AN ORAL ADDRESS OR WRITTEN  
35 STATEMENT OF A VICTIM IN DETERMINING AN APPROPRIATE DISPOSITION ON A  
36 PETITION.

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
38 October 1, 1999.