

SENATE BILL 125

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1999 Regular Session
9lr0806
CF 9lr0998

By: **Senator Stone (Task Force to Examine Maryland's Crime Victims' Rights Laws)**

Introduced and read first time: January 22, 1999

Assigned to: Judicial Proceedings

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,
23 Article - Courts and Judicial Proceedings
24 Section 3-801(a), 3-802, and 3-818
25 Annotated Code of Maryland
26 (1998 Replacement Volume)

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

1

Article 27 - Crimes and Punishments

2 594A.

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

5 (B) In any case, except as provided in [subsection (b)] SUBSECTION (C) OF
6 THIS SECTION, involving a child who has reached 14 years of age but has not reached
7 18 years of age at the time of any alleged offense excluded under the provisions of §
8 3-804(e)(1), (4), or (5) of the Courts and Judicial Proceedings Article, the court
9 exercising jurisdiction may transfer the case to the juvenile court if a waiver is
10 believed to be in the interests of the child or society.

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

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

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

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

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

22 (1) Age of child;

23 (2) Mental and physical condition of child;

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

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

27 (5) The public safety.

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

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

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

- 1 (H) (1) A VICTIM SHALL HAVE A RIGHT TO:
- 2 (I) BE PRESENT AT A WAIVER HEARING AS PROVIDED UNDER § 857
3 OF THIS ARTICLE; AND
- 4 (II) ADDRESS THE COURT BEFORE THE DETERMINATION AS TO
5 WHETHER TO WAIVE JURISDICTION.
- 6 (2) THE COURT SHALL CONSIDER THE STUDY MADE UNDER
7 SUBSECTION (E) OF THIS SECTION, THE VICTIM IMPACT STATEMENT, AND ANY ORAL
8 ADDRESS BY THE VICTIM WHEN DETERMINING WHETHER TO WAIVE JURISDICTION.
- 9 (3) THE VICTIM SHALL BE GIVEN NOTICE OF THE WAIVER HEARING AS
10 PROVIDED UNDER § 770 OF THIS ARTICLE.

11 **Article - Courts and Judicial Proceedings**

12 3-801.

- 13 (a) In this subtitle, the following words have the meanings indicated, unless
14 the context of their use indicates otherwise.
- 15 (t) (1) "Victim" means a person who suffers direct or threatened physical,
16 emotional, or financial harm as a result of a delinquent act.
- 17 (2) "Victim" includes a family member of a minor, [incompetent]
18 DISABLED, or a [homicide] DECEASED victim.
- 19 (3) "Victim" includes, if the victim is not an individual, the victim's agent
20 or designee.

21 3-802.

- 22 (a) The purposes of this subtitle are:
- 23 (1) To ensure that the Juvenile Justice System balances the following
24 objectives for children who have committed delinquent acts:
- 25 (i) Public safety and the protection of the community;
- 26 (ii) Accountability of the child to the victim and the community for
27 offenses committed; and
- 28 (iii) Competency and character development to assist children in
29 becoming responsible and productive members of society;
- 30 (2) To hold parents of children found to be delinquent responsible for the
31 child's behavior and accountable to the victim and the community;

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

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

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

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

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

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

17 3-817.

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

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

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

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

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

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

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

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

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

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

8 (1) Age of the child;

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

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

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

14 (5) The public safety.

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

20 (f) An order waiving jurisdiction is interlocutory.

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

25 3-818.

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

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

33 (c) The report of the study is admissible as evidence at a waiver hearing and
34 at a disposition hearing, but not at an adjudicatory hearing. However, the attorney for
35 each party has the right to inspect the report prior to its presentation to the court, to

1 challenge or impeach its findings and to present appropriate evidence with respect to
2 it.

3 3-820.

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

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

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

12 (ii) Subject to the provisions of paragraph (2) of this subsection,
13 commit the child to the custody or under the guardianship of the Department of
14 Juvenile Justice, a local department of social services, the Department of Health and
15 Mental Hygiene, or a public or licensed private agency on terms that the court
16 considers appropriate to meet the priorities set forth in [subsection (b) of this section]
17 § 3-802 OF THIS SUBTITLE, including designation of the type of facility where the child
18 is to be accommodated, until custody or guardianship is terminated with approval of
19 the court or as required under § 3-825 of this subtitle; or

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

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

28 (3) THE COURT SHALL CONSIDER AN ORAL ADDRESS OR WRITTEN
29 STATEMENT OF A VICTIM IN DETERMINING AN APPROPRIATE DISPOSITION ON A
30 PETITION.

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