

SENATE BILL 353

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2001 Regular Session
11r0771
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By: **Senators Jimeno, Hughes, and Ferguson (Commission on Juvenile
Justice Jurisdiction)**

Introduced and read first time: February 1, 2001

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law - Detained Juvenile Defendants - Transfer of Cases to**
3 **Juvenile Court**

4 FOR the purpose of requiring the court that has criminal jurisdiction over a case
5 involving a child who is alleged to have committed an offense excluded from the
6 jurisdiction of the juvenile court to make a determination as to whether to
7 transfer the case to the juvenile court within a certain time period; requiring
8 that a hearing on a motion requesting that a child be held in a secure juvenile
9 facility pending a transfer determination be held within a certain time period;
10 requiring the court that has criminal jurisdiction to consider a victim impact
11 statement in determining whether to transfer jurisdiction to the juvenile court;
12 authorizing the District Court to order that a certain study be made or that a
13 child be held in a secure juvenile facility under certain circumstances; requiring
14 the District Court to take certain actions if the District Court determines at a
15 bail review hearing that a child shall remain in custody; requiring a circuit court
16 to take certain actions on receipt of a District Court case file indicating that the
17 case involves a detained child; clarifying language; defining a certain term;
18 providing for the application of this Act; and generally relating to procedures
19 involving certain detained juvenile defendants and the transfer of cases from
20 criminal court to juvenile court.

21 BY repealing and reenacting, with amendments,
22 Article - Criminal Procedure
23 Section 4-202
24 Annotated Code of Maryland
25 (As enacted by Chapter ____ (S.B. 1) of the Acts of the General Assembly of 2001)

26 BY adding to
27 Article - Criminal Procedure
28 Section 4-202.1
29 Annotated Code of Maryland
30 (As enacted by Chapter ____ (S.B. 1) of the Acts of the General Assembly of 2001)

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

3 **Article - Criminal Procedure**

4 4-202.

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

6 (2) "Victim" has the meaning stated in § 11-104 of this article.

7 (3) "Victim's representative" has the meaning stated in § 11-104 of this
8 article.

9 (b) Except as provided in subsection (c) of this section, a court exercising
10 CRIMINAL jurisdiction in a case involving a child may transfer the case to the juvenile
11 court if:

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

14 (2) the alleged crime is excluded from the jurisdiction of the juvenile
15 court under § 3-804(e)(1), (4), or (5) of the Courts Article; and

16 (3) the court believes that a transfer of its jurisdiction is in the interest of
17 the child or society.

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

20 (1) the child previously has been transferred to juvenile court and
21 adjudicated delinquent;

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

24 (3) the alleged crime is murder in the first degree and the accused child
25 was 16 or 17 years of age when the alleged crime was committed.

26 (d) In determining whether to transfer jurisdiction under this section, the
27 court shall consider:

28 (1) the age of the child;

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

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

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

1 (5) the public safety.

2 (e) (1) In making a determination under this section, the court may
3 [request] ORDER that a study be made concerning the child, the family of the child,
4 the environment of the child, and other matters concerning the disposition of the case.

5 (2) THE COURT SHALL ORDER THAT A STUDY BE MADE IF REQUIRED
6 UNDER THE PROVISIONS OF § 4-202.1 OF THIS SUBTITLE.

7 (F) THE COURT SHALL MAKE A TRANSFER DETERMINATION WITHIN 10 DAYS
8 AFTER THE DATE OF A TRANSFER HEARING.

9 [(f)] (G) If the court transfers its jurisdiction under this section, the court may
10 order the child held for an adjudicatory hearing under the regular procedure of the
11 juvenile court.

12 [(g)] (H) (1) Pending a determination under this section to transfer its
13 jurisdiction, the court may order a child to be held in a SECURE juvenile facility.

14 (2) A HEARING ON A MOTION REQUESTING THAT A CHILD BE HELD IN A
15 JUVENILE FACILITY PENDING A TRANSFER DETERMINATION SHALL BE HELD NOT
16 LATER THAN THE NEXT COURT DAY, UNLESS EXTENDED BY THE COURT FOR GOOD
17 CAUSE SHOWN.

18 [(h)] (I) (1) A victim or victim's representative shall be given notice of the
19 transfer hearing as provided under § 11-104 of this article.

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

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

25 (iii) The court [may] SHALL consider a victim impact statement in
26 determining whether to transfer jurisdiction under this section.

27 (J) SUBJECT TO THE REQUIREMENTS OF § 4-202.1(B)(2)(III) OF THIS SUBTITLE,
28 AT A BAIL REVIEW OR PRELIMINARY HEARING BEFORE THE DISTRICT COURT
29 INVOLVING A CHILD WHOSE CASE IS ELIGIBLE FOR TRANSFER UNDER SUBSECTIONS
30 (B)(1) AND (2) AND (C) OF THIS SECTION, THE DISTRICT COURT MAY ORDER THAT A
31 STUDY BE MADE UNDER THE PROVISIONS OF SUBSECTION (E) OF THIS SECTION, OR
32 THAT THE CHILD BE HELD IN A SECURE JUVENILE FACILITY UNDER THE
33 PROVISIONS OF SUBSECTION (H) OF THIS SECTION, REGARDLESS OF WHETHER THE
34 DISTRICT COURT HAS CRIMINAL JURISDICTION OVER THE CASE.

1 4-202.1.

2 (A) IN THIS SECTION, "CHILD" MEANS A DEFENDANT WHO IS UNDER THE AGE
3 OF 18 YEARS AND WHOSE CASE IS ELIGIBLE FOR TRANSFER UNDER THE PROVISIONS
4 OF § 4-202(B)(1) AND (2) AND (C) OF THIS SUBTITLE.

5 (B) IF THE DISTRICT COURT DETERMINES AT A BAIL REVIEW HEARING THAT A
6 CHILD SHALL REMAIN IN CUSTODY:

7 (1) IN THE CASE OF A CHILD CHARGED WITH A FELONY THAT IS NOT
8 WITHIN THE JURISDICTION OF THE DISTRICT COURT, THE DISTRICT COURT SHALL:

9 (I) CLEARLY INDICATE ON THE CASE FILE AND IN COMPUTER
10 RECORDS THAT THE CASE INVOLVES A DETAINED CHILD; AND

11 (II) SET A PRELIMINARY HEARING TO BE HELD WITHIN 15 DAYS
12 AFTER THE BAIL REVIEW HEARING; OR

13 (2) IN THE CASE OF A CHILD CHARGED WITH A CRIME IN THE DISTRICT
14 COURT, THE DISTRICT COURT SHALL:

15 (I) CLEARLY INDICATE ON THE CASE FILE AND IN COMPUTER
16 RECORDS THAT THE CASE INVOLVES A DETAINED CHILD;

17 (II) SET A TRANSFER HEARING UNDER § 4-202 OF THIS SUBTITLE
18 TO BE HELD WITHIN 30 DAYS AFTER THE FILING OF THE CHARGING DOCUMENT;

19 (III) ORDER THAT A STUDY BE MADE UNDER § 4-202 OF THIS
20 SUBTITLE; AND

21 (IV) REQUIRE THAT PROMPT NOTICE BE GIVEN TO COUNSEL FOR
22 THE CHILD, OR, IF THE CHILD IS NOT REPRESENTED BY COUNSEL, TO THE OFFICE OF
23 THE PUBLIC DEFENDER.

24 (C) ON RECEIPT OF A DISTRICT COURT CASE FILE THAT INDICATES THAT THE
25 CASE INVOLVES A DETAINED CHILD, A CIRCUIT COURT SHALL:

26 (1) UNLESS PREVIOUSLY SET BY THE DISTRICT COURT UNDER
27 SUBSECTION (B)(2) OF THIS SECTION, SET A TRANSFER HEARING UNDER § 4-202 OF
28 THIS SUBTITLE TO BE HELD WITHIN 30 DAYS AFTER THE FILING OF THE CHARGING
29 DOCUMENT IN THE CIRCUIT COURT;

30 (2) UNLESS PREVIOUSLY ORDERED BY THE DISTRICT COURT UNDER
31 SUBSECTION (B)(2) OF THIS SECTION, ORDER THAT A STUDY BE MADE UNDER § 4-202
32 OF THIS SUBTITLE; AND

33 (3) REQUIRE THAT PROMPT NOTICE BE GIVEN TO COUNSEL FOR THE
34 CHILD, OR, IF THE CHILD IS NOT REPRESENTED BY COUNSEL, TO THE OFFICE OF THE
35 PUBLIC DEFENDER.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act
2 shall be construed prospectively to apply only to offenses committed on or after the
3 effective date of this Act and may not be applied or interpreted to have any effect on
4 or application to offenses that were committed before the effective date of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2001.