

SENATE BILL 428

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2002 Regular Session  
2r1424  
CF 2r1443

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By: ~~Senator Jimeno~~ **Senators Jimeno, Ferguson, Haines, and Hughes**

Introduced and read first time: January 31, 2002

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2002

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Juvenile Law - Transfer of Cases to Juvenile Court**

3 FOR the purpose of specifying that a court exercising criminal jurisdiction in a case  
4 involving a child may transfer the case to the juvenile court before trial or a  
5 certain plea is entered under certain conditions; altering a certain condition  
6 under which a certain case may be transferred to the juvenile court; requiring  
7 the court that has criminal jurisdiction over a case involving a child to make a  
8 determination at sentencing as to whether to transfer the case to the juvenile  
9 court under certain conditions; requiring the court to consider certain factors in  
10 determining whether to transfer jurisdiction; prohibiting the court from  
11 considering transferring jurisdiction to the juvenile court under certain  
12 conditions; requiring that certain persons be given certain notice; requiring the  
13 court to conduct a disposition under certain conditions; requiring that the record  
14 of the hearing and of the disposition be transferred to the juvenile court under  
15 certain conditions; and generally relating to certain juvenile defendants and the  
16 transfer of cases from criminal court to juvenile court.

17 BY repealing and reenacting, with amendments,  
18 Article - Criminal Procedure  
19 Section 4-202  
20 Annotated Code of Maryland  
21 (2001 Volume)

22 BY adding to  
23 Article - Criminal Procedure  
24 Section 4-202.2  
25 Annotated Code of Maryland

1 (2001 Volume)

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

4 **Article - Criminal Procedure**

5 4-202.

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

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

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

10 (b) Except as provided in subsection (c) of this section, a court exercising  
11 criminal jurisdiction in a case involving a child may transfer the case to the juvenile  
12 court BEFORE TRIAL OR BEFORE A PLEA IS ENTERED UNDER MARYLAND RULE 4-242  
13 if:

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

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

18 (3) the court [believes] DETERMINES BY A PREPONDERANCE OF THE  
19 EVIDENCE that a transfer of its jurisdiction is in the interest of the child or society.

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

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

24 (2) the child was convicted in an unrelated case excluded from the  
25 jurisdiction of the juvenile court under § 3-8A-03(d)(1) or (4) of the Courts Article; or

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

28 (d) In determining whether to transfer jurisdiction under SUBSECTION (B) OF  
29 this section, the court shall consider:

30 (1) the age of the child;

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

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

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

2 (5) the public safety.

3 (e) In making a determination under this section, the court may order that a  
4 study be made concerning the child, the family of the child, the environment of the  
5 child, and other matters concerning the disposition of the case.

6 (f) The court shall make a transfer determination within 10 days after the  
7 date of a transfer hearing.

8 (g) If the court transfers its jurisdiction under this section, the court may  
9 order the child held for an adjudicatory hearing under the regular procedure of the  
10 juvenile court.

11 (h) (1) Pending a determination under this section to transfer its  
12 jurisdiction, the court may order a child to be held in a secure juvenile facility.

13 (2) A hearing on a motion requesting that a child be held in a juvenile  
14 facility pending a transfer determination shall be held not later than the next court  
15 day, unless extended by the court for good cause shown.

16 (i) (1) A victim or victim's representative shall be given notice of the  
17 transfer hearing as provided under § 11-104 of this article.

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

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

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

25 (j) At a bail review or preliminary hearing before the District Court involving  
26 a child whose case is eligible for transfer under [subsections (b)(1) and (2) and (c)]  
27 SUBSECTION (B) of this section, the District Court may order that a study be made  
28 under the provisions of subsection (e) of this section, or that the child be held in a  
29 secure juvenile facility under the provisions of subsection (h) of this section,  
30 regardless of whether the District Court has criminal jurisdiction over the case.

31 4-202.2.

32 (A) AT SENTENCING, A COURT EXERCISING CRIMINAL JURISDICTION IN A  
33 CASE INVOLVING A CHILD SHALL DETERMINE WHETHER TO TRANSFER  
34 JURISDICTION TO THE JUVENILE COURT IF:

35 (1) AS A RESULT OF TRIAL OR A PLEA ENTERED UNDER MARYLAND  
36 RULE 4-242, ALL CHARGES THAT EXCLUDED JURISDICTION FROM THE JUVENILE

1 COURT UNDER § 3-8A-03(D)(1) OR (4) OF THE COURTS ARTICLE DO NOT RESULT IN A  
2 FINDING OF GUILTY; AND

3 (2) (I) PRETRIAL TRANSFER WAS PROHIBITED UNDER § 4-202(C)(3) OF  
4 THIS SUBTITLE; OR

5 (II) THE COURT DID NOT TRANSFER JURISDICTION AFTER A  
6 HEARING UNDER § 4-202(B) OF THIS SUBTITLE.

7 (B) IN DETERMINING WHETHER TO TRANSFER JURISDICTION UNDER  
8 SUBSECTION (A) OF THIS SECTION, THE COURT SHALL CONSIDER:

9 (1) THE AGE OF THE CHILD;

10 (2) THE MENTAL AND PHYSICAL CONDITION OF THE CHILD;

11 (3) THE AMENABILITY OF THE CHILD TO TREATMENT IN AN  
12 INSTITUTION, FACILITY, OR PROGRAM AVAILABLE TO DELINQUENT CHILDREN;

13 (4) THE NATURE OF THE CHILD'S ACTS AS PROVEN IN THE TRIAL OR  
14 ADMITTED TO IN A PLEA ENTERED UNDER MARYLAND RULE 4-242; AND

15 (5) PUBLIC SAFETY.

16 (C) THE COURT MAY NOT CONSIDER TRANSFERRING JURISDICTION TO THE  
17 JUVENILE COURT UNDER THIS SECTION IF:

18 (1) UNDER THE TERMS OF A PLEA AGREEMENT ENTERED UNDER  
19 MARYLAND RULE 4-243, THE CHILD AGREES THAT JURISDICTION IS NOT TO BE  
20 TRANSFERRED; OR

21 (2) PRETRIAL TRANSFER WAS PROHIBITED UNDER § 4-202(C)(1) OR (2) OF  
22 THIS SUBTITLE.

23 (D) (1) A VICTIM OR VICTIM'S REPRESENTATIVE SHALL BE GIVEN NOTICE OF  
24 THE TRANSFER HEARING AS PROVIDED UNDER § 11-104 OF THIS ARTICLE.

25 (2) (I) A VICTIM OR VICTIM'S REPRESENTATIVE MAY SUBMIT A VICTIM  
26 IMPACT STATEMENT TO THE COURT AS PROVIDED IN § 11-402 OF THIS ARTICLE.

27 (II) THIS PARAGRAPH DOES NOT PRECLUDE A VICTIM OR VICTIM'S  
28 REPRESENTATIVE WHO HAS NOT FILED A NOTIFICATION REQUEST FORM UNDER §  
29 11-104 OF THIS ARTICLE FROM SUBMITTING A VICTIM IMPACT STATEMENT TO THE  
30 COURT.

31 (III) THE COURT SHALL CONSIDER A VICTIM IMPACT STATEMENT IN  
32 DETERMINING WHETHER TO TRANSFER JURISDICTION UNDER THIS SECTION.

33 (E) (1) IF THE COURT TRANSFERS ITS JURISDICTION TO THE JUVENILE  
34 COURT, THE COURT SHALL CONDUCT A DISPOSITION UNDER THE REGULAR  
35 PROCEDURES OF THE JUVENILE COURT.

1                   (2)       THE RECORD OF THE HEARING AND OF THE DISPOSITION SHALL BE  
2 TRANSFERRED TO THE JUVENILE COURT, SUBJECT TO § 3-8A-27 OF THE COURTS  
3 ARTICLE.

4       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2002.