

HOUSE BILL 266

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2004 Regular Session
4r0967
CF 4r0971

By: **Delegates Sossi, Bartlett, Boteler, Elmore, Haddaway, Hogan, Shank,
Smigiel, Stull, and Walkup**

Introduced and read first time: January 26, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Causes - Repeat Sexual Offender - Child Tried as an Adult**

3 FOR the purpose of terminating, absent a certain order from an adult criminal court,
4 a juvenile court's jurisdiction over a child of at least a certain age who previously
5 has been convicted as an adult of certain sexual offenses or was adjudicated
6 delinquent at or after a certain age for committing certain acts that would be
7 certain sexual offenses if committed by an adult and is subsequently alleged to
8 have committed certain acts that would be certain sexual offenses if committed
9 by an adult as well as other certain charges arising out of the same incident;
10 authorizing an adult criminal court to transfer a case involving a child to the
11 juvenile court under certain circumstances; providing for the application of this
12 Act; and generally relating to trying juveniles as adults for certain repeat sexual
13 offenses.

14 BY repealing and reenacting, with amendments,
15 Article - Courts and Judicial Proceedings
16 Section 3-8A-03(d)
17 Annotated Code of Maryland
18 (2002 Replacement Volume and 2003 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Criminal Procedure
21 Section 4-202
22 Annotated Code of Maryland
23 (2001 Volume and 2003 Supplement)

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

1 **Article - Courts and Judicial Proceedings**

2 3-8A-03.

3 (d) The court does not have jurisdiction over:

4 (1) A child at least 14 years old alleged to have done an act which, if
5 committed by an adult, would be a crime punishable by death or life imprisonment, as
6 well as all other charges against the child arising out of the same incident, unless an
7 order removing the proceeding to the court has been filed under § 4-202 of the
8 Criminal Procedure Article;

9 (2) A child at least 16 years old alleged to have done an act in violation of
10 any provision of the Transportation Article or other traffic law or ordinance, except an
11 act that prescribes a penalty of incarceration;

12 (3) A child at least 16 years old alleged to have done an act in violation of
13 any provision of law, rule, or regulation governing the use or operation of a boat,
14 except an act that prescribes a penalty of incarceration;

15 (4) A child at least 16 years old alleged to have committed any of the
16 following crimes, as well as all other charges against the child arising out of the same
17 incident, unless an order removing the proceeding to the court has been filed under §
18 4-202 of the Criminal Procedure Article:

19 (i) Abduction;

20 (ii) Kidnapping;

21 (iii) Second degree murder;

22 (iv) Manslaughter, except involuntary manslaughter;

23 (v) Second degree rape;

24 (vi) Robbery under § 3-403 of the Criminal Law Article;

25 (vii) Second degree sexual offense under § 3-306(a)(1) of the
26 Criminal Law Article;

27 (viii) Third degree sexual offense under § 3-307(a)(1) of the
28 Criminal Law Article;

29 (ix) A crime in violation of § 5-133, § 5-134, § 5-138, or § 5-203 of
30 the Public Safety Article;

31 (x) Using, wearing, carrying, or transporting a firearm during and
32 in relation to a drug trafficking crime under § 5-621 of the Criminal Law Article;

33 (xi) Use of a firearm under § 5-622 of the Criminal Law Article;

1 (xii) Carjacking or armed carjacking under § 3-405 of the Criminal
2 Law Article;

3 (xiii) Assault in the first degree under § 3-202 of the Criminal Law
4 Article;

5 (xiv) Attempted murder in the second degree under § 2-206 of the
6 Criminal Law Article;

7 (xv) Attempted rape in the second degree under § 3-310 of the
8 Criminal Law Article or attempted sexual offense in the second degree under § 3-312
9 of the Criminal Law Article;

10 (xvi) Attempted robbery under § 3-403 of the Criminal Law Article;
11 or

12 (xvii) A violation of § 4-203, § 4-204, § 4-404, or § 4-405 of the
13 Criminal Law Article;

14 (5) A child who previously has been convicted as an adult of a felony and
15 is subsequently alleged to have committed an act that would be a felony if committed
16 by an adult, unless an order removing the proceeding to the court has been filed
17 under § 4-202 of the Criminal Procedure Article; [or]

18 (6) A peace order proceeding in which the victim, as defined in §
19 3-8A-01(w)(1)(ii) of this subtitle, is a person eligible for relief, as defined in § 4-501
20 of the Family Law Article; OR

21 (7) UNLESS AN ORDER REMOVING THE PROCEEDING TO THE COURT HAS
22 BEEN FILED UNDER § 4-202 OF THE CRIMINAL PROCEDURE ARTICLE, A CHILD AT
23 LEAST 14 YEARS OLD, AS WELL AS ALL OTHER CHARGES AGAINST THE CHILD
24 ARISING OUT OF THE SAME INCIDENT, IF THE CHILD:

25 (I) 1. PREVIOUSLY HAS BEEN CONVICTED AS AN ADULT OF A
26 VIOLATION OF § 3-303, § 3-304, § 3-305, § 3-306, OR § 3-307 OF THE CRIMINAL LAW
27 ARTICLE; OR

28 2. WAS ADJUDICATED DELINQUENT WHEN THE CHILD WAS
29 AT LEAST 14 YEARS OLD FOR COMMITTING AN ACT THAT WOULD BE A VIOLATION OF
30 § 3-303, § 3-304, § 3-305, § 3-306, OR § 3-307 OF THE CRIMINAL LAW ARTICLE IF
31 COMMITTED BY AN ADULT; AND

32 (II) IS SUBSEQUENTLY ALLEGED TO HAVE COMMITTED AN ACT
33 THAT WOULD BE A VIOLATION OF § 3-303, § 3-304, § 3-305, § 3-306, OR § 3-307 OF THE
34 CRIMINAL LAW ARTICLE IF COMMITTED BY AN ADULT.

Article - Criminal Procedure

1

2 4-202.

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

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

5 (3) "Victim's representative" has the meaning stated in § 11-104 of this
6 article.7 (b) Except as provided in subsection (c) of this section, a court exercising
8 criminal jurisdiction in a case involving a child may transfer the case to the juvenile
9 court before trial or before a plea is entered under Maryland Rule 4-242 if:10 (1) the accused child was at least 14 but not 18 years of age when the
11 alleged crime was committed;12 (2) the alleged crime is excluded from the jurisdiction of the juvenile
13 court under § 3-8A-03(d)(1), (4), [or] (5), OR (7) of the Courts Article; and14 (3) the court determines by a preponderance of the evidence that a
15 transfer of its jurisdiction is in the interest of the child or society.16 (c) The court may not transfer a case to the juvenile court under subsection (b)
17 of this section if:18 (1) the child previously has been transferred to juvenile court and
19 adjudicated delinquent;20 (2) the child was convicted in an unrelated case excluded from the
21 jurisdiction of the juvenile court under § 3-8A-03(d)(1) or (4) of the Courts Article; or22 (3) the alleged crime is murder in the first degree and the accused child
23 was 16 or 17 years of age when the alleged crime was committed.24 (d) In determining whether to transfer jurisdiction under subsection (b) of this
25 section, the court shall consider:

26 (1) the age of the child;

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

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

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

31 (5) the public safety.

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

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

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

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

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

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

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

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

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

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

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
30 construed to apply only prospectively and may not be applied or interpreted to have
31 any effect on or application to any offense or act committed before the effective date of
32 this Act.

33 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
34 effect October 1, 2004.