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By: **Senator Pipkin**

Introduced and read first time: February 6, 2004

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Causes - Repeat Juvenile Sex Offender - Adult Trial and**  
3 **Registration Requirement**

4 FOR the purpose of terminating, absent a certain order from an adult criminal court,  
5 a juvenile court's jurisdiction over a child who previously has been convicted as  
6 an adult of certain sexual offenses or was adjudicated delinquent for committing  
7 certain acts that would be certain sexual offenses if committed by an adult on at  
8 least two previous occasions and is subsequently alleged to have committed  
9 certain acts that would be certain sexual offenses if committed by an adult;  
10 authorizing an adult criminal court to transfer a case involving a child to the  
11 juvenile court under certain circumstances; requiring that a child convicted of  
12 certain sexual offenses or adjudicated delinquent for certain acts that would be  
13 certain sexual offenses if committed by an adult a certain number of times to  
14 register as a sex offender; providing for the application of this Act; and generally  
15 relating to trying juveniles as adults for certain repeat sexual offenses and sex  
16 offender registration.

17 BY repealing and reenacting, with amendments,  
18 Article - Courts and Judicial Proceedings  
19 Section 3-8A-03(d)  
20 Annotated Code of Maryland  
21 (2002 Replacement Volume and 2003 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article - Criminal Procedure  
24 Section 4-202 and 11-701(d)  
25 Annotated Code of Maryland  
26 (2001 Volume and 2003 Supplement)

27 BY repealing and reenacting, without amendments,  
28 Article - Criminal Procedure  
29 Section 11-704  
30 Annotated Code of Maryland

1 (2001 Volume and 2003 Supplement)

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

4 **Article - Courts and Judicial Proceedings**

5 3-8A-03.

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

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

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

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

18 (4) A child at least 16 years old alleged to have committed any of the  
19 following crimes, as well as all other charges against the child arising out of the same  
20 incident, unless an order removing the proceeding to the court has been filed under §  
21 4-202 of the Criminal Procedure Article:

22 (i) Abduction;

23 (ii) Kidnapping;

24 (iii) Second degree murder;

25 (iv) Manslaughter, except involuntary manslaughter;

26 (v) Second degree rape;

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (6) A peace order proceeding in which the victim, as defined in §  
22 3-8A-01(w)(1)(ii) of this subtitle, is a person eligible for relief, as defined in § 4-501  
23 of the Family Law Article; OR

24 (7) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND  
25 UNLESS AN ORDER REMOVING THE PROCEEDING TO THE COURT HAS BEEN FILED  
26 UNDER § 4-202 OF THE CRIMINAL PROCEDURE ARTICLE, A CHILD WHO:

27 (I) 1. HAS BEEN CONVICTED AS AN ADULT ON AT LEAST TWO  
28 PREVIOUS OCCASIONS OF VIOLATIONS OF § 3-303, § 3-304, § 3-305, § 3-306, OR § 3-307  
29 OF THE CRIMINAL LAW ARTICLE;

30 2. HAS BEEN ADJUDICATED DELINQUENT ON AT LEAST TWO  
31 PREVIOUS OCCASIONS FOR COMMITTING ACTS THAT WOULD BE VIOLATIONS OF §  
32 3-303, § 3-304, § 3-305, § 3-306, OR § 3-307 OF THE CRIMINAL LAW ARTICLE IF  
33 COMMITTED BY AN ADULT; OR

34 3. HAS PREVIOUSLY BEEN CONVICTED AS AN ADULT OF A  
35 VIOLATION OF § 3-303, § 3-304, § 3-305, § 3-306, OR § 3-307 OF THE CRIMINAL LAW  
36 ARTICLE AND HAS PREVIOUSLY BEEN ADJUDICATED DELINQUENT FOR COMMITTING

1 AN ACT THAT WOULD BE A VIOLATION OF § 3-303, § 3-304, § 3-305, § 3-306, OR § 3-307  
2 OF THE CRIMINAL LAW ARTICLE IF COMMITTED BY AN ADULT; AND

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

6 **Article - Criminal Procedure**

7 4-202.

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

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

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

12 (b) Except as provided in subsection (c) of this section, a court exercising  
13 criminal jurisdiction in a case involving a child may transfer the case to the juvenile  
14 court before trial or before a plea is entered under Maryland Rule 4-242 if:

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

17 (2) the alleged crime is excluded from the jurisdiction of the juvenile  
18 court under § 3-8A-03(d)(1), (4), [or] (5), OR (7) of the Courts Article; and

19 (3) the court determines by a preponderance of the evidence that a  
20 transfer of its jurisdiction is in the interest of the child or society.

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

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

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

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

29 (d) In determining whether to transfer jurisdiction under subsection (b) of this  
30 section, the court shall consider:

31 (1) the age of the child;

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

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

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

4 (5) the public safety.

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

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

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

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

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

18 (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 shall consider a victim impact statement in  
26 determining whether to transfer jurisdiction under this section.

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

33 11-701.

34 (d) "Offender" means a person who is ordered by a court to register under this  
35 subtitle and who:

36 (1) has been convicted of violating § 3-503 of the Criminal Law Article;

1 (2) has been convicted of violating § 3-502 of the Criminal Law Article or  
2 the fourth degree sexual offense statute under § 3-308 of the Criminal Law Article, if  
3 the victim is under the age of 18 years;

4 (3) has been convicted of the common law crime of false imprisonment, if  
5 the victim is under the age of 18 years and the person is not the victim's parent;

6 (4) has been convicted of a crime that involves soliciting a person under  
7 the age of 18 years to engage in sexual conduct;

8 (5) has been convicted of violating the child pornography statute under §  
9 11-207 of the Criminal Law Article;

10 (6) has been convicted of violating any of the prostitution and related  
11 crimes statutes under Title 11, Subtitle 3 of the Criminal Law Article if the intended  
12 prostitute or victim is under the age of 18 years;

13 (7) has been convicted of a crime that involves conduct that by its nature  
14 is a sexual offense against a person under the age of 18 years;

15 (8) has been convicted of an attempt to commit a crime listed in items (1)  
16 through (7) of this subsection; [or]

17 (9) has been convicted in another state or in a federal, military, or Native  
18 American tribal court of a crime that, if committed in this State, would constitute one  
19 of the crimes listed in items (1) through (8) of this subsection; OR

20 (10) IS A MINOR WHO HAS BEEN:

21 (I) CONVICTED AS AN ADULT OF A THIRD OR SUBSEQUENT  
22 VIOLATION OF § 3-303, § 3-304, § 3-305, § 3-306, OR § 3-307 OF THE CRIMINAL LAW  
23 ARTICLE;

24 (II) ADJUDICATED DELINQUENT FOR COMMITTING ACTS THAT  
25 WOULD BE A THIRD OR SUBSEQUENT VIOLATION OF § 3-303, § 3-304, § 3-305, § 3-306,  
26 OR § 3-307 OF THE CRIMINAL LAW ARTICLE IF COMMITTED BY AN ADULT; OR

27 (III) ON AT LEAST THREE SEPARATE OCCASIONS, EITHER  
28 CONVICTED OR ADJUDICATED DELINQUENT IN ANY COMBINATION OF VIOLATIONS  
29 DESCRIBED IN SUBPARAGRAPHS (I) OR (II) OF THIS PARAGRAPH.

30 11-704.

31 (a) A person shall register with the person's supervising authority if the  
32 person is:

33 (1) a child sexual offender;

34 (2) an offender;

35 (3) a sexually violent offender;

1 (4) a sexually violent predator;

2 (5) a child sexual offender who, before moving into this State, was  
3 required to register in another state or by a federal, military, or Native American  
4 tribal court for a crime that occurred before October 1, 1995;

5 (6) an offender, sexually violent offender, or sexually violent predator  
6 who, before moving into this State, was required to register in another state or by a  
7 federal, military, or Native American tribal court for a crime that occurred before July  
8 1, 1997; or

9 (7) a child sexual offender, offender, sexually violent offender, or sexually  
10 violent predator who is required to register in another state, who is not a resident of  
11 this State, and who enters this State:

12 (i) to carry on employment; or

13 (ii) to attend a public or private educational institution, including a  
14 secondary school, trade or professional institution, or institution of higher education,  
15 as a full-time or part-time student.

16 (b) Notwithstanding any other provision of law, a person is no longer subject  
17 to registration under this subtitle if:

18 (1) the underlying conviction requiring registration is reversed, vacated,  
19 or set aside; or

20 (2) the registrant is pardoned for the underlying conviction.

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

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