
By: **Chair, Judiciary Committee (By Request - Departmental - Juvenile Services)**

Introduced and read first time: February 4, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Holding in a Juvenile Facility - Prohibitions**

3 FOR the purpose of providing that once a court exercising criminal jurisdiction makes
4 a determination, with respect to a juvenile defendant, not to transfer its
5 jurisdiction to the juvenile court the juvenile defendant may not be held in a
6 juvenile facility under certain circumstances; and generally relating to the
7 detention of juvenile defendants charged with the commission of crimes.

8 BY repealing and reenacting, with amendments,
9 Article - Criminal Procedure
10 Section 4-202
11 Annotated Code of Maryland
12 (2001 Volume and 2004 Supplement)

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

15 **Article - Criminal Procedure**

16 4-202.

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

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

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

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

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

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

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

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

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

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

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

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

15 (1) the age of the child;

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

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

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

20 (5) the public safety.

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

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

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

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

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

1 (3) ONCE THE COURT HAS MADE A DETERMINATION NOT TO TRANSFER
2 ITS JURISDICTION TO THE JUVENILE COURT, THE CHILD MAY NOT BE HELD IN A
3 JUVENILE FACILITY.

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

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

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

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

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

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
20 effect October 1, 2005.