

HOUSE BILL 1093

E3, E2

9lr2490

By: **Delegates McComas, Bartlett, Boteler, Eckardt, Elmore, Frank, Haddaway, Impallaria, Sossi, and Stocksdales**

Introduced and read first time: February 13, 2009

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Causes – Obtaining Testimony of a Material Witness – Procedures**

3 FOR the purpose of establishing certain procedures for obtaining the testimony of a
4 material adult or juvenile witness in a juvenile court proceeding under certain
5 circumstances; requiring that a court promptly conduct a hearing and make
6 certain determinations when a certain law enforcement officer takes an adult or
7 a juvenile into custody as a material witness without a certain court order for
8 body attachment; authorizing a court, if the court makes certain
9 determinations, to set bond for an adult witness and, if the adult is not able to
10 post bond, commit the adult to jail for a certain period of time; providing that, if
11 the witness is a juvenile and the court makes certain determinations, the court
12 may place the witness in certain secure detention for a certain period of time;
13 providing for the release of an adult or a juvenile material witness after a
14 certain period of time unless a certain application of continued detention is filed
15 with the court and the court, after a certain hearing, orders continued detention
16 of the witness; establishing certain procedures for the court to order body
17 attachment of a material witness on the application of a party to the proceeding;
18 requiring the court to hold a hearing and make certain determinations for the
19 body attachment of an adult witness or for a juvenile witness; providing a
20 certain period of time for the detention of the witness unless the court, after a
21 hearing, orders continued detention; authorizing the court to order testimony of
22 a material witness to be taken by deposition and the witness released;
23 establishing conditions for posting a certain bond for an adult witness; listing
24 certain information that must be contained in an application for continued
25 detention or for body attachment; prohibiting the execution of a body
26 attachment on a juvenile witness except under certain circumstances; providing
27 for notification of the detention of a material juvenile witness to the juvenile's
28 parent, guardian, or custodian; providing for the application of this Act; defining
29 certain terms; and generally relating to procedures for obtaining the testimony
30 of a material witness in a juvenile court proceeding.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, without amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–01(a), (c), (j), and (l)
Annotated Code of Maryland
(2006 Replacement Volume and 2008 Supplement)

BY adding to
Article – Courts and Judicial Proceedings
Section 3–8A–35
Annotated Code of Maryland
(2006 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, without amendments,
Article – Public Safety
Section 5–101(a), (c), (n), and (p)
Annotated Code of Maryland
(2003 Volume and 2008 Supplement)

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

Article – Courts and Judicial Proceedings

3–8A–01.

(a) In this subtitle the following words have the meanings indicated, unless
the context of their use indicates otherwise.

(c) “Adult” means an individual who is at least 18 years old.

(j) “Court” means the circuit court for a county sitting as the juvenile court.

(l) “Delinquent act” means an act which would be a crime if committed by an
adult.

3–8A–35.

(A) IN THIS SECTION, “JUVENILE WITNESS” MEANS A WITNESS WHO IS
BETWEEN THE AGES OF 14 AND 18 YEARS OLD.

(B) THIS SECTION APPLIES TO A PROCEEDING FILED UNDER THIS
SUBTITLE IN WHICH:

(1) THE UNDERLYING DELINQUENT ACT:

1 (I) IS A CRIME OF VIOLENCE AS DEFINED IN § 5-101 OF THE
2 PUBLIC SAFETY ARTICLE; OR

3 (II) INVOLVES A REGULATED FIREARM OR A HANDGUN, AS
4 DEFINED IN § 5-101 OF THE PUBLIC SAFETY ARTICLE; AND

5 (2) THE MATERIAL WITNESS IS 14 YEARS OF AGE OR OLDER.

6 (C) (1) WHEN A LAW ENFORCEMENT OFFICER TAKES A PERSON INTO
7 CUSTODY AS A MATERIAL WITNESS WITHOUT AN ORDER OF COURT FOR BODY
8 ATTACHMENT, THE PERSON SHALL BE TAKEN PROMPTLY BEFORE THE COURT IN
9 THE COUNTY IN WHICH THE PROCEEDING IS PENDING OR WHERE THE WITNESS
10 IS TAKEN INTO CUSTODY FOR A HEARING.

11 (2) IF THE COURT DETERMINES, AFTER A HEARING, THAT THE
12 TESTIMONY OF THE WITNESS IS MATERIAL TO THE PROCEEDING AND THE
13 COURT MAY NOT BE ABLE TO SECURE THE ATTENDANCE OF THE WITNESS BY
14 ISSUING A SUBPOENA, THE COURT MAY:

15 (I) FOR AN ADULT WITNESS, SET A REASONABLE BOND TO
16 ENSURE THE ATTENDANCE OF THE WITNESS AT THE PROCEEDING AND, IF THE
17 WITNESS IS UNABLE TO POST THE BOND, COMMIT THE WITNESS TO JAIL; OR

18 (II) FOR A JUVENILE WITNESS, PLACE THE WITNESS IN
19 SECURE DETENTION OR ORDER AN ALTERNATIVE TO DETENTION THAT WILL
20 REASONABLY SECURE THE ATTENDANCE OF THE JUVENILE WITNESS AT THE
21 PROCEEDING.

22 (3) AFTER 7 DAYS, AN ADULT OR A JUVENILE WITNESS
23 COMMITTED OR DETAINED IN ACCORDANCE WITH PARAGRAPH (2) OF THIS
24 SUBSECTION SHALL BE RELEASED UNLESS AN APPLICATION FOR CONTINUED
25 DETENTION IS FILED IN ACCORDANCE WITH THIS SECTION AND THE COURT,
26 AFTER A HEARING, ORDERS THAT THE WITNESS CONTINUE TO BE DETAINED.

27 (D) (1) (I) ON APPLICATION FILED BY A PARTY IN ACCORDANCE
28 WITH THIS SUBSECTION, THE COURT MAY ORDER THE ISSUANCE OF A BODY
29 ATTACHMENT OF AN ADULT WITNESS.

30 (II) IF THE COURT IS SATISFIED THAT THE TESTIMONY OF
31 THE WITNESS IS MATERIAL TO THE PROCEEDING AND THE COURT MAY NOT BE
32 ABLE TO SECURE THE ATTENDANCE OF THE WITNESS BY ISSUING A SUBPOENA,
33 THE COURT MAY REQUIRE THE WITNESS TO POST A BOND IN AN AMOUNT FIXED
34 BY THE COURT THAT WILL ENSURE THE ATTENDANCE OF THE WITNESS.

1 (2) (I) A LAW ENFORCEMENT OFFICER SHALL EXECUTE THE
2 ORDER OF BODY ATTACHMENT BY TAKING THE ADULT WITNESS INTO CUSTODY
3 AND THEN BEFORE THE COURT IN THE COUNTY WHERE THE PROCEEDING IS
4 PENDING OR WHERE THE ADULT WITNESS IS TAKEN INTO CUSTODY TO POST
5 BOND IN THE CIRCUIT COURT.

6 (II) A WITNESS WHO IS UNABLE TO POST THE PRESCRIBED
7 BOND SHALL BE COMMITTED TO JAIL.

8 (III) WITHIN 3 DAYS AFTER THE WITNESS IS COMMITTED TO
9 JAIL, THE COURT SHALL HOLD A HEARING TO CONSIDER ANY MATTER
10 CONTAINED IN THE APPLICATION FOR ISSUANCE OF A BODY ATTACHMENT
11 FILED UNDER THIS SUBSECTION OR RELATED TO THE CONDITIONS OF RELEASE
12 IMPOSED ON THE WITNESS IN ACCORDANCE WITH SUBSECTION (G) OF THIS
13 SECTION.

14 (E) (1) (I) ON APPLICATION FILED BY A PARTY IN ACCORDANCE
15 WITH THIS SUBSECTION, THE COURT MAY ORDER THE ISSUANCE OF A BODY
16 ATTACHMENT OF A JUVENILE WITNESS AFTER A HEARING.

17 (II) AT THE HEARING, IF THE COURT DETERMINES THAT
18 THE TESTIMONY OF THE JUVENILE WITNESS IS MATERIAL TO THE PROCEEDING
19 AND THE COURT MAY NOT BE ABLE TO SECURE THE ATTENDANCE OF THE
20 WITNESS BY ISSUING A SUBPOENA, THE COURT MAY PLACE THE JUVENILE
21 WITNESS IN SECURE DETENTION OR AN ALTERNATIVE TO DETENTION THAT
22 WILL REASONABLY SECURE THE APPEARANCE OF THE JUVENILE WITNESS AT
23 THE PROCEEDING.

24 (2) WITHIN 3 DAYS AFTER THE JUVENILE WITNESS IS DETAINED,
25 THE JUVENILE SHALL BE RELEASED UNLESS THE COURT ORDERS FURTHER
26 DETENTION AFTER A HEARING HELD ON AN APPLICATION FOR CONTINUED
27 DETENTION FILED IN ACCORDANCE WITH THIS SUBSECTION.

28 (F) THE COURT MAY ORDER THE TESTIMONY OF A MATERIAL ADULT
29 WITNESS WHO IS COMMITTED TO JAIL UNDER THIS SECTION OR A MATERIAL
30 JUVENILE WITNESS WHO IS DETAINED UNDER THIS SECTION BE TAKEN BY
31 DEPOSITION AND MAY ORDER THE WITNESS RELEASED AFTER ITS COMPLETION.

32 (G) (1) THE CONDITIONS OF A BOND POSTED IN ACCORDANCE WITH
33 THIS SECTION SHALL BE THAT THE ADULT WITNESS PERSONALLY APPEAR AS
34 REQUIRED TO GIVE EVIDENCE IN ANY COURT:

35 (I) IN WHICH CHARGES ARE PENDING AGAINST A NAMED
36 JUVENILE IN A PARTICULAR PROCEEDING;

1 (II) IN WHICH A CHARGING DOCUMENT MAY BE FILED
2 BASED ON THE SAME ACTS OR TRANSACTIONS; OR

3 (III) TO WHICH THE PROCEEDING MAY BE TRANSFERRED OR
4 REMOVED.

5 (2) THE BOND SHALL CONTINUE IN EFFECT UNTIL DISCHARGED
6 BY THE COURT HAVING JURISDICTION OF THE PROCEEDING.

7 (H) AN APPLICATION FOR CONTINUED DETENTION UNDER SUBSECTION
8 (C) OF THIS SECTION OR FOR A BODY ATTACHMENT UNDER SUBSECTION (D) OR
9 (E) OF THIS SECTION SHALL BE VERIFIED AND CONTAIN THE FOLLOWING
10 INFORMATION:

11 (1) THE NAME AND PRESENT ADDRESS OF THE WITNESS;

12 (2) THE DESIGNATION OF THE PROCEEDING FOR WHICH THE
13 TESTIMONY OF THE WITNESS IS REQUIRED;

14 (3) A SUMMARY OF THE INFORMATION OR TESTIMONY OF WHICH
15 THE MOVING PARTY BELIEVES THE WITNESS HAS KNOWLEDGE;

16 (4) THE MATERIALITY OF THE EXPECTED TESTIMONY OF THE
17 WITNESS;

18 (5) FOR AN ADULT WITNESS, THE REASON FOR REQUIRING A
19 BOND OR INCARCERATION TO ENSURE THE ATTENDANCE OF THE WITNESS; AND

20 (6) FOR A JUVENILE WITNESS, THE REASON FOR REQUIRING
21 DETENTION OR AN ALTERNATIVE TO DETENTION TO ENSURE THE ATTENDANCE
22 OF THE WITNESS.

23 (I) (1) A LAW ENFORCEMENT OFFICER MAY EXECUTE A BODY
24 ATTACHMENT ON A JUVENILE WITNESS IN OR ABOUT A PUBLIC SCHOOL ONLY IF
25 THE UNDERLYING CHARGE INVOLVES DEATH, SERIOUS BODILY INJURY, OR AN
26 ALLEGED RAPE OR SEXUAL OFFENSE IN THE FIRST DEGREE.

27 (2) A LAW ENFORCEMENT OFFICER EXECUTING A BODY
28 ATTACHMENT ON A JUVENILE WITNESS UNDER PARAGRAPH (1) OF THIS
29 SUBSECTION FIRST SHALL ATTEMPT TO TAKE THE JUVENILE INTO CUSTODY IN
30 THE OFFICE OF THE PRINCIPAL OR OTHER SCHOOL ADMINISTRATOR BEFORE
31 TAKING THE JUVENILE INTO CUSTODY ELSEWHERE IN OR ABOUT THE SCHOOL.

(J) (1) A LAW ENFORCEMENT OFFICER WHO TAKES A JUVENILE WITNESS INTO CUSTODY SHALL IMMEDIATELY NOTIFY, OR CAUSE TO BE NOTIFIED, THE JUVENILE WITNESS' PARENT, GUARDIAN, OR CUSTODIAN.

(2) IF THE LAW ENFORCEMENT OFFICER IS UNABLE TO NOTIFY OR CAUSE TO BE NOTIFIED THE PARENT, GUARDIAN, OR CUSTODIAN AS REQUIRED UNDER THIS SECTION, THE LAW ENFORCEMENT OFFICER SHALL DOCUMENT IN WRITING ALL ATTEMPTS MADE TO NOTIFY THE PARENT, GUARDIAN, OR CUSTODIAN.

Article – Public Safety

5–101.

(a) In this subtitle the following words have the meanings indicated.

(c) “Crime of violence” means:

- (1) abduction;
- (2) arson in the first degree;
- (3) assault in the first or second degree;
- (4) burglary in the first, second, or third degree;
- (5) carjacking and armed carjacking;
- (6) escape in the first degree;
- (7) kidnapping;
- (8) voluntary manslaughter;
- (9) maiming as previously proscribed under former Article 27, § 386 of the Code;
- (10) mayhem as previously proscribed under former Article 27, § 384 of the Code;
- (11) murder in the first or second degree;
- (12) rape in the first or second degree;
- (13) robbery;
- (14) robbery with a dangerous weapon;

(15) sexual offense in the first, second, or third degree;

(16) an attempt to commit any of the crimes listed in items (1) through (15) of this subsection; or

(17) assault with intent to commit any of the crimes listed in items (1) through (15) of this subsection or a crime punishable by imprisonment for more than 1 year.

(n) (1) “Handgun” means a firearm with a barrel less than 16 inches in length.

(2) “Handgun” includes signal, starter, and blank pistols.

(p) “Regulated firearm” means:

(1) a handgun; or

(2) a firearm that is any of the following specific assault weapons or their copies, regardless of which company produced and manufactured that assault weapon:

(i) American Arms Spectre da Semiautomatic carbine;

(ii) AK-47 in all forms;

(iii) Algimec AGM-1 type semi-auto;

(iv) AR 100 type semi-auto;

(v) AR 180 type semi-auto;

- (vi) Argentine L.S.R. semi-auto;

(vii) Australian Automatic Arms SAR type semi-auto;

(viii) Auto-Ordnance Thompson M1 and 1927 semi-automatics;

(ix) Barrett light .50 cal. semi-auto;

(x) Beretta AR70 type semi-auto;

(xi) Bushmaster semi-auto rifle;

(xii) Calico models M-100 and M-900;

(xiii) CIS SR 88 type semi-auto;

- 1 (xiv) Claridge HI TEC C-9 carbines;
- 2 (xv) Colt AR-15, CAR-15, and all imitations except Colt AR-15
3 Sporter H-BAR rifle;
- 4 (xvi) Daewoo MAX 1 and MAX 2, aka AR 100, 110C, K-1, and
5 K-2;
- 6 (xvii) Dragunov Chinese made semi-auto;
- 7 (xviii) Famas semi-auto (.223 caliber);
- 8 (xix) Feather AT-9 semi-auto;
- 9 (xx) FN LAR and FN FAL assault rifle;
- 10 (xxi) FNC semi-auto type carbine;
- 11 (xxii) F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun;
- 12 (xxiii) Steyr-AUG-SA semi-auto;
- 13 (xxiv) Galil models AR and ARM semi-auto;
- 14 (xxv) Heckler and Koch HK-91 A3, HK-93 A2, HK-94 A2 and A3;
- 15 (xxvi) Holmes model 88 shotgun;
- 16 (xxvii) Avtomat Kalashnikov semiautomatic rifle in any format;
- 17 (xxviii) Manchester Arms "Commando" MK-45, MK-9;
- 18 (xxix) Mandell TAC-1 semi-auto carbine;
- 19 (xxx) Mossberg model 500 Bullpup assault shotgun;
- 20 (xxxi) Sterling Mark 6;
- 21 (xxxii) P.A.W.S. carbine;
- 22 (xxxiii) Ruger mini-14 folding stock model (.223 caliber);
- 23 (xxxiv) SIG 550/551 assault rifle (.223 caliber);
- 24 (xxxv) SKS with detachable magazine;
- 25 (xxxvi) AP-74 Commando type semi-auto;

1 (xxxvii) Springfield Armory BM-59, SAR-48, G3, SAR-3,
2 M-21 sniper rifle, M1A, excluding the M1 Garand;

3 (xxxviii) Street sweeper assault type shotgun;

4 (xxxix) Striker 12 assault shotgun in all formats;

5 (xl) Unique F11 semi-auto type;

6 (xli) Daewoo USAS 12 semi-auto shotgun;

7 (xlii) UZI 9mm carbine or rifle;

8 (xliii) Valmet M-76 and M-78 semi-auto;

9 (xliv) Weaver Arms "Nighthawk" semi-auto carbine; or

10 (xlv) Wilkinson Arms 9mm semi-auto "Terry".

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2009.