

HOUSE BILL 1010

E3, E2

01r0623

By: **Delegates Conaway, Vallario, Anderson, Dumais, Glenn, Kelly, Ramirez, and Robinson**

Introduced and read first time: February 15, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Transfer of Case at Sentencing – Expungement of Criminal**
3 **Charge**

4 FOR the purpose of establishing that, if a court exercising criminal jurisdiction in a
5 case involving a child transfers its jurisdiction to the juvenile court at
6 sentencing under a certain provision of law, the court shall enter a written
7 order transferring its jurisdiction and ordering that the child be subject to the
8 jurisdiction and procedures of the juvenile court; repealing a provision
9 concerning the transfer of a certain record to the juvenile court; authorizing the
10 Court of Appeals to adopt certain rules; authorizing a person to file, and
11 requiring a court to grant, a petition for expungement of a criminal charge
12 transferred to the juvenile court under a certain provision of law and all court
13 records related to that charge; repealing a certain obsolete definition; making a
14 certain clarifying change; and generally relating to the transfer of certain cases
15 to the juvenile court at sentencing and the expungement of certain criminal
16 charges.

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Procedure
19 Section 4–202.2 and 10–106
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2009 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article – Criminal Procedure
24 Section 10–101(c)
25 Annotated Code of Maryland
26 (2008 Replacement Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

Article – Criminal Procedure

4–202.2.

(a) At sentencing, a court exercising criminal jurisdiction in a case involving a child shall determine whether to transfer jurisdiction to the juvenile court if:

(1) as a result of trial or a plea entered under Maryland Rule 4–242, all charges that excluded jurisdiction from the juvenile court under § 3–8A–03(d)(1) or (4) of the Courts Article do not result in a finding of guilty; and

(2) (i) pretrial transfer was prohibited under § 4–202(c)(3) of this subtitle; or

(ii) the court did not transfer jurisdiction after a hearing under § 4–202(b) of this subtitle.

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

(1) the age of the child;

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

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

(4) the nature of the child’s acts as proven in the trial or admitted to in a plea entered under Maryland Rule 4–242; and

(5) public safety.

(c) The court may not consider transferring jurisdiction to the juvenile court under this section if:

(1) under the terms of a plea agreement entered under Maryland Rule 4–243, the child agrees that jurisdiction is not to be transferred; or

(2) pretrial transfer was prohibited under § 4–202(c)(1) or (2) of this subtitle.

(d) (1) A victim or victim’s representative shall be given notice of the transfer hearing as provided under § 11–104 of this article.

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

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

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

(e) [(1)] If the court transfers its jurisdiction to the juvenile court[.]:

(1) THE COURT SHALL ENTER A WRITTEN ORDER TRANSFERRING ITS JURISDICTION AND ORDERING THAT THE CHILD BE SUBJECT TO THE JURISDICTION AND PROCEDURES OF THE JUVENILE COURT;

(2) the JUVENILE court shall conduct a disposition under the regular procedures of the juvenile court[.]; AND

[(2) The record of the hearing and of the disposition shall be transferred to the juvenile court, subject to § 3-8A-27 of the Courts Article.]

(3) THE COURT OF APPEALS MAY ADOPT RULES TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION.

10-101.

(c) (1) "Court record" means an official record of a court that the clerk of a court or other court personnel keeps about:

(i) a criminal proceeding; or

(ii) any other proceeding, except a juvenile proceeding, concerning a civil offense or infraction enacted under State or local law as a substitute for a criminal charge.

(2) "Court record" includes:

(i) a record of a violation of the Transportation Article for which a term of imprisonment may be imposed; and

(ii) an index, docket entry, charging document, pleading, memorandum, transcription of proceedings, electronic recording, order, and judgment.

10-106.

1 [(a) In this section, “delinquency petition” means a petition filed under §
2 3–8A–10 of the Courts Article alleging that a child is a delinquent child.

3 (b)] A person may file, and a court shall grant, a petition for expungement of
4 a criminal charge transferred to the juvenile court under § 4–202 **OR § 4–202.2** of this
5 article **AND ALL COURT RECORDS RELATED TO THAT CHARGE.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2010.