

SENATE BILL 678

E2

2lr2686
CF 2lr1912

By: **Senator Forehand**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement of Criminal Charge Transferred to**
3 **Juvenile Court**

4 FOR the purpose of altering provisions relating to the expungement of certain criminal
5 records by authorizing a person to file, and requiring a court to grant, a petition
6 for expungement of a criminal charge transferred to the juvenile court under a
7 certain provision of law; repealing a certain obsolete definition; and generally
8 relating to the expungement of certain criminal charges transferred to the
9 juvenile court.

10 BY repealing and reenacting, without amendments,
11 Article – Criminal Procedure
12 Section 4–202 and 4–202.2
13 Annotated Code of Maryland
14 (2008 Replacement Volume and 2011 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Criminal Procedure
17 Section 10–106
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2011 Supplement)

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

22 **Article – Criminal Procedure**

23 4–202.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

23 (1) the age of the child;

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

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

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

28 (5) the public safety.

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

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

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

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

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

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

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

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

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

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

26 4-202.2.

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

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

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

1 (ii) the court did not transfer jurisdiction after a hearing under
2 § 4–202(b) of this subtitle.

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

5 (1) the age of the child;

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

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

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

11 (5) public safety.

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

14 (1) under the terms of a plea agreement entered under Maryland Rule
15 4–243, the child agrees that jurisdiction is not to be transferred; or

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

18 (d) (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 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 (e) (1) If the court transfers its jurisdiction to the juvenile court, the court
28 shall conduct a disposition under the regular procedures of the juvenile court.

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

31 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.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2012.