

SENATE BILL 761

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2lr0868
CF HB 1122

By: **Senator Gladden**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 30, 2012

CHAPTER _____

1 AN ACT concerning

2 **Juveniles – Confinement in Juvenile Facilities – Report**

3 FOR the purpose of ~~providing that a certain child for whom the juvenile court has~~
4 ~~waived jurisdiction under certain circumstances is required to remain detained~~
5 ~~in a juvenile detention facility except under certain circumstances; providing~~
6 ~~that a certain child is required to be transferred to a certain juvenile facility~~
7 ~~under certain circumstances; establishing the circumstances under which a~~
8 ~~certain child may not be transferred to a juvenile facility; prohibiting a child~~
9 ~~from being transported together with certain adults except under certain~~
10 ~~circumstances; requiring a court exercising criminal jurisdiction in a case~~
11 ~~involving a child, or the District Court at a bail review or preliminary hearing,~~
12 ~~to order a certain child to be held in a secure juvenile facility pending a certain~~
13 ~~determination except under certain circumstances; authorizing a certain~~
14 ~~defendant to receive certain credit against and a reduction of the term of a~~
15 ~~certain sentence for all time spent in the custody of a juvenile detention facility~~
16 ~~under certain circumstances; making stylistic changes~~ requiring the
17 Department of Juvenile Services to make a certain report to the General
18 Assembly on or before a certain date; and generally relating to juveniles and
19 confinement in juvenile facilities.

20 ~~BY repealing and reenacting, with amendments,~~
21 ~~Article — Courts and Judicial Proceedings~~
22 ~~Section 3-8A-06 and 3-8A-16~~
23 ~~Annotated Code of Maryland~~
24 ~~(2006 Replacement Volume and 2011 Supplement)~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~BY repealing and reenacting, without amendments,~~
 2 ~~Article—Courts and Judicial Proceedings~~
 3 ~~Section 3—8A—22~~
 4 ~~Annotated Code of Maryland~~
 5 ~~(2006 Replacement Volume and 2011 Supplement)~~

6 ~~BY repealing and reenacting, with amendments,~~
 7 ~~Article—Criminal Procedure~~
 8 ~~Section 4—202 and 6—218~~
 9 ~~Annotated Code of Maryland~~
 10 ~~(2008 Replacement Volume and 2011 Supplement)~~

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

13 ~~Article—Courts and Judicial Proceedings~~

14 ~~§ 8A—06.~~

15 ~~(a) The court may waive the exclusive jurisdiction conferred by § 3—8A—03 of~~
 16 ~~this subtitle with respect to a petition alleging delinquency by:~~

17 ~~(1) A child who is 15 years old or older; or~~

18 ~~(2) A child who has not reached his 15th birthday, but who is charged~~
 19 ~~with committing an act which if committed by an adult, would be punishable by death~~
 20 ~~or life imprisonment.~~

21 ~~(b) The court may not waive its jurisdiction under this section until after it~~
 22 ~~has conducted a waiver hearing, held prior to an adjudicatory hearing and after notice~~
 23 ~~has been given to all parties as prescribed by the Maryland Rules. The waiver hearing~~
 24 ~~is solely to determine whether the court should waive its jurisdiction.~~

25 ~~(c) (1) Notice of the waiver hearing shall be given to a victim as provided~~
 26 ~~under § 11—104 of the Criminal Procedure Article.~~

27 ~~(2) (i) A victim may submit a victim impact statement to the court~~
 28 ~~as provided in § 11—402 of the Criminal Procedure Article.~~

29 ~~(ii) This paragraph does not preclude a victim who has not filed~~
 30 ~~a notification request form under § 11—104 of the Criminal Procedure Article from~~
 31 ~~submitting a victim impact statement to the court.~~

32 ~~(iii) The court may consider a victim impact statement in~~
 33 ~~determining whether to waive jurisdiction under this section.~~

1 ~~(d) (1) The court may not waive its jurisdiction under this section unless~~
2 ~~it determines, from a preponderance of the evidence presented at the hearing, that the~~
3 ~~child is an unfit subject for juvenile rehabilitative measures.~~

4 ~~(2) For purposes of determining whether to waive its jurisdiction~~
5 ~~under this section, the court shall assume that the child committed the delinquent act~~
6 ~~alleged.~~

7 ~~(e) In making its determination, the court shall consider the following~~
8 ~~criteria individually and in relation to each other on the record:~~

9 ~~(1) Age of the child;~~

10 ~~(2) Mental and physical condition of the child;~~

11 ~~(3) The child's amenability to treatment in any institution, facility, or~~
12 ~~program available to delinquents;~~

13 ~~(4) The nature of the offense and the child's alleged participation in it;~~
14 ~~and~~

15 ~~(5) The public safety.~~

16 ~~(f) (1) If jurisdiction is waived under this section, the court shall order~~
17 ~~the child held for trial [under]:~~

18 ~~(I) UNDER the regular procedures of the court which would~~
19 ~~have jurisdiction over the offense if committed by an adult; AND~~

20 ~~(II) AS PROVIDED UNDER SUBSECTION (I) OF THIS SECTION.~~

21 ~~(2) The petition alleging delinquency shall be considered a charging~~
22 ~~document for purposes of detaining the child pending a bail hearing.~~

23 ~~(g) An order waiving jurisdiction is interlocutory.~~

24 ~~(h) If the court has once waived its jurisdiction with respect to a child in~~
25 ~~accordance with this section, and that child is subsequently brought before the court~~
26 ~~on another charge of delinquency, the court may waive its jurisdiction in the~~
27 ~~subsequent proceeding after summary review.~~

28 ~~(i) IF THE COURT HAS WAIVED JURISDICTION UNDER THIS SECTION,~~
29 ~~THE CHILD SHALL REMAIN DETAINED IN A JUVENILE DETENTION FACILITY~~
30 ~~UNLESS:~~

31 ~~(1) RELEASED ON BAIL; OR~~

~~(2) A FINDING IS MADE, AFTER A HEARING AND BASED ON EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS WITHIN THE CHARGING DOCUMENT, THAT THE CHILD IS A THREAT TO THE SAFETY OR SECURITY OF THE STAFF OR YOUTH AND CANNOT BE HELD IN A JUVENILE FACILITY.~~

~~§ 8A-16.~~

~~(a) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court or the intake officer immediately when a person, who is or appears to be under the age of 18 years, is received at the facility and shall deliver [him] THE PERSON to the court upon request or transfer [him] THE PERSON to the JUVENILE facility designated by the intake officer or the court, unless [the]:~~

~~(1) THE court has waived its jurisdiction with respect to the person [and he];~~

~~(2) THE PERSON is being proceeded against as an adult; AND~~

~~(3) A FINDING HAS BEEN MADE, AFTER A HEARING AND BASED ON EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS WITHIN THE CHARGING DOCUMENT, THAT THE PERSON:~~

~~(i) IS A THREAT TO THE SAFETY OR SECURITY OF THE STAFF OR YOUTH IN A JUVENILE DETENTION FACILITY; AND~~

~~(ii) CANNOT BE HELD IN A JUVENILE DETENTION FACILITY.~~

~~(b) When a case is transferred to another court for criminal prosecution, the child shall promptly be transferred to the appropriate officer or adult OR JUVENILE detention facility in accordance with the law governing the detention of persons charged with crime.~~

~~(c) A child may not be transported together with adults who have been charged with or convicted of a crime unless [the]:~~

~~(1) THE court has waived its jurisdiction [and the];~~

~~(2) THE child is being proceeded against as an adult; AND~~

~~(3) A FINDING HAS BEEN MADE, AFTER A HEARING AND BASED ON EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS WITHIN THE CHARGING DOCUMENT, THAT THE CHILD IS A SAFETY OR SECURITY THREAT AND CANNOT BE HELD IN A JUVENILE FACILITY.~~

1 ~~3 SA 22.~~

2 (a) ~~A child may not be detained at, or committed or transferred to, a~~
 3 ~~correctional facility, as defined in § 1-101 of the Correctional Services Article, except~~
 4 ~~in accordance with § 3 SA 16 of this subtitle.~~

5 (b) ~~A child who is not delinquent may not be committed or transferred to a~~
 6 ~~facility used for the confinement of delinquent children.~~

7 (e) ~~Unless an individualized treatment plan developed under § 10-706 of the~~
 8 ~~Health General Article indicates otherwise:~~

9 (1) ~~A child may not be committed or transferred to any public or~~
 10 ~~private facility or institution unless the child is placed in accommodations that are~~
 11 ~~separate from other persons 18 years of age or older who are confined to that facility or~~
 12 ~~institution; and~~

13 (2) ~~The child may not be treated in any group with persons who are 18~~
 14 ~~years of age or older.~~

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~~
 20 ~~this 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;~~

26 (2) ~~the alleged crime is excluded from the jurisdiction of the juvenile~~
 27 ~~court under § 3 SA 03(d)(1), (4), or (5) of the Courts Article; and~~

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

30 (e) ~~The court may not transfer a case to the juvenile court under subsection~~
 31 ~~(b) of this section if:~~

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

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

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

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

9 ~~(1) the age of the child;~~

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

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

13 ~~(4) the nature of the alleged crime; and~~

14 ~~(5) the public safety.~~

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

18 ~~(f) The court shall make a transfer determination within 10 days after the~~
19 ~~date of a transfer hearing.~~

20 ~~(g) If the court transfers its jurisdiction under this section, the court may~~
21 ~~order the child held for an adjudicatory hearing under the regular procedure of the~~
22 ~~juvenile court.~~

23 ~~(h) [(1)] Pending a determination under this section to transfer its~~
24 ~~jurisdiction, the court [may] SHALL order a child to be held in a secure juvenile~~
25 ~~facility[.~~

26 ~~(2) A hearing on a motion requesting that a child be held in a juvenile~~
27 ~~facility pending a transfer determination shall be held not later than the next court~~
28 ~~day, unless extended by the court for good cause shown] UNLESS:~~

29 ~~(1) THE CHILD IS RELEASED ON BAIL; OR~~

1 ~~(2) A FINDING IS MADE, AFTER A HEARING AND BASED ON~~
2 ~~EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS WITHIN THE CHARGING~~
3 ~~DOCUMENT, THAT THE CHILD IS A SAFETY OR SECURITY THREAT AND CANNOT~~
4 ~~BE HELD IN A JUVENILE FACILITY.~~

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

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

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

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

14 ~~(j) At a bail review or preliminary hearing before the District Court~~
15 ~~involving a child whose case is eligible for transfer under subsection (b) of this section,~~
16 ~~the District Court, REGARDLESS OF WHETHER THE DISTRICT COURT HAS~~
17 ~~CRIMINAL JURISDICTION OVER THE CASE:~~

18 ~~(1) SHALL ORDER THAT THE CHILD BE HELD IN A SECURE~~
19 ~~JUVENILE FACILITY PENDING A TRANSFER DETERMINATION UNLESS:~~

20 ~~(I) THE CHILD IS RELEASED ON BAIL; OR~~

21 ~~(II) A FINDING IS MADE, AFTER A HEARING AND BASED ON~~
22 ~~EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS WITHIN THE CHARGING~~
23 ~~DOCUMENT, THAT THE CHILD IS A SAFETY OR SECURITY THREAT AND CANNOT~~
24 ~~BE HELD IN A JUVENILE FACILITY; AND~~

25 ~~(2) may order that a study be made under the provisions of subsection~~
26 ~~(e) of this section[, or that the child be held in a secure juvenile facility under the~~
27 ~~provisions of subsection (h) of this section, regardless of whether the District Court has~~
28 ~~criminal jurisdiction over the case].~~

29 ~~6-218.~~

30 ~~(a) This section does not apply to a parolee who is returned to the custody of~~
31 ~~the Division of Correction because of a subsequent crime and is confined before being~~
32 ~~sentenced for the subsequent crime.~~

33 ~~(b) (1) A defendant who is convicted and sentenced shall receive credit~~
34 ~~against and a reduction of the term of a definite or life sentence, or the minimum and~~

~~1 maximum terms of an indeterminate sentence, for all time spent in the custody of a
2 correctional facility, hospital, facility for persons with mental disorders, JUVENILE
3 DETENTION FACILITY, or other unit because of:~~

~~4 (i) the charge for which the sentence is imposed; or~~

~~5 (ii) the conduct on which the charge is based.~~

~~6 (2) If a defendant is in custody because of a charge that results in a
7 dismissal or acquittal, the time that would have been credited if a sentence had been
8 imposed shall be credited against any sentence that is based on a charge for which a
9 warrant or commitment was filed during that custody.~~

~~10 (3) In a case other than a case described in paragraph (2) of this
11 subsection, the sentencing court may apply credit against a sentence for time spent in
12 custody for another charge or crime.~~

~~13 (e) A defendant whose sentence is set aside because of a direct or collateral
14 attack and who is reprosecuted or resentenced for the same crime or for another crime
15 based on the same transaction shall receive credit against and a reduction of the term
16 of a definite or life sentence, or the minimum and maximum terms of an indeterminate
17 sentence, for all time spent in custody under the prior sentence, including credit
18 applied against the prior sentence in accordance with subsection (b) of this section.~~

~~19 (d) A defendant who is serving multiple sentences, one of which is set aside
20 as the result of a direct or collateral attack, shall receive credit against and a
21 reduction of the remaining term of a definite or life sentence, or the remaining
22 minimum and maximum terms of an indeterminate sentence, for all time spent in
23 custody under the sentence set aside, including credit applied against the sentence set
24 aside in accordance with subsection (b) of this section.~~

~~25 (e) (1) The court shall award the credit required by this section at the
26 time of sentencing.~~

~~27 (2) After having communicated with the parties, the court shall tell
28 the defendant and shall state on the record the amount of the credit and the facts on
29 which the credit is based.~~

30 (a) On or before December 1, 2012, the Department of Juvenile Services shall
31 report to the General Assembly, in accordance with § 2-1246 of the State Government
32 Article, on the manner in which the Department will work toward ensuring that youth
33 charged as adults can be detained in juvenile detention facilities.

34 (b) The report shall include information on:

35 (1) the number of youth charged as adults held in adult detention
36 facilities from January 1, 2011 through December 31, 2011; and

1 (2) the Department’s plan to reduce the overall number of youth in
2 juvenile detention, including:

3 (i) the number of youth transferred from adult detention to
4 juvenile detention pending a transfer determination;

5 (ii) the number of youth transferred to juvenile court
6 jurisdiction on a motion to transfer from adult court jurisdiction;

7 (iii) the number of youth in juvenile detention receiving
8 Detention Risk Assessment Instrument (DRAI) screening;

9 (iv) the use of the Juvenile Detention Alternative Initiative;

10 (v) the use of prevention and diversion services;

11 (vi) the plan for reducing the number of youth in detention
12 pending placement; and

13 (vii) the average length of stay for youth charged as adults in
14 juvenile facilities.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 ~~October~~ July 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.