

HOUSE BILL 848

E3
HB 1122/12 – JUD

3lr2442
CF SB 454

By: **Delegates Rosenberg, Anderson, Carter, Dumais, Lee, F. Turner, Valderrama, and Valentino-Smith**

Introduced and read first time: February 7, 2013

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juveniles – Confinement in Juvenile Facilities**

3 FOR the purpose of requiring a certain child for whom the juvenile court has waived
4 jurisdiction under certain circumstances to remain detained in a juvenile
5 facility except under certain circumstances; requiring a certain child to be
6 transferred to a certain juvenile facility except under certain circumstances;
7 prohibiting a child from being transported together with certain adults except
8 under certain circumstances; requiring a court exercising criminal jurisdiction
9 in a case involving a child, or the District Court at a bail review or preliminary
10 hearing, to order a certain child to be held in a secure juvenile facility pending a
11 certain determination except under certain circumstances; authorizing a certain
12 defendant to receive certain credit against and a reduction of the term of a
13 certain sentence for all time spent in the custody of a juvenile facility under
14 certain circumstances; making stylistic changes; providing for the application of
15 this Act; and generally relating to juveniles and confinement in juvenile
16 facilities.

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 3–8A–06 and 3–8A–16
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2012 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article – Courts and Judicial Proceedings
24 Section 3–8A–22
25 Annotated Code of Maryland
26 (2006 Replacement Volume and 2012 Supplement)

27 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Procedure
2 Section 4–202 and 6–218
3 Annotated Code of Maryland
4 (2008 Replacement Volume and 2012 Supplement)

5 Preamble

6 WHEREAS, Juveniles are fundamentally different from adults, and fairness
7 and common sense require that these difference be taken into account when making
8 any decision about pretrial incarceration of juveniles; and

9 WHEREAS, Research across multiple jurisdictions has shown that confinement
10 in adult jails harms juveniles, increases a young person’s risk of physical and sexual
11 victimization and suicide, does not make the community safer in the long run, and
12 does not deter juvenile crime; and

13 WHEREAS, Over 80% of juveniles who are initially charged as adults and sent
14 into the adult jail system are eventually returned to the juvenile justice system,
15 released outright, or released on probation; and

16 WHEREAS, The pretrial detention of youth in juvenile facilities where rigorous
17 rehabilitative and educational services are provided benefits both the juvenile and
18 society as a whole; and

19 WHEREAS, States and local jurisdictions across the nation, including Colorado,
20 Georgia, Illinois, Oregon, Pennsylvania, and Virginia, have taken affirmative steps to
21 remove juveniles from adult jails by creating a presumption that juveniles charged as
22 adults will be held in juvenile facilities instead of adult jails; now, therefore,

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

25 **Article – Courts and Judicial Proceedings**

26 3–8A–06.

27 (a) The court may waive the exclusive jurisdiction conferred by § 3–8A–03 of
28 this subtitle with respect to a petition alleging delinquency by:

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

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

33 (b) The court may not waive its jurisdiction under this section until after it
34 has conducted a waiver hearing, held prior to an adjudicatory hearing and after notice

1 has been given to all parties as prescribed by the Maryland Rules. The waiver hearing
2 is solely to determine whether the court should waive its jurisdiction.

3 (c) (1) Notice of the waiver hearing shall be given to a victim as provided
4 under § 11–104 of the Criminal Procedure Article.

5 (2) (i) A victim may submit a victim impact statement to the court
6 as provided in § 11–402 of the Criminal Procedure Article.

7 (ii) This paragraph does not preclude a victim who has not filed
8 a notification request form under § 11–104 of the Criminal Procedure Article from
9 submitting a victim impact statement to the court.

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

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

15 (2) For purposes of determining whether to waive its jurisdiction
16 under this section, the court shall assume that the child committed the delinquent act
17 alleged.

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

20 (1) Age of the child;

21 (2) Mental and physical condition of the child;

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

24 (4) The nature of the offense and the child's alleged participation in it;
25 and

26 (5) The public safety.

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

29 (I) **UNDER** the regular procedures of the court which would
30 have jurisdiction over the offense if committed by an adult; **AND**

31 (II) **AS PROVIDED UNDER SUBSECTION (I) OF THIS SECTION.**

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

3 (g) An order waiving jurisdiction is interlocutory.

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

8 **(I) IF THE COURT HAS WAIVED JURISDICTION UNDER THIS SECTION,
9 THE CHILD SHALL REMAIN DETAINED IN A JUVENILE FACILITY UNLESS:**

10 **(1) THE CHILD IS RELEASED ON BAIL, RECOGNIZANCE, OR OTHER
11 CONDITIONS OF PRETRIAL RELEASE; OR**

12 **(2) A FINDING IS MADE, AFTER A HEARING AND BASED ON
13 EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS IN THE CHARGING
14 DOCUMENT, THAT THE CHILD:**

15 **(I) IS A THREAT TO THE SAFETY OR SECURITY OF THE
16 STAFF OR OTHER JUVENILES IN A JUVENILE FACILITY; AND**

17 **(II) CANNOT BE HELD IN A JUVENILE FACILITY.**

18 3-8A-16.

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

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

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

28 **(3) A FINDING HAS BEEN MADE, AFTER A HEARING AND BASED ON
29 EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS IN THE CHARGING
30 DOCUMENT, THAT THE PERSON:**

1 **(I) IS A THREAT TO THE SAFETY OR SECURITY OF THE**
2 **STAFF OR OTHER JUVENILES IN A JUVENILE FACILITY; AND**

3 **(II) CANNOT BE HELD IN A JUVENILE FACILITY.**

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

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

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

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

12 **(3) A FINDING HAS BEEN MADE, AFTER A HEARING AND BASED ON**
13 **EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS IN THE CHARGING**
14 **DOCUMENT, THAT THE CHILD:**

15 **(I) IS A THREAT TO THE SAFETY OR SECURITY OF THE**
16 **STAFF OR OTHER JUVENILES IN A JUVENILE FACILITY; AND**

17 **(II) CANNOT BE HELD IN A JUVENILE FACILITY.**

18 3-8A-22.

19 (a) A child may not be detained at, or committed or transferred to, a
20 correctional facility, as defined in § 1-101 of the Correctional Services Article, except
21 in accordance with § 3-8A-16 of this subtitle.

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

24 (c) Unless an individualized treatment plan developed under § 10-706 of the
25 Health – General Article indicates otherwise:

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

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

Article – Criminal Procedure

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4–202.

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

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

(3) “Victim’s representative” has the meaning stated in § 11–104 of this article.

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

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

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

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

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

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

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

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

(d) In determining whether to transfer jurisdiction under subsection (b) 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;

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

2 (5) the public safety.

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

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

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

11 (h) [(1)] Pending a determination under this section to transfer its
12 jurisdiction, the court [may] **SHALL** order a child to be held in a secure juvenile
13 facility[.

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

17 **(1) THE CHILD IS RELEASED ON BAIL, RECOGNIZANCE, OR ON**
18 **OTHER CONDITIONS OF PRETRIAL RELEASE; OR**

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

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

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

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

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

32 (j) At a bail review or preliminary hearing before the District Court
33 involving a child whose case is eligible for transfer under subsection (b) of this section,

1 the District Court, **REGARDLESS OF WHETHER THE DISTRICT COURT HAS**
2 **CRIMINAL JURISDICTION OVER THE CASE:**

3 **(1) SHALL ORDER THAT THE CHILD BE HELD IN A SECURE**
4 **JUVENILE FACILITY PENDING A TRANSFER DETERMINATION UNLESS:**

5 **(I) THE CHILD IS RELEASED ON BAIL, RECOGNIZANCE, OR**
6 **ON OTHER CONDITIONS OF PRETRIAL RELEASE; OR**

7 **(II) A FINDING IS MADE, AFTER A HEARING AND BASED ON**
8 **EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS IN THE CHARGING**
9 **DOCUMENT, THAT THE CHILD IS A THREAT TO THE SAFETY OR SECURITY OF THE**
10 **STAFF OR OTHER JUVENILES AND CANNOT BE HELD IN A JUVENILE FACILITY;**
11 **AND**

12 **(2)** may order that a study be made under the provisions of subsection
13 (e) of this section[, or that the child be held in a secure juvenile facility under the
14 provisions of subsection (h) of this section, regardless of whether the District Court has
15 criminal jurisdiction over the case].

16 6–218.

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

20 (b) (1) A defendant who is convicted and sentenced shall receive credit
21 against and a reduction of the term of a definite or life sentence, or the minimum and
22 maximum terms of an indeterminate sentence, for all time spent in the custody of a
23 correctional facility, hospital, facility for persons with mental disorders, **JUVENILE**
24 **FACILITY**, or other unit because of:

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

26 (ii) the conduct on which the charge is based.

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

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

1 (c) A defendant whose sentence is set aside because of a direct or collateral
2 attack and who is reprosecuted or resentenced for the same crime or for another crime
3 based on the same transaction shall receive credit against and a reduction of the term
4 of a definite or life sentence, or the minimum and maximum terms of an indeterminate
5 sentence, for all time spent in custody under the prior sentence, including credit
6 applied against the prior sentence in accordance with subsection (b) of this section.

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

13 (e) (1) The court shall award the credit required by this section at the
14 time of sentencing.

15 (2) After having communicated with the parties, the court shall tell
16 the defendant and shall state on the record the amount of the credit and the facts on
17 which the credit is based.

18 SECTION 2. AND BE IT FURTHER ENACTED, That:

19 (a) Notwithstanding the provisions of Section 1 of this Act, the Department
20 of Juvenile Services shall phase in the requirements of this Act and this Act shall
21 apply to individuals as follows:

22 (1) for individuals under the age of 16, this Act shall apply beginning
23 on October 1, 2013;

24 (2) for individuals under the age of 17, this Act shall apply beginning
25 on October 1, 2014; and

26 (3) for individuals under the age of 18, this Act shall apply beginning
27 on October 1, 2015.

28 (b) During the years that this Act is being phased in under subsection (a) of
29 this section, the law as it was in effect before October 1, 2013, shall remain in effect for
30 individuals under the age of 18 who, as a result of the phase-in, are not covered under
31 the provisions of Section 1 of this Act.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2013.