



Maryland State's Attorneys' Association

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DATE: **March 3, 2022**

BILL NUMBER: **SB 769**

POSITION: **Oppose**

The Maryland State's Attorney's Association (MSAA) opposes SB 769.

SB 769 adds multiple provisions to Criminal Procedure Article § 6-235 that are confusing, create the possibility of unnecessary litigation, and duplicates established procedures.

Current law under Criminal Procedure Article § 6-235 provides that no juvenile tried in adult court shall be given the sentence of life without parole and allows the Court the discretion not to impose any minimum sentence required. SB 769 creates new criteria of at least thirteen items that the Court shall consider when sentencing a minor in adult court. This procedure adds to an already complex landscape of juvenile transfer laws and is unnecessary.

Pursuant to Criminal Procedure Article § 4-202, a youth has the ability to file for a transfer from adult court jurisdiction to juvenile court jurisdiction. In deciding whether to grant a transfer, a court must consider five statutory factors: (1) the age of the child; (2) the child's physical and mental condition; (3) the child's amenability to treatment in any institution, facility, or programs available to delinquents; (4) the nature of the offense(s); and (5) public safety. To assist in the consideration of these factors, the transfer statute provides for a Court ordered study, usually conducted by the Department of Juvenile Services ("DJS"), that "concern[s] the child, the family of the child, the environment of the child, and other matters concerning the disposition of the case."

Further, if a transfer hearing is denied and a youth is convicted in adult court, they may also have the opportunity to file for **another** transfer under Criminal Procedure Article § 4-202.2, which includes the same factors and standards outlined in Criminal Procedure Article § 4-202. Should a defendant prevail under this statute, the case is sent to juvenile court for disposition.

Conversely, when jurisdiction begins in juvenile court, the State may file a waiver under Courts and Judicial Proceedings Article § 3-8A-06 which involves the movement of jurisdiction from juvenile to adult. A Court must consider the same five statutory factors as in a transfer and a similar study is produced. In waiver hearings, the burden of persuasion falls to the State to prove to a Court by a preponderance that "the child is an unfit subject for rehabilitative measures."

Recently, the Court of Appeals further altered the manner in which courts decide transfer hearings in *Davis v. State*, 474 Md. 439, 255 A.2d 56 (2020) by placing significant weight on the “amenability” factor, noting that: “[t]he five considerations are not in competition with one another. They all must be considered but they are necessarily interrelated and, analytically, they all converge on amenability to treatment.” Guided by this principle, the Court married the factors into an assessment of “amenability” as follows: (1) are there programs available for the specific needs of the defendant; (2) would the defendant benefit from the available programs more than what’s available in the adult system; and (3) whether that would reduce the likelihood of recidivism and make the child a more productive law-abiding person.

In practice, this edict from the Court of Appeals requires intensive studies of the psychological, physical and environmental conditions of the subject defendant/respondent. DJS, recognizing their repeated mention in the *Davis* opinion, responded with a policy that involved the expansion of the Transfer Summary to include an analysis by an “Assessment Staffing Team” that will include a psychological evaluation of the youth prior to the transfer/waiver hearing. The goal is for the Team to answer the “what are the specific needs” and the “what’s available” questions.

In short, SB 769 duplicates already existing procedures and case law that provide a wealth of psychological, environmental and personal information to a court which facilitate decisions and provide pathways to the juvenile justice system. The addition of yet another series of factors complicates established law. Further, SB 769 sets up a dynamic wherein a juvenile could be waived to the adult system and then have an identical hearing following conviction. Such a result is clearly illogical.