

SENATE BILL 452

E3, E2
SB 257/18 – JPR

9lr2945
CF HB 11

By: **Senators Carter, Lee, Smith, and Washington**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Juveniles Charged as Adults – Confidentiality of Photos and Videos**

3 FOR the purpose of establishing that, pending a determination by a court exercising
4 criminal jurisdiction in a case involving a child whether to transfer its jurisdiction to
5 the juvenile court, provisions of law relating to confidentiality of juvenile records
6 apply to certain photographs or videos taken of the child during the arrest or booking
7 of the child; and generally relating to photographic and video records of juveniles.

8 BY repealing and reenacting, without amendments,

9 Article – Courts and Judicial Proceedings

10 Section 3–8A–27(a)(1) and (b)(1)

11 Annotated Code of Maryland

12 (2013 Replacement Volume and 2018 Supplement)

13 BY repealing and reenacting, without amendments,

14 Article – Criminal Procedure

15 Section 4–202(b) and (h)

16 Annotated Code of Maryland

17 (2018 Replacement Volume)

18 BY adding to

19 Article – Criminal Procedure

20 Section 4–202(i)

21 Annotated Code of Maryland

22 (2018 Replacement Volume)

23 BY repealing and reenacting, with amendments,

24 Article – Criminal Procedure

25 Section 4–202(i) and (j)

26 Annotated Code of Maryland

27 (2018 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Courts and Judicial Proceedings**

4 3–8A–27.

5 (a) (1) A police record concerning a child is confidential and shall be
6 maintained separate from those of adults. Its contents may not be divulged, by subpoena
7 or otherwise, except by order of the court upon good cause shown or as otherwise provided
8 in § 7–303 of the Education Article.

9 (b) (1) A court record pertaining to a child is confidential and its contents may
10 not be divulged, by subpoena or otherwise, except by order of the court upon good cause
11 shown or as provided in §§ 7–303 and 22–309 of the Education Article.

12 **Article – Criminal Procedure**

13 4–202.

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

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

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

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

23 (h) (1) Pending a determination under this section to transfer its jurisdiction,
24 the court shall order the child to be held in a secure juvenile facility unless:

25 (i) the child is released on bail, recognizance, or other conditions of
26 pretrial release;

27 (ii) there is not available capacity in a secure juvenile facility, as
28 determined by the Department of Juvenile Services; or

29 (iii) the court finds that detention in a secure juvenile facility would
30 pose a risk of harm to the child or others.

31 (2) If the court makes a finding under paragraph (1)(iii) of this subsection

1 that detention in a secure juvenile facility would pose a risk of harm to the child or others,
2 the court shall state the reasons for the finding on the record.

3 **(I) PENDING A TRANSFER DETERMINATION UNDER THIS SECTION, THE**
4 **PROVISIONS OF § 3-8A-27 OF THE COURTS ARTICLE RELATING TO**
5 **CONFIDENTIALITY OF RECORDS APPLY TO PHOTOGRAPHS OR VIDEOS TAKEN OF THE**
6 **CHILD BY A GOVERNMENTAL ENTITY DURING THE ARREST OR BOOKING OF THE**
7 **CHILD.**

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

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

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

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

17 **[(j)] (K)** (1) Regardless of whether the District Court has jurisdiction over
18 the case, at a bail review or preliminary hearing before the District Court involving a child
19 whose case is eligible for transfer under subsection (b) of this section, the District Court:

20 (i) may order that a study be made under the provisions of
21 subsection (e) of this section; and

22 (ii) shall order that the child be held in a secure juvenile facility
23 pending a transfer determination under this section unless:

24 1. the child is released on bail, recognizance, or other
25 conditions of pretrial release;

26 2. there is not available capacity at a secure juvenile facility
27 as determined by the Department of Juvenile Services; or

28 3. the District Court finds that detention in a secure juvenile
29 facility would pose a risk of harm to the child or others.

30 (2) If the District Court makes a finding under paragraph (1)(ii)3 of this
31 subsection that detention in a secure juvenile facility would pose a risk of harm to the child
32 or others, the District Court shall state the reasons for the finding on the record.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

1 October 1, 2019.