

SENATE BILL 824

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9lr2030
CF HB 418

By: **Senator Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Waiver and Transfer of Jurisdiction**

3 FOR the purpose of repealing a certain provision requiring the juvenile court, for purposes
4 of determining whether to waive its jurisdiction under certain circumstances, to
5 assume that a certain child committed a certain delinquent act; altering the criteria
6 that the juvenile court is required to consider in determining whether to waive
7 jurisdiction with respect to a petition alleging delinquency; repealing a certain
8 provision authorizing the juvenile court to waive its jurisdiction in a certain
9 proceeding after summary review under certain circumstances; altering certain
10 criteria that a court exercising criminal jurisdiction in a case involving a certain child
11 is required to consider in determining whether to transfer jurisdiction to the juvenile
12 court; specifying that the State has the burden of proving that a court exercising
13 criminal jurisdiction in a case involving a certain child should not transfer
14 jurisdiction to the juvenile court; making certain conforming changes; and generally
15 relating to juvenile law.

16 BY repealing and reenacting, with amendments,
17 Article – Courts and Judicial Proceedings
18 Section 3–8A–06
19 Annotated Code of Maryland
20 (2013 Replacement Volume and 2018 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Criminal Procedure
23 Section 4–202 and 4–202.2
24 Annotated Code of Maryland
25 (2018 Replacement Volume)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Courts and Judicial Proceedings

3–8A–06.

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

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

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

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

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

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

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

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

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

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

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

(1) Age of the child;

(2) [Mental and physical] **ANY BEHAVIORAL HEALTH condition OR PHYSICAL DISABILITY** of the child;

1 (3) The [child's] amenability **OF THE CHILD** to treatment in any
2 institution, facility, or program available to [delinquents] **DELINQUENT CHILDREN**;

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

4 (5) The public safety.

5 (f) If jurisdiction is waived under this section, the court shall order the child held
6 for trial under the regular procedures of the court which would have jurisdiction over the
7 offense if committed by an adult. The petition alleging delinquency shall be considered a
8 charging document for purposes of detaining the child pending a bail hearing.

9 (g) An order waiving jurisdiction is interlocutory.

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

14 **Article – Criminal Procedure**

15 4–202.

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

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

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

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

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

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

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

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

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

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

5 (d) In determining whether to transfer jurisdiction under subsection (b) of this
6 section, the court shall consider **THE FOLLOWING CRITERIA INDIVIDUALLY AND IN**
7 **RELATION TO EACH OTHER ON THE RECORD:**

8 (1) the age of the child;

9 (2) [the mental and physical] **ANY BEHAVIORAL HEALTH condition OR**
10 **PHYSICAL DISABILITY** of the child;

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

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

14 (5) the public safety.

15 **(E) THE STATE HAS THE BURDEN OF PROVING THAT THE COURT SHOULD**
16 **NOT TRANSFER JURISDICTION TO THE JUVENILE COURT UNDER THIS SECTION.**

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

20 ~~[(f)]~~ **(G)** The court shall make a transfer determination within 10 days after the
21 date of a transfer hearing.

22 ~~[(g)]~~ **(H)** If the court transfers its jurisdiction under this section, the court may
23 order the child held for an adjudicatory hearing under the regular procedure of the juvenile
24 court.

25 ~~[(h)]~~ **(I)** (1) Pending a determination under this section to transfer its
26 jurisdiction, the court shall order the child to be held in a secure juvenile facility unless:

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

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

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

3 (2) If the court makes a finding under paragraph (1)(iii) of this subsection
4 that detention in a secure juvenile facility would pose a risk of harm to the child or others,
5 the court shall state the reasons for the finding on the record.

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

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

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

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

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

18 (i) may order that a study be made under the provisions of
19 subsection **[(e)] (F)** of this section; and

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

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

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

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

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

31 4–202.2.

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

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

4 (2) (i) pretrial transfer was prohibited under § 4–202(c)(2) of this
5 subtitle; or

6 (ii) the court did not transfer jurisdiction after a hearing under §
7 4–202(b) of this subtitle.

8 (b) In determining whether to transfer jurisdiction under subsection (a) of this
9 section, the court shall consider **THE FOLLOWING CRITERIA INDIVIDUALLY AND IN**
10 **RELATION TO EACH OTHER ON THE RECORD:**

11 (1) the age of the child;

12 (2) [the mental and physical] **ANY BEHAVIORAL HEALTH** condition **OR**
13 **PHYSICAL DISABILITY** of the child;

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

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

18 (5) public safety.

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

21 (1) under the terms of a plea agreement entered under Maryland Rule
22 4–243, the child agrees that jurisdiction is not to be transferred; or

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

24 **(D) THE STATE HAS THE BURDEN OF PROVING THAT THE COURT SHOULD**
25 **NOT TRANSFER JURISDICTION TO THE JUVENILE COURT UNDER THIS SECTION.**

26 **[(d)] (E)** (1) A victim or victim’s representative shall be given notice of the
27 transfer hearing as provided under § 11–104 of this article.

28 (2) (i) A victim or victim’s representative may submit a victim impact
29 statement to the court as provided in § 11–402 of this article.

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

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

6 **[(e)] (F)** (1) If the court transfers its jurisdiction to the juvenile court, the
7 court shall conduct a disposition under the regular procedures of the juvenile court.

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

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2019.