

HOUSE BILL 877

E3

EMERGENCY BILL

2lr0021

By: **Chair, Judiciary Committee (By Request – Departmental – Juvenile Services)**

Introduced and read first time: February 7, 2022

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 6, 2022

CHAPTER _____

1 AN ACT concerning

2 **Juveniles Charged as Adults – Confinement**

3 FOR the purpose of repealing certain provisions requiring a certain court exercising
4 criminal jurisdiction in a certain case involving a child to order the child to be held
5 in a secure juvenile facility pending a certain determination, except under certain
6 circumstances; requiring a certain child to be held in a certain secure juvenile facility
7 while the child is awaiting trial or other legal process, except under certain
8 circumstances; prohibiting a child from having sight or sound contact with adult
9 inmates while the child is awaiting trial or other legal process; requiring a child to
10 be promptly transferred to the appropriate officer or correctional facility in a certain
11 manner under certain circumstances; providing that Baltimore City is not required
12 to comply with the provisions of this Act until a certain date; and generally relating
13 to juveniles charged as adults.

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Procedure
16 Section 4–202 and 4–202.1
17 Annotated Code of Maryland
18 (2018 Replacement Volume and 2021 Supplement)

19 BY adding to
20 Article – Criminal Procedure
21 Section 4–202.3
22 Annotated Code of Maryland
23 (2018 Replacement Volume and 2021 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.



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

Article – Criminal Procedure

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 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

(2) 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;

(4) the nature of the alleged crime; and

(5) the public safety.

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

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

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

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

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

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

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

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

[(i)] (H) (1) The provisions of § 3–8A–27 of the Courts Article relating to confidentiality of records apply to all police records and court records concerning the child excluded from the jurisdiction of the juvenile court under § 3–8A–03(d)(1), (4), or (5) of the Courts Article from the time of the child’s arrest until:

(i) the time for filing of a motion to transfer to juvenile court under the Maryland Rules has expired and no such motion has been filed; or

(ii) a motion to transfer to juvenile court has been denied.

(2) If a case is transferred to the juvenile court under this section:

(i) the provisions of § 3–8A–27 of the Courts Article relating to confidentiality of records continue to apply to all police and court records concerning the child; and

(ii) the criminal charge is subject to expungement under § 10–106 of this article.

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

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

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

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

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

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

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

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

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

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

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

4–202.1.

(a) In this section, “child” means a defendant who is under the age of 18 years and whose case is eligible for transfer under the provisions of § 4–202(b)(1) and (2) and (c) of this subtitle.

(b) If a child remains in custody for any reason after a bail review hearing:

(1) in the case of a child charged with a felony that is not within the jurisdiction of the District Court, the District Court shall:

(i) clearly indicate on the case file and in computer records that the case involves a detained child; and

(ii) set a preliminary hearing to be held within 15 days after the bail review hearing; or

(2) in the case of a child charged with a crime in the District Court, the District Court:

(i) shall clearly indicate on the case file and in computer records that the case involves a detained child;

(ii) shall set a transfer hearing under § 4–202 of this subtitle to be held within 30 days after the filing of the charging document.

(iii) may order that a study be made under § 4–202 of this subtitle.

(iv) shall require that prompt notice be given to counsel for the child, or, if the child is not represented by counsel, to the Office of the Public Defender.

(c) [On receipt of a District Court case file that indicates] **IN A PROCEEDING IN A CIRCUIT COURT** that [the case] involves a child who was detained after a bail review hearing under subsection (b) of this section, [a] **THE** circuit court:

(1) unless previously set by the District Court under subsection (b)(2) of this section, shall set a transfer hearing under § 4–202 of this subtitle to be held within 30 days after the filing of the charging document in the circuit court;

(2) unless previously ordered by the District Court under subsection (b)(2) of this section, may order that a study be made under § 4–202 of this subtitle; and

(3) shall require that prompt notice be given to counsel for the child, or, if the child is not represented by counsel, to the Office of the Public Defender.

4–202.3.

(A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) **“CHILD” MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.**

(3) "SIGHT AND SOUND CONTACT" MEANS PHYSICAL, CLEAR VISUAL, OR VERBAL CONTACT THAT IS NOT BRIEF OR INADVERTENT.

(B) (1) A CHILD OVER WHOM A COURT EXERCISES CRIMINAL JURISDICTION SHALL BE HELD IN A SECURE JUVENILE FACILITY OPERATED BY THE DEPARTMENT OF JUVENILE SERVICES UNDER § 9-226 OF THE HUMAN SERVICES ARTICLE WHILE THE CHILD IS AWAITING TRIAL OR OTHER LEGAL PROCESS UNLESS:

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

(II) AFTER A HEARING AND IN WRITING, THE COURT FINDS THAT IT IS IN THE INTEREST OF JUSTICE TO PERMIT THE CHILD TO BE HELD IN:

1. A CORRECTIONAL FACILITY LOCATED IN THE COURT'S JURISDICTION; OR

2. FOR A CHILD BEFORE THE COURT IN BALTIMORE CITY ONLY, THE YOUTH DETENTION CENTER OPERATED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(2) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CHILD OVER WHOM A COURT EXERCISES CRIMINAL JURISDICTION MAY NOT HAVE SIGHT OR SOUND CONTACT WITH ADULT INMATES WHILE THE CHILD IS AWAITING TRIAL OR OTHER LEGAL PROCESS.

(II) COMPLIANCE WITH THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY NOT BE ACHIEVED THROUGH THE USE OF SECLUSION OR ISOLATION.

(C) IN MAKING A DETERMINATION UNDER SUBSECTION (B)(1)(II) OF THIS SECTION, THE COURT SHALL CONSIDER:

(1) THE AGE OF THE CHILD;

(2) THE PHYSICAL AND MENTAL MATURITY OF THE CHILD;

(3) THE PRESENT MENTAL STATE OF THE CHILD, INCLUDING WHETHER THE CHILD PRESENTS AN IMMINENT RISK OF HARM TO THE CHILD;

(4) THE NATURE AND CIRCUMSTANCES OF THE ALLEGED OFFENSE;

(5) THE CHILD'S HISTORY OF PRIOR DELINQUENT ACTS;

(6) THE RELATIVE ABILITY OF THE AVAILABLE ADULT AND JUVENILE DETENTION FACILITIES TO NOT ONLY MEET THE SPECIFIC NEEDS OF THE CHILD BUT ALSO TO PROTECT THE SAFETY OF THE PUBLIC AND OTHER DETAINED YOUTH; AND

(7) ANY OTHER RELEVANT FACTOR.

(D) IF THE COURT ORDERS A CHILD TO BE HELD IN A CORRECTIONAL FACILITY UNDER SUBSECTION (B)(1)(II) OF THIS SECTION:

(1) THE COURT SHALL HOLD A HEARING AT LEAST ONCE EVERY 30 DAYS TO REVIEW WHETHER IT IS STILL IN THE INTEREST OF JUSTICE TO PERMIT THE CHILD TO BE SO HELD; AND

(2) THE CHILD MAY NOT BE HELD IN A CORRECTIONAL FACILITY FOR MORE THAN 180 DAYS, UNLESS THE COURT, IN WRITING, DETERMINES THERE IS GOOD CAUSE FOR AN EXTENSION OR THE CHILD EXPRESSLY WAIVES THIS LIMITATION.

(E) WHEN A CHILD HELD IN A SECURE JUVENILE DETENTION FACILITY UNDER THIS SECTION BECOMES AN ADULT, IF THE CHILD'S CASE IS NOT PENDING A TRANSFER DETERMINATION UNDER § 4-202 OF THIS SUBTITLE, THE CHILD SHALL PROMPTLY BE TRANSFERRED TO THE APPROPRIATE OFFICER OR CORRECTIONAL FACILITY IN ACCORDANCE WITH THE LAW GOVERNING THE DETENTION AND COMMITMENT OF PERSONS CHARGED WITH A CRIME.

SECTION 2. AND BE IT FURTHER ENACTED, That Baltimore City is not required to comply with the provisions of this Act until October 1, 2022.

SECTION 2. ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.