

SENATE BILL 222

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(PRE-FILED)

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

Requested: September 29, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Juveniles Charged as Adults – Study and Confinement**

3 FOR the purpose of repealing certain provisions requiring certain courts exercising
4 criminal jurisdiction in certain cases involving a child to order the child to be held in
5 a secure juvenile facility pending a certain determination, except under certain
6 circumstances; repealing certain provisions requiring certain courts to state the
7 reasons for a certain finding on the record under certain circumstances; requiring,
8 rather than authorizing, certain courts to order that a certain study of a child be
9 made under certain circumstances; authorizing a county administrative judge or the
10 judge's designee to change a certain transfer hearing date under certain
11 circumstances; requiring a certain child to be held in a secure juvenile facility and
12 prohibiting the child from having sight or sound contact with adult inmates while
13 the child is awaiting trial or other legal process, except under certain circumstances;
14 requiring a court exercising criminal jurisdiction over a certain child to consider
15 certain factors in making a certain determination; authorizing a court to order that
16 a certain child is eligible for community detention under certain circumstances;
17 requiring a court to hold a certain hearing at certain intervals under certain
18 circumstances; prohibiting a child from being held in a correctional facility and from
19 having sight or sound contact with adult inmates for more than a certain number of
20 days, except under certain circumstances; requiring a child to be promptly
21 transferred to the appropriate officer or correctional facility in a certain manner
22 under certain circumstances; defining a certain term; making certain clarifying
23 changes; and generally relating to juveniles charged as adults.

24 BY repealing and reenacting, with amendments,
25 Article – Criminal Procedure
26 Section 4–202 and 4–202.1
27 Annotated Code of Maryland
28 (2018 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Criminal Procedure
3 Section 4–202.3
4 Annotated Code of Maryland
5 (2018 Replacement Volume and 2020 Supplement)

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

8 **Article – Criminal Procedure**

9 4–202.

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

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

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

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

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

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

29 (d) In determining whether to transfer jurisdiction under subsection (b) of this
30 section, the court shall consider:

31 (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] **SHALL** 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) 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.

[(j) (1) (I) 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] **SHALL** 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 **SHALL**:

(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; and

(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) (1) [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 **SHALL**:

[(1)] (I) 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)] (II) 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)] (III) [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.

(2) **FOR GOOD CAUSE, THE COUNTY ADMINISTRATIVE JUDGE OR A DESIGNEE OF THE COUNTY ADMINISTRATIVE JUDGE MAY CHANGE THE TRANSFER HEARING DATE SET BY A CIRCUIT COURT UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION:**

(I) **ON MOTION OF A PARTY; OR**

(II) **ON THE INITIATIVE OF THE CIRCUIT COURT.**

4–202.3.

(A) **IN THIS SECTION, “CHILD” MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.**

(B) **A CHILD OVER WHOM A COURT EXERCISES CRIMINAL JURISDICTION SHALL BE HELD IN A SECURE JUVENILE FACILITY AND MAY NOT HAVE SIGHT OR SOUND CONTACT WITH ADULT INMATES WHILE THE CHILD IS AWAITING TRIAL OR OTHER LEGAL PROCESS UNLESS:**

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

(2) 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 A CORRECTIONAL FACILITY OR TO HAVE SIGHT OR SOUND CONTACT WITH ADULT INMATES.

(C) IN MAKING A DETERMINATION UNDER SUBSECTION (B)(2) 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) THE COURT MAY ORDER THAT A CHILD HELD IN A SECURE JUVENILE FACILITY UNDER THIS SECTION IS ELIGIBLE FOR COMMUNITY DETENTION, AS DEFINED IN § 3-8A-01 OF THE COURTS ARTICLE.

(E) IF THE COURT ORDERS A CHILD TO BE HELD IN A CORRECTIONAL FACILITY OR TO HAVE SIGHT OR SOUND CONTACT WITH ADULT INMATES UNDER SUBSECTION (B)(2) 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 OR TO HAVE SIGHT OR SOUND CONTACT WITH ADULT INMATES; AND

(2) THE CHILD MAY NOT BE HELD IN A CORRECTIONAL FACILITY AND

1 MAY NOT HAVE SIGHT OR SOUND CONTACT WITH ADULT INMATES FOR MORE THAN
2 180 DAYS, UNLESS THE COURT, IN WRITING, DETERMINES THERE IS GOOD CAUSE
3 FOR AN EXTENSION OR THE CHILD EXPRESSLY WAIVES THIS LIMITATION.

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

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2021.