

HOUSE BILL 471

E3
HB 304/16 – JUD

7lr0409
CF SB 215

By: **Delegates Sydnor, Anderson, Atterbeary, Conaway, Proctor, Queen, and Sanchez**

Introduced and read first time: January 27, 2017

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Court – Jurisdiction**

3 FOR the purpose of repealing certain provisions of law that exclude from the jurisdiction of
4 the juvenile court a child of a certain age alleged to have committed any of certain
5 offenses; repealing certain provisions of law governing the transfer of certain
6 criminal cases to the juvenile court and governing certain criminal court procedures
7 involving a child whose case is eligible for transfer to the juvenile court or whose
8 charges were excluded from the jurisdiction of the juvenile court; altering certain
9 requirements relating to events that must be reported to the Criminal Justice
10 Information System Central Repository; altering certain requirements relating to
11 the fingerprinting of a child adjudicated delinquent; providing for the application of
12 this Act; and generally relating to juvenile law and the jurisdiction of the juvenile
13 court.

14 BY repealing and reenacting, with amendments,
15 Article – Courts and Judicial Proceedings
16 Section 3–8A–03(d)
17 Annotated Code of Maryland
18 (2013 Replacement Volume and 2016 Supplement)

19 BY repealing
20 Article – Criminal Procedure
21 Section 4–202, 4–202.1, and 4–202.2
22 Annotated Code of Maryland
23 (2008 Replacement Volume and 2016 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Criminal Procedure
26 Section 10–215(a)(20) and 10–216(d)
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2008 Replacement Volume and 2016 Supplement)

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

Article – Courts and Judicial Proceedings

3–8A–03.

(d) The court does not have jurisdiction over:

(1) [A child at least 14 years old alleged to have done an act which, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4–202 of the Criminal Procedure Article;

(2)] A child at least 16 years old alleged to have done an act in violation of any provision of the Transportation Article or other traffic law or ordinance, except an act that prescribes a penalty of incarceration;

[(3)] (2) A child at least 16 years old alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat, except an act that prescribes a penalty of incarceration; **OR**

[(4) A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4–202 of the Criminal Procedure Article:

(i) Abduction;

(ii) Kidnapping;

(iii) Second degree murder;

(iv) Manslaughter, except involuntary manslaughter;

(v) Second degree rape;

(vi) Robbery under § 3–403 of the Criminal Law Article;

(vii) Second degree sexual offense under § 3–306(a)(1) of the Criminal Law Article;

(viii) Third degree sexual offense under § 3–307(a)(1) of the Criminal Law Article;

(ix) A crime in violation of § 5–133, § 5–134, § 5–138, or § 5–203 of the Public Safety Article;

(x) Using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime under § 5–621 of the Criminal Law Article;

(xi) Use of a firearm under § 5–622 of the Criminal Law Article;

(xii) Carjacking or armed carjacking under § 3–405 of the Criminal Law Article;

(xiii) Assault in the first degree under § 3–202 of the Criminal Law Article;

(xiv) Attempted murder in the second degree under § 2–206 of the Criminal Law Article;

(xv) Attempted rape in the second degree under § 3–310 of the Criminal Law Article or attempted sexual offense in the second degree under § 3–312 of the Criminal Law Article;

(xvi) Attempted robbery under § 3–403 of the Criminal Law Article; or

(xvii) A violation of § 4–203, § 4–204, § 4–404, or § 4–405 of the Criminal Law Article;

(5) A child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult, unless an order removing the proceeding to the court has been filed under § 4–202 of the Criminal Procedure Article; or

(6)] (3) A peace order proceeding in which the victim, as defined in § 3–8A–01(cc)(1)(ii) of this subtitle, is a person eligible for relief, as defined in § 4–501 of the Family Law Article.

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.

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

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

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

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

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

12 (i) (1) A victim or victim's representative shall be given notice of the transfer
13 hearing as provided under § 11–104 of this article.

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

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

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

21 (j) (1) Regardless of whether the District Court has jurisdiction over the case,
22 at a bail review or preliminary hearing before the District Court involving a child whose
23 case is eligible for transfer under subsection (b) of this section, the District Court:

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

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

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

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

32 3. the District Court finds that detention in a secure juvenile
33 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; 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) On receipt of a District Court case file that indicates that the case involves a child who was detained after a bail review hearing under subsection (b) of this section, a 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.]

[4–202.2.

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

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

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

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

(b) In determining whether to transfer jurisdiction under subsection (a) 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 child’s acts as proven in the trial or admitted to in a plea entered under Maryland Rule 4–242; and

(5) public safety.

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

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

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

(d) (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 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.

(e) (1) If the court transfers its jurisdiction to the juvenile court, the court shall conduct a disposition under the regular procedures of the juvenile court.

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

10-215.

(a) The following events are reportable events under this subtitle that must be reported to the Central Repository in accordance with § 10-214 of this subtitle:

(20) an adjudication of a child as delinquent[:

(i) if the child is at least 14 years old, for an act described in § 3-8A-03(d)(1) of the Courts Article; or

(ii) if the child is at least 16 years old, for an act described in § 3-8A-03(d)(4) or (5) of the Courts Article] **FOR AN ACT THAT, IF COMMITTED BY AN ADULT, WOULD BE A CRIME PUNISHABLE BY LIFE IMPRISONMENT;**

10-216.

(d) (1) This subsection only applies to an adjudication of delinquency of a child[:

(i) for an act described in § 3-8A-03(d)(1) of the Courts Article if the child is at least 14 years old; or

(ii) for an act described in § 3-8A-03(d)(4) or (5) of the Courts Article if the child is at least 16 years old] **FOR AN ACT THAT, IF COMMITTED BY AN ADULT, WOULD BE A CRIME PUNISHABLE BY LIFE IMPRISONMENT.**

(2) If a child has not been previously fingerprinted as a result of arrest for the delinquent act, the court that held the disposition hearing of the child adjudicated delinquent shall order the child to be fingerprinted by the appropriate and available law enforcement unit.

1 (3) If the child cannot be fingerprinted at the time of the disposition
2 hearing held under paragraph (2) of this subsection, the court shall order the child to report
3 to a designated law enforcement unit to be fingerprinted within 3 days after making a
4 disposition on an adjudication of delinquency.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies only to
6 offenses committed on or after the effective date of this Act.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2017.