

HOUSE BILL 1295

E3

(4lr2154)

ENROLLED BILL

— *Judiciary/Judicial Proceedings* —

Introduced by **Delegates Carter, Glenn, B. Robinson, and Stukes**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Juvenile Law – Transfer of Cases to Juvenile Court**

3 FOR the purpose of repealing a provision of law that prohibits a court exercising
4 criminal jurisdiction in a case involving a child to transfer the case to the
5 juvenile court under certain circumstances; making certain conforming changes;
6 and generally relating to juvenile law and the transfer of cases to the juvenile
7 court.

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Procedure
10 Section ~~4-202, 4-202.1,~~ and 4-202.2
11 Annotated Code of Maryland
12 (2008 Replacement Volume and 2013 Supplement)

13 *BY repealing and reenacting, without amendments.*

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.

Italics indicate opposite chamber/conference committee amendments.



1 Article – Criminal Procedure
 2 Section 4–202.1
 3 Annotated Code of Maryland
 4 (2008 Replacement Volume and 2013 Supplement)

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

7 **Article – Criminal Procedure**

8 4–202.

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

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

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

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

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

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

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

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

24 (1) ~~the child previously has been transferred to juvenile court and~~
 25 ~~adjudicated delinquent;~~

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

28 ~~(3)~~ **(2)** the alleged crime is murder in the first degree and the accused
 29 child was 16 or 17 years of age when the alleged crime was committed. ~~¶~~

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

- 1 (1) the age of the child;
- 2 (2) the mental and physical condition of the child;
- 3 (3) the amenability of the child to treatment in an institution, facility,
4 or program available to delinquent children;
- 5 (4) the nature of the alleged crime; and
- 6 (5) the public safety.

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

10 ~~[(f)] (E)~~ The court shall make a transfer determination within 10 days after
11 the date of a transfer hearing.

12 ~~[(g)] (F)~~ If the court transfers its jurisdiction under this section, the court
13 may order the child held for an adjudicatory hearing under the regular procedure of
14 the juvenile court.

15 ~~[(h)] (G)~~ (1) Pending a determination under this section to transfer its
16 jurisdiction, the court may order a child to be held in a secure juvenile facility.

17 (2) A hearing on a motion requesting that a child be held in a juvenile
18 facility pending a transfer determination shall be held not later than the next court
19 day, unless extended by the court for good cause shown.

20 ~~[(i)] (H)~~ (1) A victim or victim's representative shall be given notice of
21 the transfer hearing as provided under § 11-104 of this article.

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

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

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

29 ~~[(j)] (I)~~ At a bail review or preliminary hearing before the District Court
30 involving a child whose case is eligible for transfer under subsection (b) of this section,
31 the District Court may order that a study be made under the provisions of subsection

1 ~~[(e)] (D)~~ of this section, or that the child be held in a secure juvenile facility under the
2 provisions of subsection ~~[(h)] (G)~~ of this section, regardless of whether the District
3 Court has criminal jurisdiction over the case.

4 4–202.1.

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

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

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

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

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

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

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

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

21 (iii) may order that a study be made under § 4–202 of this
22 subtitle; and

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

25 (c) On receipt of a District Court case file that indicates that the case
26 involves a child who was detained after a bail review hearing under subsection (b) of
27 this section, a circuit court:

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

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

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

6 4-202.2.

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

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

12 (2) ~~[(i)]~~ pretrial transfer was prohibited under § ~~4-202(e)(3)~~
13 4-202(C)(2) of this subtitle; or

14 ~~[(ii)]~~ the court did not transfer jurisdiction after a hearing under
15 § 4-202(b) of this subtitle.

16 (b) In determining whether to transfer jurisdiction under subsection (a) of
17 this section, the court shall consider:

18 (1) the age of the child;

19 (2) the mental and physical condition of the child;

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

22 (4) the nature of the child's acts as proven in the trial or admitted to in
23 a plea entered under Maryland Rule 4-242; and

24 (5) public safety.

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

27 (1) under the terms of a plea agreement entered under Maryland Rule
28 4-243, the child agrees that jurisdiction is not to be transferred; or

29 (2) pretrial transfer was prohibited under § 4-202(c)(1) ~~or (2)~~ of this
30 subtitle.

1 (d) (1) A victim or victim's representative shall be given notice of the
2 transfer hearing as provided under § 11-104 of this article.

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

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

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

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

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

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.