

SENATE BILL 648

E3, E2

3lr2117

By: **Senator Gladden**

Introduced and read first time: February 1, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Jurisdiction and Detention**

3 FOR the purpose of establishing that the juvenile court has jurisdiction over a certain
4 child alleged to have committed certain acts which, if committed by an adult,
5 would be certain crimes, or over a certain child who has previously been
6 convicted of a felony under certain circumstances; prohibiting a child from
7 waiving the right to counsel at a certain waiver hearing; requiring a certain
8 person to be transferred to a juvenile facility unless a certain finding has been
9 made; prohibiting a child from being transported together with certain adults
10 unless a certain finding has been made; repealing certain provisions of law
11 governing the transfer of certain criminal cases to juvenile court; making
12 stylistic and conforming changes; altering certain requirements relating to
13 events that must be reported to the Criminal Justice Information System
14 Central Repository; altering certain requirements relating to the fingerprinting
15 of a child adjudicated delinquent; providing for the application of this Act; and
16 generally relating to juvenile law.

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 3–8A–03(d), 3–8A–16, and 3–8A–20(b)
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2012 Supplement)

22 BY repealing
23 Article – Criminal Procedure
24 Section 4–202 and 4–202.2
25 Annotated Code of Maryland
26 (2008 Replacement Volume and 2012 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – Criminal Procedure

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 4–202.1, 10–215(a)(20), and 10–216(d)
2 Annotated Code of Maryland
3 (2008 Replacement Volume and 2012 Supplement)

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

6 **Article – Courts and Judicial Proceedings**

7 3–8A–03.

8 (d) The court does not have jurisdiction over:

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

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

17 [(3)] (2) A child at least 16 years old alleged to have done an act in
18 violation of any provision of law, rule, or regulation governing the use or operation of a
19 boat, except an act that prescribes a penalty of incarceration; **OR**

20 [(4) A child at least 16 years old alleged to have committed any of the
21 following crimes, as well as all other charges against the child arising out of the same
22 incident, unless an order removing the proceeding to the court has been filed under §
23 4–202 of the Criminal Procedure Article:

24 (i) Abduction;

25 (ii) Kidnapping;

26 (iii) Second degree murder;

27 (iv) Manslaughter, except involuntary manslaughter;

28 (v) Second degree rape;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **[(6)] (3)** A peace order proceeding in which the victim, as defined in §
26 3-8A-01(cc)(1)(ii) of this subtitle, is a person eligible for relief, as defined in § 4-501 of
27 the Family Law Article.

28 3-8A-16.

29 (a) The official in charge of a jail or other facility for the detention of adult
30 offenders or persons charged with crime shall inform the court or the intake officer
31 immediately when a person, who is or appears to be under the age of 18 years, is
32 received at the facility and shall deliver [him] **THE PERSON** to the court upon request
33 or transfer [him] **THE PERSON** to the **JUVENILE** facility designated by the intake
34 officer or the court, unless [the]:

1 **(1)** **THE** court has waived its jurisdiction with respect to the person
2 [and he];

3 **(2)** **THE PERSON** is being proceeded against as an adult; **AND**

4 **(3)** **A FINDING HAS BEEN MADE, AFTER A HEARING AND BASED ON**
5 **EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS IN THE CHARGING**
6 **DOCUMENT, THAT THE PERSON:**

7 **(I)** **CANNOT BE HELD IN A JUVENILE FACILITY; AND**

8 **(II)** **IS A THREAT TO THE SAFETY OR SECURITY OF THE**
9 **STAFF OR OTHER JUVENILES IN THE JUVENILE FACILITY.**

10 (b) When a case is transferred to another court for criminal prosecution, the
11 child shall promptly be transferred to the appropriate officer, **JUVENILE FACILITY**, or
12 adult detention facility in accordance with the law governing the detention of persons
13 charged with crime.

14 (c) A child may not be transported together with adults who have been
15 charged with or convicted of a crime unless [the]:

16 **(1)** **THE** court has waived its jurisdiction [and the];

17 **(2)** **THE** child is being proceeded against as an adult; **AND**

18 **(3)** **A FINDING HAS BEEN MADE, AFTER A HEARING AND BASED ON**
19 **EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS IN THE CHARGING**
20 **DOCUMENT, THAT THE PERSON:**

21 **(I)** **CANNOT BE HELD IN A JUVENILE FACILITY; AND**

22 **(II)** **IS A THREAT TO THE SAFETY OR SECURITY OF THE**
23 **STAFF OR OTHER JUVENILES IN THE JUVENILE FACILITY.**

24 3-8A-20.

25 (b) (1) Except as provided in paragraph (3) of this subsection, a child may
26 not waive the right to the assistance of counsel in a proceeding under this subtitle.

27 (2) A parent, guardian, or custodian of a child may not waive the
28 child's right to the assistance of counsel.

1 (3) After a petition or citation has been filed with the court under this
2 subtitle, if a child indicates a desire to waive the right to the assistance of counsel, the
3 court may not accept the waiver unless:

4 (i) The child is in the presence of counsel and has consulted
5 with counsel; and

6 (ii) The court determines that the waiver is knowing and
7 voluntary.

8 (4) In determining whether the waiver is knowing and voluntary, the
9 court shall consider, after appropriate questioning in open court and on the record,
10 whether the child fully comprehends:

11 (i) The nature of the allegations and the proceedings, and the
12 range of allowable dispositions;

13 (ii) That counsel may be of assistance in determining and
14 presenting any defenses to the allegations of the petition, or other mitigating
15 circumstances;

16 (iii) That the right to the assistance of counsel in a delinquency
17 case, or a child in need of supervision case, includes the right to the prompt
18 assignment of an attorney, without charge to the child if the child is financially unable
19 to obtain private counsel;

20 (iv) That even if the child intends not to contest the charge or
21 proceeding, counsel may be of substantial assistance in developing and presenting
22 material that could affect the disposition; and

23 (v) That among the child's rights at any hearing are the right to
24 call witnesses on the child's behalf, the right to confront and cross-examine witnesses,
25 the right to obtain witnesses by compulsory process, and the right to require proof of
26 any charges.

27 **(5) NOTWITHSTANDING PARAGRAPH (3) OF THIS SUBSECTION, A**
28 **CHILD MAY NOT WAIVE THE RIGHT TO THE ASSISTANCE OF COUNSEL IN A**
29 **WAIVER HEARING HELD UNDER § 3-8A-06 OF THIS SUBTITLE.**

30 Article – Criminal Procedure

31 [4-202.

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

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

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

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

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

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

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

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

14 (1) the child previously has been transferred to juvenile court and
15 adjudicated delinquent;

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

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

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

22 (1) the age of the child;

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

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

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

27 (5) the public safety.

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

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

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

6 (h) (1) Pending a determination under this section to transfer its
7 jurisdiction, the court may order a child to be held in a secure juvenile facility.

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

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

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

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

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

20 (j) At a bail review or preliminary hearing before the District Court
21 involving a child whose case is eligible for transfer under subsection (b) of this section,
22 the District Court may order that a study be made under the provisions of subsection
23 (e) of this section, or that the child be held in a secure juvenile facility under the
24 provisions of subsection (h) of this section, regardless of whether the District Court has
25 criminal jurisdiction over the case.]

26 [4-202.1.] **4-202.**

27 (a) In this section, "child" means a defendant who is under the age of 18
28 years [and whose case is eligible for transfer under the provisions of § 4-202(b)(1) and
29 (2) and (c) of this subtitle].

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

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

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

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

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

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

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

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

11 [(iv)] **(II)** shall require that prompt notice be given to counsel
12 for the child, or, if the child is not represented by counsel, to the Office of the Public
13 Defender.

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

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

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

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

25 [4–202.2.

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

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

31 (2) (i) pretrial transfer was prohibited under § 4–202(c)(3) of this
32 subtitle; or

1 (ii) the court did not transfer jurisdiction after a hearing under
2 § 4–202(b) of this subtitle.

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

5 (1) the age of the child;

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

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

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

11 (5) public safety.

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

14 (1) under the terms of a plea agreement entered under Maryland Rule
15 4–243, the child agrees that jurisdiction is not to be transferred; or

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

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

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

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

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

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

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

1 10–215.

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

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

5 (i) if the child is at least [14] **16** years old, for an act [described
6 in § 3–8A–03(d)(1) of the Courts Article; or

7 (ii) if the child is at least 16 years old, for an act described in §
8 3–8A–03(d)(4) or (5) of the Courts Article;] **THAT, IF COMMITTED BY AN ADULT,
9 WOULD BE A CRIME PUNISHABLE BY DEATH, LIFE IMPRISONMENT, OR LIFE
10 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE;**

11 10–216.

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

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

16 (ii) for an act [described in § 3–8A–03(d)(4) or (5) of the Courts
17 Article] **THAT, IF COMMITTED BY AN ADULT, WOULD BE A CRIME PUNISHABLE BY
18 DEATH, LIFE IMPRISONMENT, OR LIFE IMPRISONMENT WITHOUT THE
19 POSSIBILITY OF PAROLE** if the child is at least 16 years old.

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

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

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies only to
29 an action filed on or after the effective date of this Act.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2013.