

# HOUSE BILL 618

E3, E2

5lr2587  
CF SB 172

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By: **Delegates Carter, Anderson, Dumais, Morales, and Smith**

Introduced and read first time: February 12, 2015

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2015

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Juveniles – Transfer Determinations – Confinement in Juvenile Facilities**

3 FOR the purpose of requiring a court exercising criminal jurisdiction in a case involving a  
4 child, or the District Court at a bail review or preliminary hearing involving a child,  
5 to order a certain child to be held in a secure juvenile facility pending a certain  
6 transfer determination except under certain circumstances; requiring the District  
7 Court to state the reasons for a certain finding on the record under certain  
8 circumstances; and generally relating to the confinement of juveniles.

9 BY repealing and reenacting, with amendments,  
10 Article – Criminal Procedure  
11 Section 4–202  
12 Annotated Code of Maryland  
13 (2008 Replacement Volume and 2014 Supplement)

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

16 **Article – Criminal Procedure**

17 4–202.

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

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

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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.



1 (3) "Victim's representative" has the meaning stated in § 11-104 of this  
2 article.

3 (b) Except as provided in subsection (c) of this section, a court exercising criminal  
4 jurisdiction in a case involving a child may transfer the case to the juvenile court before  
5 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 court  
9 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 transfer  
11 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 (b) of  
13 this section if:

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

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

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

20 (1) the age of the child;

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

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

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

25 (5) the public safety.

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

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

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

3 (h) ~~{(1)}~~ Pending a determination under this section to transfer its jurisdiction,  
4 the court [may] **SHALL** order [a] **THE** child to be held in a secure juvenile facility[.

5 (2) A hearing on a motion requesting that a child be held in a juvenile  
6 facility pending a transfer determination shall be held not later than the next court day,  
7 unless extended by the court for good cause shown] **UNLESS:**

8 ~~(1)~~ **(I) THE CHILD IS RELEASED ON BAIL, RECOGNIZANCE, OR**  
9 **OTHER CONDITIONS OF PRETRIAL RELEASE;**

10 ~~(2)~~ **(II) THERE IS NOT AVAILABLE CAPACITY IN A SECURE JUVENILE**  
11 **FACILITY, AS DETERMINED BY THE DEPARTMENT OF JUVENILE SERVICES; OR**

12 ~~(3)~~ **(III) THE CHILD WAS CHARGED WITH AN OFFENSE EXCLUDED**  
13 **FROM THE JURISDICTION OF THE JUVENILE COURT WHILE CONFINED IN A SECURE**  
14 **JUVENILE FACILITY THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT**  
15 **DETENTION IN A SECURE JUVENILE FACILITY WOULD POSE A SUBSTANTIAL RISK OF**  
16 **HARM TO THE CHILD OR OTHERS.**

17 **(2) IF THE COURT MAKES A FINDING UNDER PARAGRAPH (1)(III) OF**  
18 **THIS SUBSECTION THAT DETENTION IN A SECURE JUVENILE FACILITY WOULD POSE**  
19 **A SUBSTANTIAL RISK OF HARM TO THE CHILD OR OTHERS, THE COURT SHALL STATE**  
20 **THE REASONS FOR THE FINDING ON THE RECORD.**

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

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

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

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

30 (j) **(1) [At] REGARDLESS OF WHETHER THE DISTRICT COURT HAS**  
31 **JURISDICTION OVER THE CASE, AT** a bail review or preliminary hearing before the  
32 District Court involving a child whose case is eligible for transfer under subsection (b) of  
33 this section, the District Court:

1           ~~(1)~~ **(I)** may order that a study be made under the provisions of  
2 subsection (e) of this section[, or]; AND

3           ~~(2)~~ **(II)** SHALL ORDER that the child be held in a secure juvenile facility  
4 [under the provisions of subsection (h) of this section, regardless of whether the District  
5 Court has criminal jurisdiction over the case] **PENDING A TRANSFER DETERMINATION**  
6 **UNDER THIS SECTION UNLESS:**

7           ~~(H)~~ **1.** THE CHILD IS RELEASED ON BAIL, RECOGNIZANCE, OR  
8 OTHER CONDITIONS OF PRETRIAL RELEASE;

9           ~~(H)~~ **2.** THERE IS NOT AVAILABLE CAPACITY AT A SECURE  
10 JUVENILE FACILITY AS DETERMINED BY THE DEPARTMENT OF JUVENILE  
11 SERVICES; OR

12           ~~(H)~~ **3.** ~~THE CHILD WAS CHARGED WITH AN OFFENSE~~  
13 ~~EXCLUDED FROM THE JURISDICTION OF THE JUVENILE COURT WHILE CONFINED IN~~  
14 ~~A SECURE JUVENILE FACILITY~~ **THE DISTRICT COURT FINDS BY CLEAR AND**  
15 **CONVINCING EVIDENCE THAT DETENTION IN A SECURE JUVENILE FACILITY WOULD**  
16 **POSE A SUBSTANTIAL RISK OF HARM TO THE CHILD OR OTHERS.**

17           **(2) IF THE DISTRICT COURT MAKES A FINDING UNDER PARAGRAPH**  
18 **(1)(II)3 OF THIS SUBSECTION THAT DETENTION IN A SECURE JUVENILE FACILITY**  
19 **WOULD POSE A SUBSTANTIAL RISK OF HARM TO THE CHILD OR OTHERS, THE**  
20 **DISTRICT COURT SHALL STATE THE REASONS FOR THE FINDING ON THE RECORD.**

21           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2015.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.