

HOUSE BILL 196

E3, E2

6lr1364

By: **Delegates Haynes, Chang, Gutierrez, Jackson, and Sophocleus**

Introduced and read first time: January 21, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juveniles – Pretrial Detention – Confinement in Juvenile Facilities**

3 FOR the purpose of requiring a court exercising criminal jurisdiction in a case involving a
4 certain child to order the child to be held in a secure juvenile facility pending a
5 criminal trial except under certain circumstances; requiring the court to state the
6 reasons for a certain finding on the record under certain circumstances; and
7 generally relating to pretrial detention of juveniles.

8 BY repealing and reenacting, with amendments,

9 Article – Criminal Procedure

10 Section 4–202

11 Annotated Code of Maryland

12 (2008 Replacement Volume and 2015 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

14 That the Laws of Maryland read as follows:

15 **Article – Criminal Procedure**

16 4–202.

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

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

15 (1) the age of the child;

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

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

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

20 (5) the public safety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 3. the District Court finds that detention in a secure juvenile
31 facility would pose a risk of harm to the child or others.

1 (2) If the District Court makes a finding under paragraph (1)(ii)3 of this
2 subsection that detention in a secure juvenile facility would pose a risk of harm to the child
3 or others, the District Court shall state the reasons for the finding on the record.

4 **(K) (1) IF THE COURT MAKES A DETERMINATION NOT TO TRANSFER ITS**
5 **JURISDICTION UNDER THIS SECTION, THE COURT SHALL ORDER THAT THE CHILD**
6 **BE HELD IN A SECURE JUVENILE FACILITY PENDING A CRIMINAL TRIAL UNLESS:**

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

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

11 **(III) THE COURT FINDS THAT DETENTION IN A SECURE JUVENILE**
12 **FACILITY WOULD POSE A RISK OF HARM TO THE CHILD OR OTHERS.**

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2016.