

HOUSE BILL 981

E3

2lr1662

By: **Delegate Alston**

Introduced and read first time: February 10, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Waiver or Transfer of Jurisdiction – Appeal**

3 FOR the purpose of establishing that an order of the juvenile court waiving its
4 jurisdiction may be appealed to the Court of Special Appeals within a certain
5 period of time; establishing that an order denying transfer of jurisdiction from a
6 court exercising criminal jurisdiction in a case involving a child to the juvenile
7 court may be appealed to the Court of Special Appeals within a certain period of
8 time; establishing that an appeal under this Act stays any further proceedings
9 in the case until the appeal is concluded; prohibiting a child from being held in
10 an adult detention facility under certain circumstances; and generally relating
11 to waivers or transfers of jurisdictions of juveniles and appeals.

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 3–8A–06
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2011 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Procedure
19 Section 4–202
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2011 Supplement)

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

24 **Article – Courts and Judicial Proceedings**

25 3–8A–06.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) The court may waive the exclusive jurisdiction conferred by § 3–8A–03 of
2 this subtitle with respect to a petition alleging delinquency by:

3 (1) A child who is 15 years old or older; or

4 (2) A child who has not reached his 15th birthday, but who is charged
5 with committing an act which if committed by an adult, would be punishable by death
6 or life imprisonment.

7 (b) The court may not waive its jurisdiction under this section until after it
8 has conducted a waiver hearing, held prior to an adjudicatory hearing and after notice
9 has been given to all parties as prescribed by the Maryland Rules. The waiver hearing
10 is solely to determine whether the court should waive its jurisdiction.

11 (c) (1) Notice of the waiver hearing shall be given to a victim as provided
12 under § 11–104 of the Criminal Procedure Article.

13 (2) (i) A victim may submit a victim impact statement to the court
14 as provided in § 11–402 of the Criminal Procedure Article.

15 (ii) This paragraph does not preclude a victim who has not filed
16 a notification request form under § 11–104 of the Criminal Procedure Article from
17 submitting a victim impact statement to the court.

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

20 (d) (1) The court may not waive its jurisdiction under this section unless
21 it determines, from a preponderance of the evidence presented at the hearing, that the
22 child is an unfit subject for juvenile rehabilitative measures.

23 (2) For purposes of determining whether to waive its jurisdiction
24 under this section, the court shall assume that the child committed the delinquent act
25 alleged.

26 (e) In making its determination, the court shall consider the following
27 criteria individually and in relation to each other on the record:

28 (1) Age of the child;

29 (2) Mental and physical condition of the child;

30 (3) The child's amenability to treatment in any institution, facility, or
31 program available to delinquents;

32 (4) The nature of the offense and the child's alleged participation in it;
33 and

1 (5) The public safety.

2 (f) If jurisdiction is waived under this section, the court shall order the child
3 held for trial under the regular procedures of the court which would have jurisdiction
4 over the offense if committed by an adult. The petition alleging delinquency shall be
5 considered a charging document for purposes of detaining the child pending a bail
6 hearing.

7 (g) **(1) An order waiving jurisdiction [is interlocutory] MAY BE**
8 **APPEALED TO THE COURT OF SPECIAL APPEALS WITHIN 30 DAYS AFTER THE**
9 **ORDER IS ISSUED.**

10 **(2) AN APPEAL UNDER PARAGRAPH (1) OF THIS SUBSECTION**
11 **SHALL STAY ANY FURTHER PROCEEDINGS IN THE CASE UNTIL THE APPEAL IS**
12 **CONCLUDED.**

13 **(3) PENDING AN APPEAL UNDER PARAGRAPH (1) OF THIS**
14 **SUBSECTION, THE CHILD MAY NOT BE HELD IN AN ADULT DETENTION FACILITY.**

15 (h) If the court has once waived its jurisdiction with respect to a child in
16 accordance with this section, and that child is subsequently brought before the court
17 on another charge of delinquency, the court may waive its jurisdiction in the
18 subsequent proceeding after summary review.

19 **Article – Criminal Procedure**

20 4–202.

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

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

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

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

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

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

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

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

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

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

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

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

13 (1) the age of the child;

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

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

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

18 (5) the public safety.

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

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

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

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

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

1 (i) (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 a 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 (j) At a bail review or preliminary hearing before the District Court
11 involving a child whose case is eligible for transfer under subsection (b) of this section,
12 the District Court may order that a study be made under the provisions of subsection
13 (e) of this section, or that the child be held in a secure juvenile facility under the
14 provisions of subsection (h) of this section, regardless of whether the District Court has
15 criminal jurisdiction over the case.

16 **(K) (1) AN ORDER DENYING TRANSFER OF JURISDICTION UNDER**
17 **THIS SECTION MAY BE APPEALED TO THE COURT OF SPECIAL APPEALS WITHIN**
18 **30 DAYS AFTER THE ORDER IS ISSUED.**

19 **(2) AN APPEAL UNDER PARAGRAPH (1) OF THIS SUBSECTION**
20 **SHALL STAY ANY FURTHER PROCEEDINGS IN THE CASE UNTIL THE APPEAL IS**
21 **CONCLUDED.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2012.