

# SENATE BILL 761

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2lr0868  
CF 2lr2290

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By: **Senator Gladden**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Juveniles – Confinement in Juvenile Facilities**

3 FOR the purpose of providing that a certain child for whom the juvenile court has  
4 waived jurisdiction under certain circumstances is required to remain detained  
5 in a juvenile detention facility except under certain circumstances; providing  
6 that a certain child is required to be transferred to a certain juvenile facility  
7 under certain circumstances; establishing the circumstances under which a  
8 certain child may not be transferred to a juvenile facility; prohibiting a child  
9 from being transported together with certain adults except under certain  
10 circumstances; requiring a court exercising criminal jurisdiction in a case  
11 involving a child, or the District Court at a bail review or preliminary hearing,  
12 to order a certain child to be held in a secure juvenile facility pending a certain  
13 determination except under certain circumstances; authorizing a certain  
14 defendant to receive certain credit against and a reduction of the term of a  
15 certain sentence for all time spent in the custody of a juvenile detention facility  
16 under certain circumstances; making stylistic changes; and generally relating to  
17 juveniles and confinement in juvenile facilities.

18 BY repealing and reenacting, with amendments,  
19 Article – Courts and Judicial Proceedings  
20 Section 3–8A–06 and 3–8A–16  
21 Annotated Code of Maryland  
22 (2006 Replacement Volume and 2011 Supplement)

23 BY repealing and reenacting, without amendments,  
24 Article – Courts and Judicial Proceedings  
25 Section 3–8A–22  
26 Annotated Code of Maryland  
27 (2006 Replacement Volume and 2011 Supplement)

28 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Procedure  
2 Section 4–202 and 6–218  
3 Annotated Code of Maryland  
4 (2008 Replacement Volume and 2011 Supplement)

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

7 **Article – Courts and Judicial Proceedings**

8 3–8A–06.

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

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

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

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

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

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

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

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

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

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

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

3 (1) Age of the child;

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

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

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

9 (5) The public safety.

10 (f) (1) If jurisdiction is waived under this section, the court shall order  
11 the child held for trial [under]:

12 (I) UNDER the regular procedures of the court which would  
13 have jurisdiction over the offense if committed by an adult; AND

14 (II) AS PROVIDED UNDER SUBSECTION (I) OF THIS SECTION.

15 (2) The petition alleging delinquency shall be considered a charging  
16 document for purposes of detaining the child pending a bail hearing.

17 (g) An order waiving jurisdiction is interlocutory.

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

22 (I) IF THE COURT HAS WAIVED JURISDICTION UNDER THIS SECTION,  
23 THE CHILD SHALL REMAIN DETAINED IN A JUVENILE DETENTION FACILITY  
24 UNLESS:

25 (1) RELEASED ON BAIL; OR

26 (2) A FINDING IS MADE, AFTER A HEARING AND BASED ON  
27 EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS WITHIN THE CHARGING  
28 DOCUMENT, THAT THE CHILD IS A THREAT TO THE SAFETY OR SECURITY OF THE  
29 STAFF OR YOUTH AND CANNOT BE HELD IN A JUVENILE FACILITY.

30 3-8A-16.

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

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

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

10 (3) **A FINDING HAS BEEN MADE, AFTER A HEARING AND BASED ON**  
11 **EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS WITHIN THE CHARGING**  
12 **DOCUMENT, THAT THE PERSON:**

13 (i) **IS A THREAT TO THE SAFETY OR SECURITY OF THE**  
14 **STAFF OR YOUTH IN A JUVENILE DETENTION FACILITY; AND**

15 (ii) **CANNOT BE HELD IN A JUVENILE DETENTION FACILITY.**

16 (b) When a case is transferred to another court for criminal prosecution, the  
17 child shall promptly be transferred to the appropriate officer or adult **OR JUVENILE**  
18 detention facility in accordance with the law governing the detention of persons  
19 charged with crime.

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

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

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

24 (3) **A FINDING HAS BEEN MADE, AFTER A HEARING AND BASED ON**  
25 **EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS WITHIN THE CHARGING**  
26 **DOCUMENT, THAT THE CHILD IS A SAFETY OR SECURITY THREAT AND CANNOT**  
27 **BE HELD IN A JUVENILE FACILITY.**

28 3-8A-22.

29 (a) A child may not be detained at, or committed or transferred to, a  
30 correctional facility, as defined in § 1-101 of the Correctional Services Article, except  
31 in accordance with § 3-8A-16 of this subtitle.

1 (b) A child who is not delinquent may not be committed or transferred to a  
2 facility used for the confinement of delinquent children.

3 (c) Unless an individualized treatment plan developed under § 10–706 of the  
4 Health – General Article indicates otherwise:

5 (1) A child may not be committed or transferred to any public or  
6 private facility or institution unless the child is placed in accommodations that are  
7 separate from other persons 18 years of age or older who are confined to that facility or  
8 institution; and

9 (2) The child may not be treated in any group with persons who are 18  
10 years of age or older.

### 11 Article – Criminal Procedure

12 4–202.

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

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

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

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

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

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

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

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

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

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

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

3           (d)    In determining whether to transfer jurisdiction under subsection (b) 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 alleged crime; and

10                  (5)    the public safety.

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

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

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

19           (h)    [(1)] Pending a determination under this section to transfer its  
20 jurisdiction, the court [may] **SHALL** order a child to be held in a secure juvenile  
21 facility[.

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

25                   **(1)    THE CHILD IS RELEASED ON BAIL; OR**

26                   **(2)    A FINDING IS MADE, AFTER A HEARING AND BASED ON**  
27 **EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS WITHIN THE CHARGING**  
28 **DOCUMENT, THAT THE CHILD IS A SAFETY OR SECURITY THREAT AND CANNOT**  
29 **BE HELD IN A JUVENILE FACILITY.**

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

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

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

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

8           (j)    At a bail review or preliminary hearing before the District Court  
9 involving a child whose case is eligible for transfer under subsection (b) of this section,  
10 the District Court, **REGARDLESS OF WHETHER THE DISTRICT COURT HAS**  
11 **CRIMINAL JURISDICTION OVER THE CASE:**

12                   **(1)    SHALL ORDER THAT THE CHILD BE HELD IN A SECURE**  
13 **JUVENILE FACILITY PENDING A TRANSFER DETERMINATION UNLESS:**

14                           **(I)    THE CHILD IS RELEASED ON BAIL; OR**

15                           **(II)   A FINDING IS MADE, AFTER A HEARING AND BASED ON**  
16 **EVIDENCE OTHER THAN SOLELY THE ALLEGATIONS WITHIN THE CHARGING**  
17 **DOCUMENT, THAT THE CHILD IS A SAFETY OR SECURITY THREAT AND CANNOT**  
18 **BE HELD IN A JUVENILE FACILITY; AND**

19                   **(2)**    may order that a study be made under the provisions of subsection  
20 (e) of this section[, or that the child be held in a secure juvenile facility under the  
21 provisions of subsection (h) of this section, regardless of whether the District Court has  
22 criminal jurisdiction over the case].

23   6-218.

24           (a)    This section does not apply to a parolee who is returned to the custody of  
25 the Division of Correction because of a subsequent crime and is confined before being  
26 sentenced for the subsequent crime.

27           (b)    (1)   A defendant who is convicted and sentenced shall receive credit  
28 against and a reduction of the term of a definite or life sentence, or the minimum and  
29 maximum terms of an indeterminate sentence, for all time spent in the custody of a  
30 correctional facility, hospital, facility for persons with mental disorders, **JUVENILE**  
31 **DETENTION FACILITY**, or other unit because of:

32                           (i)    the charge for which the sentence is imposed; or

33                           (ii)   the conduct on which the charge is based.

1           (2) If a defendant is in custody because of a charge that results in a  
2 dismissal or acquittal, the time that would have been credited if a sentence had been  
3 imposed shall be credited against any sentence that is based on a charge for which a  
4 warrant or commitment was filed during that custody.

5           (3) In a case other than a case described in paragraph (2) of this  
6 subsection, the sentencing court may apply credit against a sentence for time spent in  
7 custody for another charge or crime.

8           (c) A defendant whose sentence is set aside because of a direct or collateral  
9 attack and who is reprosecuted or resentenced for the same crime or for another crime  
10 based on the same transaction shall receive credit against and a reduction of the term  
11 of a definite or life sentence, or the minimum and maximum terms of an indeterminate  
12 sentence, for all time spent in custody under the prior sentence, including credit  
13 applied against the prior sentence in accordance with subsection (b) of this section.

14           (d) A defendant who is serving multiple sentences, one of which is set aside  
15 as the result of a direct or collateral attack, shall receive credit against and a  
16 reduction of the remaining term of a definite or life sentence, or the remaining  
17 minimum and maximum terms of an indeterminate sentence, for all time spent in  
18 custody under the sentence set aside, including credit applied against the sentence set  
19 aside in accordance with subsection (b) of this section.

20           (e) (1) The court shall award the credit required by this section at the  
21 time of sentencing.

22           (2) After having communicated with the parties, the court shall tell  
23 the defendant and shall state on the record the amount of the credit and the facts on  
24 which the credit is based.

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