

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 648 (Senator Gladden)
Judicial Proceedings

Juvenile Law - Jurisdiction and Detention

The bill expands the jurisdiction of the juvenile court to establish original jurisdiction over children (1) older than age 14 who are alleged to have done an act which, if committed by an adult, would be a crime punishable by life imprisonment and (2) older than age 16 who are alleged to have committed specified crimes. The bill makes conforming changes to the expanded original jurisdiction of the juvenile court by repealing provisions of law that govern the transfer of criminal cases to juvenile court. The bill prohibits a child from waiving the right to the assistance of counsel in a waiver hearing.

Fiscal Summary

State Effect: Significant increase in expenditures for the Department of Juvenile Services (DJS) as a result of the expansion of the juvenile court's jurisdiction. General fund expenditures decrease minimally for the Department of Public Safety and Correctional Services (DPSCS), reflecting a decrease in the juvenile population in the Baltimore City Detention Center.

Local Effect: Minimal decrease in local expenditures for juveniles that will instead be held in DJS facilities.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires an individual who is or appears to be younger than age 18 to be delivered to the court upon request or transferred to the juvenile facility

designated by the intake officer of the court unless a finding has been made, after a hearing and based on evidence other than solely the allegations in the charging document, that the person cannot be held in a juvenile facility and is a threat to the safety or security of the staff or other juveniles in the juvenile facility. The additional exceptions under current law that the court must have waived its jurisdiction and the person is being processed as an adult continue.

The bill adds to the requirements that must be met before a child can be transported together with adults who have been charged with or convicted of a crime by requiring that a finding must have been made, after a hearing and based on evidence other than solely the allegations within the charging document, that the child is a safety or security threat and cannot be held in a juvenile facility.

The bill alters the events that must be reported to the Criminal Justice Information System by requiring the reporting of the adjudication of a child as delinquent if the child is older than age 16 and the act was one that, if committed by an adult, would be a crime punishable by death, life imprisonment, or life imprisonment without the possibility of parole. The bill makes similar alterations to require that only a child who meets the above criteria must be fingerprinted.

Current Law: In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for alcoholic beverage violations. The juvenile court may waive jurisdiction over a child alleged to be delinquent who is age 15 or older, or who is younger than age 15 and is charged with committing an act which, if committed by an adult, would be punishable by death or life imprisonment. The court may waive its jurisdiction only after it has conducted a waiver hearing held prior to the adjudicatory hearing and after notice has been given to all parties. The court may not waive its jurisdiction over a case unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures. The following criteria must be considered by the court: (1) the child's age; (2) the mental and physical condition of the child; (3) the child's amenability to any available treatment; (4) the nature of the offense and the child's alleged participation in it; and (5) public safety. These criteria must be considered individually and in relation to each other on the record. If jurisdiction is waived, the court must order the child held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult.

The juvenile court does not have jurisdiction over children at least age 16 who are alleged to have committed specified violent crimes, children age 14 and older charged with a capital crime, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. However, a circuit court may transfer a case involving such a

child to the juvenile court if such a transfer is believed to be in the interests of the child or society (“reverse waiver”). A reverse waiver is not permitted in certain circumstances, including if a child was previously transferred to juvenile court and adjudicated delinquent. At a transfer hearing, the court must consider the same criteria as set forth above relating to a waiver, and may order that a study be made concerning the child, the child’s family and environment, and other matters concerning the disposition of the case.

In general, a child may not be committed or transferred to any public or private facility or institution unless the child is placed in accommodations that are separate from other persons age 18 or older. The child cannot be treated in any group with persons who are age 18 or older.

State and Local Fiscal Effect:

Department of Juvenile Services

General fund expenditures increase significantly for DJS beginning in fiscal 2014 as a result of the expansion of the juvenile court’s jurisdiction. DJS provided an estimate based on an additional 800 juveniles per year being subject to the juvenile court’s jurisdiction and made assumptions as to how the cases might be handled in the juvenile system. However, it cautions that because these cases have never been under the jurisdiction of the juvenile courts, it is not possible to accurately predict how the juvenile court may respond to these cases. The Department of Legislative Services agrees and, therefore, provides the following estimates *for illustrative purposes only*.

Detention Costs

Due to the severity of the offenses, a majority will be detained pending trial. Some of the juveniles may still be waived to adult court, and judges will retain the discretion to order juveniles who are being prosecuted as adults to be detained in adult facilities if specified determinations have been made. If DJS retains responsibility for 80% of the juveniles (640), it is reasonable to assume that due to the nature of the offenses, a majority, if not all of these juveniles, will be detained pending trial in juvenile court. If an additional 600 juveniles require detention in juvenile facilities for 30 days, there would be an average of an additional 49 juveniles in detention daily. DJS assumes that detention expenditures are materially impacted only when adding at least eight juveniles, since staffing costs are the main contributor to overall expenditures for detention and, that, for every eight additional juveniles, average annual costs increase by \$188,927. Accordingly, general fund expenditures for detention costs could increase annually by \$1,133,562.

Supervision

Increased juvenile court cases also increase juvenile dispositions. If 24% of the cases retained by the juvenile court result in juvenile probation, 154 juveniles are added to the probation caseload. Accordingly, expenditures increase by approximately \$1.0 million annually, assuming annual probation costs of \$7,000 per juvenile.

Commitment

The increased number of juveniles subject to the jurisdiction of the juvenile court also increases committed placements and, due to the severity of the offenses involved, it is reasonable to predict that the majority of these juveniles will require secure placement. Due to the ongoing lack of secured commitment capability within the State, it is assumed that these individuals will require out-of-state placements. DJS advises that the current average length of stay for juveniles placed into secure, out-of-state programs is over nine months, and juveniles who are placed for violent offenses will remain longer. *For illustrative purposes only*, if an additional 300 juveniles per year are committed in an out-of-state placement, with an average length of stay of one year, expenditures increase by \$38.3 million annually.

Department of Public Safety and Correctional Services and Local Detention Facilities

General fund expenditures for DPSCS decrease minimally as a result of fewer juveniles being detained at the Baltimore City Detention Center, which is a State-operated facility used primarily for pretrial detentions. General fund expenditures also decrease minimally as a result of fewer juveniles being subject to the jurisdiction of the adult court and potential incarceration in adult facilities at sentencing.

Local government expenditures decrease as a result of fewer juveniles being detained in local detention facilities or sentenced in adult court. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Judiciary

There is a significant operational impact to the Judiciary due to the expanded jurisdiction of the juvenile court. Cases and hearings will be redistributed throughout the Judiciary. For example, it is anticipated that the number of waiver hearings will increase. Because juvenile masters are not permitted to conduct waiver hearings, judges will be responsible for any additional hearings. The Judiciary also advises that juveniles who are committed to DJS are statutorily mandated to have review hearings every 25 days until they are

placed and every six months while in placement. Accordingly, the bill requires more of these hearings. The District Court caseload, however, will be reduced because juveniles who are currently charged as adults and appearing in the District Court for preliminary hearings go directly to juvenile court. The Judiciary advises that providing an estimate of the costs associated with the procedural and caseload shifts requires a more detailed analysis. Even if there is no increase in expenditures for the Judiciary, the bill likely requires a reallocation of resources, particularly in the larger jurisdictions.

Additional Information

Prior Introductions: None.

Cross File: None designated. However, HB 786 (Delegate Carter, *et al.* – Judiciary) is identical.

Information Source(s): Baltimore City, Howard County, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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