

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 172

(Senator Gladden)

Judicial Proceedings

Judiciary

Juveniles - Transfer Determinations - Confinement in Juvenile Facilities

This bill alters the authority of the court to determine whether a child may be held in a secure juvenile facility pending a reverse waiver determination by *requiring*, rather than *authorizing*, a court exercising criminal jurisdiction or the District Court, at a bail review or preliminary hearing involving such a child, to order the child held at a juvenile facility unless (1) the child is released on bail, recognizance, or on other conditions of pretrial release; (2) there is not available capacity in a secure juvenile facility, as determined by the Department of Juvenile Services (DJS); or (3) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others, and states the reason for the finding on the record.

Fiscal Summary

State Effect: Any potential minimal increase in general fund expenditures to accommodate additional juveniles in DJS facilities pending a reverse waiver determination does not materially impact State finances. Revenues are not affected.

Local Effect: Any potential minimal decrease in local government expenditures due to fewer juveniles being detained in local detention facilities pending a reverse waiver determination does not materially impact local finances. Revenues are not affected.

Small Business Effect: None.

Analysis

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 the child was convicted in an unrelated case excluded from the jurisdiction of the juvenile court. 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. Pending a transfer determination, the court may order the child to be held in a secure juvenile facility.

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.

Background: Interest in the pretrial detention of juveniles pending adult charges or adjudication in the juvenile courts has heightened in recent years. According to a report prepared on behalf of DJS and the Governor's Office of Crime Control and Prevention, the annual number of juveniles charged as adults has fluctuated between 912 and 989 since fiscal 2010. The report further indicates that the number of juveniles charged as adults who were admitted for pretrial detention decreased by 39% between fiscal 2011 and 2014, and that by fiscal 2014, less than half of the juveniles charged as adults were placed in a detention facility.

The decrease in the number of juveniles charged as adults and held in secure detention corresponds with an overall trend in fewer youth being held in secure detention while pending placement. The average daily pending placement population in fiscal 2014 represented a 21% decline from the previous year and the first time that this population fell below 100 since prior to fiscal 2006. The average daily population of predisposition youth in secure detention in fiscal 2014 also decreased to 189, which included 46 juveniles awaiting action from the adult courts.

State Fiscal Effect: DJS advises that due to the declining detention and pending placement populations, it has greater capacity than it has had in previous years to absorb youth who might otherwise be held in adult facilities, and that to a large extent it is already doing so. For example, since July 2013, pursuant to an agreement with the Department of Public Safety and Correctional Services, the Baltimore City Juvenile Justice Center (a DJS facility) detains the majority of the youth pending adult charges in Baltimore City. DJS has also been cooperating with many local detention facilities statewide to detain youth pending adult charges in other jurisdictions within DJS facilities. For example, according to the most recent daily population report (February 11, 2015), there were 58 youth, including 24 in jurisdictions other than Baltimore City, who were in DJS facilities pending adult charges. DJS also indicates that since beginning to absorb this population, it has not seen a material impact in expenditures within its detention facilities. Furthermore, even if DJS experiences population increases within its facilities due to a higher pending placement population or an increased use of pretrial detention for juvenile cases, the bill still conditions the requirement for DJS to detain youth pending a reverse waiver decision on the determination by DJS that it has the capacity to do so. Accordingly, the bill is not anticipated to materially impact State finances.

Local Expenditures: 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. As indicated above, DJS is already absorbing within its facilities many juveniles awaiting action by the adult courts throughout the State. To the extent that the bill results in additional juveniles being detained in DJS facilities instead of local detention facilities, local government expenditures decrease minimally. However, any potential minimal decrease in local government expenditures does not materially impact local finances.

Additional Information

Prior Introductions: HB 1294 of 2014, a similar bill, received a hearing in the House Judiciary Committee but was subsequently withdrawn. Its cross file, SB 757, received an unfavorable report from the Senate Judicial Proceedings Committee. SB 454 of 2013, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 848, received a hearing in the House Judiciary Committee but was subsequently withdrawn. Similar bills were also introduced in the 2012 session.

Cross File: HB 618 (Delegate Carter, *et al.*) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2015
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