

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 222

(Chair, Judicial Proceedings Committee)(By Request -
Departmental - Juvenile Services)

Judicial Proceedings

Judiciary

Juveniles Charged as Adults – Study and Confinement

This departmental bill makes numerous changes to statutory provisions that govern the process and requirements for the pretrial detention of juveniles charged as adults.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State government operations or expenditures, as discussed below. The bill may help protect federal funding by ensuring that Maryland law conforms to federal requirements.

Local Effect: The bill is not anticipated to materially affect local government finances or operations, as discussed below.

Small Business Effect: The Department of Juvenile Services (DJS) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary/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 specified violations. 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 crime punishable by life imprisonment, 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 limited circumstances, as specified in statute. At a transfer hearing, the court must consider specified criteria 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. The bill *requires* that a study be ordered. Additional statutory provisions that authorize such a study to be ordered at various points in a case’s progression, including by the District Court at a bail review or preliminary hearing involving a child whose case is eligible for a reverse waiver, are also altered so that a study is required.

Statutory language specifies requirements for setting a transfer hearing to be held within 30 days after the filing of the charging document in the circuit court. Pursuant to the bill, for good cause, the county administrative judge or designee may change the transfer hearing date set by the circuit court on motion of a party or on the initiative of the circuit court.

Under current law, pending a reverse waiver determination, the court must order the child to be held in a secure juvenile facility unless (1) the child is released on bail, recognizance, or other conditions of pretrial release; (2) there is not available capacity in a secure juvenile facility, as determined by DJS; or (3) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others. A District Court at a bail review or preliminary hearing involving a child whose case is eligible for transfer is also subject to these requirements. The bill repeals these provisions and instead specifies that a child over whom a court exercises criminal jurisdiction (regardless of whether or not the case is eligible for transfer) must be held in a secure juvenile facility and may not have sight or sound contact with adult inmates while the child is awaiting trial or other legal process unless (1) the child is released on bail, recognizance, or other conditions of pretrial release or (2) after a hearing and in writing, the court finds that it is in the interest of justice to permit the child to be held in a correctional facility or to have sight and sound contact with adult inmates. In making such a determination, the court must consider the following factors: (1) the age of the child; (2) the physical and mental maturity of the child; (3) the present mental state of the child, including whether the child presents an imminent risk of self-harm; (4) the nature and circumstances of the alleged offense; (5) the child’s history of prior delinquent acts; (6) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the child but also protect the safety of the public and other detained youth; and (7) any other relevant factor.

“Community detention” means a program monitored by DJS in which a delinquent child or a child alleged to be delinquent is placed in the home of a parent, guardian, custodian, or other fit person, or in shelter care, as a condition of probation or as an alternative to detention. Community detention includes electronic monitoring. The bill authorizes a court

to order that a child held in a secure juvenile facility while awaiting trial or other legal process is eligible for community detention.

The bill also establishes that if the court orders a child to be held in a correctional facility or to have sight or sound contact with adult inmates, the court must hold a hearing at least once every 30 days to review whether this order is still in the interest of justice. The child may not be held in a correctional facility and may not have sight or sound contact with adult inmates for more than 180 days, unless the court, in writing, determines there to be good cause for an extension or the child expressly waives this limitation.

Finally, the bill specifies that when a child held in a secure juvenile detention facility becomes an adult, if the child's case is not pending a transfer determination, the child must promptly be transferred to the appropriate officer or correctional facility in accordance with the law governing the detention and commitment of persons charged with a crime.

Background: DJS has housed transfer-eligible youth statewide since 2015 pursuant to Chapter 442 of 2015. Chapter 442, which altered the law regarding the pretransfer detention of juveniles charged as adults to create a presumption that juveniles should be held in juvenile facilities, was enacted in part to address the inadequacy of local detention facilities to properly detain the population of youth charged as adults. DJS advises that the vast majority of transfer-eligible youth are detained in DJS facilities instead of county jails or the Department of Public Safety and Correctional Services (which runs the Youth Detention Center in Baltimore City), and that over the past year, youth charged as adults make up approximately one-third of the average daily population in detention facilities.

The 2018 reauthorization of the federal Juvenile Justice and Delinquency Prevention Act (JJDP A) created several new requirements that states must comply with in order to receive related federal funds. Previously, JJDP A only mandated the removal of minors from adult jails in delinquency cases. Minors prosecuted as adults were exempt from this requirement and could be housed in adult facilities. The reauthorization addresses the removal of all youth younger than age 18 who are pending trial or other court processes from facilities that house adult inmates. States have until December 2021 to come into compliance with JJDP A or risk losing federal funding. The bill therefore expands eligibility for housing in a secure juvenile detention facility for all youth younger than age 18 (regardless of whether the case is eligible for reverse waiver). The bill retains an override provision by which adult detention may be permitted if holding a youth at DJS would threaten public safety. However, the bill conforms statutory language to that consistent with JJDP A requirements.

DJS further advises that the bill is also intended to reduce the delays in processing transfer cases, such as by requiring the court to order a transfer study at the onset of a case. Also, by allowing a court to utilize the existing DJS community detention program as a form of pretrial release for youth charged as adults, DJS will be better able to manage the detained

population while still allowing for the appropriate monitoring of low-risk youth pending trial.

State and Local Fiscal Effect: Although the bill may result in additional youth being held in DJS facilities or under DJS community detention, it is anticipated that DJS can absorb any increase using existing resources. Any corresponding decrease in pretrial detention facilities is likewise not anticipated to materially affect State or local incarceration costs.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - January 13, 2021
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Juveniles Charged as Adults – Study and Confinement

BILL NUMBER: SB 222

PREPARED BY: Michael DiBattista

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON
MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS