

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 754
Judiciary

(Delegate Lopez)

Minors Convicted as Adults – Sentencing – Transfer to Juvenile Court

This bill requires a court to consider specified factors before sentencing a minor convicted as an adult. The bill also authorizes a court to transfer a minor convicted as an adult to the juvenile court for sentencing if the court determines by clear and convincing evidence that the minor is a victim of specified crimes committed against the minor within one year before the offense for which the minor was convicted. The bill establishes procedures for cases involving minors who meet that criteria.

Fiscal Summary

State Effect: Potential increase in general fund expenditures for the Department of Juvenile Services (DJS), as discussed below. Revenues are not affected.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: Before sentencing a minor convicted as an adult, the court must consider the following factors: (1) the age of the minor at the time of the offense; (2) the capacity of the minor for rehabilitation; (3) the minor’s family and community environment; (4) the minor’s ability to appreciate risks and understand the consequences of actions; (5) the intellectual capacity of the minor; (6) peer and familial pressure; (7) the level of participation of the minor in the offense; (8) the ability of the minor to meaningfully participate in the minor’s legal defense; (9) the involvement of the minor in the child welfare system; (10) prior exposure of the minor to adverse childhood experiences and

trauma history; (11) faith and community involvement of the minor; (12) if a comprehensive mental health evaluation of the minor was conducted by a mental health professional licensed in the State to treat adolescents, the outcome of the evaluation; and (13) any other mitigating factor or circumstance. The bill prohibits a court from requiring that a comprehensive mental health evaluation be conducted on a minor.

Notwithstanding any other provision of law, if the court determines by clear and convincing evidence that the minor is a victim of a sex crime (under Title 3, Subtitle 3 of the Criminal Law Article) or a victim of human trafficking (under Title 3, Subtitle 11 of the Criminal Law Article) committed against the minor within one year before the offense for which the minor was convicted, the court may transfer the minor to the juvenile court for sentencing. There is a presumption that the sentencing of such a minor be conducted by the juvenile court. If a juvenile is transferred to the jurisdiction of the juvenile court under such circumstances, the bill authorizes the juvenile court to simultaneously make a juvenile disposition and determine an adult sentence. If the minor successfully completes the terms of the juvenile disposition, the court *must* vacate the adult sentence. Conversely, if the minor violates the conditions of the juvenile disposition, the court *may* impose the adult sentence.

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 may waive its jurisdiction (which transfers the case to adult court) with respect to a petition alleging delinquency if the petition concerns a child who is at least age 15 or a child who is charged with committing an act which, if committed by an adult, would be punishable by 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.

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 alleged to have committed an act which, if committed by an adult, would be 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 determined by a preponderance of the evidence to be in

the interests of the child or society (“reverse waiver”). A reverse waiver is not permitted if the child was convicted in an unrelated case excluded from the jurisdiction of the juvenile court, as specified, or the alleged crime is murder in the first degree, and the accused child was at least age 16 when the alleged crime was committed.

Statutory provisions also authorize a court exercising criminal jurisdiction to transfer the child to the juvenile court at sentencing if (1) as a result of trial or a plea, all charges that excluded jurisdiction from the juvenile court do not result in a finding of guilty and (2) pretrial transfer of the case was prohibited under specified statutes or the court did not transfer jurisdiction after a reverse waiver hearing. In determining whether to transfer jurisdiction at sentencing, the court must consider (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 child’s acts as proven in the trial or admitted to in a plea; and (5) public safety.

Generally, a disposition hearing is held (by the juvenile court) to determine whether a child who has been adjudicated delinquent needs or requires the court’s guidance, treatment, or rehabilitation and, if so, the nature of the guidance, treatment, or rehabilitation. Among other options, and subject to specified limitations, a juvenile court may:

- place the child on probation or under supervision in the child’s own home or in the custody or under the guardianship of a relative or other fit person, on terms the court deems appropriate, including community detention;
- commit the child to the custody or guardianship of DJS or other agency on terms that the court considers appropriate, including designation of the type of facility where the child is to be accommodated; or
- order the child or the child’s parents, guardian, or custodian to participate in rehabilitative services that are in the best interest of the child and the family.

When sentencing a minor convicted as an adult, a court may impose a sentence less than the minimum term required under law and may not impose a sentence of life imprisonment without the possibility of parole or release.

State Expenditures: DJS notes that under current law, individuals as young as age 14 may be charged as adults. DJS committed facilities may provide treatment for young people until age 21. If a young person sentenced under the bill’s provisions is committed to a DJS placement until they are eligible to begin a sentence in an adult facility, the length of stay in the juvenile facility could range from four to seven years. The current average length of stay in a DJS committed program is 240 days. Significantly longer stays in DJS facilities/programs have a corresponding impact on general fund expenditures, however the magnitude is not quantifiable in advance, as it is unknown how many youth may ultimately be subject to the bill’s provisions. While DJS can likely accommodate a small

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number of youth receiving blended sentences without a material impact on expenditures, to the extent that a significant number of youth meet the requirements of the bill (and receive a blended sentence), general fund expenditures increase.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 769 (Senator Lee) - Judicial Proceedings.

Information Source(s): Caroline, Montgomery, and Prince George's counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

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