

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 877

(Chair, Judiciary Committee)(By Request - Departmental
- Juvenile Services)

Judiciary

Judicial Proceedings

Juveniles Charged as Adults - Confinement

This emergency departmental bill makes numerous changes to statutory provisions that govern the process and requirements for the pretrial detention of juveniles charged as adults, including prohibiting a child over whom a court exercises criminal jurisdiction from having sight or sound contact with adult inmates while the child is awaiting trial or other legal process. Baltimore City is not required to comply with the provisions of the bill until October 1, 2022.

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: Potential significant impact on local incarceration costs, as discussed below. Revenues are not directly affected. **This bill may impose a mandate on a unit of local government.**

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. (The attached assessment does not reflect amendments to the bill.)

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.

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 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 located in the court’s jurisdiction or, for a child before the court in Baltimore City only, the Youth Detention Center (YDC) (operated by the State). 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.

The bill also establishes that if the court orders a child to be held in a correctional facility (including YDC), 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 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. A child over

whom a court exercises criminal jurisdiction may not have sight or sound contact with adult inmates while the child is awaiting trial or other legal process. Compliance with this provision may not be achieved through the use of seclusion or isolation.

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 (and since 2013 in Baltimore City, pursuant to a local pilot project). 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 operates YDC in Baltimore City), and that over the past year, youth charged as adults have consistently made up over one-half of the average daily population in DJS 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 were given until December 2021 to come into compliance with JJDP A or risk losing federal funding; DJS advises that the emergency status of the bill is intended to bring the State into compliance as quickly as possible to mitigate any potential federal fund loss. DJS further advises that providing additional time for compliance in Baltimore City allows the department to prioritize the removal of eligible youth from other local adult detention facilities and will not jeopardize the State's federal compliance. DJS notes that youth charged as adults in Baltimore City are already detained, separate and apart from adult inmates, in YDC. 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.

State and Local Fiscal Effect: Although the bill may result in additional youth being held in DJS facilities, it is anticipated that DJS can absorb any increase using existing resources.

Any corresponding decrease in the number of youth in pretrial detention facilities is likewise not anticipated to materially affect State or local incarceration costs.

While the bill still permits detention in local correctional facilities if specified determinations are made, the bill prohibits sight and sound contact with adult inmates and specifically prohibits the use of seclusion or isolation in order to comply with the “sight and sound” provision. Accordingly, local expenditures may increase significantly to ensure compliance with the bill’s provisions regarding such contact, depending on the ability of individual jurisdictions to accommodate this requirement within existing facilities. For example, Frederick County advises that the bill may necessitate renovations to its current facility and estimates that such costs exceed \$200,000. Charles County similarly advises of a potential significant impact and notes that costs associated with the construction of a new wing solely to house juveniles charged as adults in a manner not prohibited by the bill likely exceed several million dollars. Somerset County, however, advises that the bill is not anticipated to have a significant fiscal impact.

Additional Information

Prior Introductions: SB 222 of 2021, a similar bill, passed the Senate and received a hearing in the House Judiciary Committee. No further action was taken.

Designated Cross File: None.

Information Source(s): Charles, Frederick, Montgomery, and Somerset counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Juveniles Charged as Adults - Confinement

BILL NUMBER: HB 877

PREPARED BY: Michael DiBattista

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

OR

 WILL HAVE A MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

DJS already confines minors under court order.