

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 170  
Judiciary

(Delegate Simpson, *et al.*)

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Minors Convicted as Adults - Sentencing - Transfer to Juvenile Court

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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 the individual against whom the minor is convicted of committing the offense previously committed a sex crime (under Title 3, Subtitle 3 of the Criminal Law Article) or human trafficking (under Title 3, Subtitle 11 of the Criminal Law Article) against the minor within three months before the offense for which the minor was convicted.

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Fiscal Summary

**State Effect:** None. The change is procedural in nature and does not directly affect governmental finances.

**Local Effect:** Minimal.

**Small Business Effect:** None.

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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) involvement of the minor in the community; (12) if a comprehensive mental health evaluation of the minor was conducted by a qualified mental health professional, the outcome of the evaluation; and (13) any other mitigating factor or circumstance. A court must state on the record its consideration of these factors.

Notwithstanding any other provision of law, if the court determines by clear and convincing evidence that the individual against whom the minor is convicted of committing the offense previously committed a sex crime (under Title 3, Subtitle 3 of the Criminal Law Article) or human trafficking (under Title 3, Subtitle 11 of the Criminal Law Article) against the minor within three months before the offense for which the minor was convicted, the court may transfer the minor to the juvenile court for sentencing. If a juvenile is transferred to the jurisdiction of the juvenile court, the juvenile court must make a juvenile disposition.

### **Current Law:**

#### *Jurisdiction and Waiver of Jurisdiction – Cases Involving Juveniles*

In general, the juvenile court has jurisdiction over children who are alleged to be delinquent, in need of supervision, or who have received a citation for specified violations. However, except under limited circumstances involving a child who is at least age 10 and alleged to have committed a “crime of violence,” as defined in § 14-101 of the Criminal Law Article, the juvenile court does not have jurisdiction over a child younger than age 13 for purposes of a delinquency proceeding and such a child may not be charged with a crime. In addition, the juvenile court does not have jurisdiction over (1) a child at least age 14 alleged to have committed an act which, if committed by an adult, would be a crime punishable by life imprisonment; (2) a child at least age 16 alleged to have violated certain traffic or boating laws; (3) a child at least age 16 alleged to have committed certain violent crimes; or (4) a child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult. These cases would be tried in adult criminal court.

However, for items (1), (3), and (4) above, the criminal court may transfer the case back to juvenile court before trial or before a plea is entered if the court determines from a preponderance of the evidence that transfer is in the interest of the child or society and certain other conditions are met. This is often referred to as “reverse waiver.” A reverse waiver is not permitted in certain circumstances, such as when the child was previously convicted in an unrelated case excluded from the jurisdiction of the juvenile court or when the alleged crime is murder in the first degree and the accused child was at least age 16 when the alleged crime was committed.

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 juvenile court must consider the following criteria when making a waiver determination: (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.

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.

### *Juvenile Court Dispositions*

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 the Department of Juvenile Services 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.

*Sentencing of a Minor Convicted as an Adult*

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.

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**Additional Information**

**Prior Introductions:** Similar legislation has been introduced within the last three years. See SB 769 and HB 754 of 2022.

**Designated Cross File:** None.

**Information Source(s):** Montgomery and Somerset counties; 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

**Fiscal Note History:** First Reader - February 1, 2023  
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