

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 704

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

Judicial Proceedings

Children Charged as Adults - 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, 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.

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.

Analysis

Bill Summary/Current Law: Under current law, the juvenile court generally 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.

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 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 requirement 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 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), under the Juvenile Justice Reform Act, 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 has noted 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 current 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, Charles County advises that the bill will necessitate construction of a new wing in order to comply with the “sight and sound provision” and estimates such costs at up to \$10 million. With respect to previously introduced similar legislation, Frederick County advised that compliance may necessitate renovations to the county’s existing facility and estimated that such costs exceed \$200,000.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 877 of 2022 and SB 222 of 2021.

Designated Cross File: None.

Information Source(s): Charles and Frederick 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 21, 2023
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Children Charged as Adults - Confinement

BILL NUMBER: SB704

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

DJS already confines minors under court order.