

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 316
Judiciary

(Delegates Frush and Hubbard)

Criminal Procedure - Dual Jurisdiction - Juvenile Offenders

This bill establishes that, in a criminal prosecution involving a child that results in a conviction or guilty plea for an act excluded or waived from juvenile court jurisdiction, the court may issue both a juvenile disposition and an adult criminal sentence. The court may order the child to complete the juvenile disposition and suspend the adult criminal sentence, subject to conditions established by the court. If the court orders the child to complete the juvenile disposition, the court may, at any time, revoke the juvenile disposition, impose the adult criminal sentence, or enter any order it considers appropriate.

Fiscal Summary

State Effect: Decrease in general fund expenditures due to fewer incarcerations in Division of Correction (DOC) facilities offset by increases in general fund expenditures from more commitments to Department of Juvenile Services (DJS) facilities. The number of cases that would be affected is expected to be minimal.

Local Effect: Minimal decrease in local expenditures for juveniles committed to DJS facilities rather than local correctional facilities.

Small Business Effect: None.

Analysis

Current Law: The juvenile court does not have jurisdiction over 16 and 17 year old children who are alleged to have committed a violent crime, children 14 and older charged with a capital crime, and children who have previously been convicted as an

adult. These children are within the circuit courts' jurisdiction. However, with certain exceptions, a circuit court may transfer a case involving such a child to the juvenile court if a transfer is believed to be in the interest of the child or society ("reverse waiver").

The juvenile court may waive jurisdiction over a child alleged to be delinquent who is 15 or older, or who is younger than 15 and is charged with committing an act which, if committed by an adult, would be punishable by death or life imprisonment. The juvenile court may not waive its jurisdiction until after it has conducted a waiver hearing, held prior to an adjudicatory hearing and after notice has been given to all parties. The court may not waive its jurisdiction unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures.

Background: Serious crimes committed by juveniles, many of which involve weapons, have led states to consider a number of approaches to insure that such juveniles are not automatically released from confinement at the traditional, statutory upper age of juvenile court jurisdiction (21, in Maryland and most other states). According to a 2008 report by the National Center for Juvenile Justice, Maryland is 1 of 29 states that statutorily exclude certain crimes committed by juveniles from juvenile court jurisdiction. Seventeen states have criminal blended sentencing laws, in which a criminal court can impose juvenile sanctions. When a court opts to impose a blended sentence, a juvenile disposition is often imposed in combination with a suspended criminal sentence in order to ensure compliance.

The Department of Public Safety and Correctional Services advises that there were 79 inmates age 17 and under in DOC facilities in fiscal 2010. There are approximately 90 juveniles currently in pretrial detention.

According to DJS's *FY 2010 Annual Statistical Report*, 185 juveniles had their cases waived to adult court in fiscal 2010.

State/Local Expenditures: General fund expenditures could decrease minimally due to fewer juveniles being incarcerated in DOC facilities, or serving shorter terms in DOC facilities.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,920 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

DJS expenditures could increase as a result of more commitments to DJS facilities under the bill. However, given that the bill is expected to apply to a small number of cases, the bill is not expected to have a significant impact on DJS resources.

Additional Information

Prior Introductions: SB 467 of 2005 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Office of the Public Defender, Department of Public Safety and Correctional Services, National Center for Juvenile Justice, Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2011
ncs/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510