

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 131

(Chair, Judiciary Committee)(By Request - Maryland
Judicial Conference)

Judiciary

Judicial Proceedings

Criminal Procedure - Transfer to Juvenile Court - Petition for Expungement

This bill requires that a petition for expungement of a criminal charge that has been transferred to the juvenile court be filed in the court of original jurisdiction from which the order of transfer was entered (the adult criminal court).

Fiscal Summary

State Effect: None. The bill is procedural and does not materially affect State finances.

Local Effect: None. The bill is procedural and does not materially affect local finances.

Small Business Effect: None.

Analysis

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 a violation. The juvenile court does not have jurisdiction over (1) children at least age 16 alleged to have violated specified boating or traffic laws; (2) children at least age 16 who are alleged to have committed specified violent crimes; (3) children age 14 and older alleged to have committed an act that would be a crime punishable by life imprisonment if committed by an adult; and (4) 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. These cases are tried in adult criminal court.

However, for items (2) through (4), 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 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 16 or 17 years of age when the alleged crime was committed.

A court exercising criminal jurisdiction in a case involving a child must determine whether to transfer jurisdiction to a juvenile court at sentencing if (1) as a result of trial or a plea entered (in lieu of trial), all charges that precluded the juvenile court from exercising jurisdiction did not result in a finding of guilty and (2) pretrial transfer was prohibited because the alleged crime was first-degree murder and the child was 16 or 17 years old at the time of its commission; or the court did not transfer jurisdiction after a hearing on a motion for reverse waiver.

The court may not transfer jurisdiction to juvenile court at sentencing if:

- the child agrees that jurisdiction is not to be transferred as part of a plea agreement; or
- pretrial transfer was prohibited because the child was convicted in an unrelated case excluded from the juvenile court’s jurisdiction because the child was at least age 14 and was alleged to have committed an act that would be a crime punishable by life imprisonment if committed by an adult or the child was at least age 16 and was alleged to have committed specified violent crimes.

In determining whether to transfer jurisdiction, the court must consider the child’s age, mental and physical condition, the amenability of the child to treatment or other programs available to delinquent children, the nature of the alleged crime or the child’s acts, and public safety.

Pursuant to Chapter 712 of 2009, a court is required to grant a petition for expungement of a criminal charge that was transferred to the juvenile court under reverse waiver provisions. In addition to requiring courts to grant such petitions, Chapter 712 also removed mandatory waiting periods for the filing of these petitions. Chapter 563 of 2012 expanded eligibility for these expungements to cases transferred to the juvenile court at sentencing. The petitioner must file his/her petition for expungement in the court to which the case was transferred (the juvenile court).

Background: In *In re Nancy H.*, 297 Md. App. 419, 14 A.3d 19 (2011), a former juvenile sought to have a criminal record expunged from a proceeding in which the case was transferred from the criminal court to the juvenile court for disposition. The Court of

Special Appeals held that the juvenile court had the authority to expunge the petitioner's (adult) criminal record in the case.

Additional Information

Prior Introductions: None.

Cross File: SB 87 (Chair, Judicial Proceedings Committee)(By Request - Maryland Judicial Conference) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of Legislative Services

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ncs/kdm

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