

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 196
Judiciary

(Delegate Haynes, *et al.*)

Juveniles - Pretrial Detention - Confinement in Juvenile Facilities

This bill requires a court that has determined not to transfer its jurisdiction under reverse waiver provisions to order that the child be held in a secure juvenile facility pending a criminal trial 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 the Department of Juvenile Services (DJS); or (3) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others and states the reasons for the finding on the record.

Fiscal Summary

State Effect: General fund expenditures increase minimally to the extent that more juveniles are held in DJS facilities pending resolution of adult charges. Potential significant loss of federal grant revenues.

Local Effect: Any potential minimal decrease in local government expenditures due to fewer juveniles being detained in local detention facilities pending adult charges does not materially impact local finances. Revenues are not affected.

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 specified violations (examples of citationable offenses include alcoholic beverage violations or possession of less than 10 grams of marijuana). The juvenile court may waive jurisdiction over a child alleged to be delinquent who is age 15 or older or who is younger than age 15 and is charged

with committing an act which, if committed by an adult, would be punishable by death or 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 following criteria must be considered by the court: (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. If jurisdiction is waived, the court must order the child held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult.

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 capital crime, 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 if the child was convicted in an unrelated case excluded from the jurisdiction of the juvenile court or the alleged crime is murder in the first degree and the accused child was at least age 16 when the alleged crime was committed. At a transfer hearing, the court must consider the same criteria as set forth above relating to a waiver 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. Pending a transfer 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 and states the reasons for the finding on the record. The District Court, at a bail review or preliminary hearing involving a child eligible for transfer, must also order the child to be held in a secure facility pending a transfer determination under the provisions specified above.

In general, a child may not be committed or transferred to any public or private facility or institution unless the child is placed in accommodations that are separate from other persons age 18 or older. The child cannot be treated in any group with persons who are age 18 or older.

Background: Interest in the pretrial detention of juveniles pending adult charges or adjudication in the juvenile courts has heightened in recent years. The overall decline of juveniles held in secure detention in recent years, including a decrease in the pending

placement population, allowed DJS to gradually assume responsibility for a significant portion of the youth who have been charged as an adult and are awaiting a reverse waiver determination. Legislation enacted in 2015 (Chapter 442) requires juveniles awaiting a reverse waiver determination from the adult court to be held in a juvenile detention facility, except under certain circumstances as set forth above. In fiscal 2015, juveniles awaiting action from the adult courts accounted for more than one-quarter of the entire predisposition detention population in DJS facilities. According to a report prepared on behalf of DJS and the Governor's Office of Crime Control and Prevention (GOCCP), the estimated average daily population of juveniles charged as adults and held in both adult and juvenile detention facilities has decreased from 201 in fiscal 2012 to 128 in fiscal 2015. Of these juveniles, 80 were in adult detention facilities and 48 were in juvenile detention facilities.

State Fiscal Effect: General fund expenditures increase minimally to the extent that additional juveniles are detained in DJS facilities pending resolution of adult charges. According to the Data Resource Guide for fiscal 2015, the average daily population in DJS detention facilities is 238; detention facility capacity is 454.

Even though DJS is not required to detain youth after a reverse waiver has been denied, if it determines that there is not available capacity, DJS is likely able to accommodate additional youth within its detention facilities in most instances. However, the Department of Legislative Services (DLS) notes that judges still retain the discretion to require a juvenile to be detained in an adult facility if there is a determination that a child is a safety or security threat. According to the aforementioned report prepared by DJS and GOCCP, robberies, carjacking, and assaults comprised 66% of the crimes for which juveniles were charged as adults and admitted to adult detention facilities. Considering the severity of the alleged crimes and because for youth subject to this bill's provisions, a determination has already been made that the case is appropriate for adult criminal court and not juvenile proceedings, it is reasonable to assume that in a number of cases, a judge may make a finding that detention in a juvenile facility is not appropriate. DLS also notes that in the agency response to a request for a fiscal estimate for Chapter 422 of 2015, DJS noted that it had been able to absorb a large number of youth in DJS facilities who were pending adult charges (but awaiting a transfer determination decision) without seeing a material impact in expenditures. Even though the bill's provisions subject additional juveniles to being held in DJS facilities pending the resolution of adult charges, it is assumed that the number of juveniles who are detained in juvenile facilities after the denial of transfer is not enough to significantly impact DJS expenditures.

DLS also notes, however, that the decline in population within detention facilities has largely been attributed to provisions known as the continuum of care, which authorize DJS to transfer youth between committed placement without court intervention (or the need for a detention stay pending court action). The provisions authorizing continuum of care (most

recently Chapter 135 of 2014) are scheduled to terminate June 30, 2016, and a departmental bill (Senate Bill 81) has been introduced to repeal the termination provision and provide DJS with permanent authority to transfer youth between committed placements. Whether or not the termination date is repealed (or extended) will be a factor in DJS operations and the ability of DJS to accommodate additional individuals within existing detention facilities without significantly impacting expenditures.

Even if expenditures are not significantly impacted, DJS advises that the bill impacts operations within DJS detention facilities. Currently, once a court has made a determination not to transfer jurisdiction to the juvenile court (“reverse waiver”) the juvenile is detained in an adult facility pending trial. Under the bill, the juvenile is instead detained pending trial in a DJS facility, unless one of the exceptions specified above is met. According to available data, almost 60% of juveniles charged as adults in fiscal 2015 and detained in adult facilities were age 17 at the time of admission, which means that many individuals may turn the age of majority (18) while awaiting trial. However, federal law prohibits individuals who have turned the age of majority and are being prosecuted as an adult from having sight and sound contact with juveniles. DJS advises that it is not able to provide that level of separation within existing DJS detention facilities. This inability may jeopardize attainment of federal grant funds related to the Juvenile Justice and Delinquency Prevention Act. The proposed fiscal 2017 budget includes \$726,840 in such funds.

The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions. Although the bill may result in fewer juveniles being detained in adult facilities pending trial, any potential minimal decrease in expenditures is not anticipated to materially impact the Department of Public Safety and Correctional Services.

Local Expenditures: Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years. To the extent that the bill results in additional juveniles being detained in DJS facilities instead of local detention facilities, local government expenditures decrease minimally. However, any potential minimal decrease in local government expenditures does not materially impact local finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Governor's Office of Crime Control and Prevention, Department of Legislative Services

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