

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1202
Judiciary

(Delegate Morales, *et al.*)

Human Trafficking Victims - Establishment of Diversionary Docket and
Workgroup

This bill requires the circuit administrative judge of each circuit to establish and maintain a diversionary docket for specified minors as an alternative to conviction for an offense or adjudication of a child as delinquent. The diversionary docket may be used only in cases in which a court finds a minor to have committed a specified offense or a delinquent act as a victim of human trafficking. Each circuit administrative judge must adopt procedures necessary to carry out the bill's requirements.

The bill also establishes the Workgroup to Study Single-Point Entry for Services and Criminal Immunity for Victims of Human Trafficking to study issues relating to a single point of entry into therapeutic foster homes for minors who are victims of human trafficking. The bill provides for the membership of the workgroup and establishes reporting requirements. The Governor's Office of Crime Control and Prevention (GOCCP) must provide staff for the workgroup.

The bill takes effect July 1, 2017. The provisions relating to the workgroup terminate June 30, 2020.

Fiscal Summary

State Effect: Any expense reimbursements for workgroup members and staffing costs for GOCCP are assumed to be minimal and absorbable within existing budgeted resources. State revenues are not affected.

Local Effect: Local expenditures increase minimally for the circuit administrative judge of each circuit to establish a diversionary docket. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Diversionary Docket: The following offenses are eligible for the diversionary docket:

- disorderly conduct;
- disturbing the peace;
- failure to obey a reasonable and lawful order;
- malicious destruction of property in the lesser degree;
- trespass on posted property;
- possessing or administering a controlled dangerous substance;
- possessing or administering a noncontrolled substance;
- use or possession with intent to use drug paraphernalia;
- driving without a license;
- driving while privilege is canceled, suspended, refused, or revoked;
- driving while uninsured;
- a prostitution offense, if the conviction is for prostitution and not assignation; or
- a theft offense.

Workgroup: The workgroup must:

- design a plan that will create a single point of entry into therapeutic foster homes for minors who are victims of human trafficking;
- study the potential cost of a program providing a single point of entry into therapeutic foster homes for minors who are victims of human trafficking; and
- study the potential for providing immunity in connection with participation in a therapeutic foster care environment for minors who are the victims of human trafficking and have been charged with criminal offenses or delinquent acts.

The workgroup must submit preliminary reports on its findings and recommendations to the Governor and the General Assembly by December 1, 2017, and by December 1, 2018. By December 1, 2019, the workgroup must submit a final report on its findings and recommendations to the Governor and the General Assembly.

A member of the workgroup may not receive compensation, but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

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.

Chapter 218 of 2011 authorizes a person convicted of prostitution to file a motion to vacate the judgment if the person committed the act or acts of prostitution while under duress caused by an act of another committed in violation of the prohibitions against human trafficking under Maryland or federal law. The motion must (1) be in writing; (2) be signed and consented to by the State's Attorney; (3) be made within a reasonable period of time after the conviction; and (4) describe the evidence and provide copies of official documents showing that the defendant is entitled to a vacated judgment for a conviction of prostitution in accordance with the bill's eligibility criteria.

The court must hold a hearing on the motion if the motion meets the statutory requirements. However, a court may dismiss a motion without a hearing if the court finds that the motion

fails to assert grounds on which relief may be granted. The defendant has the burden of proof in a proceeding to vacate the conviction. In ruling on a motion, the court may vacate the conviction, modify the sentence, or grant a new trial.

Background: Chapter 91 of 2015 established the Workgroup to Study Safe Harbor Policy for Youth Victims of Human Trafficking. The workgroup was tasked with various responsibilities relating to human trafficking, including making recommendations regarding legislation to address the provision of services and legal protections for youth victims of human trafficking in the State. One of the recommendations in the workgroup’s final report was for GOCCP to form a workgroup of appropriate State agencies and nongovernmental organizations to design and implement a three-year plan to develop a “Safe Harbor Service Provision Proposal” that will create a single point of entry into services for youth victims of human trafficking.

Local Expenditures: Expenditures increase minimally as a result of the bill’s requirement for the circuit administrative judge of each circuit to establish and maintain the required diversionary docket. The bill does not require the Judiciary to offer treatment or services; therefore, any fiscal impact on the circuit courts is anticipated to be minimal. However, because the bill requires a single diversionary docket for each circuit but not one in each local circuit court, the bill may increase transportation costs and complicate court operations if judges are required to hear cases outside of their assigned courts.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 1018 (Senator Lee - Judicial Proceedings) is not identical.

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

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