

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 861

(Senator Ferguson)

Judicial Proceedings

Judiciary

Juvenile Law - Witnesses - Body Attachment

This bill authorizes the juvenile court to issue a body attachment for witnesses pursuant to Maryland Rule 4-267 if a case was transferred to the court under reverse waiver provisions.

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary. It is assumed that any necessary form revisions or programming changes can be absorbed within existing budgeted resources.

Local Effect: The bill does not materially impact the workload of the circuit courts or local law enforcement.

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. 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 specified criteria 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.

Pursuant to Maryland Rule 4-267, the court may order the issuance of a body attachment of a witness and require the witness to post a bond in an amount fixed by the court to ensure attendance if the court is satisfied that (1) the testimony of the witness is material in a criminal proceeding and (2) it may become impracticable to secure the witness' attendance by subpoena. A sheriff or peace officer must execute the body attachment by taking the witness into custody and before a judicial officer in the county where the action is pending or where the witness is taken into custody to post bond. A witness who is unable to post bond is committed to jail; within three days after a witness is taken into custody, the court must hold a hearing, as specified.

According to the Judiciary, Maryland Rule 2-510 addresses subpoenas in civil proceedings, including juvenile proceedings. Pursuant to Rule 2-510, a witness served with a subpoena is liable to body attachment and a fine for failure to obey the subpoena without sufficient excuse. A sheriff or peace officer must execute a writ of attachment; a witness must immediately be taken before the court if it is in session. If the court is not in session, the witness must be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the appearance of the witness at the next session of court.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 1023 (Delegate Clippinger, *et al.* – Judiciary) is not identical.

Information Source(s): Anne Arundel, Dorchester, Garrett, and Montgomery counties; Office of the Public Defender; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2018
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