

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 863

(Senator Kelley, *et al.*)

Judicial Proceedings

Juvenile Law - Juvenile Court Jurisdiction

This bill expands the jurisdiction of the juvenile court by altering provisions of law that exclude from the jurisdiction of the juvenile court children of specified ages who are alleged to have committed specified offenses unless a reverse waiver order has been filed.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State operations or finances.

Local Effect: The bill is not anticipated to materially impact local operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that the court does not have jurisdiction over a child at least age 14 alleged to have done, *as a principal*, an act which, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident. It also specifies that the court does not have jurisdiction over a child at least age 16 who is alleged to have committed specified crimes, *as a principal*. The juvenile court does not have jurisdiction over a child who previously has been convicted as an adult of a felony *as a principal* and is subsequently alleged to have committed, *as a principal*, an act that would be a felony if committed by an adult.

The bill also removes the following offenses from provisions that exclude the juvenile court from having jurisdiction over a child at least age 16 unless a reverse waiver order has been filed: (1) the commission or attempted commission of a robbery by displaying a written

instrument claiming that the person has possession of a dangerous weapon; (2) wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime; (3) possessing, owning, carrying, or transporting a firearm if the person has been convicted of specified offenses; (4) attempted murder, rape, or robbery in the second degree; and (5) wearing, carrying, or transporting a handgun, on or about the person or in a vehicle, as specified. It also specifies that to be excluded from the jurisdiction of the juvenile court, the offense of carjacking must have involved actual force or violence.

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. Statutory provisions also set forth a process by which a court exercising criminal jurisdiction in a case involving a child must determine whether to transfer jurisdiction to a juvenile court at sentencing.

Unless otherwise specified, the distinction between an accessory before the fact and a principal is abrogated, and an accessory before the fact may be tried, convicted, and sentenced as a principal. Pursuant to case law, a person who did not actually commit the crime in question may nevertheless be guilty to the same degree as the person who did. A principal in the first degree commits the deed as a perpetrator actor, either by the person’s own hand or the hand of an innocent agent; principals in the second degree do not commit the crime themselves but are present, actually or constructively, aiding and abetting the crime. (*See, Kohler v. State*, 203 Md. App. 110, 119 (2012), citing *Handy v. State*, 23 Md. App. 239, 250, 251–52 (1974)).

State and Local Fiscal Effect: The bill is not anticipated to materially impact State or local finances. Although the bill expands the jurisdiction of the juvenile court, statutory provisions already provide a method by which the juvenile court may still hear these cases, through the reverse waiver process as described above. In addition, juveniles pending charges in adult court (including the charges relevant to this bill) are generally held in juvenile facilities pending a transfer determination (reverse waiver) by the court, mitigating

any material impact on pretrial detention costs. The Judiciary and the Office of the Public Defender also advise that there is no material impact.

Additional Information

Prior Introductions: None.

Cross File: HB 1550 (Delegate Sydnor) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2018
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