

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 859
Judiciary

(Delegate Clippinger)

Juvenile Law - Transfer of Cases to Juvenile Court

This bill requires a transfer hearing (a hearing to determine whether specified cases involving a juvenile charged as an adult should be transferred to the juvenile court) to be held no later than 30 days after a specified study is completed. If no study is ordered, the hearing must be held no later than 30 days after a motion to transfer the case is filed pursuant to the Maryland Rules. The county administrative judge or a designee of the judge, on motion of a party for good cause shown, may grant an extension for the transfer hearing. If an extension is granted, the county administrative judge or the judge's designee must state on the record the cause that requires the extension and the length of the extension.

Fiscal Summary

State Effect: Potential significant increase in expenditures for the Office of the Public Defender (OPD). Otherwise, the bill is not anticipated to materially impact State finances, as discussed below.

Local Effect: The bill is not anticipated to materially impact local finances, as discussed below.

Small Business Effect: None.

Analysis

Current Law/Background: 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. The court must make a transfer determination within 10 days after the date of a transfer hearing.

Pursuant to Maryland Rule 4-252, a request to transfer an action to juvenile court must be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court, as specified. If not made, the request is waived unless the court, for good cause shown, orders otherwise.

Detention of Juveniles Charged as Adults

Chapter 442 of 2015 altered the law regarding the pretransfer detention of juveniles charged as adults to create a presumption that the juveniles should be held in a juvenile detention facility. Specifically, a court must order a juvenile charged as an adult who is eligible for transfer to the juvenile system to be held in a juvenile detention facility unless (1) the juvenile is released on bail, recognizance, or other pretrial condition; (2) there is no capacity at a secure juvenile facility; 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.

In fiscal 2017, the first full fiscal year following the implementation of Chapter 442, there were 397 admissions to Department of Juvenile Services (DJS) detention facilities of juveniles charged as adults pending a transfer determination; the average daily population was 116. Juveniles awaiting disposition in the juvenile court, which is subject to strict procedural time limits, had an average length of stay of approximately 17 days in fiscal 2017. Conversely, juveniles awaiting a reverse waiver decision had an average length of stay of 103 days; according to preliminary data in fiscal 2018, the average length of stay has increased to 132 days. Although DJS has thus far generally been able to accommodate these individuals within available capacity, the longer lengths of stay associated with these cases may begin to more significantly impact DJS resources. Although juveniles in detention facilities have access to medical and behavioral services and attend school within the facility, programming is generally designed for shorter lengths of stay. The problem is further exacerbated since juveniles pending adult court action tend

to be those who have committed more serious crimes and potentially need more intensive services in order to properly facilitate rehabilitation.

State Fiscal Effect: Although the bill may reduce the average length of stay in juvenile detention facilities for youth charged as adults and ease the strain on DJS resources, as discussed above, any such impact is not anticipated to materially impact DJS finances. Conversely, the expedited process for transfer hearings may result in longer stays for juveniles in adult pretrial facilities, including the Baltimore Pretrial Complex, a State-operated facility that is used primarily for pretrial detentions. As noted above, juveniles held pending a reverse waiver determination are generally held in DJS facilities. However, if an adult court retains jurisdiction after a transfer hearing, the juvenile is held in an adult facility pending trial (if ordered to be held pretrial by the court). Accordingly, some juveniles may be transferred to adult detention facilities faster due to the expedited process for transfer hearings. Any such impact is not likely to materially impact State incarceration costs.

OPD advises that it *may* require additional attorneys to handle the cases in the required timeframes and that a reliable estimate of any potential need is not available beforehand. However, *for illustrative purposes only*, for every new attorney needed, expenditures increase by at least \$100,000 annually. The Department of Legislative Services notes, however, that overall caseloads, including those involving juveniles, are declining for OPD. Therefore, it is possible that a reallocation of resources could alleviate some of the impact on OPD, potentially negating the need for additional staff.

The bill does not materially impact the workload of the Judiciary.

Local Expenditures: As discussed above, the expedited process for transfer hearings may result in some juveniles being transferred to adult pretrial detention facilities faster. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years. Any such impact is not likely to materially impact local incarceration costs.

Any potential minimal increase in expenditures for state's attorneys' offices to accommodate expedited hearings is not anticipated to materially impact local finances. The bill also does not materially impact the workload of the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 21, 2018
mag/kdm

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510