

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 418
Judiciary

(Delegates Moon and Sydnor)

Juvenile Law - Waiver and Transfer of Jurisdiction

This bill alters statutory provisions regarding the transfer of cases involving a juvenile between adult court and juvenile court.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect the workload or finances of the Judiciary, the Department of Juvenile Services, or the Office of the Public Defender.

Local Effect: The bill is not anticipated to materially affect the workload or finances of the circuit courts or state’s attorneys’ offices.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Transfers to Juvenile Court (Reverse Waivers)

In general, the juvenile court has jurisdiction over a child alleged to be delinquent. 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 reverse waiver hearing, the court must consider specified criteria, including the age of the child, the mental and physical condition of the child, and the nature of the alleged crime. The bill specifies that each of the criteria must be considered individually and in relation to each other on the record. Pursuant to case law, the burden of demonstrating that a reverse waiver should be exercised is carried by the party initiating the action. (*In re Ricky B.*, 43 Md. App. 645, 406 A.2d 690 (1979)). The bill specifies that the State has the burden of proving that the court should not transfer jurisdiction to the juvenile court.

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; the bill specifies that the court must consider the criteria individually and in relation to each other on the record. It also specifies that the State has the burden of proving that the court should not transfer jurisdiction to the juvenile court.

Transfers to Adult Court

The juvenile court may waive its jurisdiction with respect to a petition alleging delinquency if the petition concerns a child who is at least 15 years old or a child who is charged with committing an act which, if committed by an adult, would be punishable by 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.

Under current law, for purposes of determining whether to waive its jurisdiction, the court must assume that the child committed the delinquent act alleged; the bill repeals this provision. Under current law, if the court has once waived its jurisdiction with respect to a child, and that child is subsequently brought before the court on another charge of delinquency, the court may waive its jurisdiction in the subsequent proceeding after summary review; the bill repeals this provision.

Additional Information

Prior Introductions: None.

Cross File: SB 824 (Senator Smith) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Juvenile Services; Department of Legislative Services

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