

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 608 (Delegate Marriott, *et al.*)
Judiciary

Juvenile Court - Expansion of Jurisdiction

This bill repeals statutory provisions that exclude specified offenses committed by juveniles from juvenile court jurisdiction. Notwithstanding this repeal, the specified offenses upon adjudication remain reportable offenses for purposes of criminal records (and for reporting to a school superintendent). The bill also requires that children arrested for the formerly excludable offenses must still be fingerprinted at disposition pursuant to an existing statute.

The bill applies a 14-day deadline, allowing for reasonable continuances, for holding a waiver hearing in juvenile court and requires that a child be represented by counsel at a waiver hearing. The bill repeals a provision allowing the juvenile court to waive its jurisdiction after summary review over a child for whom it has previously waived jurisdiction.

The bill applies only to cases filed on or after the bill's October 1, 2002 effective date.

Fiscal Summary

State Effect: Decrease in general fund expenditures for the Division of Correction (DOC) and increase in general fund expenditures for the Department of Juvenile Justice, assuming that the juvenile court does not waive its jurisdiction over these cases.

Local Effect: Potential decrease in expenditures for local detention facilities that may house fewer juveniles pursuant to the bill.

Small Business Effect: Potential minimal.

Analysis

Current Law: The following offenses are excluded from juvenile court jurisdiction:

- children aged 14 to 17 charged with a capital crime;
- 16 and 17 year olds charged with the following crimes:
 - abduction;
 - kidnapping;
 - second degree murder or attempted second degree murder;
 - manslaughter, except involuntary manslaughter;
 - attempted rape or second degree rape;
 - robbery or attempted robbery with a dangerous or deadly weapon;
 - second degree sexual offense or attempted second degree sexual offense;
 - third degree sexual offense;
 - specified weapons offenses;
 - using, wearing, carrying, or transporting of a firearm during and in relation to a drug trafficking crime;
 - unlawful possession of a firearm based on a prior felony conviction;
 - carjacking or armed carjacking; or
 - first degree assault; and
- children charged with a felony who have previously been convicted as an adult of a felony.

In addition, the juvenile court does not have jurisdiction over specified motor vehicle and boating offenses and peace orders.

However, a circuit court exercising criminal jurisdiction may transfer a case involving a child to the juvenile court if a transfer is believed to be in the interests of the child or society (“reverse waiver”).

Among other “events” that must be reported to the Criminal Justice Information System Central Repository, an adjudication of a child as delinquent for one of the above-listed offenses must be reported to the Central Repository. At a disposition following adjudication for one of the above-listed offenses, the child must be fingerprinted.

The juvenile court may waive jurisdiction over a child alleged to be delinquent who is 15 or older, or who is younger than 15 and is charged with a capital crime. There are no statutory time limits within which a waiver hearing must occur. A juvenile is entitled to be represented by counsel under U.S. Supreme Court case law (see Background section,

below). If a juvenile court has previously waived its jurisdiction over a juvenile and the juvenile is subsequently brought before the court on another charge of delinquency, the court may waive its jurisdiction after summary review.

Background: Chapter 465 of 1998 created the Commission on Juvenile Justice Jurisdiction to examine recent changes in juvenile court jurisdiction and the effects of those changes on youth in the juvenile and criminal justice systems. In its September 30, 2001 final report to the Governor and General Assembly, the commission made a number of recommendations and conclusions. One conclusion was that the time youth wait in jail pending a court decision on whether their case should be transferred to the jurisdiction of the juvenile court was, in many cases, inexcusably long.

The first juvenile court was created by legislation in Cook County, Illinois in 1899. Other states followed suit throughout the early 1900s by creating separate juvenile courts that focused on rehabilitation for juveniles rather than punishment. The juvenile justice system was uniformly designed to be non-adversarial, civil, and less formal in nature.

All states have some procedural method for prosecuting certain juveniles in the adult criminal system, generally falling into one or a combination of three categories: (1) judicial waiver (a judge decides); (2) statutory exclusion (legislative decision); or (3) concurrent jurisdiction (prosecutorial discretion). Maryland uses a combination of judicial waiver, statutory exclusion, and a “reverse waiver” (petition to return to juvenile court upon exclusion). The first and last in a series of juvenile rights cases heard by the U.S. Supreme Court in the mid-1960s to mid-1970s both dealt with the issue of transfers to adult criminal court. In *Kent v. United States*, 383 U.S. 541 (1966), the Supreme Court held that a juvenile has a right to a hearing prior to being transferred via waiver to adult court. The *Kent* Court specifically held that juveniles facing a waiver are entitled to: (1) representation by counsel; (2) access to social service records; and (3) a written statement of the reasons for the waiver. *Id.* In *Breed v. Jones*, 421 U.S. 519 (1975), the Supreme Court held that it was a double jeopardy violation of a juvenile’s due process rights to transfer the juvenile to adult court after adjudicating him delinquent in a juvenile court.

During the 1990s, serious and violent juvenile crimes rose dramatically. Research suggested that a small proportion of juvenile offenders were responsible for this increase; serious, violent, and juvenile offenders composed only 6% to 8% of the total juvenile offender population. Coordinating Council on Juvenile Justice and Delinquency Prevention, *Combating Violence and Delinquency: The National Juvenile Justice Plan 20* (March 1996). Maryland’s juvenile violent crime rates broadly mirrored the national average. According to the National Center for Juvenile Justice, from 1992 to 1999, 49 states (including Maryland) and the District of Columbia passed laws making it easier for juveniles to be tried as adults.

A study conducted in Florida -- which had the highest rate of juvenile transfers to criminal court in the mid-1990s -- compared to the recidivism rates of juveniles transferred to the adult system versus a “comparable” (based on factors including offense, age, race, sex, and prior offenses) group of juveniles who were processed through the juvenile system. In a one-year follow-up, the juveniles processed in the adult system had a higher rate of recidivism upon release than their counterparts in the juvenile system. However, after nearly six years, the recidivism rate for the juveniles who remained in the juvenile system had caught up to those in the adult system. The researchers’ findings showed that the juveniles who were transferred and rearrested tended to be rearrested more quickly and more often than those processed through juvenile court. *Juvenile Transfers to Criminal Court in the 1990’s, Lessons Learned from Four Studies*, OJJDP (August 2000); see also Lisa Stansky, *Age of Innocence*, A.B.A. J., Nov. 1996, at 62.

State Fiscal Effect: The bill would result in an initial shift of juveniles from the adult criminal system to the juvenile justice system. The number of cases that would remain in the juvenile system would depend on whether the juvenile court transfers any of these cases to criminal court via judicial waiver. The magnitude of any remaining shift and resulting expenditure decrease for DOC and expenditure increase for DJJ cannot be reliably estimated. Information regarding the number of children who have been charged as adults with crimes, the number of children who have been convicted as adults of crimes, and the number of children who have been detained in adult facilities and their lengths of stay is not readily available.

The State pays the expenditures for juvenile detention, which is estimated to have an annual cost, including overhead, of \$46,700 per child. The average annual cost of a juvenile committed placement varies widely. It ranges from about \$22,500 for treatment foster care up to \$136,000 for a specialized residential treatment program.

Criminal defendants in Baltimore City are generally housed pretrial in the Baltimore City Detention Center, a State-operated facility. In other jurisdictions, criminal defendants held pretrial are usually held in locally-operated detention facilities. Generally, persons serving a criminal sentence longer than one year are incarcerated in DOC facilities. The average total cost per inmate, including overhead, is estimated at \$22,200 annually.

The office of the Public Defender advises that the bill will have no fiscal impact on it.

Local Fiscal Effect: The bill would result in a decrease in the number of juveniles initially detained in adult detention facilities. Notwithstanding the bill’s elimination of the exclusionary statute, some of the juveniles who would have been detained in an adult facility under the exclusionary statute may still be transferred to the adult system via judicial waiver. With this in mind, although the exact impact cannot be reliably

estimated, any decrease in expenditures for local detention facilities is expected to be minimal.

The shift in cases from the circuit court criminal dockets to juvenile courts (which are a part of the circuit court system, except in Montgomery County where they will become a part of the circuit court system as of March 1, 2002) is not expected to have a material impact on the operations or finances of the circuit court system.

Small Business Effect: Small businesses that operate juvenile commitment facilities may receive additional children as a result of the bill.

Additional Information

Prior Introductions: A similar bill was introduced in the 2001 session as HB 827. It received an unfavorable report from the House Judiciary Committee. A similar bill was also introduced in the 2000 session as HB 381. It also received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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

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