

Department of Legislative Services
Maryland General Assembly
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FISCAL NOTE

Senate Bill 428

(Senator Jimeno)

Judicial Proceedings

Judiciary

Juvenile Law - Transfer of Cases to Juvenile Court

This bill adds a preponderance of the evidence standard to a court's determination of whether transferring jurisdiction from criminal court to juvenile court is in the interest of the child or society. The bill also requires a criminal court to make a transfer determination at sentencing under specified circumstances.

Fiscal Summary

State Effect: The requirement of a transfer determination at sentencing could result in a shift of cases from the criminal system to the juvenile system, resulting in a shift in expenditures from the Division of Correction (DOC) to the Department of Juvenile Justice (DJJ). This bill is not expected to affect a large number of cases and could likely be handled by DJJ with existing resources.

Local Effect: This bill is not expected to have a material impact on circuit court finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: This bill specifies that a criminal court's existing authority to transfer a case involving a child to juvenile court ("reverse waiver") applies to transfers before trial or before a plea is entered in lieu of trial in the criminal matter. It further specifies that the court must use a preponderance of the evidence standard in determining whether to transfer jurisdiction in a reverse waiver hearing.

A criminal court must determine whether to transfer jurisdiction to juvenile court at sentencing of a case involving a child if, as a result of trial or a plea entered (in lieu of trial), all charges that precluded the juvenile court from exercising jurisdiction did not result in a finding of guilty, and:

- pretrial transfer was prohibited because the alleged crime was first degree murder and the child was 16 or 17 years old at the time of its commission; or
- the court did not transfer jurisdiction after a hearing on a motion for reverse waiver (from criminal court to juvenile court).

In determining whether to transfer jurisdiction, the court must consider the same factors as must be considered at a reverse waiver hearing, except that the court must consider the nature of the child's acts as proven at trial or admitted to in a plea, rather than considering the nature of the alleged crime. The court may not transfer jurisdiction to juvenile court at sentencing if:

- the child agrees that jurisdiction is not to be transferred as part of a plea bargain; or
- pretrial transfer was prohibited because the child: (1) previously had a case transferred to juvenile court and was adjudicated delinquent; or (2) was convicted in an unrelated case excluded from juvenile court jurisdiction under the Courts Article § 3-8A-03(d)(1) or (4).

If a victim or victim's representative has filed a notification request form, the victim or victim's representative must be given proper notice of the transfer hearing. A victim or victim's representative may submit a victim impact statement to the court, which the court must consider in its transfer decision. If the court transfers the matter to the juvenile court, the juvenile court must conduct a disposition. If the case is transferred, the transfer hearing transcript and subsequent disposition are confidential.

Current Law: Under the Courts Article § 3-8A-03(d)(1), (4), and (5) respectively, the juvenile court does not have jurisdiction over the following causes (including all other charges arising out of the same incident) unless the criminal court grants a motion to waive jurisdiction back to the juvenile court:

- a child at least 14 years old alleged to have done an act which, if committed by an adult, would be a crime punishable by death or life imprisonment;
- a child at least 16 years old alleged to have committed --
 - 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 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
- a child who has previously been convicted as an adult of a felony and who is currently charged with an act classified as a felony.

A court exercising criminal jurisdiction generally may transfer a case to the juvenile court (via reverse waiver) if:

- the accused child was 14 to 17 years old when the alleged crime was committed;
- the alleged crime is otherwise excluded from the jurisdiction of the juvenile court under the Courts Article § 3-8A-03(d)(1), (4), or (5); and
- the court believes that a transfer of its jurisdiction is in the interest of the child or society.

However, the criminal court may not transfer a case to the juvenile court if:

- the child previously has been transferred to juvenile court and adjudicated delinquent;
- the child was convicted in an unrelated case excluded from the jurisdiction of the juvenile court under § 3-8A-03(d)(1) or (4) of the Courts Article; or
- the alleged crime is murder in the first degree and the accused child was 16 or 17 years old when the alleged crime was committed.

In determining whether to transfer jurisdiction, the criminal court must consider:

- the child's age;
- the child's mental and physical condition;

- the child's amenability to treatment in an institution, facility, or program available to delinquent children;
- the nature of the alleged crime; and
- the public safety.

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. One recommendation was that youth who are initially excluded from the juvenile court's jurisdiction based upon their charges and are only convicted of crimes for which they would not have been excluded should be given the opportunity to bring before a court the merits of a transfer to the juvenile justice system for purposes of disposition.

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 nonadversarial, 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" (petitioning 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 to adult court. 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 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 Effect: The bill may result in a shift of juveniles from the adult criminal system to the juvenile justice system post-conviction. Although the magnitude of such a shift and any resulting expenditure decrease for DOC and expenditure increase for DJJ cannot be reliably quantified, it is expected to be minimal and could likely be handled with existing resources. Information is not readily available regarding the number of children who have been: (1) charged as adults with crimes; (2) convicted as adults of crimes; and (3) convicted of only lesser-included crimes after having been charged with excludable offenses.

DJJ pays the expenditures for committed juvenile placements. 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. 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.

Additional Information

Prior Introductions: None.

Cross File: HB 974 (Delegate Montague, *et al.*) – Judiciary.

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

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