

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 163

(Senator Kelley, *et al.*)

Judicial Proceedings

Judiciary

Juvenile Law - Waiver of Counsel

This bill provides that a child may not waive the right to assistance of counsel except under specified circumstances. The bill requires the juvenile court to hold a waiver of counsel hearing in all delinquency cases, children in need of supervision cases, and cases in which a child has received a citation for specified violations, if the child indicates a desire to waive the right to the assistance of counsel. Unless the child has consulted with counsel and the court determines that the right to the assistance of counsel is knowingly and voluntarily waived, the court may not accept the waiver.

Fiscal Summary

State Effect: Any increased workload for the Public Defender's Office could be handled with existing resources.

Local Effect: Any increased workload for the circuit courts could be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: In determining whether the waiver is knowing and voluntary the court must consider, after appropriate questioning in open court and on the record, whether the child fully comprehends:

- the nature of the allegations and the proceedings;

- the range of allowable dispositions;
- that counsel may be of assistance in determining and presenting any defenses to the allegations, or other mitigating circumstances;
- that the right to counsel in a delinquency or child in need of supervision case includes the right to the prompt assignment of an attorney, without charge to the child if the child is financially unable to obtain private counsel;
- that even if the child intends not to contest the charge or proceeding, counsel may be of substantial assistance in developing and presenting material that could affect the disposition; and
- that among the child's rights at any hearing are the right to call witnesses on the child's behalf, the right to confront and cross-examine witnesses, the right to obtain witnesses by compulsory process, and the right to require proof of any charges.

After entry of its appearance, OPD must verify the child's eligibility for continued representation.

The continuance of a waiver or adjudicatory hearing may not be the sole basis for detaining a child.

Current Law: A party is entitled to the assistance of counsel at every stage of any proceeding brought under Title 3, Subtitle 8A of the Courts and Judicial Proceedings Article (Juvenile Causes – Children Other Than Children in Need of Assistance and Adults). However, there are no statutory requirements to ensure that the party makes an informed waiver of this right.

Compensation for the services of an attorney appointed to represent a child in an action under Subtitle 8A may be assessed by the court against any party or against a parent of the child.

Background: An American Bar Association report, *Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, released in October 2003, found that as many as one-half of juveniles appearing in State courts waive their right to counsel, many because they do not understand the consequences of the waiver, or because public defenders are not immediately available to assist them.

The figure varies widely from county to county, and, in certain counties, from judge to judge. The Baltimore City District Court has a regular juvenile arraignment docket that is staffed by assistant public defenders who explain to the juvenile what is happening and what it means not to have a lawyer. In other counties, a judge may inform the juvenile of the right to an attorney, but proceed directly to trying the case if the juvenile does not stop the proceedings to request a lawyer.

State Fiscal Effect: The bill is likely to increase juvenile defender caseloads in some counties. However, OPD received funding in fiscal 2004 and a commitment for funding in fiscal 2005 and 2006 to address increasing attorney caseloads. The fiscal 2005 allowance includes full funding for the second year of this three-year caseloads initiative (approximately \$2.8 million for 68.5 new positions). If fully funded, the caseloads initiative will allow the agency to absorb any increase in juvenile defender caseloads resulting from enactment of this bill.

Additional Information

Prior Introductions: None.

Cross File: HB 511 (Delegate Kelley, *et al.*) – Judiciary.

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

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