

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 348

(Senator Green)

Judicial Proceedings

Criminal Procedure - Dual Jurisdiction - Juvenile Offenders

This bill provides that, in a criminal prosecution involving a child that results in a conviction or guilty plea, the court may issue both a juvenile disposition and an adult criminal sentence. The court may order the child to complete the juvenile disposition and suspend the adult criminal sentence, subject to conditions established by the court. If for any reason the suspended adult sentence is revoked, all time served by the child under the juvenile disposition is credited toward the adult criminal sentence.

Fiscal Summary

State Effect: Decrease in general fund expenditures due to fewer incarcerations in Division of Correction (DOC) facilities offset by increases in general fund expenditures from more commitments to Department of Juvenile Services (DJS) facilities.

Local Effect: Minimal decrease in local expenditures for juveniles committed to DJS facilities rather than local facilities.

Small Business Effect: None.

Analysis

Bill Summary: The following provisions apply to a child who has received both a juvenile disposition and a suspended sentence.

If the child commits a new offense while serving the juvenile disposition, or violates a condition of the suspended adult sentence, the court may:

- continue the juvenile disposition;
- revoke the juvenile disposition;
- impose the adult criminal sentence; or
- enter any order it considers appropriate.

If DJS determines that it cannot meet the child's needs, DJS may petition the court for a transfer of custody of the child. After a hearing, the court may:

- revoke the suspension and direct that the child be taken into immediate custody of DOC; or
- direct that the child be placed on probation.

The court shall hold a hearing when the individual reaches the age of 18, and may:

- revoke the suspension and direct that the individual be committed immediately to the custody of DOC;
- direct that the individual be placed on probation; or
- direct that the individual remain in the custody of DJS, if DJS agrees with the placement.

DJS shall petition the court for a hearing before it releases a child at any time before the child reaches the age of 18. The court may:

- revoke the suspension and direct that the child be committed immediately to the custody of DOC; or
- direct that the child be placed on probation.

Current Law: The juvenile court does not have jurisdiction over 16 and 17 year old children who are alleged to have committed a violent crime, children 14 and older charged with a capital crime, and children who have previously been convicted as an adult. These children are within the circuit courts' jurisdiction. However, with certain exceptions, a circuit court may transfer a case involving such a child to the juvenile court if a transfer is believed to be in the interest of the child or society ("reverse waiver").

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 committing an act which, if committed by an adult, would be punishable by death or life imprisonment. The juvenile

court may not waive its jurisdiction until after it has conducted a waiver hearing, held prior to an adjudicatory hearing and after notice has been given to all parties. The court may not waive its jurisdiction unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures.

Background: Serious crimes committed by juveniles, many of which involve weapons, have led states to consider a number of approaches to insure that such juveniles are not automatically released from confinement at the traditional, statutory upper age of juvenile court jurisdiction (21, in Maryland and most other states). Maryland is one of 29 states that statutorily excludes certain crimes committed by juveniles from juvenile court jurisdiction. Seventeen states have the blended sentencing laws contemplated in this bill, in which a criminal court can impose juvenile sanctions. In Arkansas, Florida, Idaho, Iowa, Michigan, Missouri, and Virginia, a juvenile who does not satisfactorily complete a juvenile disposition is returned to criminal court, and may be required to serve an adult sentence. Covered offenses and other requirements vary.

State Expenditures: General fund expenditures could decrease minimally due to fewer juveniles being incarcerated in DOC facilities, or serving shorter terms in DOC facilities.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2005 are estimated to range from \$14 to \$58 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

DJS costs would increase significantly, based on a higher number of juveniles being committed to DJS residential facilities. The cost of maintaining a juvenile at a DJS residential facility averages \$178 per day, or \$65,000 per year. While not all juveniles covered by the bill will receive a juvenile disposition, and not all who do will be

committed to DJS facilities, the serious nature of the crimes covered by this bill make it likely that there will be substantially more commitments to DJS facilities.

If the dually-sentenced juvenile must subsequently serve a portion of an adult sentence, the county would pay the full cost of the first 90 days of incarceration, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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