

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 467

(Senators Green and Giannetti)

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 for an act excluded or waived from juvenile court jurisdiction, 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 the court orders the child to complete the juvenile disposition, the court may, at any time, revoke the juvenile disposition, impose the adult criminal sentence, or enter any order it considers appropriate.

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. The number of cases that would be affected is expected to be minimal.

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

Small Business Effect: None.

Analysis

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 criminal blended sentencing laws, 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.

DOC advises that there currently are 54 juveniles incarcerated in adult facilities and 115 in pretrial detention.

State/Local 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 \$310 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 2006 are estimated to range from \$17 to \$65 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 could increase significantly, based on a higher number of juveniles being committed to DJS residential facilities. The cost of maintaining a juvenile at a DJS nonsecured committed facility averages \$189 per day, or \$68,985 per year. However, the number of cases that this bill is expected to affect is minimal.

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 \$33 to \$119 per inmate in fiscal 2006.

Additional Comments: DJS advises that this bill could also affect its receipt of federal funds under the Juvenile Justice and Delinquency Prevention Act. The Act provides, in part, that the states receiving federal funding for juvenile justice programs must certify that "...juveniles alleged to be or found to be delinquent...shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges..." Legislative Services disagrees with DJS' interpretation, as the statute refers specifically to "adult persons," not persons charged as adults.

Additional Information

Prior Introductions: SB 348 of 2004, a similar bill, was withdrawn following a hearing.

Cross File: None.

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

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