

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1093
Judiciary

(Delegate McComas, *et al.*)

Juvenile Causes - Obtaining Testimony of a Material Witness - Procedures

The bill establishes procedures for obtaining the testimony of a material adult or juvenile witness in certain juvenile proceedings.

Fiscal Summary

State Effect: Any increase in the workload for the Judiciary can be absorbed within existing budgeted resources.

Local Effect: The bill's requirements can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill's provisions apply to a juvenile proceeding in which the underlying delinquent act: (1) is a crime of violence as defined in the Public Safety Article or involves a regulated firearm or handgun; and (2) the material witness is age 14 or older. The bill defines a "juvenile witness" as a witness who is between the ages of 14 and 18.

When a law enforcement officer takes a person into custody as a material witness without an order of court for body attachment, the person must be taken promptly before the court in the county in which the proceeding is pending or where the witness is taken into custody for a hearing. If the court determines after a hearing that the testimony of the witness is material to the proceeding and the attendance of the witness may not be secured with the issuance of a subpoena, the court may:

- for an adult witness, set a reasonable bond to ensure the attendance of the witness at the proceeding and, if the witness is unable to post the bond, commit the witness to jail; or
- for a juvenile witness, place the witness in secure detention or order an alternative to detention that will reasonably secure the attendance of the juvenile witness at the proceeding.

After seven days, an adult or juvenile witness who has been committed or detained in accordance with the provisions set forth above, must be released unless an application for continued detention is filed and the court, after a hearing, orders that the witness must continue detention.

The court may order the issuance of a body attachment of an adult witness on application filed by a party. If the court is satisfied that the testimony of the witness is material to the proceeding and the court may not be able to secure the attendance of the witness by issuing a subpoena, the court may require the witness to post a bond in an amount fixed by the court that will ensure the attendance of the witness. A law enforcement officer must execute the order of body attachment by taking the adult witness into custody and then before the court in the county where the proceeding is pending or where the adult witness is taken into custody to post bond in the circuit court. A witness who is unable to post the bond must be committed to jail.

Within three days after the witness is committed to jail, the court must hold a hearing to consider any matter contained in the application for issuance of a body attachment or related to the conditions of release imposed on the witness in accordance with the bill's provisions.

The court may order the issuance of a body attachment of a juvenile witness after a hearing on application filed by a party. If the court determines that the testimony of the juvenile witness is material to the proceeding and the court may not be able to secure the attendance of the witness by issuing a subpoena, the court may place the witness in secure detention or an alternative that will reasonably secure the appearance of the juvenile witness at the proceeding.

Within three days after the juvenile witness is detained, the juvenile must be released unless the court orders further detention after a hearing held on an application for continued detention.

An application for continued detention or for a body attachment must be verified and contain specified identifying information, information on the materiality of the testimony and reason for detention.

The court may order the testimony of a material adult witness who is committed to jail or a material juvenile witness who is detained to be taken by deposition and may order the witness released after its completion.

The conditions of a bond posted in accordance with this section must be that the adult witness personally appear as required to give evidence in any court:

- in which charges are pending against a named juvenile in a particular proceeding;
- in which a charging document may be filed based on the same acts or transactions;
or
- to which the proceeding may be transferred or removed.

The bond must continue in effect until discharged by the court having jurisdiction of the proceedings.

The bill authorizes a law enforcement officer to execute a body attachment on a juvenile witness in or about a public school only if the underlying charge involves death, serious bodily injury, or an alleged rape or sexual offense in the first degree. A law enforcement officer must attempt to take the juvenile into custody in the office of the principal or other school administrator before taking the juvenile into custody elsewhere on school grounds.

A law enforcement officer who takes a juvenile witness into custody must immediately notify or arrange for the notification of the juvenile witness' parent, guardian, or custodian. If the officer is unable to notify the parent, guardian, or custodian as required, the officer must document all notification attempts in writing.

Current Law: The Maryland Rules establish a mechanism by which a court can secure the testimony or presence of a material witness in a criminal matter in the District Court and the circuit courts. There is no corresponding provision for the juvenile courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles County, Frederick County, Montgomery County, Somerset County, Maryland State Department of Education, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of State Police, Department of Legislative Services

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