

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1010

(Delegate Conaway, *et al.*)

Judiciary

Judicial Proceedings

Juvenile Law - Transfer of Case at Sentencing - Expungement of Criminal Charge

This bill establishes that if a court exercising criminal jurisdiction in a case involving a child transfers its jurisdiction to the juvenile court at sentencing, the court must enter a written order transferring jurisdiction and requiring that the child be subject to the jurisdiction and procedures of the juvenile court. The Court of Appeals is authorized to adopt implementing rules. The bill requires a court to grant a petition for expungement of a criminal charge that was transferred to the juvenile court at sentencing and establishes that if a criminal charge is transferred to the juvenile court at sentencing or under “reverse waiver” provisions, all court and police records related to the charge must be expunged.

Fiscal Summary

State Effect: None. The Judiciary and the Department of Public Safety and Correctional Services can handle the bill’s requirements with existing budgeted resources.

Local Effect: None. Circuit courts and local law enforcement can handle the bill’s requirements with existing budgeted resources.

Small Business Effect: None.

Analysis

Current Law: In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for alcoholic beverage violations. The juvenile court does not have jurisdiction over children at least age 16 who are alleged to have committed specified violent crimes, children age 14 and older

charged with a capital crime, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult.

However, a circuit court may transfer a case involving such a child to the juvenile court if such a transfer is believed to be in the interests of the child or society (“reverse waiver”). A reverse waiver is not permitted in certain circumstances, including if a child was previously transferred to juvenile court and adjudicated delinquent. The District Court has the authority to transfer cases to juvenile court under certain circumstances. In addition, the juvenile court may waive jurisdiction over a child alleged to be delinquent who is age 15 or older, or who is younger than age 15 and is charged with committing an act which if committed by an adult, would be punishable by death or life imprisonment.

A court exercising criminal jurisdiction in a case involving a child must determine whether to transfer jurisdiction to a juvenile court at sentencing if: (1) 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 (2) 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.

In determining whether to transfer jurisdiction, the court must consider the child’s age, mental and physical condition, the amenability of the child to treatment or other programs available to delinquent children, the nature of the child’s acts as proven at trial or admitted to in a plea, and public safety.

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 otherwise excluded from juvenile court jurisdiction.

If the court transfers the matter to the juvenile court, the juvenile court must conduct a disposition.

A court is required to grant a petition for expungement of a criminal charge that was transferred to the juvenile court under reverse waiver provisions.

Background: According to the Department of Juvenile Services' *Fiscal 2009 Annual Statistical Report*, 218 cases were transferred from adult courts to juvenile courts in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 24, 2010
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