

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 838 (Senator Gladden)  
Judicial Proceedings

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Juvenile Law - Waiver of Jurisdiction - Appeal

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This bill establishes that an order of the juvenile court waiving its jurisdiction may be appealed to the Court of Special Appeals within 60 days after the order is issued and repeals a former provision designating that such an order was interlocutory.

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Fiscal Summary

**State Effect:** Potential significant increase in expenditures for the Department of Juvenile Services (DJS) as a result of more juveniles being held in DJS facilities pending appeal of the waiver order. Any increase in the workload for the Office of the Public Defender due to the accelerated appeal process is assumed to be minimal and can be absorbed with existing budgeted resources. The Judiciary can handle any increase in workload with existing budgeted resources.

**Local Effect:** Minimal decrease in local expenditures for juveniles held in DJS facilities pending the appeal of the waiver order rather than in local correctional facilities.

**Small Business Effect:** None.

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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 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. The court may waive its jurisdiction only after it has conducted a waiver

hearing held prior to the adjudicatory hearing and after notice has been given to all parties. The court may not waive its jurisdiction over a case unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures. The following criteria must be considered by the court: (1) the child's age; (2) mental and physical condition of the child; (3) the child's amenability to any available treatment; (4) the nature of the offense and the child's alleged participation in it; and (5) public safety. These criteria must be considered individually and in relation to each other on the record. An order waiving jurisdiction is interlocutory (a provisional order allowing the case to proceed without a decision on the merits).

**Background:** Because an order waiving jurisdiction is interlocutory, children whose cases have been waived from the juvenile court and into adult court do not have a right to appeal the juvenile court's ruling until after the criminal trial is complete. Once the child has been waived to adult court, if he or she is incarcerated pending a trial date, he or she must await trial in the adult correctional system.

According to DJS' *FY 2010 Annual Statistical Report*, 185 juveniles had their cases waived to adult court in fiscal 2010.

**State and Local Fiscal Effect:** Potential significant increase in expenditures for DJS as a result of more juveniles being held in DJS facilities pending appeal of the waiver order. For purposes of this analysis, it is assumed that in some cases, the appeal will stay the proceedings and that the juvenile court and DJS will retain jurisdiction pending the final resolution of the appeal. *For illustrative purposes only*, if only 20% of the juveniles who have had their cases waived to adult court file for appeal and remain in DJS custody for 90 additional days during the appeal process (a conservative estimate), DJS expenditures increase by over \$1.5 million annually. For purposes of this estimate, a per diem of \$476 was used, which reflects the average per diem for those DJS facilities with a detention component.

The State does not pay for pretrial detention time in a local correctional facility. However, the Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions. Because there are few waivers to adult court in Baltimore City (only nine in fiscal 2010), the provisions of this bill are not expected to materially impact expenditures of the Department of Public Safety and Correctional Services.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** Although designated as a cross file, HB 825 (Delegate Dumais – Judiciary) is not identical.

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

**Fiscal Note History:** First Reader - March 15, 2011  
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