

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 981
Judiciary

(Delegate Alston)

Juvenile Law - Waiver or Transfer of Jurisdiction - Appeal

This bill establishes that an order of the juvenile court waiving its jurisdiction may be appealed to the Court of Special Appeals within 30 days after the order is issued and repeals a provision designating that such an order was interlocutory. An appeal stays any further proceedings until the appeal is concluded. Pending an appeal, the child may not be held in an adult detention facility. The bill also establishes that an order denying a “reverse waiver” may be appealed to the Court of Special Appeals within 30 days after the order is issued, and further proceedings are stayed until the appeal is concluded.

Fiscal Summary

State Effect: 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 or the denial of a “reverse waiver.” Potential minimal increase in expenditures for the Office of the Public Defender, the Office of the Attorney General, and the Judiciary due to additional appeals.

Local Effect: Minimal decrease in local expenditures for juveniles held in DJS facilities rather than in local correctional facilities pending resolution of the appeals.

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 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). If jurisdiction is waived, the court must order the child held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult.

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. At a transfer hearing, the court must consider the same criteria as set forth above relating to a waiver, and may order that a study be made concerning the child, the child's family and environment, and other matters concerning the disposition of the case. Pending a transfer determination, the court may order a child to be held in a secure juvenile facility.

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 2011 Data Resource Guide*, 189 juveniles had their cases waived to adult court in fiscal 2011 and 179 children entered the juvenile system after being waived from adult court.

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. Because the appeal stays the proceedings, DJS will retain jurisdiction of the juvenile pending 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, as the Judiciary advises that even under an expedited process, the appeal would likely take six to eight months), DJS expenditures increase by approximately \$1.7 million annually. For purposes of this estimate, a per diem of \$492 was used, which reflects the average per diem for those DJS facilities with a detention component.

Information regarding the average number of children who are held at a juvenile facility pending a transfer hearing (which is authorized under current law) is not readily available. Because an appeal of a reverse waiver denial will stay the proceedings, DJS expenditures will increase further to the extent that reverse waiver denials are appealed for juveniles who were being held in juvenile detention facilities pending the reverse waiver determination, as DJS will retain jurisdiction of these juveniles during the appeal process.

The State does not pay for pretrial detention time in a local correctional facility. However, the Baltimore City Detention Center (BCDC), a State-operated facility, is used primarily for pretrial detentions. Because there are few waivers to adult court in Baltimore City (only seven in fiscal 2011), the provisions of this bill relating to the appeal of waiver decisions are not expected to materially impact expenditures of the Department of Public Safety and Correctional Services. In addition, any impact from juveniles in Baltimore City remaining in juvenile detention facilities during the appeal process for a reverse waiver denial (instead of being transferred to BCDC), is not expected to materially impact expenditures.

Additional Information

Prior Introductions: HB 825 of 2011, a similar bill, was withdrawn after a hearing in the House Judiciary Committee. SB 838 of 2011, another similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

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

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mc/kdm

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