

Department of Legislative Services
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FISCAL AND POLICY NOTE

House Bill 798
Judiciary

(Delegate Vallario, *et al.*)

Juvenile Offenders - Dual Sentencing

This bill authorizes a court exercising criminal jurisdiction, in cases involving a child for which the juvenile court has either waived jurisdiction or the jurisdiction of the juvenile court is excluded, to impose simultaneously a juvenile disposition and an adult criminal sentence. If the court imposes 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 imposes an order and suspends a sentence and the child commits a new offense or violates a condition of the suspended adult criminal sentence while serving the juvenile disposition, the court may (1) revoke the juvenile disposition; (2) impose the adult criminal sentence; or (3) enter any order the court considers appropriate.

Fiscal Summary

State Effect: Increase in general fund expenditures from more commitments to Department of Juvenile Services (DJS) facilities partially offset by decreases in general fund expenditures due to fewer incarcerations in Division of Correction (DOC) 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 correctional facilities.

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.

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.

Juvenile Dispositions

A disposition hearing is a hearing to determine whether a child needs or requires the court's guidance, treatment, or rehabilitation, and if so, the nature of the guidance, treatment, or rehabilitation.

In making a disposition, the juvenile court may:

- place the child on probation or under supervision in the child's own home or in the custody or under the guardianship of a relative or other fit person, on terms the court deems appropriate, including community detention;
- commit the child to the custody or guardianship of DJS or other agency on terms that the court considers appropriate, including designation of the type of facility where the child is to be accommodated; or

- order the child or the child's parents, guardian, or custodian to participate in rehabilitative services that are in the best interest of the child and the family.

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). According to a 2008 report by the National Center for Juvenile Justice, Maryland is 1 of 29 states that statutorily exclude 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. When a court opts to impose a blended sentence, a juvenile disposition is often imposed in combination with a suspended criminal sentence in order to ensure compliance.

According to DJS' *FY 2011 Data Resource Guide*, 189 juveniles had their cases waived to adult court in fiscal 2011.

State Fiscal Effect: General fund expenditures for the Department of Public Safety and Correctional Services decrease minimally as a result of 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 \$2,900 per month. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about \$385 per month. Excluding all medical care, the average variable costs total \$170 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced 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 expenditures increase minimally as a result of more commitments to DJS facilities under the bill. However, given that the bill is expected to be applied to a small number of cases, the bill is not expected to have a significant impact on DJS resources.

Local Fiscal Effect: Expenditures decrease minimally as a result of fewer juveniles being committed to local correctional facilities. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: HB 316 of 2011 was withdrawn after receiving a hearing in the House Judiciary Committee. SB 467 of 2005 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, 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

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mm/kdm

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