

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 848  
Judiciary

(Delegate Rosenberg, *et al.*)

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Juveniles - Confinement in Juvenile Facilities

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This bill requires a child for whom the juvenile court has waived jurisdiction to remain detained in a juvenile detention facility unless (1) released on bail, recognizance, or other conditions of pretrial release or (2) a finding is made, after a hearing, that the child is a threat to the safety or security of the staff or youth and cannot be held in a juvenile facility. A finding must be based on evidence other than solely the allegations made within the charging document. The bill also alters the authority of the court to determine whether a child who is awaiting a reverse waiver decision may be held in a secure juvenile facility by requiring, rather than authorizing, the child to be held at a juvenile facility unless the child is released on bail, recognizance, or on other conditions of pretrial release, or a finding is made, after a hearing, that the child is a safety or security threat and cannot be held in a juvenile facility. The bill establishes that a defendant who is convicted and sentenced must receive credit for time served in a juvenile detention facility. The bill specifies a phase-in method for implementation of the bill according to the age of the juvenile.

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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 trial or a reverse waiver determination. General fund expenditures decrease minimally for the Department of Public Safety and Correctional Services (DPSCS), reflecting a decrease in the juvenile population in the Baltimore City Detention Center.

**Local Effect:** Minimal decrease in local expenditures for juveniles held in DJS facilities pending trial or a reverse waiver determination.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The bill requires an individual who is or appears to be younger than age 18 to be delivered to the court upon request or transferred to the juvenile facility designated by the intake officer of the court unless a finding has been made, as specified, that the person cannot be held in a juvenile detention facility. The additional exceptions under current law that the court must have waived its jurisdiction and the person is being processed as an adult continue.

The bill adds to the requirements that must be met before a child can be transported together with adults who have been charged with or convicted of a crime by requiring that a finding must have been made, after a hearing and based on evidence other than solely the allegations within the charging document, that the child is a safety or security threat and cannot be held in a juvenile facility.

Regardless of whether the District Court has criminal jurisdiction over a case, at a bail review hearing or preliminary hearing before the District Court involving a child whose case is eligible for transfer under reverse waiver provisions, the District Court must order that the child be held in a secure juvenile facility pending a transfer determination unless the child is released on bail or a finding is made, after a hearing, that the child is a safety or security threat and cannot be held in a juvenile facility.

DJS must phase in the bill's requirements. Specifically, the bill's provisions take effect (1) October 1, 2013 for individuals younger than age 16; (2) October 1, 2014 for individuals younger than age 17; and (3) October 1, 2015 for individuals younger than age 18. The bill specifies that during the years in which the bill is being phased in, statutory provisions remain in effect for individuals younger than age 18 who, as a result of the phase-in, are not covered under the provisions.

**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) the 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. 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 the child to be held in a secure juvenile facility.

In general, a child may not be committed or transferred to any public or private facility or institution unless the child is placed in accommodations that are separate from other persons age 18 or older. The child cannot be treated in any group with persons who are age 18 or older.

**Background:** Similar legislation has been enacted recently in a number of states, including Pennsylvania and Virginia. Interest in the pretrial detention of youth in the State has been heightened in recent years due to the plans to build a new Youth Detention Center in Baltimore, after a 2000 investigation by the U.S. Department of Justice found the conditions in the current detention center facility (the Juvenile Unit at the Baltimore City Detention Center) to be inadequate. Although funds were authorized, the project was temporarily put on hold pending resolution of a policy issue regarding adequate bed space for the facility, with opponents claiming that the State's population projection of 180 beds was too high. The National Council on Crime and Delinquency (NCCD) was commissioned to conduct a new population analysis and released its findings in 2011, which forecasted the need for only 117 beds.

Among the findings in the NCCD report was that over two-thirds of the youth committed to the Baltimore City Detention Center left without a conviction in adult court, either because they were transferred to the juvenile justice system, released for various reasons (such as a finding of not guilty or a decision not to pursue the charges), released on bail, or placed on probation. The report found that only 7% of the children detained in the

detention center were eventually tried and sentenced to adult prison. However, 22% of the children detained reached age 18 before they were tried and were moved into the general adult population upon reaching age 18. Information regarding the final resolution of their cases is not available.

Chapter 416 of 2012 (HB 1122) required DJS to report to the General Assembly on the manner in which DJS would move toward ensuring that juveniles charged as adults can be detained in juvenile detention facilities. According to the report, in total, 771 juveniles were admitted to adult detention facilities during calendar 2011, with 29.8% of the population admitted in Baltimore City. Prince George's County had the second highest admissions, accounting for 22.3% of the population, followed by Baltimore County (13.4%). The majority of youth, approximately 64.7%, were admitted to adult detention facilities because their charges automatically excluded them from the jurisdiction of the juvenile court. Approximately half of the population (50.2%) was 17 years old at the time of admission, while less than 12.0% was below age 16.

In January 2013, DJS and DPSCS announced an alternative to the youth detention center, which is contingent on a plan to find a location within Baltimore City for a proposed regional treatment facility by October. The plan also includes the renovation of DPSCS's prerelease unit to accommodate juveniles charged as adults. The proposed treatment facility will allow DJS to reduce its average daily detention population at the Baltimore City Juvenile Justice Center, which will allow that facility to hold more juveniles charged as adults.

**State Fiscal Effect:** General fund expenditures increase significantly for DJS beginning in fiscal 2014 as a result of more juveniles being held in DJS facilities pending trial or a reverse waiver determination. A more specific estimate of costs cannot be reliably determined before actual experience under the bill's provisions for the reasons discussed below.

DJS advises that of the 771 juveniles admitted to adult facilities in calendar 2011, approximately 200 juveniles were detained on an average day. In preparing a response for the fiscal impact of the bill, DJS generally estimated that absorbing an additional 200 juveniles per day into existing facilities increases expenditures by \$4.7 million annually, which does not take into account the bill's phase-in provisions. In its estimate, DJS assumed that expenditures are materially impacted only when adding at least eight juveniles, since staffing costs are the main contributor to overall expenditures for detention. Using these assumptions, for every eight additional juveniles, average annual costs increase by \$188,927.

As noted above, the estimate from DJS does not account for the phasing-in of the bill. Assuming that the average daily population of juveniles corresponds with the overall trends of the number of juveniles detained in adult facilities, 24 juveniles younger than age 16 would be detained in an average day. Using the assumptions explained above, in the first year of implementation, which only applies to individuals younger than age 16, expenditures increase by \$425,086, which accounts for the October 1, 2013 effective date. Expenditures continue to increase to accommodate additional juveniles over the next three fiscal years as the bill is fully implemented.

However, the Department of Legislative Services (DLS) notes that judges still retain the discretion to require a child to be detained in an adult facility if there is a determination that a child is a safety or security threat. According to the report prepared by DJS, the crimes for which juveniles were admitted into adult facilities ranged from narcotics possession to first-degree murder. Although the bill's provisions likely substantially increase the number of juveniles who are detained in juvenile facilities pending trial, particularly once it is fully implemented, it is reasonable to assume that DJS is not required to detain all of the individuals who are detained in adult facilities under current law.

Even if DJS is not required to absorb all of the juveniles detained in adult facilities, DLS consistently noted ongoing capacity issues of DJS. These issues include the population of juveniles who are in detention while pending placement in a committed residential program. DLS has noted that without the creation of additional treatment capacity, it will be difficult to significantly reduce the pending placement population from current levels, which further hinders the ability to accommodate any additional juveniles in detention facilities.

Although DJS provided an estimate based on increased detention costs, it agrees that current facilities do not have the capacity to properly accommodate an increased detention population of this magnitude, and estimates that a new detention facility would need to be constructed at a cost of over \$50 million. However, DLS has also recognized that current detention policies and practices of DJS detain relatively moderate-risk youth who could otherwise successfully participate in an alternative to detention program. If sufficient resources were made available and detention decision policies were more aligned with risk assessment findings, it is likely that DJS could significantly reduce its secure detention population and effectively monitor youth in the community. If a portion of the juveniles in detention under current practices were to instead be supervised in the community, DJS would have greater capacity to then absorb additional juveniles charged as adults. Furthermore, the Maryland Consolidated Capital Bond Loan of 2013 includes language authorizing DJS to identify a site for the Baltimore Regional Treatment Center until October 2013 (or the \$3.0 million acquisition appropriation is restricted for the sole

purpose of renovating or constructing a facility for the juveniles charged as adult population). If DJS is able to comply with this language (although it would take multiple years for the capacity to become available) it would place DJS in a much better position to accommodate this new population, as fewer juveniles would remain in pending placement status. Without knowing how the issues outlined above will ultimately be resolved, not enough data is available to accurately estimate the specific fiscal impact of this bill.

General fund expenditures for DPSCS decrease minimally as a result of fewer juveniles being detained at the Baltimore City Detention Center, which is a State-operated facility used primarily for pretrial detentions.

**Local Expenditures:** Local government expenditures decrease as a result of fewer juveniles being detained in local detention facilities pending trial or a reverse waiver determination. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** This bill is similar to SB 761 of 2012 and its cross file, HB 1122, as introduced. The bills were substantially amended in the Senate Judicial Proceedings and House Judiciary committees, respectively, to require instead for DJS to submit a specified report. SB 761 passed the Senate as amended, but no further action was taken. HB 1122, as amended, was enacted as Chapter 416.

**Cross File:** SB 454 (Senator Gladden) - Judicial Proceedings.

**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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