

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1294
Judiciary

(Delegate Carter, *et al.*)

Juveniles - Transfer Determinations - Confinement in Juvenile Facilities

This bill alters the authority of the court to determine whether a child may be held in a secure juvenile facility pending a reverse waiver determination by *requiring*, rather than *authorizing*, a court exercising criminal jurisdiction or the District Court, at a bail review or preliminary hearing involving such a child, to order the child held at a juvenile facility unless (1) the child is released on bail, recognizance, or on other conditions of pretrial release or (2) the court finds, by clear and convincing evidence, that detention in a juvenile facility will pose a substantial risk of harm to the child or others. If the court makes such a finding, it must state the reasons on the record. The bill also *requires* the District Court, on request of the defendant, to order that a study be made concerning the child, the family of the child, the environment of the child, and other matters concerning the disposition of the case.

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 a reverse waiver determination. Revenues are not affected.

Local Effect: Minimal decrease in local expenditures for juveniles held in DJS facilities pending trial or a reverse waiver determination. Revenues are not affected.

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) 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: Interest in the pretrial detention of youth in the State has been heightened in recent years. Chapter 416 of 2012 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 pending trial. 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.

The 2012 *Joint Chairmen's Report* required DJS to conduct a statewide evaluation of overall detention utilization in the State. The main purpose of the study was to gain an understanding of why youth are detained. The analysis identified multiple pathways for youth to enter secure detention. One pathway was adult court involvement, which occurs after the resolution or waiver down of an adult charge or as a courtesy hold while an adult charge is addressed. Pursuant to an agreement with the Department of Public Safety and Correctional Services, the Baltimore City Juvenile Justice Center (BCJJC, a DJS facility) detains some youth pending adult charges in Baltimore City. DJS estimates that an average of 30 to 40 youth per day are held in this capacity.

State Fiscal Effect: General fund expenditures increase significantly for DJS beginning in fiscal 2015 as a result of more juveniles being held in DJS facilities pending a reverse waiver determination. A more specific estimate of costs cannot be reliably determined for the reasons discussed below.

DJS estimates that the bill's provisions increase the average daily population (ADP) of youth within detention centers by approximately 90 to 100. The estimate assumes that individuals pending a reverse waiver decision have an average length of stay of 90 days. The increase in the ADP does not include youth who are already being held in BCJJC as discussed above. The estimate further accounts for judges still retaining 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, and assumes that DJS is not required to assume all of the juveniles pending reverse waiver decisions.

To the extent that DJS is able to absorb youth in existing facilities, annual costs per youth range from \$20,259 to \$135,567, with an average annual cost per youth of \$95,991. The estimates of annual costs per youth differ depending on the number of youth that could be placed in any one facility. As the average daily population for any one facility increases, annual costs per youth are higher due to the enhanced staffing needs. To the extent that construction of a new facility is needed to accommodate additional youth, annual costs per youth may increase to as high as \$252,000 (which excludes capital costs).

The Department of Legislative Services (DLS) has consistently noted ongoing capacity issues of DJS. While the ADP of juveniles in detention facilities decreased to 345 in fiscal 2013 (from 432 in fiscal 2012), this decrease has predominately been in the pending placement population. This decline is largely attributed to Chapter 198 of 2012, which established provisions authorizing DJS to transfer youth between committed placement without court intervention (or the need for a detention stay pending court

action). Chapter 198 is scheduled to sunset at the end of June 2014 and a departmental bill has been introduced to repeal the sunset provision and provide DJS with permanent authority to transfer youth between committed placements. Whether or not the sunset is repealed will be a large factor in DJS operations and the ability of DJS to accommodate additional individuals within existing detention facilities.

DLS has also recognized that the 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, then DJS would have greater capacity to absorb additional juveniles charged as adults. For example, the Governor's proposed fiscal 2015 budget includes \$750,000 in general funds to expand programming designed to reduce the number of youth in secure detention to the Metro region. To the extent that the funding is appropriated and such programming is successful, statewide detention facility capacity issues may be minimized.

Without knowing how the issues outlined above will ultimately be resolved, sufficient data is not available to accurately estimate the specific fiscal impact of this bill.

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.

Additional Information

Prior Introductions: SB 454 of 2013, a similar bill relating to the pretrial detention of youth, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 848, received a hearing in the House Judiciary Committee but was subsequently withdrawn. SB 761 of 2012 and its cross file, HB 1122, as introduced, also related to the pretrial detention of youth. 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 757 (Senators McFadden and Currie) - Judicial Proceedings.

Information Source(s): Department of Juvenile Services, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Montgomery County, Baltimore City, Department of Legislative Services

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mc/kdm

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