

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 243

(Senator Kelley, *et al.*)

Judicial Proceedings

Juvenile Court - Jurisdiction

This bill expands the jurisdiction of the juvenile court to establish original jurisdiction over children (1) older than age 14 who are alleged to have done an act which, if committed by an adult, would be a crime punishable by life imprisonment; (2) older than age 16 who are alleged to have committed specified crimes; and (3) 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. The bill makes conforming changes to the expanded original jurisdiction of the juvenile court by repealing provisions of law that govern the transfer of criminal cases to juvenile court. It also establishes that only adjudications of delinquency for acts that, if committed by an adult, would be a crime punishable by life imprisonment are reportable events and require a child to be fingerprinted.

The bill applies only to offenses committed on or after the bill's effective date of October 1, 2016.

Fiscal Summary

State Effect: Potential significant increase in expenditures for the Department of Juvenile Services (DJS) as a result of the expansion of the juvenile court's jurisdiction. General fund expenditures increase in FY 2017 only for Judiciary programming costs. General fund expenditures decrease minimally for the Department of Public Safety and Correctional Services (DPSCS). Revenues are not affected.

Local Effect: Minimal decrease in local government expenditures due to fewer juveniles being sentenced from the adult court and/or detained in local detention facilities pending adult charges. 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 specified violations (examples of citationable offenses include alcoholic beverage violations or possession of less than 10 grams of marijuana). 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 if the child was convicted in an unrelated case excluded from the jurisdiction of the juvenile court or the alleged crime is murder in the first degree and the accused child was at least age 16 when the alleged crime was committed. 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 must order the child to be held in a secure juvenile facility unless (1) the child is released on bail, recognizance, or other conditions of pretrial release; (2) there is not available capacity in a secure juvenile facility, as determined by DJS; or (3) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others and states the reasons for the finding on the record. The District Court, at a bail review or preliminary hearing involving a child eligible for

transfer, must also order the child to be held in a secure facility pending a transfer determination under the provisions specified above.

The Criminal Justice Information System (CJIS) Central Repository within DPSCS collects, manages, and disseminates Maryland Criminal History Record Information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes. Statutory provisions specify events that criminal justice units must report to CJIS's Central Repository. Reportable events include adjudications of delinquency (1) for crimes punishable by life imprisonment if the child is age 14 and older; (2) for specified crimes if the child is age 16 or older; and (3) for acts that would be a felony if committed by an adult if the child is at least age 16 and has previously been convicted as an adult of a felony.

For specified juveniles adjudicated delinquent, if such a child has not been previously fingerprinted as a result of arrest for a delinquent act, the court that held the disposition hearing must order the child fingerprinted, as specified. This applies to juveniles adjudicated delinquent for (1) crimes punishable by life imprisonment if the child is age 14 and older; (2) specified crimes if the child is age 16 or older; and (3) acts that would be a felony if committed by an adult if the child is at least age 16 and has previously been convicted as an adult of a felony.

State Expenditures: General fund expenditures increase, *potentially* significantly, for DJS to serve additional youth due to the expanded jurisdiction of the juvenile court. DJS advises that some youth who are currently charged as adults can likely be absorbed without materially impacting expenditures. In addition, while this bill increases the number of juveniles who originate in the juvenile justice system, some youth charged as adults are already being served by DJS, either within detention facilities while pending a reverse waiver decision, as discussed below, or because although charged as an adult, their cases were ultimately transferred from the adult court to the juvenile court. For example, according to an analysis of available data, between 2009 and 2014, in 489 of 2,845 cases involving a youth charged as an adult for a case excluded from juvenile court jurisdiction, the case was ultimately remanded to the juvenile court.

DJS estimates that expenditures may increase to accommodate additional juveniles in detention facilities and to the extent that more juveniles are adjudicated delinquent in the juvenile system and require committed placements. However, because these cases have never been under the original jurisdiction of the juvenile court, it is not possible to accurately predict how the juvenile court may respond to these cases, which will determine the magnitude of any increase in expenditures.

Detention

Pursuant to this bill, all juveniles charged as adults and held pretrial will originally be detained in juvenile facilities. However, DJS is already accommodating a portion of juveniles who would otherwise be detained in an adult facility while awaiting court action. Specifically, legislation enacted in 2015 (Chapter 442) requires juveniles awaiting a reverse waiver determination from the adult court to be held in a juvenile detention facility except under certain circumstances set forth above. In fiscal 2015, juveniles awaiting action from the adult courts accounted for more than one-quarter of the entire predisposition detention population in DJS facilities. According to a report prepared on behalf of DJS and the Governor's Office of Crime Control and Prevention, the estimated average daily population of juveniles charged as adults and held in both adult and juvenile detention facilities was 128 in fiscal 2015. Of these juveniles, 80 were in adult detention facilities and 48 were in juvenile detention facilities. DJS has previously noted that it had been able to absorb a large number of youth in DJS facilities who were pending adult charges (but awaiting a transfer determination decision) without seeing a material impact in expenditures. Even though the bill subjects additional juveniles to being held in DJS facilities pending trial, it is assumed that the additional juveniles do not significantly impact DJS expenditures and that any increase in general fund expenditures related to this provision is minimal.

In addition, although juveniles who are alleged to have committed offenses that are no longer excluded from the juvenile court start in the juvenile system under this bill, judges still have the discretion to waive cases to adult court. Once jurisdiction is waived to the adult court, juveniles are held in adult facilities pending trial. While relatively few juvenile cases were waived to adult courts in fiscal 2015 (less than 1% of court dispositions where formal petitions were authorized), the new offenses that are under the juvenile court's original jurisdiction pursuant to the bill are more serious in nature. Accordingly, it is assumed that a substantial number may still be waived to the adult court, which limits the burden on extended detention costs.

The Department of Legislative Services also notes, however, that the decline in population within detention facilities has largely been attributed to provisions known as the continuum of care, which authorize DJS to transfer youth between committed placement without court intervention (or the need for a detention stay pending court action). The provisions authorizing continuum of care (most recently Chapter 135 of 2014) are scheduled to terminate June 30, 2016. A departmental bill (Senate Bill 81) has been introduced to repeal the termination provision and provide DJS with permanent authority to transfer youth between committed placements. Whether or not the termination date is repealed (or extended) is a factor in DJS operations and the ability of DJS to accommodate additional individuals within existing detention facilities without significantly impacting expenditures.

Committed Placements

To the extent that having additional cases originate in juvenile court results in more juveniles remaining in the juvenile justice system, expenditures may increase for additional committed placements. Although DJS can likely accommodate additional youth within State-operated residential facilities, if youth are committed to out-of-home placements in other types of facilities, per diem residential expenditures increase. While it is not possible to accurately predict the extent to which these expenditures increase, *for illustrative purposes only*, DJS estimates that for every 10 youth committed to residential placements (aside from DJS-operated facilities) with a stay of at least one year, expenditures increase by \$1.2 million.

Department of Public Safety and Correctional Services

The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions. General fund expenditures for DPSCS decrease minimally as a result of fewer juveniles being detained in Baltimore City pending trial.

General fund expenditures for DPSCS also decrease minimally to the extent that fewer juveniles are subject to adult court procedures and sentenced to State or local corrections facilities. Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,300 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had 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 the State but are confined in a local facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities.

Judiciary

The Judiciary advises that the bill requires programming changes; however, the costs associated with such programming were not available in time for inclusion in this fiscal and policy note. Otherwise, the Judiciary does not anticipate a significant fiscal or operational impact.

Local Expenditures: Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years. To the extent that the bill results in fewer juveniles being detained in local detention facilities or sentenced in adult court, local government expenditures decrease minimally.

Additional Information

Prior Introductions: HB 786 of 2013, a similar bill, was amended to become a task force on juvenile court jurisdiction and enacted as Chapter 639. SB 648 of 2013 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 304 (Delegate Sydnor, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of Public Safety and Correctional Services, Governor's Office of Crime Control and Prevention, Office of the Public Defender, State's Attorneys' Association, Department of State Police, Department of Legislative Services

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