

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 624

(Senator Carter)

Judicial Proceedings

---

**Juveniles Charged as Adults - Transfer of Jurisdiction - Community Detention**

---

This bill authorizes a court exercising criminal jurisdiction in a case involving a child to order that the child be placed in community detention pending a reverse waiver determination. The District Court, at a bail review or preliminary court hearing involving a child whose case is eligible for a reverse waiver, may order the child to be placed in community detention. If a circuit court or the District Court orders a child to be held in a detention facility that also holds adults, the detention facility must meet specified requirements.

---

**Fiscal Summary**

**State Effect:** The bill is not anticipated to materially affect State finances or operations.

**Local Effect:** Potential significant increase in local incarceration costs. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** None.

---

**Analysis**

**Bill Summary/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. 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 some circumstances, as specified in statute. At a transfer hearing, the court must consider specified criteria 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.

Under current law, pending a reverse waiver 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 the Department of Juvenile Services (DJS); or (3) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others. The bill specifies that the court’s finding regarding whether detention in a secure juvenile facility would pose a risk of harm to the child or others must be based on facts other than those that gave rise to the charges in the case against the child. The bill also authorizes the court to order the child to be placed in community detention.

Under current law, regardless of whether the District Court has jurisdiction over the case, at a bail review or preliminary hearing involving a child whose case is eligible for a reverse waiver, the District Court must order the child to be held in a secure juvenile facility pending a transfer determination unless one of the criteria specified above is met. The bill also authorizes the District Court to order the child to be placed in community detention.

“Community detention” means a program monitored by DJS in which a delinquent child or a child alleged to be delinquent is placed in the home of a parent, guardian, custodian, or other fit person, or in shelter care, as a condition of probation or as an alternative to detention. Community detention includes electronic monitoring. Only the juvenile court or an intake officer may authorize detention, community detention, or shelter care for a child who may be in need of supervision or delinquent. The bill makes conforming changes to authorize and define community detention under the circumstances set forth in the bill.

If the court orders the child to be held in a detention facility that also holds adults, the detention facility must (1) provide adequate supervision of the child to ensure the child’s safety and (2) hold the child in a ward of the facility that is entirely separate from adults held at the facility.

**State Fiscal Effect:** DJS can accommodate any increase in its community detention caseload using existing budgeted resources. The bill does not materially affect the Department of Public Safety and Correctional Services or the workload of the Judiciary.

**Local Expenditures:** Expenditures increase, likely significantly, in jurisdictions that need to conform detention facilities to meet the bill’s requirements. For example, Carroll County advises that expenditures increase significantly, as there is no separate space at the

detention facility that could be used. St. Mary's County anticipates significant expenditures and also notes that its detention center is not designed in a way to facilitate the separation of juveniles and adults. Harford, Montgomery, and Queen Anne's counties all advise there is no fiscal impact.

The Department of Legislative Services notes that pursuant to the federal Prison Rape Elimination Act of 2003, youth who are younger than age 18 and under adult court supervision, if incarcerated or detained in an adult facility, may not be placed in housing units where contact will occur with adult inmates in common spaces. Outside of housing units, facilities must either maintain "sight and sound separation" or provide direct staff supervision when adults and youth are together. Facilities must also use best efforts to avoid placing youth in isolation in order to meet these requirements. Chapter 442 of 2015, which altered the law regarding the pretransfer detention of juveniles charged as adults to create a presumption that juveniles should be held in juvenile facilities, was enacted in part to address the inadequacy of local detention facilities to properly detain the population of youth charged as adults.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Juvenile Services; Department of Public Safety and Correctional Services; Center for Children's Law and Policy; Department of Legislative Services

**Fiscal Note History:** First Reader - March 6, 2019  
mm/kdm

---

Analysis by: Jennifer K. Botts

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510