

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 933
Judiciary

(Delegate Wilson)

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: Potential minimal decrease in general fund expenditures due to fewer incarcerations in Division of Corrections (DOC) facilities. The bill is not anticipated to materially affect the Department of Juvenile Services (DJS) expenditures. Revenues are not affected.

Local Effect: Potential minimal decrease in local incarceration expenditures due to juveniles being committed to DJS facilities rather than local correctional facilities. 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. The juvenile court may waive its jurisdiction (which transfers the case to adult court) with respect to a petition alleging delinquency if the petition concerns a child who is at least age 15 or a child who is charged with committing an act which, if committed by an adult, would be punishable by 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.

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 alleged to have done an act which, if committed by an adult, would be punishable by life imprisonment; 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.

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: Of the 7,349 juvenile cases in which formal action was authorized, less than 1% of the juveniles had their cases waived to the adult court in fiscal 2019. In fiscal 2019, DOC received 195 juveniles who were tried as adults; the average sentence for these individuals was approximately 14 years.

State Fiscal Effect: General fund expenditures for the Department of Public Safety and Correctional Services may 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 State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,700 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The bill is not anticipated to materially affect DJS expenditures.

Local Fiscal Effect: Expenditures may 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. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: HB 798 of 2012 received a hearing in the House Judiciary Committee but was subsequently withdrawn. HB 316 of 2011 received a hearing in the

House Judiciary Committee but was subsequently withdrawn. SB 467 of 2005 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

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