

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 165

(Senator Carter)

Judicial Proceedings

Juvenile Court – Jurisdiction

This bill expands the jurisdiction of the juvenile court to establish original jurisdiction over (1) children age 14 and older who are alleged to have done an act which, if committed by an adult, would be a crime punishable by life imprisonment; (2) children age 16 and older who are alleged to have committed specified crimes; and (3) 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. The bill repeals existing statutory provisions that (1) govern the potential transfer of such children from criminal court to the juvenile court (“reverse waiver”) under specified circumstances and (2) designate the acts currently excluded from the juvenile court’s jurisdiction as “reportable offenses” in the Criminal Procedure and Education Articles.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances, as discussed below. Revenues are not affected.

Local Effect: Potential increase in expenditures for State’s Attorneys’ offices and circuit courts. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under current law, the juvenile court generally 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 (*e.g.*, abduction, kidnapping, second-degree murder, second-degree rape, armed carjacking, *etc.*), children age 14 and older charged with a crime 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. The bill repeals these exceptions to the juvenile court's jurisdiction.

Under current law, 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 limited circumstances related to specified prior convictions of the child or when the alleged crime is murder in the first degree and the child was 16 or 17 years old at the time the alleged crime was committed. Statutory provisions also set forth a process by which a court exercising criminal jurisdiction in a case involving a child must determine whether to transfer jurisdiction to a juvenile court at sentencing. The bill repeals these provisions to conform to the expanded jurisdiction of the juvenile court within the bill.

Under current law, 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. These provisions are unchanged by the bill.

Reportable Events – Criminal Procedure Article

Under current law, if a child at least age 16 is adjudicated delinquent for an act originally excluded from the jurisdiction of the juvenile court (or is at least age 14 and adjudicated delinquent for an act that would be punishable by life imprisonment if committed by an adult), it is a "reportable event" and must be reported to the Central Repository. If a child has not been previously fingerprinted as a result of arrest for the delinquent act, the court that held the disposition hearing of the child adjudicated delinquent must order the child to be fingerprinted, as specified. The bill repeals these provisions.

Reportable Offenses – Education Article

Statutory provisions in the Education Article set forth requirements relating to the sharing of information regarding juveniles who have been arrested for reportable offenses. For example, if a student is arrested for a reportable offense, the law enforcement agency making the arrest must notify, within 24 hours of an arrest or as soon as practicable, the local superintendent and the school principal. Reportable offenses include specified violent crimes and various gang-, weapons-, drug-, theft-, and intimidation-related charges; malicious destruction of property; second-degree assault; and auto theft. The list of reportable offenses also includes a reference to offenses that are currently excluded from the original jurisdiction of the juvenile court under § 3-8A-03(d)(4) of the Courts and Judicial Proceedings Article. The bill repeals this reference. However, some of these offenses continue to be reportable offenses, as there is overlap between some of the items within the list of reportable offenses.

State/Local Expenditures: The bill is not anticipated to materially affect State finances. Although the bill expands the jurisdiction of the juvenile court, statutory provisions already provide a method by which the juvenile court may still hear these cases, through the reverse waiver process as described above. In addition, most juveniles detained pending charges in adult court are generally already held in juvenile facilities pending a transfer determination (reverse waiver) by the court, mitigating any material impact on pretrial detention costs (for the Department of Juvenile Services (DJS), local detention facilities, or the State-operated Youth Detention Center in Baltimore City). Further, DJS notes that youth charged as adults who are detained in juvenile facilities pending reverse waiver hearings have significantly longer lengths of stay than youth charged as juveniles. For example, in fiscal 2019 (the last full year of data unaffected by COVID-19), the average length of stay for youth pending a transfer hearing was over 100 days; the average length of stay for youth pending juvenile court action was approximately 20 days. The difference in the length of stay is attributed to the strict statutory timeframes that exist in the juvenile system, such as the requirement that an adjudicatory or waiver hearing be held no later than 30 days after the date a petition for (pretrial) detention or community detention is granted. Therefore, DJS anticipates that cases would be resolved in a more efficient manner if all youth-involved cases originate in the juvenile system.

The Office of the Public Defender (OPD) advises that the bill reduces costs by reducing the number of reverse waiver hearings, thereby allowing assistant public defenders handling such cases to spend more time on addressing other caseloads. However, for purposes of this estimate, it is assumed that any *potential* decrease in expenditures related to such an impact is minimal and does not materially affect State finances. It is also generally assumed that OPD resources formerly aligned with reverse waiver proceedings are likely diverted elsewhere (such as waiver hearings to determine whether a juvenile case should be waived to adult court, an option that will continue to exist) and not eliminated.

The bill does not increase overall case volume for State's Attorneys' offices and circuit courts but instead shifts the origin of all cases involving a juvenile to the juvenile court. Regardless, because the cases that will originate in the juvenile court under the bill involve a range of serious crimes that will be subject to more stringent timeframes, some jurisdictions may experience an impact that cannot be fully absorbed simply by reallocating existing resources. For example, Frederick County advises it will need to hire at least one additional prosecutor and an investigator in its State's Attorney's office, as well as utilize additional expert witnesses on juvenile amenability, brain development, and rehabilitative option; it estimates expenditures of at least \$270,000 annually.

The Judiciary does not anticipate a significant fiscal impact; however, Frederick County also advises of the need for additional judicial resources for its circuit courts.

The Department of Public Safety and Correctional Services (DPSCS) advises that the bill's changes regarding reportable events may necessitate modifications to its databases. Although DPSCS is unable to quantify such impact, for purposes of this fiscal and policy note it is assumed that any potential expenditures are minimal and do not materially impact State finances.

Additional Information

Prior Introductions: Similar legislation has been introduced in prior legislative sessions. HB 1029 of 2021 was withdrawn prior to a hearing. SB 626 of 2019 was withdrawn prior to a hearing. Similar legislation was also introduced in 2017, 2016, and 2013.

Designated Cross File: HB 294 (Delegate Crutchfield, *et al.*) - Judiciary.

Information Source(s): Charles, Frederick, and Somerset counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State Department of Education; Department of Juvenile Services; Department of Public Safety and Correctional Services; Baltimore City Public Schools; Prince George's County Public Schools; Department of Legislative Services

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