

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 459
Judiciary

(Delegate Clippinger)

Judicial Proceedings

Juvenile Justice Reform

This bill makes numerous changes to the juvenile justice process in the State by generally implementing the recommendations of the Juvenile Justice Reform Council (JJRC), as created by Chapters 252 and 253 of 2019. Among other provisions, the bill (1) limits the circumstances under which a child younger than age 13 is subject to the jurisdiction of the juvenile court; (2) alters the use of informal adjustments; (3) establishes limitations on terms of probation imposed by a juvenile court, the use of detention, and out-of-home placements; (4) creates a permanent Commission on Juvenile Justice Reform and Emerging and Best Practices; and (5) establishes numerous reporting requirements. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase by \$25,000 in FY 2023 for one-time programming costs. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	25,000	0	0	0	0
Net Effect	(\$25,000)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government operations or finances, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Juvenile Court Jurisdiction

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 bill generally establishes that a child younger than age 13 is not subject to the jurisdiction of the juvenile court for purposes of a delinquency proceeding and may not be charged with a crime. However, the juvenile court has jurisdiction over a child who is at least age 10 who is alleged to have committed a crime of violence, as defined in § 14-101 of the Criminal Law Article. The jurisdiction of the juvenile court under these circumstances remains subject to statutory provisions under § 3-8A-03(d) of the Courts and Judicial Proceedings Article, as discussed below.

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.

Under current law (§ 3-8A-03(d) of the Courts and Judicial Proceedings Article), in addition to other exclusions regarding traffic/boating 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 alleged to have committed 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 determined by a preponderance of the evidence 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, as specified, 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. These provisions are unchanged by the bill.

Informal Adjustments

Under current law, after a complaint has been received and specified statutory requirements have been satisfied, a Department of Juvenile Services (DJS) intake officer may (1) deny authorization to file a petition and/or peace order request in the juvenile court or (2) authorize the filing of a petition and/or peace order request. If a complaint is filed that alleges the commission of an act that would be a felony if committed by an adult or a violation of specified firearms-related offenses, and the intake officer denies authorization to file a petition or proposes an informal adjustment (as discussed below), the intake officer must immediately forward the complaint and the intake file, as specified, to the State's Attorney. After a preliminary review, as specified, the State's Attorney must either file a petition and/or a peace order request, dismiss the complaint, or refer the complaint to DJS for informal disposition.

The bill establishes that if a complaint alleges the commission of an act that would be a felony if committed by an adult, the intake officer is not required to forward the complaint and a copy of the intake file to the State's Attorney if (1) the intake officer proposes the matter for informal adjustment; (2) the act did not involve the intentional causing of, or attempt to cause, the death of or physical injury to another; and (3) the act would not be a crime of violence (as defined under § 14-101 of the Criminal Law Article) if committed by an adult.

Under current law, an intake officer may propose an informal adjustment if, based on the complaint and the inquiry, the officer concludes that a juvenile court has jurisdiction but that an informal adjustment, rather than judicial action, is in the best interests of the public and the child. The intake officer must propose an informal adjustment by informing the victim, the child, and the child's parent or guardian of the nature of the complaint, the objectives of the adjustment process, and the conditions and procedures under which it will be conducted. The intake officer may not proceed with an informal adjustment unless the victim, the child, and the child's parent or guardian consent to the informal adjustment procedure. The bill establishes that an intake officer may proceed with an informal adjustment without the consent of the victim and may proceed without informing the victim if the intake officer has made reasonable efforts to contact the victim.

Under current law, during an informal adjustment process, the child is subject to such supervision as the intake officer deems appropriate. The process may not exceed 90 days unless the time is extended by the court or the intake officer determines that additional time is necessary for the child to complete a program that is part of the informal adjustment process. If, at any time before the completion of an agreed upon informal adjustment, the

intake officer believes that it cannot be completed successfully, the intake officer must either authorize the filing of a petition and/or a peace order request or deny authorization to file a petition and/or a peace order request.

The bill authorizes the court, at any time before an adjudicatory hearing, to hold the proceedings in abeyance for informal adjustment if consented to by the State's Attorney, the child who is the subject of the petition and the child's counsel, and the court. If the child successfully completes the informal adjustment, the court must dismiss the delinquency petition. If the child does not successfully complete the informal adjustment, the court must resume proceedings against the child.

Authorized Detention

Under current law, a child who is taken into custody may be placed in detention or community detention prior to a hearing if such action is required to protect the child or others or the child is likely to leave the jurisdiction of the court. The bill establishes that a child alleged to have committed a delinquent act may not be placed in detention before a hearing if the most serious offense would be a misdemeanor if committed by an adult, unless (1) the act involved a handgun and would be a violation under the Criminal Law Article or Public Safety Article if committed by an adult or (2) the child has been adjudicated delinquent at least twice in the preceding 12 months. The bill also requires the court or an intake officer to consider the results of a risk scoring instrument before placing a child in detention. A "risk scoring instrument" is a tool, metric, algorithm, or software that (1) is used to assist in determining the eligibility of a child for release before a hearing and (2) has been independently validated at least once in the preceding five years.

The bill also makes conforming changes to current law by repealing statutory provisions that prohibit the continuation of detention beyond emergency detention for a child younger than age 12 unless the child has committed a crime of violence, as specified, or the child is likely to leave the jurisdiction of the court.

Detention Stays

Under current law, if a child remains in a facility used for detention for the specific act for which the child has been adjudicated delinquent for more than 25 days after the court has made a disposition on a petition, DJS must (1) on the first available court date after the twenty-fifth day that the child remains in such a facility, appear at a hearing before the court with the child to explain the reasons for continued detention and (2) continue to appear every 25 days thereafter to explain the reasons for continued detention. The bill alters the applicable timeframes to within 14 days *after the child's initial detention*, and every 14 days thereafter. Within 10 days after a decision to detain a child in a facility used

for detention, DJS must submit a plan to the court for releasing the child into the community.

Juvenile Dispositions – Placements

Generally, a disposition hearing is held to determine whether a child who has been adjudicated delinquent needs or requires the court's guidance, treatment, or rehabilitation and, if so, the nature of the guidance, treatment, or rehabilitation. Among other options, and subject to specified limitations, a 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.

Under current law, with limited exception, a child may not be committed to DJS for out-of-home placement if the most serious offense is one of several specified offenses, including use or possession of less than 10 grams of marijuana, malicious destruction of property, disturbing the peace or disorderly conduct, or specified theft violations. The bill retains the exemption for the marijuana-related offense but repeals the remainder of the specified offenses and instead prohibits a child from being committed to DJS for out-of-home placement for an offense that would be a misdemeanor if committed by an adult, unless the offense involves a firearm. A child also may not be committed to DJS for out-of-home placement for a technical violation. A "technical violation" is defined in the bill to mean a violation of probation that does not involve an arrest or summons issued by a commissioner on a statement of charges filed by a law enforcement officer; a violation of a criminal prohibition, or an act that would be a violation of a criminal prohibition if committed by an adult, other than a minor traffic offense; a violation of a no-contact or stay-away order; or absconding. The bill also specifies that a child may not be placed in a facility used for detention for a technical violation.

Current law specifies limited circumstances under which a child may be committed to DJS for out-of-home placement even if the most serious offense is one of the specified offenses discussed above. These exceptions include if the child has previously been adjudicated delinquent for three or more offenses arising from separate and independent circumstances; the child knowingly, intelligently, and voluntarily waives the prohibition on commitment to DJS for out-of-home placement; or if the court makes a written finding, as specified,

that an out-of-home placement is necessary for the welfare of the child or in the interest of public safety. The bill makes conforming changes to current law by repealing these provisions.

Juvenile Dispositions – Probation

As noted above, a juvenile court may place a child on probation. No limitations on the term of a probation are specified in statute under current law.

The bill establishes additional restrictions on the use of probation, as described below. However, the provisions are not applicable to an offense committed by a child that, if committed by an adult, would be a felony and a crime of violence under § 14-101 of the Criminal Law Article.

The bill establishes that if the most serious offense committed by a child would be a *misdemeanor* if committed by an adult, the court may place the child on probation for a period not exceeding six months. The court may, after a hearing, extend the probation by periods of up to three months if the court finds good cause, and the purpose of extending the probation is to ensure that the child completes a treatment or rehabilitative program or service. The total period of probation, including extensions of the probation, may not exceed one year.

If the most serious offense committed by a child would be a *felony* if committed by an adult, the court may place the child on probation for a period of up to one year. After a hearing, the court may extend the term of probation by periods not exceeding three months if the court finds good cause, and the extension's purpose is to ensure completion of a treatment or rehabilitative program or service. Generally, the total period of probation may not exceed two years. However, probation may exceed this period if, after a hearing, the court finds by clear and convincing evidence that there is good cause to extend the probation and extending the probation is in the best interest of the child. If probation is extended under these conditions, the total period of probation (including extensions) may not exceed three years.

If a child is found to have committed a violation of probation, except for a technical violation, a court may, after a hearing, place the child on a new term of probation for a period that is consistent with the period of probation that may be imposed under the above provisions for the delinquent act for which the child was originally placed on probation.

Commission on Juvenile Justice Reform and Emerging and Best Practices

The bill establishes a Commission on Juvenile Justice Reform and Emerging and Best Practices, which is to be staffed by DJS and the Department of Human Services. The Governor must designate the chair. The commission must:

- research culturally competent, evidence-based, research-based, and promising practices relating to child welfare; juvenile rehabilitation; mental health services for children; and prevention and intervention services for juveniles;
- evaluate the cost-effectiveness of practices researched by the commission;
- identify means of evaluating the effectiveness of practices researched by the commission; and
- giving special attention to organizations located in or serving historically underserved communities, identify strategies to enable community-based organizations that provide services for juveniles to evaluate and validate services and programming provided by those organizations.

By December 31, 2023, and annually thereafter, the commission must report its findings to the Governor and the General Assembly.

Commission members may not receive compensation as members of the commission but are entitled to reimbursement for expenses under the standard State travel regulations.

Additional Reporting Requirements

By April 15, 2023, DJS must report to the General Assembly on multiple specified items, including:

- the use of community detention for juveniles in the care and custody of DJS;
- the effect of a requirement that DJS provide a robust continuum of community-based alternatives to detention in all jurisdictions of the State and recommendations for establishing the requirement;
- access to mental health services for all juveniles served by DJS;
- the use of community detention, including electronic monitoring, for juveniles placed on probation;
- plans to increase the number of shelter beds available in juvenile facilities, particularly for girls;
- minimum training standards for staff at juvenile facilities;
- standards for attorneys to access their clients within all juvenile facilities in the State; and

- plans to transition from the current slate of secure juvenile facilities to ensure access to both nonresidential and residential facilities that use culturally competent, evidence-based programming in all jurisdictions of the State.

Governor's Office of Crime Prevention, Youth, and Victim Services

The Governor's Office of Crime Prevention, Youth, and Victim Services (GOCOPYVS) must request and analyze data relating to juveniles who are charged, convicted, and sentenced as adults in the State, including data from law enforcement agencies, the Administrative Office of the Courts, local correctional facilities in the State, and the Department of Public Safety and Correctional Services (DPSCS). The information must include (1) the number of juveniles charged, convicted, and sentenced as adults; (2) the outcomes of such cases, including whether the case resulted in conviction, dismissal, or transfer to the juvenile court, as specified; (3) the number of juveniles housed in each State and local correctional facility; and (4) the length of sentence for each juvenile sentenced as an adult in the State. By December 31, 2023, and annually thereafter, GOCOPYVS must report its findings to the Governor and the General Assembly.

By December 31, 2023, GOCOPYVS must (1) develop a model policy for diversion of juveniles from the juvenile justice system and criminal justice system; (2) identify funding opportunities to support diversion programs for juveniles in the State, including local programs; (3) collect and evaluate data related to the implementation and effectiveness of diversion programs for juveniles in the State; and (4) report its findings to the General Assembly.

State Expenditures: General fund expenditures increase by \$25,000 in fiscal 2023 for one-time programming costs for GOCOPYVS.

The bill results in additional operational effects, as discussed below.

Department of Juvenile Services

Although the bill represents a significant operational shift in the handling of juvenile delinquency matters, it is not anticipated to materially affect DJS finances. The bill reduces the number of juveniles in detention and in out-of-home placements, likely resulting in decreased expenditures associated with facility operations. However, it is assumed that expenditures to serve more juveniles in community-based settings, including costs associated with supervision, treatment, and services, increase. Thus, despite the significant operational impact, no material effect on *overall* DJS expenditures is anticipated. DJS can also use existing resources to fulfill the reporting requirement and staff the newly created commission.

Governor's Office of Crime Prevention, Youth, and Victim Services

General fund expenditures for GOCPYVS increase by \$25,000 for programming changes to facilitate the reporting elements in the bill. Despite the bill's June 1, 2022 effective date, it is assumed that these costs are incurred in fiscal 2023.

Judiciary

Although the bill alters the juvenile court's handling of delinquency matters and may require the development of related forms and guidance, any resulting impact, including the need for any potential minimal computer programming, is anticipated to be accommodated using existing resources. The Judiciary can also provide any requested data using existing resources.

Other Agencies

The Office of the Public Defender (OPD) advises that the bill may decrease the number of juvenile cases it handles, allowing it to divert resources to other matters. While this may have a positive impact on overall OPD workload and caseload standards, it is not anticipated to materially affect State finances.

DPSCS can respond to any data requests with existing resources.

Any additional reimbursement expenses for commission members are assumed to be absorbable within existing budgeted resources.

Local Fiscal Effect: The bill is not anticipated to materially affect local government operations or finances. While the bill may reduce the number of juvenile petitions handled by State's Attorneys' offices, thereby potentially reducing the workload associated with such matters, it is assumed that resources are diverted elsewhere. Any data requests from local law enforcement agencies can be accommodated using existing resources. The bill does not materially impact the workload or finances of the circuit courts.

Additional Comments: This bill generally implements the recommendations of JJRC. The council was created pursuant to Chapters 252 and 253 of 2019. The council issued its final [report](#) in January 2021 and a supplemental [report](#) in October 2021.

Additional Information

Prior Introductions: The bill is similar to HB 1187 and SB 853 of 2021, as introduced. However, as amended, those bills only (1) extended the termination date for JJRC and

required a supplemental report and (2) established a mandated appropriation to a private entity. HB 1187 was enacted as Chapter 596 of 2021.

Designated Cross File: None.

Information Source(s): Harford and Montgomery counties; Governor's Office of Crime Prevention, Youth, and Victim Services; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Human Services; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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