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FISCAL AND POLICY NOTE
First Reader

Senate Bill 827

(Senator Love, *et al.*)

Judicial Proceedings

Juvenile Law - Confinement and Restrictive Housing - Limitations

This bill limits the circumstances under which a minor may be placed in restrictive housing within a facility operated by a correctional unit. The bill alters the criteria for these placements, the duration of these placements, and services a minor must receive while in restrictive housing. The bill also establishes procedures a facility must follow when a minor's placement in restrictive housing expires. The bill prohibits a child, including one subject to adult criminal court jurisdiction, from being detained or confined in any institution in which the child has contact with or comes within sight or sound of an incarcerated adult. However, the bill also prohibits a child who has been convicted of or awaiting trial for an offense under adult jurisdiction from being held in an adult correctional facility. The bill makes corresponding changes to reflect these prohibitions. Finally, the bill requires the Department of Juvenile Services (DJS) to make specified notifications when a child in its custody reaches age 18, for purposes of transferring the individual.

Fiscal Summary

State Effect: No effect on total capital spending; however, funding for other capital projects is reduced or delayed due to construction costs caused by the bill. General fund operational expenditures for DJS may increase significantly, which may be partially offset by a (potential) corresponding decrease in the Department of Public Safety and Correctional Services' (DPSCS) expenditures depending on interpretation of the bill. The bill may help protect federal funding by ensuring that Maryland law conforms to federal requirements. Revenues are not affected.

Local Effect: Local expenditures may increase significantly, as discussed below. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Restrictive Housing

The bill prohibits a minor from being placed in restrictive housing solely for the purposes of discipline, punishment, administrative convenience, retaliation, or staffing shortages. A minor may be placed in restrictive housing as a temporary measure if:

- the managing official of the facility finds by clear and convincing evidence that there is an immediate and substantial risk (1) of physical harm to the minor, other incarcerated individuals, or staff or (2) to the security of the facility;
- there are no other reasonable means to eliminate the risk;
- restrictive housing is used only to the extent necessary to eliminate the identified risk;
- restrictive housing occurs under the least restrictive conditions practicable and consistent with the rationale for the minor's placement in restrictive housing;
- facility staff promptly notifies the minor of the rationale for the minor's placement in restrictive housing; and
- facility staff develops a plan that will allow the minor to leave restrictive housing and return to the general population as soon as possible.

A health care or mental health care provider must conduct a mental health screening of a minor placed in restrictive housing within one hour of the minor's placement. Following this mental health screening, the correctional facility must provide the minor with any necessary mental health services.

A minor placed in restrictive housing must be housed in restrictive housing for the shortest amount of time necessary, not to exceed six hours. At the end of this time, a correctional facility must (1) return the minor to the general population; (2) transport the minor to a mental health facility if recommended by a mental health professional; (3) transfer the minor to the medical unit in the facility; or (4) provide special individualized programming outside of restrictive housing, as specified.

A minor may be placed in restrictive housing at the minor's request. A minor may revoke their request at any time; if the minor revokes their request, they must be immediately returned to the general population.

A minor placed in restrictive housing must be provided the same standard of access that is provided to incarcerated individuals not in restrictive housing to specified items

(e.g., phone calls, visits, food, showers, and sanitary supplies) and medical care, mental health care, and dental health care. Unless it would pose a risk of physical harm to the minor or another, the minor must also have maximized access to recreation, education, and programming. If any of these privileges or conditions is not provided to the minor, the managing official or the managing official's designee must record the reason in the minor's file.

The bill does not alter any relevant statutory definitions for restrictive housing, which are discussed below in the Current Law section of this fiscal and policy note.

Notifications by the Department of Juvenile Services

The bill requires DJS to notify the sentencing court and the State's Attorney within 180 days, or as soon as otherwise practicable, before a child who is in the custody of DJS reaches age 18, for purposes of eventually transferring the child to an adult correctional facility.

On the sentencing court's receipt of this notification, the sentencing court must set the matter for a hearing before the child reaches age 18 and must enter an order transferring the child, on the child reaching age 18, to an adult correctional facility, facility for youthful offenders, if applicable, or any disposition the court considers appropriate that does not otherwise violate these provisions. The sentencing court may not remand a person who has reached age 18 to a juvenile facility or place the person with other juveniles.

Current Law:

Placement of Minors in Restrictive Housing

A minor may not be placed in restrictive housing unless the managing official of the facility finds by clear and convincing evidence that there is an immediate and substantial risk (1) of physical harm to the minor, other incarcerated individuals, or staff or (2) to the security of the facility.

A minor placed in restrictive housing must be provided:

- daily physical and mental health assessments to determine whether the minor may be released from restrictive housing;
- the same standard of access that is provided to incarcerated individuals not in restrictive housing to specified items (e.g., phone calls, visits, food, showers, and sanitary supplies) and medical care, mental health care, and dental health care; and
- unless it would pose a risk of physical harm to the minor or another, maximized access to recreation, education, and programming.

If any of these privileges or conditions is not provided to the minor, the managing official or the managing official's designee must record the reason in the minor's file.

A "correctional unit" means a unit of the State or local government that is directly responsible for the care, custody, and control of individuals committed to the custody of the unit for the commission or alleged commission of a crime or an act that would be a crime if committed by an adult. "Correctional unit" includes (1) DPSCS; (2) DJS; and (3) offices of a county sheriff or a local government unit responsible for operating a local correctional facility or county detention center.

"Restrictive housing" means a form of physical separation that has not been requested by the incarcerated individual in which the incarcerated individual is placed in a locked room or cell for approximately 22 hours or more out of a 24-hour period. Restrictive housing includes administrative segregation and disciplinary segregation.

"Administrative segregation" means a form of physical separation of an inmate from the general population determined by the classification process or authorized personnel when the continued presence of an inmate in the general population would pose a serious threat to (1) life; (2) property; (3) self; (4) staff or other inmates; (5) the security or orderly functioning of the facility; or (6) the well-being of society.

"Disciplinary detention" means a form of physical separation in which an inmate found guilty at a disciplinary hearing is confined apart from the general population for a designated period of time.

Transfers of Juveniles Between Facilities – Mostly Repealed by the Bill

The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime must (1) inform the court or the intake officer immediately when a person, who is or appears to be younger than age 18, is received at the facility and (2) deliver them to the court upon request or transfer the person to the facility designated by the intake officer or the court, unless the court has waived its jurisdiction with respect to the person and they are being proceeded against as an adult. When a case is transferred to another court for criminal prosecution, the child must promptly be transferred to the appropriate officer or adult detention facility in accordance with the law governing the detention of persons charged with crime. The bill repeals these provisions.

A child may not be transported together with adults who have been charged with or convicted of a crime unless the court has waived its jurisdiction, and the child is being proceeded against as an adult. The bill repeals the conditional provision, thus prohibiting a child's transportation with adults who have been convicted of a crime entirely.

Pending Placements in Juvenile Facilities – Repealed by the Bill

Pending the determination to transfer jurisdiction of a child, 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.

If the court makes a finding that detention in a secure juvenile facility would pose a risk of harm to the child or others, the court must state the reasons for the finding on the record.

State Expenditures:

Provisions of the Bill and Assumptions

The bill contains unclear language. Section 3-8A-16(b) of the Courts and Judicial Proceedings Article, as amended by the bill, prohibits a child who has been convicted of or is awaiting trial for an offense under adult jurisdiction from being held in an adult correctional facility. Section 3-8A-16(a), as amended by the bill, prohibits a child, including one subject to adult criminal court jurisdiction, from being detained or confined in any institution in which the child has contact with or comes within sight or sound of an incarcerated adult. Given the prohibition under (b), it is unclear which children and what circumstances and facilities are being addressed in (a).

Also, neither the bill nor existing statute define “adult correctional facility.” The Youth Detention Center (YDC) in Baltimore City houses youth younger than age 18 who are charged as adults in Baltimore City and are awaiting trial or serving the beginning of their sentence for a conviction as an adult. While YDC’s entire population is younger than age 18, by function and statute, YDC is operated by the Division of Pretrial Detention and Services (DPDS) in DPSCS, not DJS.

Thus, regarding State expenditures, this estimate makes the assumptions listed below.

- Children awaiting trial or convicted of a crime as an adult may not be held in a facility operated by DPSCS and must be held in a facility operated by DJS.
- YDC in Baltimore City, which is operated by DPSCS, is an adult correctional facility.

Department of Juvenile Services

DJS advises that implementation of the bill may require the construction of two new 24-bed facilities, at a cost of \$45 million each and annual operating expenditures of \$12.0 to \$15.0 million. DJS did not provide any additional information regarding its estimate, including how it intends to address the bill's requirements prior to construction of these new facilities. Nevertheless, it is assumed that DJS expenditures may increase significantly beginning in fiscal 2026.

Barring any alternative arrangements that would allow YDC not to be considered an adult correctional facility under the bill, the bill requires the transfer of youth from YDC, other DPSCS facilities, and local facilities to DJS facilities. Although the bill has no effect on total capital spending, which is established annually by the Governor and the General Assembly through the capital budget process, funding for other capital projects is reduced or delayed. As noted above, to the extent facilities are constructed, general fund operational expenditures for DJS increase significantly. Expenditures associated with the new facilities are unlikely to be incurred within the five-year projection of this estimate.

Department of Public Safety and Correctional Services

DPSCS advises that the restrictive housing portion of the bill has no fiscal or operational impact on the department and DPDS. YDC does not have a restrictive housing unit and does not utilize restrictive housing for the juveniles housed at YDC. Instead, DPDS utilizes a Behavior Modification Housing Program. Juveniles are not removed from their cells for program implementation.

DPSCS expenditures decrease beginning in fiscal 2026 as DJS assumes custody of children currently in DPSCS facilities; DPSCS expenditures decrease further, perhaps significantly, from reduced operations at YDC due to the transfer of youth from YDC to new DJS-operated facilities. Any such decrease may not occur until the out-years after construction of additional DJS facilities. This estimate assumes that the transfer of youth sentenced as adults who are in other DPSCS facilities will not materially affect the expenditures or operations of the Division of Correction (DOC). Under the bill, these individuals return to DOC when they reach age 18.

While DJS mainly addresses youth younger than age 18, individuals may remain under the jurisdiction of DJS until age 21. The bill appears to require a child in DJS custody to be transferred to an adult correctional facility when they reach age 18. This estimate assumes that such transfers can be accommodated with existing budgeted resources. This estimate further assumes that individuals subject to this provision are in hardware secure DJS placements at age 18. While information is not readily available on the number of individuals in this population, according to the *2024 DJS Data Resource Guide*,

approximately 68 of the 347 DJS committed placements in fiscal 2024 were for individuals ages 18 to 20; however, hardware secure placements only represented 26% of all placements.

Governor's Office of Crime Prevention and Policy

The 2018 reauthorization of the federal Juvenile Justice and Delinquency Prevention Act (JJDP), under the Juvenile Justice Reform Act, created several new requirements that states must comply with in order to receive related federal funds. Previously, JJDP only mandated the removal of minors from adult jails in delinquency cases. Minors prosecuted as adults were exempt from this requirement and could be housed in adult facilities. The reauthorization addresses the removal of all youth younger than age 18 who are pending trial or other court processes from facilities that house adult inmates. States were given until December 2021 to come into compliance with JJDP or risk losing federal funding.

The Governor's Office of Crime Prevention and Policy (GOCPP) administers the Title II Juvenile Justice Delinquency Prevention Formula Grant, which, subject to the federal grant program and federal law, requires the removal of children from adult jails and lockups. GOCPP advises that current State practice is noncompliant, and implementation of the bill is necessary for compliance with federal formula grant funds standards. For each core grant program requirement with noncompliance, the State's award will be reduced by 20%. GOCPP estimates a \$173,364 reduction of the State's award absent the bill's provisions. GOCPP did not indicate if the State has experienced any reductions in grant funding since the initial 2021 compliance deadline or whether there has been a renewed federal effort (signaled by a recent advisory letter) to enforce compliance.

Local Expenditures: Although unclear in the bill, local expenditures increase significantly if local detention facilities are required to implement sight and sound separation between children and incarcerated adults. If the bill prohibits children from being housed in local facilities altogether, local expenditures decrease by an indeterminate amount.

For example, Washington County reports its detention center (WCDC) does not have the ability to house youth out of sight and sound of incarcerated adults without the use of restrictive housing. In order to implement the requirements of the bill, WCDC requires approximately \$2.5 million in construction costs in fiscal 2026 for renovations to comply with the bill's requirements to separate youth from adults; associated staffing costs for deputy sheriffs total approximately \$400,000 annually.

In addition to other noted impacts, Montgomery County advises that while it does employ mental health professionals, they are not immediately available at all hours to perform

mental health evaluations within one hour of a youth's placement in restrictive housing under the bill.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1107 (Delegate Bartlett, *et al.*) - Judiciary.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; Governor's Office of Crime Prevention and Policy; Department of Juvenile Services; Department of Public Safety and Correctional Services; Board of Public Works; Department of Legislative Services

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