

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 215 (Senator Kelley, *et al.*)
Judicial Proceedings

Juvenile Court - Jurisdiction

This bill expands the jurisdiction of the juvenile court to establish original jurisdiction over children (1) older than age 14 who are alleged to have done an act which, if committed by an adult, would be a crime punishable by life imprisonment; (2) older than age 16 who are alleged to have committed specified crimes; and (3) 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 makes conforming changes to the expanded original jurisdiction of the juvenile court by repealing provisions of law that govern the transfer of criminal cases to juvenile court. It also establishes that only adjudications of delinquency for acts that, if committed by an adult, would be a crime punishable by life imprisonment are reportable events and require a child to be fingerprinted.

The bill applies only to offenses committed on or after the bill's effective date of October 1, 2017.

Fiscal Summary

State Effect: Any potential minimal increase in expenditures for the Department of Juvenile Services (DJS) as a result of the expansion of the juvenile court's jurisdiction is not anticipated to materially impact State finances. General fund expenditures increase in FY 2018 only for Judiciary programming costs. General fund expenditures decrease minimally for the Department of Public Safety and Correctional Services (DPSCS). Revenues are not affected.

Local Effect: Minimal decrease in local government expenditures due to fewer juveniles being sentenced from the adult court and/or detained in local detention facilities pending adult charges. 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 (examples of citationable offenses include alcoholic beverage violations or possession of less than 10 grams of marijuana). The juvenile court may waive jurisdiction over a child alleged to be delinquent who is age 15 or older or who is younger than age 15 and is charged with committing an act which, if committed by an adult, would be punishable by death or 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. If jurisdiction is waived, the court must order the child held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult.

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 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. At a transfer hearing, the court must consider the same criteria as set forth above relating to a waiver 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. Pending a transfer 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 DJS; or (3) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others and states the reasons for the finding on the record. The District Court, at a bail review or preliminary hearing involving a child eligible for

transfer, must also order the child to be held in a secure facility pending a transfer determination under the provisions specified above.

The Criminal Justice Information System (CJIS) Central Repository within DPSCS collects, manages, and disseminates Maryland Criminal History Record Information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes. Statutory provisions specify events that criminal justice units must report to CJIS's Central Repository. Reportable events include adjudications of delinquency (1) for crimes punishable by life imprisonment if the child is age 14 and older; (2) for specified crimes if the child is age 16 or older; and (3) for acts that would be a felony if committed by an adult if the child is at least age 16 and has previously been convicted as an adult of a felony.

For specified juveniles adjudicated delinquent, if such a child has not been previously fingerprinted as a result of arrest for a delinquent act, the court that held the disposition hearing must order the child fingerprinted, as specified. This applies to juveniles adjudicated delinquent for (1) crimes punishable by life imprisonment if the child is age 14 and older; (2) specified crimes if the child is age 16 or older; and (3) acts that would be a felony if committed by an adult if the child is at least age 16 and has previously been convicted as an adult of a felony.

State Expenditures:

Department of Juvenile Services

Any potential minimal increase in general fund expenditures is not anticipated to materially impact the finances of DJS. While the bill increases the number of juveniles who originate in the juvenile justice system, some youth charged as adults are already being served by DJS. Legislation enacted in 2015 (Chapter 442) requires juveniles awaiting a reverse waiver determination from the adult court to be held in a juvenile detention facility except under specified circumstances. In fiscal 2016, juveniles awaiting action from the adult courts accounted for more than one-quarter of the entire predisposition detention population in DJS facilities. In addition, DJS serves juveniles who, although initially charged as an adult, ultimately had their cases transferred from the adult court to the juvenile court. According to an analysis of available data, between 2009 and 2014, in 489 of 2,845 cases involving a youth charged as an adult for a case excluded from juvenile court jurisdiction, the case was ultimately remanded to the juvenile court.

Even though the bill subjects additional juveniles to being held in DJS facilities pending trial, it is assumed that adding additional juveniles does not materially impact expenditures, as it will reduce detention costs. Although the population of detained juveniles involved in the traditional juvenile court system has fallen by 52% since 2012, the overall detention population has only fallen 33%, as DJS has absorbed more youth whose secure detention

is authorized by the adult court system. While thus far capacity has not been a concern, juveniles awaiting action from the adult court system have a significantly longer length of stay than those awaiting juvenile dispositions. According to DJS, in fiscal 2016, the average length of stay for youth awaiting juvenile dispositions was 16 days; the average length of stay for youth charged as adults was 81.7 days. By expanding the original jurisdiction of the juvenile court, these juveniles will be subject to the stricter statutory time frames as required by the juvenile process, thus reducing the average length of stays, and correspondingly, the average daily population within DJS detention facilities.

To the extent that having additional cases originate in juvenile court results in more juveniles remaining in the juvenile justice system, expenditures related to additional committed placements may increase. However, the average daily population of youth in committed residential placements in fiscal 2016 reflects the second year of declines of at least 20% in this population, resulting in increased capacity at State-operated residential facilities. If youth are committed to out-of-home placements in other types of facilities, per diem residential expenditures may increase; however, DJS advises that reductions in detention expenditures as well as the ability to reallocate departmental resources from detention and to committed placements are anticipated to offset any potential expenditures related to committed placements.

In addition, although juveniles who are alleged to have committed offenses that are no longer excluded from the juvenile court start in the juvenile system under this bill, judges still have the discretion to waive cases to adult court. Once jurisdiction is waived to the adult court, juveniles are held in adult facilities pending trial. While relatively few juvenile cases were waived to adult courts in fiscal 2016 (1% of court dispositions where formal petitions were authorized), the new offenses that are under the juvenile court's original jurisdiction pursuant to the bill are more serious in nature. Accordingly, it is assumed that a substantial number may still be waived to the adult court, which will limit any additional burden on DJS.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS may decrease minimally to the extent that fewer juveniles are subject to adult court procedures and sentenced to State or local corrections 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 \$3,600 per month. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$800 per month. Excluding all health care, the average variable costs total \$210 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility.

The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions. General fund expenditures for DPSCS may decrease minimally if the expansion of the juvenile court's jurisdiction results in fewer juveniles being detained in Baltimore City pending trial.

Judiciary

The Judiciary advises that the bill requires programming changes; however, the costs associated with such programming are not available in time for inclusion in this fiscal and policy note. Otherwise, the Judiciary does not anticipate a significant fiscal or operational impact.

Office of the Public Defender

Although litigating cases in juvenile court requires fewer resources than cases handled in the adult courts, the bill is not anticipated to materially impact the finances of the Office of the Public Defender, as it is assumed that the office reallocates budgeted resources accordingly.

Local Expenditures: To the extent that the bill results in fewer juveniles being detained in local detention facilities or sentenced in adult court, local government expenditures decrease minimally. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for

inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Although litigating cases in juvenile court requires fewer resources than cases handled in the adult courts, the bill is not anticipated to materially impact the finances of state's attorneys' offices, as it is assumed that those offices reallocate budgeted resources accordingly.

Additional Information

Prior Introductions: SB 243 of 2016 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 304, received an unfavorable report from the House Judiciary Committee. HB 786 of 2013, a similar bill, was amended to become a task force on juvenile court jurisdiction and enacted as Chapter 639. SB 648 of 2013 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 471 (Delegate Sydnor, *et al.*) - Judiciary.

Information Source(s): Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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Analysis by: Jennifer K. Botts

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