

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 761

(Senator Gladden)

Judicial Proceedings

Rules and Executive Nominations

Juveniles - Confinement in Juvenile Facilities - Report

This bill requires the Department of Juvenile Services (DJS) to report to the General Assembly, on or before December 1, 2012, on the manner in which the department will work toward ensuring that youth charged as adults can be detained in juvenile detention facilities.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: DJS can use existing resources to prepare the required report.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The report must include information on the number of youth charged as adults held in adult detention facilities from January 1, 2011, through December 31, 2011. The report must also include information on the department's plan to reduce the overall number of youth in juvenile detention, including (1) the number of youth transferred from adult detention to juvenile detention pending a transfer determination; (2) the number of youth transferred to juvenile court jurisdiction on a motion to transfer from adult court jurisdiction; (3) the number of youth in juvenile detention receiving Detention Risk Assessment Instrument (DRAI) screening; (4) the use of the Juvenile Detention Alternative Initiative (JDAI); (5) the use of prevention and

diversion services; (6) the plan for reducing the number of youth in detention pending placement; and (7) the average length of stay for youth charged as adults in juvenile facilities.

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 alcoholic beverage violations. 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) 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 in certain circumstances, including if a child was previously transferred to juvenile court and adjudicated delinquent. 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.

In general, a child may not be committed or transferred to any public or private facility or institution unless the child is placed in accommodations that are separate from other persons 18 years of age or older. The child cannot be treated in any group with persons who are 18 years of age or older.

Background:

Pretrial Detention of Youth

Interest in the pretrial detention of youth in the State has been heightened in recent years due to the plans to build a new Youth Detention Center in Baltimore, after an investigation in 2000 by the U.S. Department of Justice found the conditions in the current detention center facility (the Juvenile Unit at the Baltimore City Detention Center) to be inadequate. Although funds were authorized, the project was temporarily put on hold pending resolution of a policy issue regarding adequate bed space for the facility, with opponents claiming that the State's population projection of 180 beds was too high. The National Council on Crime and Delinquency (NCCD) was commissioned to conduct a new population analysis and released its findings in 2011, which forecasted the need for only 117 beds. Funding for the project has been deferred to fiscal 2014 based on DPSCS' decision to reduce the scope of the project.

Among the findings in the NCCD report was that over two-thirds of the youth committed to the Baltimore Center Detention Center left without a conviction in adult court, either because they were transferred to the juvenile justice system, were released for various reasons (such as a finding of not guilty or a decision not to pursue the charges), were released on bail, or placed on probation. The report found that only 7% of the children detained in the detention center were eventually tried and sentenced to adult prison. However, 22% of the children detained reached the age of 18 before they were tried and were moved into the general adult population upon reaching 18. Information regarding the final resolution of their cases was not available.

Risk Assessment and Conditions of Facilities

DRAI screening, based on criteria that assess risk factors and the youth's current offense, is a tool used by DJS to determine whether a youth should be placed in secure confinement, conditionally released to the community under close supervision with treatment services, or released with no conditions until a court hearing. Youth with high-risk DRAI scores are placed in detention, while youth with low- to moderate-risk scores are placed in an alternative to detention program. Alternatives to detention primarily include shelter care, evening reporting center participation, and community detention/electronic monitoring.

JDAI is a project of the Annie E. Casey Foundation that provides technical assistance to states and local jurisdictions regarding their juvenile justice system. The goals of JDAI are to reduce overcrowding in juvenile detention centers by safely maintaining the youth in the community in detention alternatives without jeopardizing public safety or increasing the number of youth who fail to appear for court.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 1122 (Delegate Valderrama, *et al.* – Judiciary) is not identical.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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Analysis by: Jennifer K. Botts

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