

Department of Legislative Services
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 598
Judiciary

(Delegate McComas, *et al.*)

Judicial Proceedings

Juvenile Law - Taking Child into Custody - Arrest Warrant

This bill authorizes an intake officer of the Department of Juvenile Services, after conducting an inquiry in accordance with statutory provisions, to file with the court an application for an arrest warrant prepared by a law enforcement officer. An arrest warrant may only be issued by the court on a finding of probable cause and must direct the law enforcement officer to take immediate custody of the child.

Fiscal Summary

State Effect: None. Any change in State activities will not materially affect State finances or operations.

Local Effect: None. Any change in local law enforcement activities will not materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes that an application for an arrest warrant must be in writing and signed and sworn to by the law enforcement officer. The application must also be accompanied by an affidavit that sets forth the basis for there being probable cause to believe that (1) the child who is the subject of the warrant has committed a delinquent act; and (2) unless the child who is the subject of the warrant is taken into custody, the child is likely to leave the jurisdiction; may not be apprehended; may cause physical injury or property damage to another; or may tamper with, dispose of, or destroy evidence.

Current Law: A child may be taken into custody by any of the following methods:

- pursuant to an order of the court;
- by a law enforcement officer pursuant to the law of arrest;
- by a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary for the child's protection; or
- by a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child has run away from the child's parents, guardian, or legal custodian.

Generally, the laws of arrest require a warrant for a police officer to arrest an individual, although certain exceptions are provided by statute. For example, an officer may arrest without a warrant a person who commits or attempts to commit a felony or misdemeanor in the presence or within the view of the police officer. A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the presence or within the view of the police officer may arrest without a warrant any person whom the police officer reasonably believes to have committed the crime. A police officer may arrest a person without a warrant if the police officer has probable cause to believe that a felony has been committed or attempted and the person has committed or attempted to commit the felony whether or not in the presence or within the view of a police officer. Other provisions of law authorize warrantless arrests for other specified crimes and during a state of emergency.

Juvenile Intake and Inquiry

Intake occurs when a complaint is filed by a police officer or other person or agency having knowledge of facts that may cause a child to be subject to the jurisdiction of the juvenile court. Within 25 days after the complaint is filed, the intake officer is required to make an inquiry as to whether the juvenile court has jurisdiction and whether judicial action is in the best interest of the public or the child. In making this determination, the intake officer considers (1) the nature of the alleged offense; (2) the child's home, school, and community environment; and (3) input from the victim and the police.

The intake officer may make any of the following decisions: (1) deny authorization to file a petition or a peace order request or both in the juvenile court; (2) propose informal supervision; or (3) authorize the filing of a petition or a peace order request or both in the juvenile court. A "petition" is the pleading filed with the juvenile court alleging that a child is a delinquent child. A "peace order request" is the initial pleading filed with the juvenile court that alleges the commission of any of certain acts against a victim by a

child and that serves as the basis for a peace order proceeding. In specified circumstances set forth in statute, the intake officer must forward the complaint and the entire intake case file to the State's Attorney for further review.

Background: Although the exceptions to warrantless arrests outlined above apply to juveniles, no provision in the Juvenile Causes Act permits an individual to seek and obtain an arrest warrant against a juvenile.

The Judiciary advises that although they are not precluded from doing so, in practice judges rarely issue arrest warrants in juvenile cases and only do so in the case of an ongoing investigation in a felony case. Requests for arrest warrants for misdemeanors are instead generally referred to the Department of Juvenile Services for intake. The Judiciary further advises that in a five-year period in Baltimore City, only six felony arrest warrants were issued by juvenile judges.

Additional Information

Prior Introductions: HB 1108 of 2009 received an unfavorable report from the House Judiciary Committee.

Cross File: SB 414 (Senator Brochin, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of State Police, Harford and Montgomery counties, Department of Legislative Services

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