

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 708
Judiciary

(Delegate Valentino-Smith, *et al.*)

Judicial Proceedings

Criminal Procedure - Expungement of Criminal Charge Transferred to Juvenile Court

This bill authorizes a person to file, and requires a court to grant, a petition for expungement of a criminal charge that was transferred to the juvenile court for disposition at sentencing.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing resources.

Local Effect: The bill's requirements can be handled with existing resources.

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 alcoholic beverage 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 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. A court is required to

grant a petition for expungement of a criminal charge that was transferred to the juvenile court under reverse waiver provisions.

A court exercising criminal jurisdiction in a case involving a child must determine whether to transfer jurisdiction to a juvenile court at sentencing if (1) as a result of trial or a plea entered (in lieu of trial), all charges that precluded the juvenile court from exercising jurisdiction did not result in a finding of guilty; and (2) pretrial transfer was prohibited because the alleged crime was first degree murder and the child was 16 or 17 years old at the time of its commission; or the court did not transfer jurisdiction after a hearing on a motion for reverse waiver.

In determining whether to transfer jurisdiction, the court must consider the child's age, mental and physical condition, the amenability of the child to treatment or other programs available to delinquent children, the nature of the child's acts as proven at trial or admitted to in a plea, and public safety. If the court transfers the matter to the juvenile court, the juvenile court must conduct a disposition hearing.

The court may not transfer jurisdiction to juvenile court at sentencing if:

- the child agrees that jurisdiction is not to be transferred as part of a plea bargain; or
- pretrial transfer was prohibited because the child (1) previously had a case transferred to juvenile court and was adjudicated delinquent; or (2) was convicted in an unrelated case otherwise excluded from juvenile court jurisdiction.

Background: In *In re Nancy H.*, 297 Md. App. 419, 14 A.3d 19 (2011), a former juvenile sought to have a criminal record expunged from a proceeding in which the case was transferred from the criminal court to the juvenile court for disposition. The Court of Special Appeals held that although the expungement statute relating to juvenile records does not permit expungement if a case was transferred to the circuit court at sentencing, the statute should be interpreted to permit a juvenile who has been waived to juvenile court from circuit court for disposition to also have the benefit of the court's discretion as to whether expungement of the proceedings is appropriate. (The petitioner in this case filed her petition for expungement prior to Chapter 712 of 2009, which made it mandatory, rather than permissive, for a juvenile court to grant expungement petitions for cases in which criminal charges were transferred to juvenile court under reverse waiver provisions.) The Court of Special Appeals examined the legislative history of the statute and concluded that the legislature could not have intended to provide a juvenile in such a circumstance with all the benefits afforded to juveniles whose cases originated in juvenile court, yet still subject the juvenile to the collateral sanctions that accompany a criminal conviction.

Additional Information

Prior Introductions: HB 1010 of 2010, a similar bill, passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 678 (Senator Forehand) - Judicial Proceedings.

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

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