

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1138

(Delegate Carter, *et al.*)

Judiciary

Judicial Proceedings

Criminal Procedure - Charging or Arrest of Minor - Notification of Parent or Guardian

This bill requires a law enforcement officer who charges a minor with a criminal offense to make a reasonable attempt to notify the parent or guardian of the minor of the charge. If a law enforcement officer takes a minor into custody, the law enforcement officer or the officer's designee must make a reasonable attempt to notify the parent or guardian of the minor within 48 hours of the arrest of the minor.

Fiscal Summary

State Effect: The bill is procedural and does not materially affect local finances.

Local Effect: The bill is procedural and does not materially affect local finances.

Small Business Effect: None.

Analysis

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.

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 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.

If a law enforcement officer takes a child into custody as a juvenile (not as an adult), the officer must immediately notify the child's parents, guardian, or custodian of the action. After making every reasonable effort to give notice, the law enforcement officer must, with all reasonable speed: (1) release the child to the child's parents, guardian, or custodian or to any other person designated by the court, after securing a written promise to bring the child to court as requested and obtaining any security reasonably required to guarantee the child's appearance in court; or (2) deliver the child to the court or a place of detention or shelter care designated by the court.

If a parent, guardian, or custodian fails to bring the child before the court when requested, the court may issue a writ of attachment directing that the child be taken into custody and brought before the court. The court may proceed against the parent, guardian, or custodian for contempt.

While current law has specific notification requirements when a child is taken into custody as a juvenile, it does not appear that there are comparable provisions for when a child is taken into custody and charged as an adult.

State Fiscal Effect: The Department of Transportation advises that the bill's requirements are already standard practice for the department's police department.

Local Fiscal Effect: Kent, Washington, and Worcester counties all advise that their law enforcement officers already comply with the bill's requirements as standard practice.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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ncs/kdm

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