

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1187 (Delegate Clippinger)
 Judiciary

Juvenile Law - Juvenile Justice Reform

This bill makes numerous changes to the juvenile justice process in the State by generally implementing the recommendations of the Juvenile Justice Reform Council, as created by Chapters 252 and 253 of 2019. Among other provisions, the bill (1) limits the circumstances under which a child younger than age 13 is subject to the jurisdiction of the juvenile court; (2) expands the use of informal adjustments; (3) establishes limitations on terms of probation imposed by a juvenile court, the use of detention, and out-of-home placements; (4) creates a permanent Commission on Juvenile Justice Reform and Emerging and Best Practices; (5) extends the termination date for the Juvenile Justice Reform Council; and (6) establishes numerous reporting requirements. **The bill takes effect June 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$7,800 in FY 2021 for programming changes. Future years reflect the addition of staffing costs in FY 2022 and annualization. Otherwise, the bill is not anticipated to materially affect State finances, as discussed below. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	7,800	69,200	73,800	76,000	78,700
Net Effect	(\$7,800)	(\$69,200)	(\$73,800)	(\$76,000)	(\$78,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government operations or finances, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Juvenile Court Jurisdiction

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. A delinquent act is an act which would be a crime if committed by an adult. The bill specifies that a “delinquent act” does not include an act that is committed in a school and is traditionally subject only to administrative discipline by the school.

The bill generally establishes that a child younger than age 13 is not subject to the jurisdiction of the juvenile court and may not be charged with a crime. However, the juvenile court has jurisdiction over a child who is at least age 10 who is alleged to have done an act that, if committed by an adult, would constitute (1) a crime punishable by life imprisonment; (2) first-degree child abuse under § 3-601 of the Criminal Law Article; (3) sexual abuse of a minor under § 3-602(b) of the Criminal Law Article; (4) second-degree murder under § 2-204 of the Criminal Law Article; (5) armed carjacking under § 3-705 of the Criminal Law Article; (6) second-degree rape under § 3-304 of the Criminal Law Article; (7) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; or (8) third-degree sexual offense under § 3-307 of the Criminal Law Article. The juvenile court also has jurisdiction for offenses arising out of the same incident as an act listed in items (1) through (8).

Under current law, the juvenile court may waive its jurisdiction (which transfers the case to adult court) with respect to a petition alleging delinquency if the petition concerns a child who is at least age 15 or a child who is charged with committing an act which, if committed by an adult, would be punishable by 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. These provisions are unchanged by the bill.

Under current law, in addition to other exclusions regarding traffic/boating 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 alleged to have

committed an act which, if committed by an adult, would be punishable by life imprisonment; 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. These provisions are unchanged by the bill.

Informal Adjustments

Under current law, after a complaint has been received and specified statutory requirements have been satisfied, a Department of Juvenile Services (DJS) intake officer may (1) deny authorization to file a petition and/or peace order request in the juvenile court or (2) authorize the filing of a petition and/or peace order request. If a complaint is filed that alleges the commission of an act that would be a felony if committed by an adult or a violation of specified firearms-related offenses, and the intake officer denies authorization to file a petition or proposes an informal adjustment (as discussed below), the intake officer must immediately forward the complaint and the intake file, as specified, to the State’s Attorney.

The bill establishes that if a complaint alleges the commission of an act that would be a felony if committed by an adult, the intake officer is not required to forward the complaint and a copy of the intake file to the State’s Attorney if (1) the intake officer proposes the matter for informal adjustment; (2) the act did not involve the intentional causing of, or attempt to cause, the death of or physical injury to another; and (3) the act would not be a crime of violence (as defined under § 14-101 of the Criminal Law Article) if committed by an adult.

Under current law, an intake officer *may* also propose an informal adjustment if, based on the complaint and the inquiry, the officer concludes that a juvenile court has jurisdiction but that an informal adjustment, rather than judicial action, is in the best interests of the public and the child. The bill *requires* an intake officer to propose an informal adjustment if:

- the child who is the subject of the complaint has not been previously adjudicated delinquent;
- (1) the complaint alleges that the child committed an act that would be a misdemeanor if committed by an adult or (2) the complaint alleges that the child committed an act that would be a felony if committed by an adult, but the act does not involve the intentional causing of, or attempting to cause, the death of or

physical injury to another and would not be a “crime of violence” if committed by an adult; and

- the complaint does not allege an act involving the use or possession of a firearm.

Under current law, the intake officer must propose an informal adjustment by informing the victim, the child, and the child’s parent or guardian of the nature of the complaint, the objectives of the adjustment process, and the conditions and procedures under which it will be conducted. The intake officer may not proceed with an informal adjustment unless the victim, the child, and the child’s parent or guardian consent to the informal adjustment procedure. The bill establishes that an intake officer may proceed with an informal adjustment without the consent of the victim and without informing the victim if the intake officer has made reasonable efforts to contact the victim.

Under current law, during an informal adjustment process, the child is subject to such supervision as the intake officer deems appropriate. The process may not exceed 90 days unless the time is extended by the court or the intake officer determines that additional time is necessary for the child to complete a program that is part of the informal adjustment process. If, at any time before the completion of an agreed upon informal adjustment, the intake officer believes that it cannot be completed successfully, the intake officer may authorize the filing of or deny authorization to file a petition and/or a peace order request.

The bill authorizes the court, at any time before an adjudicatory hearing, to hold the proceedings in abeyance for informal adjustment if consented to by the State’s Attorney, the child who is the subject of the petition and the child’s counsel, and the court. If the child successfully completes the informal adjustment, the court must dismiss the delinquency petition. If the child does not successfully complete the informal adjustment, the court must resume proceedings against the child.

Authorized Detention

Under current law, a child who is taken into custody may be placed in detention or community detention prior to a hearing if such action is required to protect the child or others or the child is likely to leave the jurisdiction of the court. The bill establishes that a child alleged to have committed a delinquent act may not be placed in detention before a hearing if the most serious offense would be a misdemeanor if committed by an adult, unless (1) the act involved a handgun and would be a violation under the Criminal Law Article or Public Safety Article if committed by an adult or (2) the child has been adjudicated delinquent at least twice in the preceding 12 months. The bill also requires a court or an intake officer to consider the results of a risk scoring instrument before placing a child in detention. A “risk scoring instrument” is a tool, metric, algorithm, or software that (1) is used to assist in determining the eligibility of a child for release before a hearing and (2) has been independently validated at least once in the preceding five years.

Detention Stays

Under current law, if a child remains in a facility used for detention for the specific act for which the child has been adjudicated delinquent for more than 25 days after the court has made a disposition on a petition, DJS must (1) on the first available court date after the 25th day that the child remains in such a facility, appear at a hearing before the court with the child to explain the reasons for continued detention and (2) continue to appear every 25 days thereafter to explain the reasons for continued detention. The bill alters the applicable timeframes to within 14 days *after the child's initial detention*, and every 14 days thereafter. Within 10 days after a decision to detain a child in a facility used for detention, DJS must submit a plan to the court for releasing the child into the community.

Juvenile Dispositions – Placements

A disposition hearing is a hearing to determine whether a child needs or requires the court's guidance, treatment, or rehabilitation, and, if so, the nature of the guidance, treatment, or rehabilitation.

In making a disposition, the juvenile court may:

- place the child on probation or under supervision in the child's own home or in the custody or under the guardianship of a relative or other fit person, on terms the court deems appropriate, including community detention;
- commit the child to the custody or guardianship of DJS or other agency on terms that the court considers appropriate, including designation of the type of facility where the child is to be accommodated; or
- order the child or the child's parents, guardian, or custodian to participate in rehabilitative services that are in the best interest of the child and the family.

Under current law, a child may not be committed to DJS for out-of-home placement if the most serious offense is one of several specified offenses, including use or possession of less than 10 grams of marijuana, malicious destruction of property, disturbing the peace or disorderly conduct, or specified theft violations. The bill retains the exemption for the marijuana-related offense, but repeals the remainder of the specified offenses and instead prohibits a child from being committed to DJS for out-of-home placement for an offense that would be a misdemeanor if committed by an adult, unless the offense involves a firearm, and the child has been adjudicated delinquent on a prior occasion for an offense involving a firearm. A child also may not be committed to DJS for out-of-home placement for a "technical violation." A "technical violation" is defined in the bill to mean a violation of probation that does not involve an arrest or summons issued by a commissioner on a statement of charges filed by a law enforcement officer; a violation of a criminal

prohibition, or an act that would be a violation of a criminal prohibition if committed by an adult, other than a minor traffic offense; a violation of a no-contact or stay-away order; or absconding. The bill also specifies that a child may not be placed in a facility used for detention for a technical violation.

Juvenile Dispositions – Probation

As noted above, a juvenile court may place a child on probation. No limitations on the term of a probation are specified in statute under current law. The bill establishes that if the most serious offense committed by a child would be a *misdemeanor* if committed by an adult, the court may place the child on probation for a period not exceeding six months. The court may, after a hearing, extend the probation by periods of up to three months if the court finds good cause, and the purpose of extending the probation is to ensure that the child completes a treatment or rehabilitative program or service. The total period of probation, including extensions of the probation, may not exceed one year.

If the most serious offense committed by a child would be a *felony* if committed by an adult, the court may place the child on probation for a period of up to one year. After a hearing, the court may extend the term of probation by periods not exceeding three months if the court finds good cause, and the extension's purpose is to ensure completion of a treatment or rehabilitative program or service. Generally, the total period of probation may not exceed two years. However, probation may exceed this period if, after a hearing, the court finds by clear and convincing evidence that there is good cause to extend the probation and extending the probation is in the best interest of the child. If probation is extended under these conditions, the total period of probation (including extensions) may not exceed three years.

If the most serious offense committed by a child would be a crime that, if committed by an adult, would be punishable by life imprisonment, the court may place the child on probation for a period not exceeding two years. The court may, after a hearing, extend the probation by periods of up to three months on a finding of good cause and if the purpose is to ensure completion of a treatment or rehabilitative program or service.

Citations

A citation is a written form issued by a police officer which serves as the initial pleading against a child for a violation and which is adequate process to give the court jurisdiction over the person cited. Under current law, a law enforcement officer authorized to make arrests must issue a citation to a child if the officer has probable cause to believe that a child is violating specified statutory provisions, including the prohibition against the use or possession of less than 10 grams of marijuana and various alcoholic beverages prohibitions. The bill authorizes an officer to issue a citation if the officer has probable

cause to believe that the child has committed an act that would be a misdemeanor if committed by an adult, unless the act involves the use or possession of a firearm.

Education

The Maryland State Department of Education (MSDE) is responsible under current law for educating juveniles within residential facilities of DJS. The bill requires the programs developed and implemented within such facilities to be comprehensive and include optional programs in technical and vocational education and training that includes instruction by highly qualified teachers and on the job training.

Commission on Juvenile Justice Reform and Emerging and Best Practices

The bill establishes a Commission on Juvenile Justice Reform and Emerging and Best Practices, which is to be staffed by DJS and the Department of Human Services. The Governor must designate the chair. The commission must:

- research culturally competent, evidence-based, research-based, and promising practices relating to child welfare; juvenile rehabilitation; mental health services for children; and prevention and intervention services for juveniles;
- evaluate the cost-effectiveness of practices researched by the commission;
- identify means of evaluating the effectiveness of practices researched by the commission; and
- giving special attention to organizations located in or serving historically underserved communities, identify strategies to enable community-based organizations that provide services for juveniles to evaluate and validate services and programming provided by those organizations.

By December 31, 2022, and annually thereafter, the commission must report its findings to the Governor and the General Assembly.

Commission members may not receive compensation as members of the commission but are entitled to reimbursement for expenses under the standard State travel regulations.

Juvenile Justice Reform Council – Extension and Supplemental Report

The bill extends, from June 30, 2021, to June 30, 2022, the termination date for the Juvenile Justice Reform Council. It also requires the council, by October 1, 2021, to submit a supplemental report of its findings and recommendations to the Governor and the General Assembly.

Additional Reporting Requirements

By April 15, 2022, DJS must report to the General Assembly on multiple specified items, including:

- the use of community detention for juveniles in the care and custody of DJS;
- the effect of a requirement that DJS provide a robust continuum of community-based alternatives to detention in all jurisdictions of the State and recommendations for establishing the requirement;
- access to mental health services for all juveniles served by DJS;
- the use of community detention, including electronic monitoring, for juveniles placed on probation;
- plans to increase the number of shelter beds available in juvenile facilities, particularly for girls;
- minimum training standards for staff at juvenile facilities;
- standards for attorneys to access their clients within all juvenile facilities in the State; and
- plans to transition from the current slate of secure juvenile facilities to ensure access to both nonresidential and residential facilities that use culturally competent, evidence-based programming in all jurisdictions of the State.

Governor's Office of Crime Prevention, Youth, and Victim Services

The Governor's Office of Crime Prevention, Youth, and Victim Services (GOCPYVS) must request and analyze data relating to juveniles who are charged, convicted, and sentenced as adults in the State, including data from law enforcement agencies, the Administrative Office of the Courts, local correctional facilities in the State, and the Department of Public Safety and Correctional Services (DPSCS). The information must include (1) the number of juveniles charged, convicted, and sentenced as adults; (2) the outcomes of such cases, including whether the case resulted in conviction, dismissal, or transfer to the juvenile court, as specified; (3) the number of juveniles housed in each State and local correctional facility; and (4) the length of sentence for each juvenile sentenced as an adult in the State. By December 31, 2022, and annually thereafter, GOCPYVS must report its findings to the Governor and the General Assembly.

By December 31, 2022, GOCPYVS must (1) develop a model policy for diversion of juveniles from the juvenile justice system and criminal justice system; (2) identify funding opportunities to support diversion programs for juveniles in the State, including local programs; (3) collect and evaluate data related to the implementation and effectiveness of diversion programs for juveniles in the State; and (4) report its findings to the General Assembly.

State Expenditures:

Department of Juvenile Services

Although the bill represents a significant operational shift in the handling of juvenile delinquency matters, it is not anticipated to materially affect DJS finances. The bill reduces the number of juveniles in detention and in out-of-home placements, likely resulting in decreased expenditures associated with facility operations. However, it is assumed that expenditures to serve more juveniles in community-based settings, including costs associated with supervision, treatment, and services, increase. Thus, despite the significant operational impact, no material effect on *overall* DJS expenditures is anticipated. DJS can also use existing resources to fulfill the reporting requirement and staff the newly created commission.

Governor’s Office of Crime Prevention, Youth, and Victim Services

General fund expenditures for GOCPYVS increase by \$69,222 in fiscal 2022, which assumes a 90-day start-up delay from the bill’s June 1, 2021 effective date. This estimate reflects the cost of hiring one data analyst to (1) assist with the collection and evaluation of data related to the implementation of diversion programs (as required by December 31, 2022) and (2) manage requests for and analysis of data relating to juveniles charged, convicted, and sentenced as adults in the State (as initially required by December 31, 2022, and an ongoing requirement annually thereafter). It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses

Position	1.0
Salary and Fringe Benefits	\$63,588
Operating Expenses	<u>5,634</u>
Total FY 2022 State Expenditures	\$69,222

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses. This estimate assumes continuation of the full-time position to account for the ongoing responsibilities of data collection and analysis related to juveniles with adult-court involvement. However, the Department of Legislative Services notes that because some of the tasks associated with this position terminate after December 31, 2022, once the model policy for juvenile diversion has been developed, it is possible that the workload will no longer justify a full-time position and could instead be accommodated with part-time staff. Any such impact would mitigate future year expenditures, but has not been accounted for in this analysis.

Judiciary

The Judiciary anticipates minimal programming costs of \$7,752 in fiscal 2021. Otherwise, although the bill alters the juvenile court's handling of delinquency matters and may require the development of related forms and guidance, any resulting impact is anticipated to be accommodated using existing resources. The Judiciary can also provide any requested data using existing resources.

Other Agencies

The Office of the Public Defender (OPD) advises that the bill significantly reduces the number of cases it handles and reduces associated litigation costs, such as those incurred for experts and investigations, for juvenile matters. However, for purposes of this estimate, it is assumed that any potential decrease in expenditures related to litigation costs is minimal and does not materially affect State finances. It is also assumed that OPD resources formerly aligned with juvenile proceedings are likely diverted elsewhere and not eliminated. While this may have a positive impact on overall OPD workload and caseload standards, it is not anticipated to materially affect State finances.

MSDE can meet the bill's requirements regarding educational services within DJS facilities using existing budgeted resources. DPSCS can likewise respond to any data requests with existing resources.

Any additional reimbursement expenses for commission members and council members are assumed to be absorbable within existing budgeted resources.

Local Fiscal Effect: The bill is not anticipated to materially affect local government operations or finances. While the bill may reduce the number of juvenile petitions handled by State's Attorneys' offices, thereby potentially reducing the workload associated with such matters, it is assumed that resources are diverted elsewhere. The expanded authorized use of citations is likewise not anticipated to materially affect local law enforcement agencies, and any data requests can be accommodated using existing resources. The bill does not materially impact the workload or finances of the circuit courts.

Additional Comments: This bill generally implements the recommendations of the Juvenile Justice Reform Council. The council, chaired by the Secretary of Juvenile Services, was created pursuant to Chapters 252 and 253. The council issued its final [report](#) in January 2021.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 853 (Senator Carter) (By Request - Juvenile Justice Reform Council) - Judicial Proceedings.

Information Source(s): Prince George's County; Governor's Office of Crime Prevention, Youth, and Victim Services; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland State Department of Education; Department of Human Services; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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