

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 659
Judiciary

(Delegate Shetty, *et al.*)

Juvenile Law - Continued Detention - Minimum Age

This bill prohibits the continued detention, beyond emergency detention, of a child younger than age 12 unless the child is alleged to have committed a crime of violence.

Fiscal Summary

State Effect: The bill does not materially affect the operations or finances of the Department of Juvenile Services (DJS), the Judiciary, or the Office of the Public Defender (OPD).

Local Effect: The bill does not materially affect the workload of the circuit courts or State's Attorneys' offices.

Small Business Effect: None.

Analysis

Current Law: Detention refers to the temporary care of children who, pending court disposition, require secure custody for the protection of themselves or the community, in physically restricting facilities. Detention can only be authorized by the court or an intake officer. A child may be placed in 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 intake officer or the official who authorized detention must immediately file a petition to authorize continued detention. A hearing on the petition must be held by the next court day, unless extended for up to 5 days by the court upon good cause shown. Reasonable notice, oral or written, must be given to the child and, if they can be found, the child's

parents, guardian, or custodian. An adjudicatory or waiver hearing must be held within 30 days after the date a petition for detention is granted. If a child is detained after an adjudicatory hearing, a disposition hearing must be held no later than 14 days after the adjudicatory hearing. Detention may be extended in increments of not more than 14 days where the petition charges the child with a delinquent act and where the court finds, after a subsequent hearing, that extended detention or community detention is necessary either for the protection of the child or the community.

Detention may not be continued beyond emergency detention or community detention unless, upon an order of court after a hearing, the court has found that such action is required to protect the child or others or the child is likely to leave the jurisdiction of the court. Such an order must contain a written determination of whether or not specified criteria have been met and specify which of the prerequisites noted above exist. If the court has not specifically prohibited community detention, DJS may release the child from detention into community detention and place the child in shelter care or the custody of the child's parent, guardian, custodian, or other person able to provide supervision and care for the child and to return the child to court when required. If a child who has been released by DJS or the court into community detention violates the conditions of community detention and it is necessary to protect the child or others, an intake officer may authorize the detention of the child. DJS must promptly notify the court of a child's release from or return to detention.

"Community detention" is a program monitored by DJS in which a delinquent child or a child alleged to be delinquent is placed in the home of a parent, guardian, custodian, or other fit person, or in shelter care (a physically unrestricting facility), as a condition of probation or as an alternative to detention. Community detention includes electronic monitoring.

Section 14-101(a) of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony, as specified, or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of conduct with a child; (18) assault in the first degree; or (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Background: In its *Data Resources Guide for Fiscal 2018*, DJS notes that youth younger than age 13 represent very few of the youth detained by DJS. Instead of placing these youth in a detention facility, it generally uses an alternative to detention, with placement at home

or in a shelter. If youth of this age must be placed in a detention center, they are housed with youth closest to age and size; if deemed highly vulnerable, they may be placed in the infirmary, with individual staff supervision, or sent to a smaller facility with a lower population. In fiscal 2018, DJS received 772 complaints regarding youth younger than age 12; of those youth, 8 were placed in DJS detention prior to disposition.

The Task Force to Study the Restraint, Searches, and Needs of Youth in the Juvenile Justice System, created by Chapter 655 of 2016, recommended that youth younger than age 13 should not be held in a detention facility.

State/Local Fiscal Effect: Because juveniles younger than age 12 represent a small portion of the youth detained annually, the bill is not anticipated to materially affect the operations or finances of DJS. Likewise, although the prohibition against continued detention for juveniles younger than age 12, except in limited circumstances, may result in fewer court hearings, the workload of the circuit courts, OPD, and State's Attorneys' offices are not materially impacted.

Additional Information

Prior Introductions: HB 853 of 2017, a similar bill, received an unfavorable report from the House Judiciary Committee. Its cross file, SB 904, was withdrawn. SB 5 of 2017, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. HB 407 of 2014, a similar bill, received an unfavorable report from the House Judiciary Committee. SB 485 of 2014, a similar bill but designated as the cross file of HB 407, received an unfavorable report from the Senate Judicial Proceedings Committee. Similar legislation was also introduced in 2013 and 2012.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of Legislative Services

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