

HOUSE BILL 407

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CF 4r1106

By: **Delegates Dumais, Carter, Mizeur, Simmons, and Valentino-Smith**

Introduced and read first time: January 24, 2014

Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Juvenile Law – Prohibition Against Continued Detention

FOR the purpose of prohibiting the continued detention, beyond emergency detention, of a child under a certain age except under certain circumstances; and generally relating to juvenile law.

BY repealing and reenacting, without amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–01(a) and (n)
Annotated Code of Maryland
(2013 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–15
Annotated Code of Maryland
(2013 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

3–8A–01.

(a) In this subtitle the following words have the meanings indicated, unless the context of their use indicates otherwise.

(n) “Detention” means the temporary care of children who, pending court disposition, require secure custody for the protection of themselves or the community, in physically restricting facilities.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



3-8A-15.

(a) Only the court or an intake officer may authorize detention, community detention, or shelter care for a child who may be in need of supervision or delinquent.

(b) If a child is taken into custody under this subtitle, the child may be placed in detention or community detention prior to a hearing if:

(1) Such action is required to protect the child or others; or

(2) The child is likely to leave the jurisdiction of the court.

(c) A child taken into custody under this subtitle may be placed in emergency shelter care or community detention prior to a hearing if:

(1) (i) Such action is required to protect the child or person and property of others;

(ii) The child is likely to leave the jurisdiction of the court; or

(iii) There is no parent, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required; and

(2) (i) 1. Continuation of the child in the child's home is contrary to the welfare of the child; and

2. Removal of the child from the child's home is reasonable under the circumstances due to an alleged emergency situation and in order to provide for the safety of the child; or

(ii) 1. Reasonable but unsuccessful efforts have been made to prevent or eliminate the need for removal from the child's home; and

2. As appropriate, reasonable efforts are being made to return the child to the child's home.

(d) (1) If the child is not released, the intake officer or the official who authorized detention, community detention, or shelter care under this section shall immediately file a petition to authorize continued detention, community detention, or shelter care.

(2) A hearing on the petition shall be held not later than the next court day, unless extended for no more than 5 days by the court upon good cause shown.

(3) Reasonable notice, oral or written, stating the time, place, and purpose of the hearing, shall be given to the child and, if they can be found, the child's parents, guardian, or custodian.

(4) Except as provided in paragraph (5) of this subsection, shelter care may not be ordered for a period of more than 30 days unless an adjudicatory or waiver hearing is held.

(5) For a child in need of supervision or a delinquent child, shelter care may be extended for an additional period of not more than 30 days if the court finds after a hearing held as part of the adjudication that continued shelter care is consistent with the circumstances stated in subsections (b) and (c) of this section.

(6) (i) An adjudicatory or waiver hearing shall be held no later than 30 days after the date a petition for detention or community detention is granted.

(ii) If a child is detained or placed in community detention after an adjudicatory hearing, a disposition hearing shall be held no later than 14 days after the adjudicatory hearing.

(iii) Detention or community detention time 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:

1. For the protection of the child; or
2. For the protection of the community.

(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, DETENTION MAY NOT BE CONTINUED BEYOND EMERGENCY DETENTION FOR A CHILD UNDER THE AGE OF 12 YEARS UNLESS THE CHILD IS ALLEGED TO HAVE COMMITTED:

(1) MURDER IN THE FIRST DEGREE UNDER § 2-201 OF THE CRIMINAL LAW ARTICLE;

(2) ATTEMPTED MURDER IN THE FIRST DEGREE UNDER § 2-205 OF THE CRIMINAL LAW ARTICLE;

(3) RAPE IN THE FIRST DEGREE UNDER § 3-303 OF THE CRIMINAL LAW ARTICLE; OR

(4) SEXUAL OFFENSE IN THE FIRST DEGREE UNDER § 3-305 OF THE CRIMINAL LAW ARTICLE.

[(e)] (F) (1) Detention or 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 one or more of the circumstances stated in subsection (b) of this section exist.

(2) A court order under this paragraph shall:

(i) Contain a written determination of whether or not the criteria contained in subsection (c)(1) and (2) of this section have been met; and

(ii) Specify which of the circumstances stated in subsection (b) of this section exist.

(3) (i) If the court has not specifically prohibited community detention, the Department of Juvenile Services may release the child from detention into community detention and place the child in:

1. Shelter care; or

2. 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.

(ii) If a child who has been released by the Department of Juvenile Services 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.

(iii) The Department of Juvenile Services shall promptly notify the court of:

1. The release of a child from detention under subparagraph (i) of this paragraph; or

2. The return to detention of a child under subparagraph (ii) of this paragraph.

[(f)] (G) Shelter care may only be continued beyond emergency shelter care if the court has found that:

(1) Continuation of the child in the child's home is contrary to the welfare of the child; and

(2) (i) Removal of the child from the child's home is necessary due to an alleged emergency situation and in order to provide for the safety of the child; or

(ii) Reasonable but unsuccessful efforts were made to prevent or eliminate the need for removal of the child from the home.

(3) (i) If the court continues shelter care on the basis of an alleged emergency, the court shall assess whether the absence of efforts to prevent removal was reasonable.

(ii) If the court finds that the absence of efforts to prevent removal was not reasonable, the court shall make a written determination so stating.

(4) The court shall make a determination as to whether reasonable efforts are being made to make it possible to return the child to the child's home or whether the absence of such efforts is reasonable.

[(g)] (H) A child alleged to be delinquent may not be detained in a jail or other facility for the detention of adults.

[(h)] (I) (1) A child alleged to be in need of supervision may not be placed in:

(i) Detention or community detention;

(ii) A State mental health facility; or

(iii) A shelter care facility that is not operating in compliance with applicable State licensing laws.

(2) Subject to paragraph (1)(iii) of this subsection, a child alleged to be in need of supervision may be placed in shelter care facilities maintained or approved by the Social Services Administration or the Department of Juvenile Services or in a private home or shelter care facility approved by the court.

(3) The Secretary of Human Resources and the Secretary of Juvenile Services together, when appropriate, with the Secretary of Health and Mental Hygiene shall jointly adopt regulations to ensure that any child placed in shelter care pursuant to a petition filed under subsection (d) of this section be provided appropriate services, including:

(i) Health care services;

(ii) Counseling services;

(iii) Education services;

(iv) Social work services; and

(v) Drug and alcohol abuse assessment or treatment services.

(4) In addition to any other provision, the regulations shall require:

(i) The Department of Juvenile Services to develop a plan within 45 days of placement of a child in a shelter care facility to assess the child's treatment needs; and

(ii) The plan to be submitted to all parties to the petition and their counsel.

~~[(i)]~~ **(J)** The intake officer or the official who authorized detention, community detention, or shelter care under this subtitle shall immediately give written notice of the authorization for detention, community detention, or shelter care to the child's parent, guardian, or custodian and to the court. The notice shall be accompanied by a statement of the reasons for taking the child into custody and placing him in detention, community detention, or shelter care. This notice may be combined with the notice required under subsection (d) of this section.

~~[(j)]~~ **(K)** (1) If a child is alleged to have committed a delinquent act, the court or a juvenile intake officer shall consider including, as a condition of releasing the child pending an adjudicatory or disposition hearing, reasonable protections for the safety of the alleged victim.

(2) If a victim has requested reasonable protections for safety, the court or juvenile intake officer shall consider including, as a condition of releasing the child pending an adjudicatory or disposition hearing, provisions regarding no contact with the alleged victim or the alleged victim's premises or place of employment.

~~[(k)]~~ **(L)** 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 under § 3-8A-19 of this subtitle, the Department of Juvenile Services shall:

(1) On the first available court date after the 25th day that the child remains in a facility used for detention, appear at a hearing before the court with the child to explain the reasons for continued detention; and

(2) Every 25 days thereafter, appear at another hearing before the court with the child to explain the reasons for continued detention.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.