

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1255 (Delegate Jalisi, *et al.*)
 Judiciary

Juveniles - Mechanical Restraints

This bill requires the Department of Juvenile Services (DJS) to adopt regulations that meet specified requirements regarding the use of “mechanical restraints” during transport. The regulations must be applicable to residential and detention facilities operated by DJS and to private agencies under contract with DJS. “Mechanical restraint” means a device used to limit the movement of a child’s hands, legs, or body. By September 30 of each year, DJS must report to the Governor and the General Assembly on each transport of a child in mechanical restraints, as specified.

Fiscal Summary

State Effect: General fund expenditures increase by \$846,300 in FY 2018, which reflects the bill’s October 1, 2017 effective date, for DJS to hire additional staff and purchase vans to provide transportation for juveniles. Future year expenditures reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	846,300	872,600	912,400	954,400	998,800
Net Effect	(\$846,300)	(\$872,600)	(\$912,400)	(\$954,400)	(\$998,800)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Mechanical restraint” includes (1) handcuffs or wristlets; (2) a leg iron, a leg cuff, or an anklet; (3) a waist chain; (4) a security black box; and (5) a key lock.

A child may be transported to or from a detention facility or hardware secure facility in mechanical restraints. However, a child may not be transported in mechanical restraints for an earned pass home or for release to the community. A child may not remain in mechanical restraints for more than eight hours and must be released from mechanical restraints for a period of five minutes for every four hours that a child is in mechanical restraints.

A child may not be transported to or from a staff secure program in mechanical restraints unless (1) there is a reasonable, articulable belief that the child, during transport, will flee or pose an imminent danger to the child or others and (2) the use of mechanical restraints is authorized by the program superintendent, the program administrator, or a designee of these individuals.

When a child is transported in mechanical restraints, written documentation of the following information must be placed in the child’s case file: (1) the name, gender, race, and age of the child; (2) the travel date, start and end times, and address of origin and destination; and (3) if the child is transported to or from a staff secure program, the name and position of the authorizing official and a detailed statement of the reasonable, articulable belief for the use of mechanical restraints. Except for the names of the individuals involved, DJS must include this information in an annual report to the Governor and the General Assembly.

Current Law: DJS must adopt regulations applicable to residential facilities it operates that (1) prohibit the use of locked door seclusion and restraints as punishment and describe the circumstances under which these methods may be used and (2) prohibit abuse of a child. DJS must also adopt regulations that set standards for juvenile detention facilities operated by DJS and by private agencies. The standards must reflect the following central purposes of juvenile detention: (1) to protect the public; (2) to provide a safe, humane, and caring environment for children; and (3) to provide access to required services for children. Standards must include provisions establishing prohibitions against the use of excessive force against a child and prohibitions against the use of physical restraints on an individual known to be in the third trimester of pregnancy or during labor, delivery, or postpartum recovery, including during all transports, unless a facility superintendent or designee determines that a physical restraint is necessary to protect the individual from harming herself or others or to prevent the individual’s escape from custody.

Pursuant to regulation, a DJS facility employee may apply restraints to a youth only for the protection of the youth or other individuals, secure transportation, or the prevention of escape. (See COMAR 16.18.02.04.) The use of restraint is governed by the policy applicable to the facility, which is based on the facility's physical structure and personnel. (See COMAR 16.18.02.05.)

Background: The State's Juvenile Justice Monitoring Unit (JJMU) within the Office of the Attorney General has, on multiple occasions, drawn attention to the policies and practices of DJS regarding the indiscriminate shackling and strip searching of youth within the juvenile justice system. In its *Fourth Quarter Report and 2015 Annual Review*, the JJMU quotes the Maryland Judiciary in noting that shackling "can be traumatizing and contrary to the developmentally appropriate approach to juvenile justice." During the 2016 session, the General Assembly also expressed concern about the department's current policy of shackling children in certain facilities during transportation to and from court hearings, medical and educational appointments, and earned home passes, without any individualized determination of risk. These concerns resulted in the addition of restrictive language in the fiscal 2017 budget bill withholding \$1.0 million from the department pending receipt of a report on the issue and the enactment of Chapter 655 of 2016 establishing the Task Force to Study the Restraint, Searches, and Needs of Children in the Juvenile Justice System.

DJS policy requires mechanical restraints to be used at all times to transport a youth who has been placed in either a secure detention or hardware secure committed facility, regardless of the reason for transport. Youth placed in staff secure committed facilities are transported with the use of mechanical restraints for the first 30 days of placement. After 30 days, unless the youth poses a safety, security, or escape risk, transport is nonsecure. All secure transports are completed through DJS's Transportation Unit by staff designated as transportation officers, who are required to complete specific training on a regular basis related to secure transports. Youth in community-based placements do not require the use of mechanical restraints during transport.

For individuals known to be pregnant, current departmental policies and procedures prohibit the use of waist chains, leg irons, or anything other than handcuffs during all trimesters of pregnancy and do not allow for the use of any mechanical restraint during the third trimester. Additionally, two staff are assigned to escort pregnant youth. As of July 2016, mechanical restraints are also prohibited from use on any youth during emergency-related medical transports. In addition, a court resolution issued on September 21, 2015, presumes that mechanical restraints should not be used on youth inside a courtroom unless the presiding judge or magistrate expressly orders the restraints to be reapplied.

Data regarding the use of mechanical restraints during transport is not currently collected, as it occurs as a matter of policy and procedure. The bill partially implements some of the recommendations of the task force created by Chapter 655, which issued its [final report](#) in December 2016. For example, the task force unanimously voted to prohibit the use of mechanical restraints for an earned home pass or release to the community.

State Expenditures: General fund expenditures increase by \$846,311 in fiscal 2018, which accounts for the bill's October 1, 2017 effective date. DJS advises that the bill limits its ability to centralize transportation operations for juveniles, as it needs to ensure that restrained juveniles are not transported with nonrestrained juveniles. Accordingly, this estimate reflects the cost of hiring 12 staff in order to create additional transportation teams (six teams of two individuals each). It includes salaries, fringe benefits, one-time start-up costs (including the purchase of six transportation vans), and ongoing operating expenses.

Positions	12
Salaries and Fringe Benefits	\$622,631
Van Purchases	150,000
Equipment/Operating Expenses	<u>73,680</u>
Total FY 2018 State Expenditures	\$846,311

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

DJS notes that these costs can be mitigated to the extent that it is successful in implementing alternate strategies related to the transportation of youth to court hearings. For example, it can attempt to work with the Judiciary to coordinate court schedules of juveniles; legislation to allow video conferencing during juvenile hearings (which would reduce transportation needs) has also been introduced this session (Senate Bill 907/House Bill 928). While the Department of Legislative Services agrees that such changes would mitigate costs, potentially significantly, because these strategies require statutory changes and multi-jurisdictional coordination with the Judiciary, any mitigating impact on costs is speculative and not reflected in this analysis.

Additional Information

Prior Introductions: None.

Cross File: SB 981 (Senator Muse, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Juvenile Services; Department of Legislative Services

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mm/kdm

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