

# HOUSE BILL 978

E3

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By: **Delegates Dumais, Carter, and Clippinger**

Introduced and read first time: February 10, 2012

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Prohibition Against Continued Detention**

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

6 BY repealing and reenacting, without amendments,  
7 Article – Courts and Judicial Proceedings  
8 Section 3–8A–01(a) and (n)  
9 Annotated Code of Maryland  
10 (2006 Replacement Volume and 2011 Supplement)

11 BY repealing and reenacting, with amendments,  
12 Article – Courts and Judicial Proceedings  
13 Section 3–8A–15  
14 Annotated Code of Maryland  
15 (2006 Replacement Volume and 2011 Supplement)

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

18 **Article – Courts and Judicial Proceedings**

19 3–8A–01.

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

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 3-8A-15.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16                   (iii) Detention or community detention time may be extended in  
17 increments of not more than 14 days where the petition charges the child with a  
18 delinquent act and where the court finds, after a subsequent hearing, that extended  
19 detention or community detention is necessary either:

- 20                           1. For the protection of the child; or
- 21                           2. For the protection of the community.

22           **(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,**  
23 **DETENTION MAY NOT BE CONTINUED BEYOND EMERGENCY DETENTION FOR A**  
24 **CHILD UNDER THE AGE OF 14 YEARS UNLESS THE CHILD IS ALLEGED TO HAVE**  
25 **COMMITTED AN ACT THAT, IF COMMITTED BY AN ADULT, WOULD BE**  
26 **PUNISHABLE BY DEATH OR LIFE IMPRISONMENT.**

27           **[(e)] (F)** (1) Detention or community detention may not be continued  
28 beyond emergency detention or community detention unless, upon an order of court  
29 after a hearing, the court has found that one or more of the circumstances stated in  
30 subsection (b) of this section exist.

31           (2) A court order under this paragraph shall:

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

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

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

6 1. Shelter care; or

7 2. The custody of the child's parent, guardian, custodian,  
8 or other person able to provide supervision and care for the child and to return the  
9 child to court when required.

10 (ii) If a child who has been released by the Department of  
11 Juvenile Services or the court into community detention violates the conditions of  
12 community detention, and it is necessary to protect the child or others, an intake  
13 officer may authorize the detention of the child.

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

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

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

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

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

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

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

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

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

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

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

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

8                           (i)    Detention or community detention;

9                           (ii)   A State mental health facility; or

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

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

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

21                           (i)    Health care services;

22                           (ii)   Counseling services;

23                           (iii)   Education services;

24                           (iv)   Social work services; and

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

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

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

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

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

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

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

16            **[(k)] (L)**        If a child remains in a facility used for detention for the specific act  
17 for which the child has been adjudicated delinquent for more than 25 days after the  
18 court has made a disposition on a petition under § 3-8A-19 of this subtitle, the  
19 Department of Juvenile Services shall:

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

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

25            SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2012.