

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 978
Judiciary

(Delegate Dumais, *et al.*)

Juvenile Law - Prohibition Against Continued Detention

This bill establishes that detention may not be continued beyond emergency detention for a child under the age of 14 years unless the child is alleged to have committed an act that, if committed by an adult, would be punishable by death or life imprisonment.

Fiscal Summary

State Effect: Potential significant increase in expenditures for the Department of Juvenile Services (DJS) to develop additional alternative to detention placements, potentially fully offset from savings from a decreased detention population.

Local Effect: None.

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 five 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, as a condition of probation or as an alternative to detention. Community detention includes electronic monitoring.

State Fiscal Effect: The potential significant increase in general fund expenditures required by DJS to provide alternatives to detention placement are likely to be at least partially offset by savings from a smaller detention population. DJS submitted a fiscal estimate indicating that it would need to provide alternatives to detention for the juveniles who would no longer be eligible for continued detention. It further estimated that between 200 and 250 juveniles would require alternatives to detention placements, at an annual cost per juvenile of \$10,000, for a total cost of between \$2.0 million to \$2.5 million annually.

While the Department of Legislative Services (DLS) agrees that additional alternative to detention placements will be necessary, it notes that the estimate submitted by DJS does not take into account any expenditure offset due to the reduced detention population. *By way of illustration*, at an average per diem of \$492 for detention facilities, if 200 juveniles are not held in detention facilities for 14 days (representing the average

length of stay), per diem costs associated with detentions are reduced by \$1.3 million, which would partially offset the alternative to detention costs as estimated by DJS. Although alternatives to detention may also include shelter care and evening reporting center participation, DLS notes that 85% of juveniles who are participating in alternatives to detention are on community detention/electronic monitoring, and in fiscal 2011, expenditures of \$2.0 million supported 825 electronic monitoring/GPS devices. Accordingly, the annual cost per juvenile of \$10,000 estimated by DJS is likely inflated for many of the juveniles that would be assigned to an alternative to detention program.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Garrett, and Montgomery counties; Department of Human Resources; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Office of the Public Defender; State's Attorneys' Association; Department of Legislative Services

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mlm/kdm

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