

# SENATE BILL 5

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(PRE-FILED)

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By: **Chair, Judicial Proceedings Committee (By Request – Departmental – Juvenile Services)**

Requested: October 20, 2016

Introduced and read first time: January 11, 2017

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Continued Detention – Minimum Age**

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

6 BY repealing and reenacting, with amendments,  
7 Article – Courts and Judicial Proceedings  
8 Section 3–8A–15  
9 Annotated Code of Maryland  
10 (2013 Replacement Volume and 2016 Supplement)

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

13 **Article – Courts and Judicial Proceedings**

14 3–8A–15.

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

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

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

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10                           1.    For the protection of the child; or

11                           2.    For the protection of the community.

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

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

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

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

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

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

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

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

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

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

4                                   1.    Shelter care; or

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

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

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

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

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

18                   (iv)   1.    If a child is returned to detention under subparagraph (ii)  
19 of this paragraph, the intake officer who authorized detention shall immediately file a  
20 petition to authorize continued detention.

21                                   2.    A hearing on the petition to authorize continued detention  
22 shall be held no later than the next court day, unless extended for no more than 5 days by  
23 the court on good cause shown.

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

27                   **[(f)] (G)**   (1)   Shelter care may only be continued beyond emergency shelter  
28 care if the court has found that:

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

31                                   (ii)   1.    Removal of the child from the child's home is necessary  
32 due to an alleged emergency situation and in order to provide for the safety of the child; or

33   2.    Reasonable but unsuccessful efforts were made to prevent  
34 or eliminate the need for removal of the child from the home.

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

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

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

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

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

12                   (i)    Detention or community detention;

13                   (ii)   A State mental health facility; or

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

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

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

25                   (i)    Health care services;

26                   (ii)   Counseling services;

27                   (iii)   Education services;

28                   (iv)   Social work services; and

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

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

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

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

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

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

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

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

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

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

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 October 1, 2017.