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Bill Number/Title: House Bill 389 Juveniles – Detention and Confinement – Limitations on Juvenile Contact With Incarcerated Adults
Committee: Judiciary
DJS Position: Letter of Information

The Department of Juvenile Services (DJS) submits this letter for informational purposes regarding House Bill 389. The Department shares the goal of protecting youth from contact with incarcerated adults and offers the following information to clarify how the bill interacts with existing Maryland law, federal requirements, and current operational practices.

House Bill 389 seeks to prevent youth under 18 from being detained in facilities where they have contact with incarcerated adults. This aligns with, but is more expansive than the federal Juvenile Justice and Delinquency Prevention Act (JJDP) requirements for jail removal and sight-and-sound separation. Maryland’s current statutory framework prioritizes holding all youth in juvenile facilities, however, it still results in some youth being held in adult jails while awaiting adult transfer determinations due to juvenile capacity limitations. Statutory reforms—such as changes to automatic charging—are necessary to relieve existing pressure and create the capacity needed to implement the provisions of hb 389. Until these reforms are in place and operational adjustments are fully implemented, DJS does not have capacity to safely accommodate additional populations under the proposed bill.

Current Maryland Law

When a youth is charged as an adult, and a transfer determination is pending, the court must order the youth to be held in a secure juvenile facility. The statute provides limited and clearly defined exceptions, including:

- Release on bail, recognizance, or other conditions of pretrial release;
- Lack of available capacity in a secure juvenile facility as determined by the Department of Juvenile Services; or
- A judicial finding that placement in a secure juvenile facility would pose a risk of harm to the youth or others, with the reasons stated on the record.

This framework establishes clear court oversight, defined decision-making authority, and narrowly tailored, documented exceptions. Youth remain in DJS custody unless and until the court denies a transfer hearing. If a youth pending transfer turns 18, the youth remains in a DJS facility while the court process is ongoing. It is important to note that 16-and 17-year-olds charged with capital offenses are not eligible for transfer to juvenile court.

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The Juvenile Justice and Delinquency Prevention Act (JJDP) establishes federal protections applicable to juveniles in custody. The jail removal requirement states that juveniles may not be securely detained in adult jails or lockups except for limited exceptions, such as brief processing or transfer.

Federal regulations allow a youth charged as an adult to be held in an adult jail or lockup beyond normal jail-removal limits if the court determines that it is in the interest of justice and makes specific findings, which may include:

- The nature of the offense;
- Public safety considerations;
- Risk of flight;
- Inability to safely transport the youth; and
- Distance to the nearest juvenile facility.

The exception provides limited, case-specific judicial discretion, subject to strict statutory timeframes that limit the duration of adult detention and require explicit judicial findings and ongoing court review, while maintaining federal compliance.

Importantly, the JJDP does not address the placement of convicted youth.

House Bill 389

House Bill 389 prohibits a *child*—defined under Maryland law as an individual under the age of 18—from being detained or confined in any facility where the child has contact with, or is within sight or sound of, an incarcerated adult. The bill further provides that a child under 18 who has been arrested, convicted, or is awaiting trial may not be held in an adult correctional facility.

HB 389 allows for a limited exception for temporary processing. A child under 18 may be held briefly in a jail or detention center that lacks a secure juvenile area if the child is separated by sight and sound from adults and is held for fewer than six hours prior to transport to a juvenile facility.

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Key Policy Considerations

- **Definition of “child.”**
The bill relies exclusively on an under-18 definition. As written, a youth who turns 18 while awaiting a transfer determination would be required to move to an adult facility, even though the juvenile court process remains ongoing.
- **Absence of an “interest of justice” exception.**
The bill does not incorporate the federal “interest of justice” exception or establish a comparable state-level framework allowing courts to make individualized, documented findings when adult placement is deemed necessary.
- **Operational and judicial clarity.**
The bill uses permissive language (“may not be held”) without clearly identifying decision-making authority, required judicial findings, or standards governing placement decisions.
- **Facility scope.**
It is unclear whether the prohibition applies to the Youth Detention Center operated by the Department of Public Safety and Correctional Services, creating uncertainty regarding implementation and compliance.
- **Population and capacity impact.**
The bill would expand the populations required to be served in DJS detention centers—including youth who are convicted or awaiting trial in adult court—without a corresponding reduction in DJS’s existing detention population, raising significant capacity and operational concerns.

DJS appreciates the intent of HB 389 and shares the goal of reducing youth placements in adult correctional facilities. DJS continues to work collaboratively with judges, state’s attorney’s, public defenders, local detention facilities, and other system partners to fully utilize existing statutory authority to reduce both the number of youth held in adult facilities and the length of time youth remain there. These efforts reflect a shared commitment across the system to protect youth while maintaining public safety and accountability.

DJS also appreciates the delayed implementation contemplated in HB 389. However, without understanding how other necessary statutory reforms - particularly those affecting automatic charging and transfer timelines - will impact the current population, it is not possible for DJS to fully assess its ability to implement the provisions of HB 389 safely and effectively. These statutory changes are critical to creating the capacity required to serve additional populations within the juvenile justice system framework.



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DJS remains committed to work with the Committee to strike the appropriate balance between implementing youth removal from adult jails and operational feasibility. During the delayed implementation period, DJS respectfully requests the opportunity to study the population impact of related statutory changes and provide data and analysis to the General Assembly. This approach will ensure that any implementation of HB 389 is informed, deliberate, and aligned with the DJS' ability to safely and securely accommodate additional youth in its care.

DJS appreciates the Committee's consideration of this letter of information.