

HOUSE BILL 853

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7lr2231
CF 7lr3539

By: **Delegates Jalisi, Haynes, and Proctor**

Introduced and read first time: February 3, 2017

Assigned to: Judiciary

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 unless the child is alleged to have committed a certain
5 crime of violence; and generally relating 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.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Detention or community detention time 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:

1. For the protection of the child; or

2. For the protection of the community.

(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, DETENTION MAY NOT BE CONTINUED BEYOND EMERGENCY DETENTION FOR A CHILD UNDER THE AGE OF 13 YEARS UNLESS THE CHILD IS ALLEGED TO HAVE COMMITTED A CRIME OF VIOLENCE AS DEFINED UNDER § 14-101 OF THE CRIMINAL LAW ARTICLE.

[(e)] (F) (1) Detention or 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 one or more of the circumstances stated in subsection (b) of this section exist.

(2) A court order under this paragraph shall:

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

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

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

1. Shelter care; or

2. 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.

(ii) If a child who has been released by the Department of Juvenile Services 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.

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

1. The release of a child from detention under subparagraph (i) of this paragraph; or
2. The return to detention of a child under subparagraph (ii) of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

2 (i) Detention or community detention;

3 (ii) A State mental health facility; or

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

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

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

15 (i) Health care services;

16 (ii) Counseling services;

17 (iii) Education services;

18 (iv) Social work services; and

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

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

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

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

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

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

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

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

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

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

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