

HOUSE BILL 711

E3
HB 978/12 – JUD

3lr2169
CF SB 732

By: **Delegates Dumais, Carter, Anderson, Clippinger, Lee, B. Robinson,
Valentino-Smith, and M. Washington**

Introduced and read first time: February 4, 2013

Assigned to: Judiciary

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 2012 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 2012 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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (n) "Detention" means the temporary care of children who, pending court
2 disposition, require secure custody for the protection of themselves or the community,
3 in physically restricting facilities.

4 3-8A-15.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 1. For the protection of the child; or

24 2. For the protection of the community.

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

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

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

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

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

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

8 1. Shelter care; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (i) Detention or community detention;

11 (ii) A State mental health facility; or

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

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

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

23 (i) Health care services;

24 (ii) Counseling services;

25 (iii) Education services;

26 (iv) Social work services; and

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

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

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

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

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

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

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

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

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

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

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2013.