
National Landscape for Juvenile Detention Decisionmaking

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Maryland Statute: §3-8A-15 “Detention and Shelter Care Prior to Hearing”

- (a) Authorization. – Only the Court or an intake officer may authorize detention, community detention, or shelter care for a child who may be in need of supervision or delinquent.
- (b) Child in custody – Detention – If a child is taken into custody under this subtitle, the child may be placed in detention or community detention prior to a hearing if :
 - 1) Such action is required to protect the child or others; or
 - 2) The child is likely to leave the jurisdiction of the court.

Maryland April 13, 2020 Court of Appeals 9 Factors

- Factors 1 and 2 – specific to COVID preexisting conditions and symptoms
- Factor 3 - Availability of treatment or educational program in the facility
- Factor 4 - Whether the purpose of the commitment can be achieved under current circumstances
- Factor 5 – Whether the Department of Justice Services has notified the court of a viable alternative plan for detention or commitment
- Factor 6 – Whether the juvenile has family or a placement resource available to meet basic food, housing and health needs, including any period of quarantine that may be required
- Factor 7 – Whether release poses a risk to safety of the juvenile or another, and the extent to which any such risk can be mitigated in the community with conditions or supervision, or with placement in an alternative session during the COVID-19 emergency
- Factor 8 – Whether the risk to the safety of the juvenile or others in the community during the COVID-19 emergency outweighs the risk of harm that continued detention poses to the juvenile, to other detained individuals, to staff, and to the community
- Factor 9 – Whether released of the detained or committed juvenile during the COVID-19 emergency is in the interest of justice
- Unnamed factors: a) whether detention poses serious health risks to the juvenile; b) whether any condition of release can mitigate that risk of physical harm to self or others c) any additional circumstances specific to the juvenile that are warranted in the interest of justice.

Juvenile Detention's Harmful Impact:

- (a) Increases recidivism: Even short stays in pretrial detention can increase recidivism, particularly for children with little prior criminal history. 1
- (b) Imprisons more youth of color than white youth: even when controlling for seriousness of charges and criminal history. 2
- (c) Harms Health: Detained youth show greater trauma, markers for severe mental health issues such as suicidal ideation are higher than in the general population. 3
- (d) Interrupts and Interferes with education and employment outcomes – kids in detention less likely to finish high school and to find jobs. _____

1. Walker, Hertig “The Impact of Pretrial Juvenile Detention on 12-Month Recidivism: A Matched Comparison Study” June 2020, Sage Publications)(studied 32 jurisdictions)

2. Annie E. Casey Foundation “Kids Deserve Better: Why Juvenile Detention Reform Matters” (December 5, 2018)

3. OJJDP “Suicidal Thoughts and Behaviors among Detained Youth” 2014)

4. Annie E. Casey Foundation “Kids Deserve Better: Why Juvenile Detention Reform Matters” (December 5, 2018)

Statutory Strategies: Presumption Towards Release

New Jersey Administration of Civil and Criminal Justice §2A:4A-34

A juvenile charged with delinquency may not be placed or retained in detention under this act prior to disposition, except as otherwise provided by law, unless:

(1) Detention is necessary to secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent willful failure to appear at juvenile court proceedings or to remain where placed by the court or the court intake service or the juvenile is subject to a current warrant for failure to appear at court proceedings which is active at the time of arrest; or

(2) The physical safety of persons or property of the community would be seriously threatened if the juvenile were not detained and the juvenile is charged with an offense which, if committed by an adult, would constitute a crime of the first, second or third degree or one of the following crimes of the fourth degree: aggravated assault; stalking; criminal sexual contact; bias intimidation; failure to control or report a dangerous fire; possession of a prohibited weapon or device in violation of N.J.S.2C:39-3; or unlawful possession of a weapon in violation of N.J.S.2C:39-5;

Statutory Strategies: Presumption Towards Release

- California Welfare and Institutions Code § 635

The court will examine the minor, his or her parent, legal guardian, or other person having relevant knowledge, hear relevant evidence the minor, his or her parent, legal guardian, or counsel desires to present, **and, unless** it appears that the minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that he or she be detained or that the minor is likely to flee to avoid the jurisdiction of the court, **the court shall make its order releasing the minor from custody.**

Statutory Strategies: Least Restrictive Alternative

- Delaware Revised Code Title 10 §1007

(a) Pending adjudication no child alleged to be delinquent may be placed in secure detention operated by the Department of Services for Children, Youth and Their Families unless the Court determines that no means less restrictive of the child's liberty gives reasonable assurance that the child will attend the adjudicatory hearing and:

Various other considerations including prior failure to appear, felony and A misdemeanor charges, escapes, and incurring new charges while on nonsecure detention

- Hawaii Revised Code §571-31.1(2)(B) Detention may be considered when "Previous control measures have failed."

Statutory Strategies: Role of Risk Assessments

Florida: Florida Criminal Procedure and Corrections §985.245

1) All determinations and court orders regarding placement of a child into detention care shall comply with all requirements and criteria provided in this part and shall be based on a risk assessment of the child, unless the child is placed into detention care as provided in s. F985.255(2) [domestic violence respite].

§985.255 At the hearing, the court may order a continued detention status if the result of the risk assessment instrument pursuant to s. 985.245 indicates secure or supervised release detention.

Delaware Revised Code Title 10 §1007

c) If the Court places a child in secure detention pending adjudication, the court shall state in writing the basis for its detention determination pursuant to subsection (a) of this section and the reasons for not employing any of the secure detention alternatives under subsection (b) of this section. In the event that a risk assessment instrument has been completed for the child for the pending offense, with the resulting presumptive disposition being to release the child, or hold the child in a nonsecure detention facility, the Court shall further state in writing the basis for overriding that presumption.

Further resources for legislative and regulatory action

http://jlc.org/sites/default/files/publication_pdfs/aecf-embeddingdetentionreform-2014_0.pdf - can we do this as a screen shot?