

3. The bill adds domestic violence and violation of an order of protection to the types of offenses that a child may commit.
 - This is a loop-hole in the law that has long-needed to be addressed. Right now, an order of protection issued against a minor child (17 years old) has no effect and will not be enforced by the police or courts. Stalking or other threatening behavior where there is no physical contact becomes nearly impossible to effectively address.
4. The bill keeps returning to a common theme that children should not be incarcerated when another option is available and preferable. The bill focuses on requiring the department complete the risk assessment instrument before confining a child. The bill expressly provides that if the criteria for detention of an alleged delinquent child are not met, the child shall be released from custody. Criteria for detaining a child would include:
 - Alleged violation of the Children's Code;
 - Alleged parole violation;
 - The child poses a threat to himself;
 - The child poses risk of substantial harm to others; and
 - The child has demonstrated that he may leave the jurisdiction.
4. In an effort to be proactive in addressing "causes" to delinquency and detention needs, the department is instructed to collect data from the risk assessment instruments and to report their findings and analyses to the Legislature in a written report by January 1, 2004.
5. The bill creates an additional placement option for "detaining" a child. In addition to fostercare, a child welfare services agency, a shelter-care facility, or detention facility, a child may also be returned home, with conditions and restrictions placed on him by the court.
6. The bill provides that a child may be detained pending a court hearing in a suitable place, other than a facility to which children adjudicated as delinquent children may be confined.
7. The bill includes new provisions intended to protect staff in detention facilities against violent delinquents. In the event that a child is violent toward staff, he may be transferred to a local jail facility until a hearing is held on the matter. However, the director of the jail facility shall presume the child is particularly vulnerable to victimization and shall take measures appropriate to protect the child.

The bill also provides that a child who has been previously housed in an adult jail facility, or has been incarcerated as an adult, shall not be detained in a juvenile detention facility in the event of subsequent offenses.

The bill is careful to note that in no instance shall the child's civil rights be less than those existing for an incarcerated adult.

8. The bill keeps the 48-hour from the time of detention probable cause determination deadline, but shortens the timeframe for filing a petition from 48 hours to 24 hours from time of detention. Failure to file a petition within the stated time shall result in the child's release. If a petition is filed, a detention hearing is to be held within 24 hours.
 - By the wording of these sections, it is presumed that the petition relates to detention vs. release. Does it make sense to have the probable cause hearing after the detention vs. release petition is pursued?
9. If a child is not released at the detention hearing, the child's detention may be subsequently reviewed by the court, or may be addressed at the pre-trial conference.
10. The bill adds a provision stating that, if a child is not placed within 10 days after a disposition hearing, the child may be released and placed under appropriate supervision.
11. The bill includes a new, express statement that nothing in the Delinquency Act shall limit the right of a child to file a writ of habeas corpus.
12. The bill includes a new, rebuttable presumption for the sentencing of delinquents as adults. If a child has previously been sentenced as an adult, on subsequent charges, the judge shall presume that the child is not amenable to treatment or rehabilitation.
13. The bill removes the oversight authority of the juvenile parole board for child offenders who complete a short-term commitment of one year and who is subsequently placed on parole. The bill changes the oversight authority to the department.
 - This amendment, as a practical matter, more accurately reflects what is already happening and would possibly result in less administrative paperwork.
 - The bill provides for 90 supervision by the department (CYFD). The department notes that a more appropriate period of supervision would be 1 year. Such a period of supervision would impose an additional burden on CYFD, but it is thought that the benefits outweigh the cost.
14. A new provision to the Act provides that a person "who is not the subject of a delinquency petition or a person who is determined to not be a delinquent offender" shall have his files and records AUTOMATICALLY SEALED by the Court. Also, it is provided that child's records and files shall be AUTOMATICALLY SEALED if the child has not received any new allegations of delinquency in the two years following his release from custody and supervision.

FISCAL IMPLICATIONS

There are no direct fiscal implications related to the enactment of HB 507. However, there may be secondary FTE and budget implications, including:

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- According to the Children, Youth and Families Department, there may be a reduction in the costs of detention.
- However, the department notes there will be additional costs for parole supervision.
- There will be additional court hearings required. This impacts the court, prosecutors and public defenders.

SJM/njw