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## WATCHDOG

# Teens now can't be jailed unless it's in the interest of justice. In PA, there are issues

*The Juvenile Justice Reform Act of 2018 requires judges to hold a hearing and issue written findings within six hours — and every 30 or 45 days*



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Since his arrest at 15 years old on charges including first- and third-degree murder, Alexis Cado-Suero has been held in York County Prison.

He's accused of shooting and killing Tyree Smart, 16, of York, at Brooklyn and West Newton avenues in York on March 27, 2021.

But York County President Judge Maria Musti Cook later scheduled a hearing to determine whether Cado-Suero, now 16, of York, should remain in York County Prison — or be transferred to a juvenile detention center. That's because of a recent change to federal law.

On Monday, though, Cook stated that the change to federal law did not retroactively apply to Cado-Suero. She later denied a request from his attorney, George Margetas, to set bail.

"Well, your honor, I'm glad we're all figuring this out together," Chief Deputy Prosecutor Steph Lombardo told Cook at the hearing. "It's certainly a complex issue."

Effective on Dec. 21, 2021, children who are charged as adults cannot be held for more than six hours in a lockup or jail or within sight and sound of adults unless a judge holds a hearing and issues written findings that it's in the interest of justice. The requirement is a result of a provision in the Juvenile Justice Reform Act of 2018.

Judges need to continue to hold these hearings, depending on population, either every 30 or 45 days. They must also find good cause for children to remain in custody in an adult facility

for longer than 180 days.

As Pennsylvania implements the new measure, there are unresolved questions and issues that remain.

First, the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention initially issued guidance informing the states that the requirement for judges to conduct these hearings did not retroactively apply.

But the federal government later indicated that the provision may be retroactive, said Seth Bloomquist, director of secure monitoring for Pennsylvania.

Bloomquist said there's no clear guidance on the topic. The state, he said, is acting based on the original direction that the requirement for an interest of justice determination does not retroactively apply.

Second, there has been a sharp reduction of the number of beds in juvenile detention centers in Pennsylvania.

"The federal intent is to remove juveniles from being exposed to adults," said Richard Steele, executive director of the Pennsylvania Juvenile Court Judges' Commission. "But ultimately, right now in Pennsylvania, we're in a situation because of all the reform we've done, we've closed so many juvenile detention facilities that we're actually in a crisis."

Between 2006 and 2021, 15 juvenile detention centers closed in Pennsylvania, according to a December 2021 report from the Pennsylvania Juvenile Court Judges' Association called "Pennsylvania Secure Detention Analysis: Impact of Facility Closures on Accessibility of Services."

Steele said there's less of a need for beds in juvenile detention centers than in the past.

But he said it's still important to have them available in certain cases in which it's necessary to ensure the protection of the community.

During the hearing for Cado-Suero, York County Juvenile Probation Officer Lisa Rumsey testified about the lack of available beds in juvenile detention centers.

Rumsey said the three facilities that York County uses are not accepting children who are charged as adults from out of the area.

When Cook asked if any juvenile detention centers in the state are taking children from out of county, Rumsey replied, "I'm not aware."

The new requirement also conflicts with one of Pennsylvania's rules of criminal procedure, which states that the DA must consent to a child who's charged as an adult being held in a juvenile detention center.

"It's definitely in contravention to the state statute," said Lancaster County Common Pleas Judge David R. Workman, who serves as the juvenile court administrative judge. "There's no doubt."

The Legislature or the appellate courts, he said, will have to resolve the issue.

In Lancaster County, Workman said, law enforcement now first take children who are charged as adults to the Lancaster County Youth Intervention Center.

A magisterial district judge will hold their preliminary arraignment via video. Staff members will then notify one of the two permanent juvenile court judges, he said, who will schedule an interest of justice determination as soon as possible.

Workman said the child will appear at that hearing with counsel.

Meanwhile, in Philadelphia, Common Pleas Judge Lisette Shirdan-Harris, administrative judge for the trial division, issued an administrative order directing that police will first take children who are charged as adults and have not been released on bail to the Philadelphia Juvenile Justice Service Center.

When the DA files a motion, a judge will hold a hearing and make that interest of justice determination.

Because of the conflict with the state rules of criminal procedure, children charged as adults are being segregated in juvenile detention, said Michelle Mason, director of Juvenile Special Defense Division at the Defender Association of Philadelphia.

That's because juvenile detention centers have licensing requirements, she said, and must follow state laws and regulations. The only mechanism to prevent that from happening is for

the defense attorney, judge and DA to agree in a petition to house them in juvenile detention, Mason said.

In general, Mason said, there's movement in the criminal justice system away from criminalizing children and removing them from their home as punitive sanctions for negative behavior.

Mason said she thinks the new requirement codifies what everyone believes: that children should not be held in detention with adults. She noted that most youth later end up in the juvenile justice system.

"I think this is just a reflection of where we are as a society," Mason said. "We need to treat kids like kids, we're looking at treating kids like kids, and then, most of the time, we do treat kids like kids."

"Especially while they're pending trial, there's a presumption of innocence," she added. "Why expose them to the harms of adult incarceration?"

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