

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 452

(Senator Carter, *et al.*)

Judicial Proceedings

Judiciary

Juveniles Charged as Adults – Confidentiality of Records

This bill establishes that, pending a transfer determination from adult criminal court to the juvenile court (“reverse waiver”), specified provisions relating to the confidentiality of juvenile records apply to all police and court records concerning the child from the time of the child’s arrest until (1) the time for the filing of a motion to transfer to juvenile court under the Maryland Rules has expired and no such motion has been filed or (2) a motion to transfer to juvenile court has been denied. The bill sets forth additional provisions regarding the confidentiality of police and court records concerning a child.

Fiscal Summary

State Effect: General fund expenditures increase by \$52,700 in FY 2020 only for programming changes, as discussed below. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	52,700	0	0	0	0
Net Effect	(\$52,700)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: If a case is transferred to the juvenile court under the bill’s provisions, existing provisions relating to the confidentiality of juvenile records continue to apply to

all police and court records concerning the child. The criminal charge is also subject to expungement, as authorized under current law.

Provisions of law relating to the confidentiality of juvenile police records do not prohibit law enforcement agencies, the Department of Juvenile Services (DJS), or the criminal justice information system from including, in the law enforcement computer system, information about (1) an outstanding criminal court ordered writ of attachment for the sole purpose of apprehending a child named in the writ; (2) an outstanding judicially issued warrant for the sole purpose of apprehending a child named in the warrant; or (3) a child who has been reported missing. A law enforcement agency is also not prohibited, for the purposes of facilitating apprehension of a child and ensuring public safety, from releasing to the public photographs and identifying information regarding a child who (1) has escaped from a correctional unit; (2) is the subject of a judicially issued warrant; (3) is subject to arrest for a crime or act that would be a crime if committed by an adult; or (4) has been reported missing.

Current Law: In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for specified violations. The juvenile court does not have jurisdiction over children at least age 16 who are alleged to have committed specified violent crimes, children age 14 and older charged with a capital crime, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. However, a circuit court may transfer a case involving such a child to the juvenile court if such a transfer is believed to be in the interests of the child or society (“reverse waiver”). A reverse waiver is not permitted if the child was convicted in an unrelated case excluded from the jurisdiction of the juvenile court or the alleged crime is murder in the first degree and the accused child was at least age 16 when the alleged crime was committed. At a transfer hearing, the court must consider specified criteria and may order that a study be made concerning the child, the child’s family and environment, and other matters concerning the disposition of the case. Statutory provisions also set forth a process by which a court exercising criminal jurisdiction in a case involving a child must determine whether to transfer jurisdiction to a juvenile court at sentencing. A person may file, and a court must grant, a petition for expungement of a criminal charge transferred to the juvenile court under these circumstances.

Juvenile Records

In general, police and court records concerning a child are confidential, and their contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or in certain circumstances relating to notification of a local superintendent or nonpublic school principal upon the arrest of a child for specified offenses. This prohibition does not restrict access to and the use of court records in court proceedings involving the

child by personnel of the court, the State's Attorney, counsel for the child, a court-appointed special advocate for the child, or authorized personnel of DJS. Subject to certain exceptions, the restriction also does not prohibit access to and confidential use of police and court records of a child by DJS or in an investigation and prosecution by a law enforcement agency. The provisions also do not prohibit a law enforcement agency from releasing to the public photographs and identifying information regarding a child who has escaped from a juvenile detention center or a secure residential facility for juveniles, for the purposes of facilitating apprehension of the child and ensuring public safety. Law enforcement agencies, DJS, and the criminal justice information system are not prohibited from including, in the law enforcement computer system, information about an outstanding juvenile court ordered writ of attachment for the sole purpose of apprehending the child named in the writ.

Statutory provisions also set forth circumstances under which the police and court records of a child may be accessed and used by various entities for specified purposes. For example, the Department of Human Services may have access to and confidential use of a court record for the purpose of claiming federal funds.

State and Local Fiscal Effect: General fund expenditures increase by \$52,686 in fiscal 2020 only for the Judiciary to make necessary programming changes.

Otherwise, it is estimated that any changes in procedures for law enforcement agencies, DJS, the courts, and State's Attorneys' offices to ensure the confidentiality of additional juvenile records do not materially impact State and local finances.

Additional Information

Prior Introductions: HB0 555 of 2018, a similar bill, was withdrawn. Its cross file, SB 257, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: HB 11 (Delegate Sydnor, *et al.*) - Judiciary.

Information Source(s): Caroline County; City of Takoma Park; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Juvenile Services; Department of State Police; Department of Legislative Services

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