

Chapter 12

(Senate Bill 314 of the 2020 Regular Session)

AN ACT concerning

Juveniles Charged as Adults – Confidentiality of Records

FOR the purpose of establishing that, ~~pending a determination by a court exercising criminal jurisdiction in a case involving a child whether to transfer its jurisdiction to the juvenile court,~~ certain provisions of law relating to confidentiality of juvenile records apply to all police records and court records concerning ~~the~~ a child excluded from the jurisdiction of the juvenile court under a certain provision of law from the time of the child's arrest until a certain event occurs; establishing that, if a case is transferred to the juvenile court, certain provisions of law relating to confidentiality of juvenile records continue to apply to certain records and a certain criminal charge is subject to expungement under a certain provision of law; establishing certain exceptions to certain provisions of law relating to confidentiality of juvenile police records; and generally relating to juveniles charged as adults and juvenile records.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–27(a)
Annotated Code of Maryland
(2013 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–27(b)(1)
Annotated Code of Maryland
(2013 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
Article – Criminal Procedure
Section 4–202(b) and (h)
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

BY adding to
Article – Criminal Procedure
Section 4–202(i)
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Procedure

Section 4–202(i) and (j)
 Annotated Code of Maryland
 (2018 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

3–8A–27.

(a) (1) A police record concerning a child is confidential and shall be maintained separate from those of adults. Its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown or as otherwise provided in § 7–303 of the Education Article.

(2) This subsection does not prohibit:

(i) Access to and confidential use of the record by the Department of Juvenile Services or in the investigation and prosecution of the child by any law enforcement agency;

(ii) Access to and confidential use of the record by the Baltimore City Mayor’s Office on Criminal Justice if the Baltimore City Mayor’s Office on Criminal Justice is providing programs and services to a child who is the subject of the record, for a purpose relevant to the provisions of the programs and services and the development of a comprehensive treatment plan;

(iii) A law enforcement agency of the State or of a political subdivision of the State, the Department of Juvenile Services, or the criminal justice information system from including in the law enforcement computer information system information about [an]:

1. AN outstanding juvenile court ordered writ of attachment OR AN OUTSTANDING CRIMINAL COURT ORDERED WRIT OF ATTACHMENT, for the sole purpose of apprehending a child named in the writ;

2. AN OUTSTANDING CRIMINAL COURT ISSUED WARRANT, FOR THE SOLE PURPOSE OF APPREHENDING A CHILD NAMED IN THE WARRANT; OR

3. A MISSING CHILD AS DEFINED IN § 9–401 OF THE FAMILY LAW ARTICLE; or

(iv) A law enforcement agency of the State or of a political subdivision of the State, **WHEN NECESSARY AND FOR THE SOLE PURPOSES OF FACILITATING APPREHENSION OF A CHILD AND ENSURING PUBLIC SAFETY**, from releasing to the public photographs and identifying information of a child who [has]:

1. **HAS** escaped from [a]:

A. A detention center for juveniles[or a];

B. A secure residential facility for juveniles[, for the purposes of facilitating apprehension of the child and ensuring public safety]; **OR**

C. A CORRECTIONAL UNIT AS DEFINED IN § 2-401 OF THE CORRECTIONAL SERVICES ARTICLE; ~~OR~~

2. IS A MISSING CHILD AS DEFINED IN § 9-401 OF THE FAMILY LAW ARTICLE; OR

3. THE COURT DOES NOT HAVE JURISDICTION OVER PURSUANT TO § 3-8A-03(D)(1), (4), OR (5) OF THIS SUBTITLE AND WHO IS SUBJECT TO:

A. ARREST; OR

B. AN ARREST WARRANT ISSUED BY A CRIMINAL COURT.

(3) The Baltimore City Mayor's Office on Criminal Justice shall be liable for the unauthorized release of a police record it accesses under this subsection.

(b) (1) A court record pertaining to a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown or as provided in §§ 7-303 and 22-309 of the Education Article.

Article – Criminal Procedure

4-202.

(b) Except as provided in subsection (c) of this section, a court exercising criminal jurisdiction in a case involving a child may transfer the case to the juvenile court before trial or before a plea is entered under Maryland Rule 4-242 if:

(1) the accused child was at least 14 but not 18 years of age when the alleged crime was committed;

(2) the alleged crime is excluded from the jurisdiction of the juvenile court under § 3-8A-03(d)(1), (4), or (5) of the Courts Article; and

(3) the court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society.

(h) (1) Pending a determination under this section to transfer its jurisdiction, the court shall order the child to be held in a secure juvenile facility unless:

(i) the child is released on bail, recognizance, or other conditions of pretrial release;

(ii) there is not available capacity in a secure juvenile facility, as determined by the Department of Juvenile Services; or

(iii) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others.

(2) If the court makes a finding under paragraph (1)(iii) of this subsection that detention in a secure juvenile facility would pose a risk of harm to the child or others, the court shall state the reasons for the finding on the record.

(1) (1) ~~PENDING A TRANSFER DETERMINATION UNDER THIS SECTION,~~ ~~THE~~ THE PROVISIONS OF § 3-8A-27 OF THE COURTS ARTICLE RELATING TO CONFIDENTIALITY OF RECORDS APPLY TO ALL POLICE RECORDS AND COURT RECORDS CONCERNING THE CHILD EXCLUDED FROM THE JURISDICTION OF THE JUVENILE COURT UNDER § 3-8A-03(D)(1), (4), OR (5) OF THE COURTS ARTICLE FROM THE TIME OF THE CHILD'S ARREST UNTIL:

(I) THE TIME FOR FILING OF A MOTION TO TRANSFER TO JUVENILE COURT UNDER THE MARYLAND RULES HAS EXPIRED AND NO SUCH MOTION HAS BEEN FILED; OR

(II) A MOTION TO TRANSFER TO JUVENILE COURT HAS BEEN DENIED.

(2) IF A CASE IS TRANSFERRED TO THE JUVENILE COURT UNDER THIS SECTION:

(I) THE PROVISIONS OF § 3-8A-27 OF THE COURTS ARTICLE RELATING TO CONFIDENTIALITY OF RECORDS CONTINUE TO APPLY TO ALL POLICE AND COURT RECORDS CONCERNING THE CHILD; AND

(II) THE CRIMINAL CHARGE IS SUBJECT TO EXPUNGEMENT UNDER § 10-106 OF THIS ARTICLE.

[(i)] (J) (1) A victim or victim's representative shall be given notice of the transfer hearing as provided under § 11–104 of this article.

(2) (i) A victim or a victim's representative may submit a victim impact statement to the court as provided in § 11–402 of this article.

(ii) This paragraph does not preclude a victim or victim's representative who has not filed a notification request form under § 11–104 of this article from submitting a victim impact statement to the court.

(iii) The court shall consider a victim impact statement in determining whether to transfer jurisdiction under this section.

[(j)] (K) (1) Regardless of whether the District Court has jurisdiction over the case, at a bail review or preliminary hearing before the District Court involving a child whose case is eligible for transfer under subsection (b) of this section, the District Court:

(i) may order that a study be made under the provisions of subsection (e) of this section; and

(ii) shall order that the child be held in a secure juvenile facility pending a transfer determination under this section unless:

1. the child is released on bail, recognizance, or other conditions of pretrial release;

2. there is not available capacity at a secure juvenile facility as determined by the Department of Juvenile Services; or

3. the District Court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others.

(2) If the District Court makes a finding under paragraph (1)(ii)3 of this subsection that detention in a secure juvenile facility would pose a risk of harm to the child or others, the District Court shall state the reasons for the finding on the record.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.

Gubernatorial Veto Override, February 11, 2021.