



## POSITION ON PROPOSED LEGISLATION

BILL: HB 672

POSITION: Opposed

DATE: 2-8-21

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 672.

### **Confidentiality is a cornerstone of the juvenile delinquency system**

The early twentieth century architects of the juvenile court feared that without confidentiality, the public would brand children accused of offenses as criminal, reject them, and impede their readjustment and rehabilitation. “The purpose of keeping [juvenile] records confidential is to further the rehabilitation of young offenders by relieving them of the enduring stigma of their misconduct.”<sup>1</sup> The confidentiality of juvenile records is wholly consistent with and necessary to achieve the rehabilitative purposes of the Juvenile Causes Act.<sup>2</sup>

It is vital to understand that the overwhelming majority of young people who commit crimes age out of this type of behavior, regardless of any services provided.<sup>3</sup> Yet when we hear about the bad acts of children, “instead of viewing a child’s behavior as evil, society views the child him or herself as evil.”<sup>4</sup> This is the idea that led to the unfounded juvenile superpredator scare of the 1990s.

### **House Bill 672 Will Breach that Confidentiality**

Although HB 672 does not provide for the names, ages, or race of young people whose offenses it seeks to compile, the database it creates renders it all too easy to combine the data gleaned from multiple sources, including social and traditional media sources, and would allow for their

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<sup>1</sup> *In re Nick H.*, 224 Md. App. 668, 694 (2015) (internal citation omitted).

<sup>2</sup> In large part, the Act seeks “To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child’s best interests and the protection of the public interest.” Md. Code Ann., Cts. & Jud. Proc. § 3-8A-02(4). Confidentiality is a primary focus at every stage in juvenile proceedings, including arrest. The Maryland Rules provide for the confidentiality of juvenile records, including even the “docket entries and indices.” It also provides for the automatic sealing of records on termination of the court’s jurisdiction. Rule 11-121. “A police record concerning a child is confidential and shall be maintained separate from those of adults.” Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27(a)(1). “A court record pertaining to a child is confidential and its contents may not be divulged.” Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27(b)(1).

<sup>3</sup> Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. REV. 520, 539 (2004) (internal citations omitted).

<sup>4</sup> Affidavit of Professor Megan Kurlychek in 2020 WL 8083562 (D. Conn.).

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easier identification. We are concerned this will lead to increased instances not only of exposure to young people that can never be undone, but of potential vigilante justice.

### **Vague Language Makes Implementation Impossible**

House Bill 672 requires reporting the location and time of “all offenses involving juveniles.” Offense is not defined in HB672, but the language is so vague that it ostensibly could require the reporting of all incidents in which a juvenile is an alleged perpetrator or victim. It appears to include mere allegations and incidents proven after an adjudication. It does not distinguish between juveniles brought to court, those diverted before any sort of court proceeding, and it does not provide for indicating when young people have been found facts not sustained (not guilty in juvenile court parlance.)

The Juvenile Causes Act does not itself define “offense,” but it does define “delinquent act” as an act that would be a crime if committed by an adult.<sup>5</sup> As it stands now, HB672 might be read to include status offenses, such as truancy, or violations, such as marijuana possession.<sup>6</sup>

### **Existing law allows for sharing case information with complaining witnesses**

Maryland law already specifically allows information sharing with crime victims regarding delinquency cases.<sup>7</sup> Today, the duty to inform and communicate with complaining witnesses is relegated to the various State’s Attorneys Offices.<sup>8</sup> This strikes a balance between juvenile confidentiality and information sharing with those impacted by allowing information sharing related to a specific case.

### **Confidentiality Protects Young People, Especially Youth of Color, From Long Term Collateral Consequences**

By publishing a centralized database of information that can easily be used to identify specific young people who have not been found facts sustained, HB672 tears at the fabric of a rehabilitative juvenile justice system and creates tangible harms for young people. The collateral consequences of a criminal record are both tangible and psychological. The Maryland Court of Special Appeals has noted that “Publishing information about former juvenile sex offenders on a public website hardly provides confidentiality, and instead creates the ‘enduring stigma of their misconduct.’”<sup>9</sup> Similarly, HB672, too, erodes confidentiality and helps to foster an enduring stigma to all young people. Black boys and girls would disproportionately suffer from these negative consequences. Out of 528,468 youth in Maryland, 31% were Black, yet in FY2020, 62% of youth that had DJS intakes were Black.<sup>10</sup> The publication of this online database, then, poses yet another color barrier to already disadvantaged young people.

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<sup>5</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-8a-01(l).

<sup>6</sup> See Md. Code Ann., Cts. & Jud. Proc. § 3-8a-01(dd).

<sup>7</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27

<sup>8</sup> See Md Crim. Pro. R. 11-104 & 11-508.

<sup>9</sup> *In re Nick H.*, 224 Md. App. 668, 694 (2015).

<sup>10</sup> Maryland Department of Juvenile Services, *2020 Data Resource Guide, Section II: Intake and Community Supervision*, available at <https://djs.maryland.gov/Documents/DRG/Intake-and-Community-Supervision.pdf>, at 26.

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For these reasons, the Maryland Office of the Public Defender urges an unfavorable report on House Bill 672.