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## **POSITION ON PROPOSED LEGISLATION**

**BILL: HB 1142 – Juvenile Offense Database**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 03/08/2022**

The Maryland Office of the Public Defender strongly opposes House Bill 1142, and respectfully requests that the Committee issue an unfavorable report on this Bill.

HB1142 violates the text and spirit of the juvenile causes act, and runs counter to the evidence-based, considered juvenile justice reform measures this body has championed. By publishing a centralized database of information that can easily be used to identify specific young people who have not been found facts sustained, HB1142 tears at the fabric of a rehabilitative juvenile justice system and creates tangible harms for young people. HB1142 does not solve any existing issues, as existing law already allows crime victim notification.

**Confidentiality is a cornerstone of the youth justice system.** The purpose of Maryland’s juvenile justice system is to hold youth and their parents accountable and provide rehabilitative services to the youth who need it without attaching the stigma of criminality to the individual, or to the services provided.

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>

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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 11-403. “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).

Confidentiality is an important tenet of the youth justice system because 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 told 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 biased perception led to the unfounded juvenile superpredator scare of the 1990s.

**Confidentiality protects young people, especially Black youth, from the long term collateral consequences of an arrest.** 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>5</sup> Similarly, HB 1142, 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: of 528,468 youth in Maryland, only 31% were Black, yet in FY2020, 62% of youth that had DJS intakes were Black.<sup>6</sup>

**Existing law already allows for sharing case information with complaining witnesses.** Maryland law already specifically requires notification to crime victims regarding delinquency cases.<sup>7</sup> The duty to inform and communicate with complaining witnesses is relegated to the prosecuting agency, the State’s Attorney’s Office.<sup>8</sup> The current crime victim notification laws balance the competing concerns for confidentiality for the youth with sharing information to those impacted by allowing information to be shared as it relates to a specific case.

**HB 1142 includes vague language that would prevent implementation.** House Bill 1142 leaves undefined what “diversion” means, what a “treatment program” means, what it means to be “referred” to one of those programs, what a “prior offense” is and how one can be quantified, “a general description of any judicial or other action taken,” and, of course, a “description of the offense.” There is no explanation as to what specificity must be provided for the “location” of the offense.

House Bill 1142 also requires reporting the location and time of “all offenses involving juveniles.” The term “offense” is not defined in HB1142, 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 in addition to 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

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<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.).

<sup>5</sup> *In re Nick H.*, 224 Md. App. 668, 694 (2015).

<sup>6</sup> Md. Dep’t Juv. Svcs., *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.

<sup>7</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-8a-27(g) and §3-8a-34.

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

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>9</sup> As it stands now, HB 1142 might be read to include status offenses, such as truancy, or violations, such as marijuana possession.<sup>10</sup> And, in representing young people accused with crimes, we often find the original “description of the offense,” that is, the police report, is rarely, if ever, close to what actually transpired. Young people, as with most in the criminal justice system, are often overcharged so prosecutors have the best chance to have charges “stick.”

Moreover, by asking whether a juvenile was “referred to a diversion or treatment program”, the Bill conflates the various processes young people can encounter in the juvenile justice system. Referrals for services can be informal, done by a DJS worker prior to any child ever stepping foot in a courtroom, or appearing for a virtual hearing. Referrals can also be formal, required by the Department of Juvenile Services. A Residential Treatment Center has an actual meaning in COMAR. Treatment programs might refer to mentoring, drug treatment, therapeutic, in-home, or out-of-home placements.

HB 1142 is also overly broad in including “alleged” offenses. This would include factually innocent children in this database, including those where facts have not been sustained against them, the juvenile court equivalent of being found not guilty. As such, a child, or that child’s family, or even someone who falsely accused them of a crime could look them up and have the constant reminder of something the youth was not even found to have done.

**The Data this Bill seeks to publish is unnecessary, duplicative, and perpetuates fear.**

HB 1142 would only serve to perpetuate fear of young people in the State of Maryland. Although news stories and headlines have perpetuated the falsehood that juvenile crime is rampant with armed carjackings, muggings, and gangs of roving teenagers running the streets, data shows that crime committed by young people is at its lowest point in a decade.<sup>11</sup> While HB 1142 attempts to appease those who believe that crime is on the rise and want to see children being held accountable by the juvenile justice system, this committee already has the knowledge, from research and studies, on what works to treat the causes of offenses perpetrated by children. We already have data on who is sent to juvenile facilities. We already have data on arrests on a monthly basis, delineated by type of offense. All of this is publically available. Baltimore City publishes arrest data by neighborhood. One can search by block and by arrest date. The “any prior offenses” language in the Bill, which is undefined and indeterminate, once more plays upon the stereotype of the juvenile superpredator.

The centralized database proposed by HB 1142 goes farther in destroying confidentiality than anything that exists even for adults in allowing anyone from intrepid reporters or internet

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<sup>9</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-8a-01(l).

<sup>10</sup> See Md. Code Ann., Cts. & Jud. Proc. § 3-8a-01(dd).

<sup>11</sup> See Md. Dep’t Juv. Svcs., Maryland Juvenile Services Long Term Trends FY 2011 – FY 2020, *available at* <https://djs.maryland.gov/Documents/trends/2020-Statewide-Overall-Trends.pdf>, 4.

doxxers to do a little digging and turn that database into one in which children are named and shamed. We ought to be protecting our youth instead of adding them to databases.

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For these reasons, the Maryland Office of the Public Defender urges an unfavorable report on House Bill 1142.

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**Submitted by: Maryland Office of the Public Defender, Government Relations Division.**