

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 1142
Department of Juvenile Services – Juvenile Offense Database
DATE: March 2, 2022
(3/10)
POSITION: Oppose, as drafted

The Maryland Judiciary opposes House Bill 1142, as drafted. This legislation adds a provision requiring the Department of Juvenile Services (the “Department”), in coordination with the Administrative Office of the Courts, to develop a publicly accessible database. The database will provide certain information that does not violate provisions of the law mandating the confidentiality of certain juvenile records.

This bill raises several issues, as drafted. There is no discernable way to obtain information on prior offenses committed by a juvenile and no practical and accurate way for the court to research a juvenile’s record in Maryland or outside Maryland. Such information generally resides in separate databases maintained by other state and federal agencies. Developing a database would necessitate expenditure of significant hours and would likely take months or years to create. Apart from developing the database, the larger concern is that the courts have no current mechanism for populating the data which resides in other databases.

Further, the population of individuals to whom the bill applies is not clear. The term “juvenile” is not defined in the bill, nor is it defined in Courts and Judicial Proceedings Title 3 or Subtitle 8A, Human Services Title 9. The term is defined in Code only in Human Services Article, § 9-303 (the definitional section for the laws around the Interstate Compact for Juveniles), where it is defined as meaning “any person defined as a juvenile in any member state or by the rules of the Interstate Commission”. *Id.*, Subsection (i)(1). The term could be interpreted to apply to all individuals served by the Department, in which case it would include certain individuals age 18 and over. Alternatively, it could be interpreted to mean “child” in which case the term would mean an individual under the age of 18 years per CJP § 3-8A-01(d).

In addition, the bill may apply to CINS children and juvenile victims. The bill uses the term “searchable database of all offenses involving juveniles” [emphasis added]. The bill

does not define the term “offense”. In Courts and Judicial Proceedings 3-8A-01(e), the term “offense” is used to refer to acts by a child in need of supervision, defined as “a child who requires guidance, treatment, or rehabilitation and:

- (1) Is required by law to attend school and is habitually truant;
- (2) Is habitually disobedient, ungovernable, and beyond the control of the person having custody of him;
- (3) Departs himself so as to injure or endanger himself or others; or
- (4) Has committed an offense applicable only to children.

[emphasis added]; contrast the definition of a “delinquent child” as a child who has committed an act which would be a crime if committed by an adult and who requires guidance, treatment, or rehabilitation. CJP § 3-8A-01(m)(l) [emphasis added]. That language could be interpreted to mean that the database is required to include a juvenile who is a victim of an offense.

In addition, Courts and Judicial Proceedings Title 3-8A allows for both the sealing and the expungement of juvenile police and court records. Courts and Judicial Proceedings §§ 3-8A-27(c), 3-8A-27.1. It is unclear what effect sealing or expungement would have on the database. For example, would the database processes have to include the removal of information related to a sealed or expunged case. Additionally, if the database is public, the efficacy of expungement and sealing would be limited by the bill.

Finally, the Judiciary is concerned that this database would allow a juvenile to be identified. While the proposal does not explicitly state whether the database is intended to be available to the public, the amendment to § 3-8A-27 suggests that intent. If so, practical experience indicates that through google and other sources, it may be possible to identify individual children - and their treatment plans and other personal services - through the type of information that is required to be posted. This can be particularly true in smaller jurisdictions.

cc. Hon. Dalya Attar
Judicial Council
Legislative Committee
Kelley O’Connor