

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 817 (Senator Shank)
Judicial Proceedings

Criminal Law - Informants - Identity of Minors

This bill prohibits the State from disclosing the identity of a minor until the start of a criminal trial if the minor has furnished information about an alleged criminal offense to (1) a police officer; (2) a representative of an administrative agency charged with the administration or enforcement of the law alleged to have been violated; or (3) any other person for the purpose of transmitting the information to the police officer or the representative.

Fiscal Summary

State Effect: The bill is procedural and does not materially affect State finances.

Local Effect: The bill is procedural and does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: Maryland has long recognized the State's privilege to withhold the identity of an informer. *Drouin v. State*, 222 Md. 271, 279 (1960). The purpose of this privilege "...is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation." *Roviaro v. United States*, 353 U.S. 53, 59 (1957).

However, this privilege is not absolute and must be weighed against a defendant's interest in a fair trial. *Brooks v. State*, 320 Md. 516, 522 (1990). In the *Roviaro* case, the Supreme Court determined that the privilege gives way when the disclosure of the informant's identity or the contents of the informant's communication "...is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause...." 353 U.S. at 60. To make this determination, courts must use a balancing test that weighs the public interest in protecting the State's flow of information against the defendant's right to prepare his defense. 353 U.S. at 62. The Maryland Court of Appeals noted that of particular interest to courts is "...the materiality of the informant's testimony to the determination of the accused's guilt or innocence." *Warrick v. State*, 326 Md. 696, 701 (1992).

Additional Information

Prior Introductions: None.

Cross File: HB 652 (Delegates Dumais and Serafini) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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