



POSITION ON PROPOSED LEGISLATION

BILL: HB 502 Office of the State's Attorney - Collection and Publication of Prosecutorial Information
POSITION: Support with amendments
DATE: February 10, 2021

The Maryland Office of the Public Defender supports House Bill 502 with amendments and offers the following information.

The transparency and integrity of Maryland's justice system is of vital importance to every citizen, and Prosecutors are an integral part of our justice system. In 2018 alone there were approximately 30,000 criminal cases in Circuit Court, 130,000 criminal cases in District Court, and 15,000 delinquency cases in Juvenile Courts. ([Maryland Judiciary Statistical Abstracts 2018. P. 15 & 38.](#)). Currently data regarding criminal and juvenile delinquency cases are collected five different entities: the Judiciary, the Governor's Office of Crime Prevention, Youth and Victim Services, the Department of Juvenile Services, and the Maryland State Commission on Criminal Sentencing Policy, and Maryland's Open Data Portal.

The [Open Data Portal](#) publishes a wide variety of data on public safety and a variety of other topics. The Governor's Office of Crime Prevention, Youth, and Victim Services publishes a bi-annual [report on Juveniles Charged as Adults](#) which publishes the number of cases where children charged as adults, in addition to data regarding race, sex, and charge. The Department of Juvenile Services publishes an annual [Data Resource Guide](#), a wealth of information on children in juvenile court including the number of juvenile cases, placements in juvenile facilities, recidivism rates, and demographic data. MSCCSP collects all of the data included on sentencing guidelines worksheets (which are only used in Circuit Court cases): demographic data, sentencing guidelines, the actual sentence, the sentencing judge, and whether the defendant was indigent, among other things. The Judiciary's statistical abstracts report the number of cases opened and closed each year. None of these entities collects data about prosecutorial decisions.

As a 20 year veteran attorney, primarily representing children charged both in juvenile courts and as adults in criminal court throughout the state, I noticed arbitrariness in how waiver petitions were being filed by state’s attorneys in Maryland. Throughout 2020, on behalf of the Public Defender’s Office, I engaged in a data collection project looking for information about the filing of petitions to Waive Jurisdiction of the Juvenile Court (meaning to prosecute a child as an adult rather than as a juvenile). Under [current Maryland Law](#), once a child turns 15 a child’s juvenile case can be moved to adult court for any charge, no matter how minor. An examination of the DJS Data Resource Guides reveals that children of color have historically been waived in far greater numbers than white children. It stands to reason then, that prosecutors must be filing more petitions against children of color than white children. I filed Public Information Act Requests with the Administrative Office of Courts attempting to find out the number of waiver petitions filed statewide and requested demographic about the children against whom those petitions were filed. The A.O.C. denied my request on the grounds that it would be too time consuming. I filed PIAs with all of the State’s Attorneys Offices requesting the same information, along with their policies governing the decision making process for filing Waiver Petitions. No office had any policies governing this completely discretionary and critical decision. Only one office (Baltimore County) maintained any data on their cases, and it was only possible to collect that data because they had instituted a new case management system in 2018.

The prosecutorial decision to attempt to seek Waiver of the Juvenile Court’s jurisdiction over a child is just one example of the completely discretionary decisions prosecutors make every day that impact the lives of all Marylanders. While prosecutors should certainly have broad discretion in the handling of their cases, there should also be accountability and transparency to ensure that the laws of our state are being enforced fairly and justly. For these reasons, we support this bill and would recommend the following proposed amendments to further include collecting and publishing prosecutorial information about juvenile cases.

Page 2 line 15: (b) “Case number” means the unique number assigned to a criminal OR JUVENILE DELINQUENCY CASE ASSOCIATED WITH A PARTICULAR CRIMINAL CHARGE.

Page 3 lines 2-3: (G) “Disposition” means the conclusion of the prosecution of a charge, IN EITHER CIRCUIT, DISTRICT, OR JUVENILE COURTS, including:

Page 3 lines 11-13: (H) “Initiation means the creation or institution of a charge against a criminal defendant OR JUVENILE RESPONDENT, whether by police, prosecutors, grand jury or other entity.

Page 4 between lines 18 and 19 add: (V) AGE AT THE TIME THE CRIME OR DELINQUENT ACT WAS ALLEGEDLY COMMITTED.

Page 6 between lines 15 and 16: (28) FOR JUVENILE CASES, WHETHER A PETITION TO WAIVE JUVENILE COURT JURISDICTION WAS FILED. (29) FOR CASES WHERE CHILDREN ARE CHARGED AS ADULTS, WHETHER A HEARING TO TRANSFER JURISDICTION TO JUVENILE COURT WAS HELD, AND IF SO THE STATE’S ATTORNEY’S POSITION ON TRANSFER.

Page 6 after line 25: (VII) WHETHER AN AGREEMENT TO TRANSFER THE CASE TO JUVENILE COURT, OR WAIVE JURISDICTION WAS A TERM OF THE PLEA AGREEMENT.

The Office of the Public Defender is committed to ensuring justice and equality for all, and we believe that this can only be accomplished when all parts of law enforcement, including the prosecution, are open and transparent about their decisions and decision making processes. For these reasons, we support House Bill 502 with the proposed amendments.

Respectfully submitted,

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