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Introduced and read first time: February 13, 1998

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Court - Jurisdiction of Court and Use of Juvenile Records**

3 FOR the purpose of eliminating the jurisdiction of a juvenile court in certain
4 subsequent proceedings involving a child who has been previously charged as an
5 adult of a crime under certain circumstances; establishing an order of a juvenile
6 court waiving jurisdiction to be final; repealing the authority of a juvenile court
7 to elect to waive jurisdiction of certain subsequent proceedings; authorizing
8 access to and use by certain persons of a police or court record of a child in
9 certain proceedings in which the child is charged as an adult with an offense;
10 and generally relating to the jurisdiction of juvenile courts and access and use of
11 certain police and court records under certain circumstances.

12 BY repealing and reenacting, with amendments,
13 Article - Courts and Judicial Proceedings
14 Section 3-804, 3-806, 3-817, and 3-828
15 Annotated Code of Maryland
16 (1995 Replacement Volume and 1997 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Courts and Judicial Proceedings**

20 3-804.

21 (a) The court has exclusive original jurisdiction over:

22 (1) A child alleged to be delinquent, in need of supervision, in need of
23 assistance or who has received a citation for a violation; and

24 (2) With respect to any child who is under the jurisdiction of the juvenile
25 court and previously has been adjudicated a child in need of assistance, all
26 termination of parental rights proceedings and related adoption proceedings.

1 (b) The court has exclusive original jurisdiction over proceedings arising
2 under the Interstate Compact on Juveniles.

3 (c) The court has concurrent jurisdiction over proceedings against an adult for
4 the violation of § 3-831 of this subtitle. However, the court may waive its jurisdiction
5 under this subsection upon its own motion or upon the motion of any party to the
6 proceeding, if charges against the adult arising from the same incident are pending in
7 the criminal court. Upon motion by either the State's Attorney or the adult charged
8 under § 3-831, the court shall waive its jurisdiction, and the adult shall be tried in the
9 criminal court according to the usual criminal procedure.

10 (d) The jurisdiction of the court is concurrent with that of the District Court in
11 any criminal case arising under the compulsory public school attendance laws of this
12 State.

13 (e) The court does not have jurisdiction over:

14 (1) A child at least 14 years old alleged to have done an act which, if
15 committed by an adult, would be a crime punishable by death or life imprisonment, as
16 well as all other charges against the child arising out of the same incident, unless an
17 order removing the proceeding to the court has been filed under Article 27, § 594A of
18 the Code;

19 (2) A child at least 16 years old alleged to have done an act in violation of
20 any provision of the Transportation Article or other traffic law or ordinance, except an
21 act that prescribes a penalty of incarceration;

22 (3) A child at least 16 years old alleged to have done an act in violation of
23 any provision of law, rule, or regulation governing the use or operation of a boat,
24 except an act that prescribes a penalty of incarceration; [or]

25 (4) A child at least 16 years old alleged to have committed any of the
26 following crimes, as well as all other charges against the child arising out of the same
27 incident, unless an order removing the proceeding to the court has been filed under
28 Article 27, § 594A of the Code:

29 (i) Abduction;

30 (ii) Kidnapping;

31 (iii) Second degree murder;

32 (iv) Manslaughter, except involuntary manslaughter;

33 (v) Second degree rape;

34 (vi) Robbery with a dangerous or deadly weapon;

35 (vii) Second degree sexual offense in violation of Article 27, §
36 464A(a)(1) of the Code;

- 1 (viii) Third degree sexual offense in violation of Article 27, §
2 464B(a)(1) of the Code;
- 3 (ix) A crime in violation of Article 27, § 36B, § 373, § 374, § 445, §
4 446, or § 481C of the Code;
- 5 (x) Using, wearing, carrying, or transporting of firearm during and
6 in relation to a drug trafficking crime in violation of Article 27, § 281A of the Code;
- 7 (xi) Use of a firearm in violation of Article 27, § 291A of the Code;
- 8 (xii) Carjacking or armed carjacking in violation of Article 27, § 348A
9 of the Code;
- 10 (xiii) Assault in the first degree in violation of Article 27, § 12A-1 of
11 the Code;
- 12 (xiv) Attempted murder in the second degree in violation of Article
13 27, § 411A of the Code;
- 14 (xv) Attempted rape or attempted sexual offense in the second
15 degree under Article 27, § 464F of the Code; or
- 16 (xvi) Attempted robbery with a dangerous or deadly weapon under
17 Article 27, § 488 of the Code; OR

18 (5) THE SUBSEQUENT ACTS OF A CHILD WHO HAS BEEN PREVIOUSLY
19 CHARGED AS AN ADULT OF A CRIME OTHER THAN:

20 (I) A VIOLATION OF THE TRANSPORTATION ARTICLE OR OTHER
21 TRAFFIC LAW OR ORDINANCE FOR WHICH A PENALTY OF INCARCERATION IS NOT
22 AUTHORIZED; OR

23 (II) A VIOLATION OF ANY LAW GOVERNING THE USE OR OPERATION
24 OF A BOAT FOR WHICH A PENALTY OF INCARCERATION IS NOT AUTHORIZED.

25 (f) If the child is charged with two or more violations of the Maryland Vehicle
26 Law, another traffic law or ordinance, or the State Boat Act, allegedly arising out of
27 the same incident and which would result in the child being brought before both the
28 court and a court exercising criminal jurisdiction, the court has exclusive jurisdiction
29 over all of the charges.

30 3-806.

31 (a) If the court obtains jurisdiction over a child, that jurisdiction continues
32 until that person reaches 21 years of age unless terminated sooner.

33 (b) This section does not affect the jurisdiction of other courts over a person
34 who commits an offense after he reaches the age of 18.

1 (c) Unless otherwise ordered by the court, the court's jurisdiction is
2 terminated over a person who has reached 18 years of age when he is convicted of a
3 crime, including manslaughter by automobile, unauthorized use or occupancy of a
4 motor vehicle, or operating a vehicle while under the influence of intoxicating liquors
5 or drugs, but excluding a conviction for a violation of any other traffic law or
6 ordinance or any provision of the State Boat Act, or the fish and wildlife laws of the
7 State.

8 (d) FOR ANY SUBSEQUENT CRIMINAL ACT, THE COURT'S JURISDICTION IS
9 TERMINATED OVER A PERSON WHO HAS BEEN PREVIOUSLY CHARGED AS AN ADULT
10 OF A CRIME OTHER THAN:

11 (1) A VIOLATION OF THE TRANSPORTATION ARTICLE OR OTHER TRAFFIC
12 LAW OR ORDINANCE FOR WHICH A PENALTY OF INCARCERATION IS NOT
13 AUTHORIZED; OR

14 (2) A VIOLATION OF ANY LAW GOVERNING THE USE OR OPERATION OF A
15 BOAT FOR WHICH A PENALTY OF INCARCERATION IS NOT AUTHORIZED.

16 (E) If the court in a child in need of assistance proceeding places a child in the
17 care and custody of a person other than the parent, guardian, or custodian who had
18 custody at the time the petition is filed, the custody order of the court shall continue
19 after the termination of the child in need of assistance proceeding unless:

20 (1) The custody order is terminated by the court; or

21 (2) The custody order is modified by an order of any other court with
22 jurisdiction.

23 3-817.

24 (a) The court may waive the exclusive jurisdiction conferred by § 3-804 with
25 respect to a petition alleging delinquency by:

26 (1) A child who is 15 years old or older; or

27 (2) A child who has not reached his 15th birthday, but who is charged
28 with committing an act which if committed by an adult, would be punishable by death
29 or life imprisonment.

30 (b) The court may not waive its jurisdiction until after it has conducted a
31 waiver hearing, held prior to an adjudicatory hearing and after notice has been given
32 to all parties as prescribed by the Maryland Rules. The waiver hearing is solely to
33 determine whether the court should waive its jurisdiction.

34 (c) The court may not waive its jurisdiction unless it determines, from a
35 preponderance of the evidence presented at the hearing, that the child is an unfit
36 subject for juvenile rehabilitative measures. For purposes of determining whether to
37 waive its jurisdiction, the court shall assume that the child committed the delinquent
38 act alleged.

1 (d) In making its determination, the court shall consider the following criteria
2 individually and in relation to each other on the record:

3 (1) Age of the child;

4 (2) Mental and physical condition of the child;

5 (3) The child's amenability to treatment in any institution, facility, or
6 program available to delinquents;

7 (4) The nature of the offense and the child's alleged participation in it;
8 and

9 (5) The public safety.

10 (e) If the jurisdiction is waived, the court shall order the child held for trial
11 under the regular procedures of the court which would have jurisdiction over the
12 offense if committed by an adult. The petition alleging delinquency shall be
13 considered a charging document for purposes of detaining the child pending a bail
14 hearing.

15 (f) An order waiving jurisdiction is [interlocutory] FINAL.

16 [(g) If the court has once waived its jurisdiction with respect to a child in
17 accordance with this section, and that child is subsequently brought before the court
18 on another charge of delinquency, the court may waive its jurisdiction in the
19 subsequent proceeding after summary review.]

20 3-828.

21 (a) (1) A police record concerning a child is confidential and shall be
22 maintained separate from those of adults. Its contents may not be divulged, by
23 subpoena or otherwise, except by order of the court upon good cause shown or as
24 otherwise provided in § 7-303 of the Education Article.

25 (2) This subsection does not prohibit access to and confidential use of
26 [the record] A POLICE RECORD CONCERNING A CHILD:

27 (I) [by] BY the Department of Juvenile Justice or in the
28 investigation and prosecution of the child by any law enforcement agency; OR

29 (II) IN ANY PROCEEDING IN WHICH THE INDIVIDUAL WHO IS THE
30 SUBJECT OF THE POLICE RECORD IS CHARGED AS AN ADULT WITH AN OFFENSE, BY
31 PERSONNEL OF THE CIRCUIT OR DISTRICT COURT NOT SITTING AS THE JUVENILE
32 COURT, THE STATE'S ATTORNEY, OR COUNSEL FOR THE DEFENDANT.

33 (b) (1) A court record pertaining to a child is confidential and its contents
34 may not be divulged, by subpoena or otherwise, except by order of the court upon good
35 cause shown or as provided in § 7-303 of the Education Article.

1 (2) This subsection does not prohibit access to and the use of the court
2 record or fingerprints of a child described under the Criminal Justice Information
3 System subtitle of Article 27 of the Code in a proceeding in the court involving the
4 child, by personnel of the court, the State's Attorney, counsel for the child, a
5 court-appointed special advocate for the child, or authorized personnel of the
6 Department of Juvenile Justice, or, in a proceeding involving a child alleged to be in
7 need of assistance, by authorized personnel of the Social Services Administration and
8 local departments of social services of the Department of Human Resources in order
9 to conduct a child abuse or neglect investigation or to comply with requirements
10 imposed under Title IV-E of the Social Security Act.

11 (3) Information obtained from a juvenile court record by authorized
12 personnel of the Department of Human Resources under paragraph (2) of this
13 subsection is subject to the provisions of Article 88A, § 6 of the Code.

14 (4) (i) Except as provided in subparagraph (ii) of this paragraph, this
15 subsection does not prohibit access to and confidential use of the court record or
16 fingerprints of a child described under the Criminal Justice Information System
17 subtitle of Article 27 of the Code in an investigation and prosecution by a law
18 enforcement agency.

19 (ii) The court record or fingerprints of a child described under
20 Article 27, §§ 747(a)(21) and 747A of the Code may not be disclosed to:

- 21 1. A federal criminal justice agency or information center; or
- 22 2. Any law enforcement agency other than a law enforcement
23 agency of the State or a political subdivision of the State.

24 (5) (i) This subsection does not prohibit access to and use of a court
25 record by a judicial officer who is authorized under the Maryland Rules to determine
26 a defendant's eligibility for pretrial release, BY PERSONNEL OF THE CIRCUIT OR
27 DISTRICT COURT NOT SITTING AS THE JUVENILE COURT, counsel for the defendant,
28 or the State's Attorney if [:

29 1. The] THE individual who is the subject of the court record
30 is charged as an adult with an offense[;

31 2. The access to and use of the court record is strictly limited
32 for the purpose of determining the defendant's eligibility for pretrial release; and

33 3. The court record concerns an adjudication of delinquency
34 that occurred within 3 years of the date the individual is charged as an adult].

35 (ii) The court of appeals may adopt rules to implement the
36 provisions of this paragraph.

37 (c) The court, on its own motion or on petition, and for good cause shown, may
38 order the court records of a child sealed, and, upon petition or on its own motion, shall
39 order them sealed after the child has reached 21 years of age. If sealed, the court

1 records of a child may not be opened, for any purpose, except by order of the court
2 upon good cause shown.

3 (d) This section does not prohibit access to or use of any juvenile record by the
4 Maryland Division of Parole and Probation or the Maryland Parole Commission when
5 the Division or the Commission is carrying out any of their statutory duties either at
6 the direction of a court of competent jurisdiction, or when the Maryland Parole
7 Commission is carrying out any of its statutory duties, if the record concerns a charge
8 or adjudication of delinquency.

9 (e) This section does not prohibit access to and use of any juvenile record by
10 the Maryland Division of Correction when the Division is carrying out any of its
11 statutory duties if: (1) the individual to whom the record pertains is committed to the
12 custody of the Division; and (2) the record concerns an adjudication of delinquency.

13 (f) Subject to the provisions of Article 83C, § 2-115 of the Code, this section
14 does not prohibit access to or use of any juvenile record for criminal justice research
15 purposes. A record used under this subsection may not contain the name of the
16 individual to whom the record pertains, or any other identifying information which
17 could reveal the individual's name.

18 (g) This section does not prohibit a victim who has filed a notification request
19 form from being notified of proceedings and events involving the defendant or child as
20 provided in this article or Article 27 of the Code.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
22 effect October 1, 1998.