

HOUSE BILL 1021

Unofficial Copy  
E3  
HB 1272/98 - JUD

1999 Regular Session  
9r1260

---

By: **Delegates Conway, Cane, Bozman, Rudolph, McClenahan, and Eckardt**  
Introduced and read first time: February 15, 1999  
Assigned to: Rules and Executive Nominations

---

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 provisions of law eliminating the  
7 authority of a juvenile court to waive jurisdiction of certain subsequent  
8 proceedings involving a child who has been convicted as an adult of a felony;  
9 repealing the authority of a juvenile court to elect to waive jurisdiction of certain  
10 subsequent proceedings; authorizing access to and use by certain persons of a  
11 police or court record of a child in certain proceedings in which the child is  
12 charged as an adult with an offense; and generally relating to the jurisdiction of  
13 juvenile courts and access and use of certain police and court records under  
14 certain circumstances.

15 BY repealing and reenacting, with amendments,  
16 Article - Courts and Judicial Proceedings  
17 Section 3-804, 3-806, 3-817, and 3-828  
18 Annotated Code of Maryland  
19 (1998 Replacement Volume)

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

22 **Article - Courts and Judicial Proceedings**

23 3-804.

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

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

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

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

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

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

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

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

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

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

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

32                   (i)     Abduction;

33                   (ii)    Kidnapping;

34                   (iii)   Second degree murder;

35                   (iv)   Manslaughter, except involuntary manslaughter;

36                   (v)    Second degree rape;

- 1 (vi) Robbery with a dangerous or deadly weapon;
- 2 (vii) Second degree sexual offense in violation of Article 27, §  
3 464A(a)(1) of the Code;
- 4 (viii) Third degree sexual offense in violation of Article 27, §  
5 464B(a)(1) of the Code;
- 6 (ix) A crime in violation of Article 27, § 36B, § 373, § 374, § 445, §  
7 446, or § 481C of the Code;
- 8 (x) Using, wearing, carrying, or transporting of firearm during and  
9 in relation to a drug trafficking crime in violation of Article 27, § 281A of the Code;
- 10 (xi) Use of a firearm in violation of Article 27, § 291A of the Code;
- 11 (xii) Carjacking or armed carjacking in violation of Article 27, § 348A  
12 of the Code;
- 13 (xiii) Assault in the first degree in violation of Article 27, § 12A-1 of  
14 the Code;
- 15 (xiv) Attempted murder in the second degree in violation of Article  
16 27, § 411A of the Code;
- 17 (xv) Attempted rape or attempted sexual offense in the second  
18 degree under Article 27, § 464F of the Code; or
- 19 (xvi) Attempted robbery with a dangerous or deadly weapon under  
20 Article 27, § 488 of the Code; or
- 21 (5) [A child who previously has been convicted as an adult of a felony  
22 and is subsequently alleged to have committed an act that would be a felony if  
23 committed by an adult, unless an order removing the proceeding to the court has been  
24 filed under Article 27, § 594A of the Code] THE SUBSEQUENT ACTS OF A CHILD WHO  
25 HAS PREVIOUSLY BEEN CHARGED AS AN ADULT OF A CRIME OTHER THAN:
- 26 (I) A VIOLATION OF ANY PROVISION OF THE TRANSPORTATION  
27 ARTICLE OR OTHER TRAFFIC LAW OR ORDINANCE, EXCEPT AN ACT THAT  
28 PRESCRIBES A PENALTY OF INCARCERATION; OR
- 29 (II) A VIOLATION OF ANY PROVISION OF LAW, RULE, OR  
30 REGULATION GOVERNING THE USE OR OPERATION OF A BOAT, EXCEPT AN ACT THAT  
31 PRESCRIBES A PENALTY OF INCARCERATION.
- 32 (f) If the child is charged with two or more violations of the Maryland Vehicle  
33 Law, another traffic law or ordinance, or the State Boat Act, allegedly arising out of  
34 the same incident and which would result in the child being brought before both the  
35 court and a court exercising criminal jurisdiction, the court has exclusive jurisdiction  
36 over all of the charges.

1 3-806.

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

4 (b) This section does not affect the jurisdiction of other courts over a person  
5 who commits an offense after [he] THE PERSON reaches the age of 18.

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

13 (D) FOR ANY SUBSEQUENT CRIMINAL ACT, THE COURT'S JURISDICTION IS  
14 TERMINATED OVER A PERSON WHO HAS BEEN PREVIOUSLY CHARGED AS AN ADULT  
15 OF A CRIME OTHER THAN:

16 (I) A VIOLATION OF ANY PROVISION OF THE TRANSPORTATION  
17 ARTICLE OR OTHER TRAFFIC LAW OR ORDINANCE, EXCEPT AN ACT THAT  
18 PRESCRIBES A PENALTY OF INCARCERATION; OR

19 (II) A VIOLATION OF ANY PROVISION OF LAW, RULE, OR  
20 REGULATION GOVERNING THE USE OR OPERATION OF A BOAT, EXCEPT AN ACT THAT  
21 PRESCRIBES A PENALTY OF INCARCERATION.

22 [(d)] (E) If the court in a child in need of assistance proceeding places a child  
23 in the care and custody of a person other than the parent, guardian, or custodian who  
24 had custody at the time the petition is filed, the custody order of the court shall  
25 continue after the termination of the child in need of assistance proceeding unless:

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

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

29 3-817.

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

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

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

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

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

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

12 (1) Age of the child;

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

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

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

18 (5) The public safety.

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

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

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

29 3-828.

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

34 (2) This subsection does not prohibit:

35 (i) Access to and confidential use of [the] A POLICE record  
36 CONCERNING A CHILD:

1                                   1.       [by] BY the Department of Juvenile Justice or in the  
2 investigation and prosecution of the child by any law enforcement agency; or

3                                   2.       IN ANY PROCEEDING IN WHICH THE INDIVIDUAL WHO IS  
4 THE SUBJECT OF THE POLICE RECORD IS CHARGED AS AN ADULT WITH AN OFFENSE,  
5 BY PERSONNEL OF THE CIRCUIT OR DISTRICT COURT NOT SITTING AS THE JUVENILE  
6 COURT, THE STATE'S ATTORNEY, OR COUNSEL FOR THE DEFENDANT; OR

7                                   (ii)     A law enforcement agency of the State or of a political  
8 subdivision of the State or the criminal justice information system from including, in  
9 the law enforcement computer information system, information about an outstanding  
10 juvenile court ordered writ of attachment, for the sole purpose of apprehending a child  
11 named in the writ.

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

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

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

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

33                               (ii)     The court record or fingerprints of a child described under  
34 Article 27, §§ 747(a)(21) and (22) and 747A of the Code may not be disclosed to:

35                                   1.       A federal criminal justice agency or information center; or

36                                   2.       Any law enforcement agency other than a law enforcement  
37 agency of the State or a political subdivision of the State.

38                               (5)     (i)     This subsection does not prohibit access to and use of a court  
39 record by a judicial officer who is authorized under the Maryland Rules to determine  
40 a defendant's eligibility for pretrial release, BY PERSONNEL OF THE CIRCUIT OR

1 DISTRICT COURT NOT SITTING AS THE JUVENILE COURT, counsel for the defendant,  
2 or the State's Attorney if [:

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

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

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

9                                   (ii)          The Court of Appeals may adopt rules to implement the  
10 provisions of this paragraph.

11       (c)          The court, on its own motion or on petition, and for good cause shown, may  
12 order the court records of a child sealed, and, upon petition or on its own motion, shall  
13 order them sealed after the child has reached 21 years of age. If sealed, the court  
14 records of a child may not be opened, for any purpose, except by order of the court  
15 upon good cause shown.

16       (d)          This section does not prohibit access to or use of any juvenile record by the  
17 Maryland Division of Parole and Probation or the Maryland Parole Commission when  
18 the Division or the Commission is carrying out any of their statutory duties either at  
19 the direction of a court of competent jurisdiction, or when the Maryland Parole  
20 Commission is carrying out any of its statutory duties, if the record concerns a charge  
21 or adjudication of delinquency.

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

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

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

34       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
35 October 1, 1999.