

Chapter 102

(House Bill 133)

AN ACT concerning

Courts and Judicial Proceedings – Juvenile Records – Access by the Division of Pretrial Detention and Services

FOR the purpose of providing that certain laws relating to the confidentiality of juvenile ~~police and court~~ records do not prohibit access to and use of ~~certain~~ juvenile court records by the Maryland Division of Pretrial Detention and Services under certain circumstances; and generally relating to juvenile records.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–27
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Courts and Judicial Proceedings

3–8A–27.

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

(2) This subsection does not prohibit:

(i) Access to and confidential use of the record by the Department of Juvenile Services or in the investigation and prosecution of the child by any law enforcement agency;

(ii) Access to and confidential use of the record by the Baltimore City Health Department:

1. If the Baltimore City Health Department is providing treatment or care to a child who is the subject of the record, for a purpose relevant to the provision of the treatment or care;

2. If the record concerns a child convicted of a crime or adjudicated delinquent for an act that caused a death or near fatality; or

3. If the record concerns a victim of a crime of violence, as defined in § 14–101 of the Criminal Law Article, who is a child residing in Baltimore City for the purpose of developing appropriate programs and policies aimed at reducing violence against children in Baltimore City;

(iii) A law enforcement agency of the State or of a political subdivision of the State, the Department of Juvenile Services, or the criminal justice information system from including in the law enforcement computer information system information about an outstanding juvenile court ordered writ of attachment, for the sole purpose of apprehending a child named in the writ; or

(iv) A law enforcement agency of the State or of a political subdivision of the State from releasing to the public photographs and identifying information of a child who has escaped from a detention center for juveniles or a secure residential facility for juveniles, for the purposes of facilitating apprehension of the child and ensuring public safety.

(3) (i) The Baltimore City Health Department shall be liable for the unauthorized release of a police record under this subsection.

(ii) Within 180 days after the Baltimore City Health Department accesses a police record under this subsection, the Baltimore City Health Department shall submit a report to the law enforcement agency from which the record was received detailing the purposes for which the record was used.

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

(2) This subsection does not prohibit access to and the use of the court record or fingerprints of a child described under Title 10, Subtitle 2 of the Criminal Procedure Article in a proceeding in the court involving the child, by personnel of the court, the State’s Attorney, counsel for the child, a court–appointed special advocate for the child, or authorized personnel of the Department of Juvenile Services.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, this subsection does not prohibit access to and confidential use of the court record or fingerprints of a child described under Title 10, Subtitle 2 of the Criminal Procedure Article by the Department of Juvenile Services or in an investigation and prosecution by a law enforcement agency.

(ii) The court record or fingerprints of a child described under §§ 10–215(a)(21) and (22), 10–216, and 10–220 of the Criminal Procedure Article may not be disclosed to:

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

(4) (i) The Department of Juvenile Services may provide access to and the confidential use of a treatment plan of a child described under Title 10, Subtitle 2 of the Criminal Procedure Article by an agency in the District of Columbia or a state agency in Virginia, if the agency:

1. Performs the same functions in the jurisdiction of the agency as described in § 9–216(a) of the Human Services Article;
2. Has a reciprocal agreement with the State that provides that the specific information to be shared by the State is the same type of information that will be shared by the agency; and
3. Has custody of the child.

(ii) A record that is shared under this paragraph may only provide information that is relevant to the supervision, care, and treatment of the child.

(iii) The Department of Juvenile Services shall be liable for an unauthorized release of a court record under this paragraph.

(iv) The Department of Juvenile Services shall adopt regulations to implement this paragraph.

(5) (i) This subsection does not prohibit access to and use of a court record by a judicial officer who is authorized under the Maryland Rules to determine a defendant's eligibility for pretrial release, counsel for the defendant, ~~or~~ the State's Attorney, **OR THE MARYLAND DIVISION OF PRETRIAL DETENTION AND SERVICES** if:

1. The individual who is the subject of the court record is charged as an adult with an offense;
2. The access to and use of the court record is strictly limited for the purpose of determining the defendant's eligibility for pretrial release; and

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

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

(6) (i) This subsection does not prohibit access to and confidential use of a court record by the Baltimore City Health Department:

1. If the Baltimore City Health Department is providing treatment or care to a child who is the subject of the record, for a purpose relevant to the provision of the treatment or care;

2. If the record concerns a child convicted of a crime or adjudicated delinquent for an act that caused a death or near fatality; or

3. If the record concerns a victim of a crime of violence, as defined in § 14-101 of the Criminal Law Article, who is a child residing in Baltimore City for the purpose of developing appropriate programs and policies aimed at reducing violence against children in Baltimore City.

(ii) 1. The Baltimore City Health Department shall be liable for the unauthorized release of a court record under this paragraph.

2. Within 180 days after the Baltimore City Health Department accesses a court record under this paragraph, the Baltimore City Health Department shall submit a report to the court detailing the purposes for which the record was used.

(7) (i) This subsection does not prohibit access to and confidential use of a court record by the Department of Human Resources for the purpose of claiming federal Title IV-E funds.

(ii) The Department of Human Resources shall be liable for the unauthorized release of a court record under this paragraph.

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

(d) This section does not prohibit access to or use of any juvenile record by the Maryland Division of Parole and Probation or the Maryland Parole Commission

when the Division or the Commission is carrying out any of their statutory duties either at the direction of a court of competent jurisdiction, or when the Maryland Parole Commission is carrying out any of its statutory duties, if the record concerns a charge or adjudication of delinquency.

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

~~(f) THIS SECTION DOES NOT PROHIBIT ACCESS TO AND USE OF ANY JUVENILE RECORD BY THE MARYLAND DIVISION OF PRETRIAL DETENTION AND SERVICES WHEN THE DIVISION IS CARRYING OUT ANY OF ITS STATUTORY DUTIES, IF THE RECORD CONCERNS A CHARGE OR AN ADJUDICATION OF DELINQUENCY, AND:~~

~~(1) THE INDIVIDUAL TO WHOM THE RECORD PERTAINS IS IN THE CUSTODY OF THE COMMISSIONER OF PRETRIAL DETENTION AND SERVICES; OR~~

~~(2) THE INDIVIDUAL TO WHOM THE RECORD PERTAINS IS SUPERVISED BY THE DIVISION'S PRETRIAL RELEASE SERVICES PROGRAM.~~

~~(f)~~ (g) Subject to the provisions of §§ 9-219 and 9-220 of the Human Services Article, this section does not prohibit access to or use of any juvenile record for criminal justice research purposes. A record used under this subsection may not contain the name of the individual to whom the record pertains, or any other identifying information which could reveal the individual's name.

~~(g)~~ (h) This section does not prohibit a victim or victim's representative who has filed a notification request form from being notified of proceedings and events involving the defendant or child as provided in this subtitle, the Criminal Procedure Article, or the Criminal Law Article.

~~(h)~~ (i) This section does not prohibit the Department of Public Safety and Correctional Services or a supervising authority, as defined in § 11-701 of the Criminal Procedure Article, from accessing or using the part of a juvenile record that identifies an offense committed by a juvenile for purposes of complying with Title 11, Subtitle 7 of the Criminal Procedure Article.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, April 12, 2011.