

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 870
Judiciary

(Delegate Carter, *et al.*)

Criminal Procedure - Confidentiality of Police and Court Records Pertaining to
Minor

This bill establishes that police and court records pertaining to a minor who is arrested and charged as an adult are confidential and may not be divulged except under specified circumstances.

Fiscal Summary

State Effect: The bill's changes can be implemented and enforced using existing resources.

Local Effect: The bill's changes can be implemented and enforced using existing resources.

Small Business Effect: None.

Analysis

Bill Summary: Unless otherwise specified, a police record concerning a minor who is arrested and charged as an adult is confidential and must be maintained separate from those of adults. A court record pertaining to a minor who is charged as an adult is also confidential. The contents of the court or police record may not be divulged, by subpoena or otherwise, except by court order on a showing of good cause, or as otherwise permitted by law, from the time of arrest until (1) it is determined that the minor is ineligible for transfer under reverse waiver provisions; (2) the time for the filing of a request for transfer has expired; or (3) a request for transfer has been denied.

The bill does not prohibit:

- access to and confidential use of the police record by the Department of Public Safety and Correctional Services (DPSCS) or in the investigation and prosecution of the minor by any law enforcement agency;
- a law enforcement agency of the State or of a political subdivision of the State, DPSCS, or the Criminal Justice Information System, from including in the law enforcement computer information system information about an outstanding court-ordered writ of attachment, for the sole purpose of apprehending a minor named in the writ; or
- a law enforcement agency of the State or of a political subdivision in the State from releasing to the public photographs and identifying information of a minor who has escaped custody, for the purposes of facilitating apprehension of the minor and ensuring public safety.

The bill does not prohibit review of a court record by (1) personnel of the court; (2) a party; (3) counsel for a party; (4) a court-appointed special advocate for a minor; (5) authorized personnel of the Social Services Administration within the Department of Human Resources and local departments of social services in order to conduct a child abuse or neglect investigation or to comply with requirements imposed under federal law; or (6) a victim.

Information obtained from a court record is subject to provisions of law relating to the confidentiality of child abuse and neglect records.

Current Law:

Confidentiality of Records in Juvenile Court

In general, a court record concerning a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or in certain circumstances relating to notification of a local superintendent or nonpublic school principal upon the arrest of a child for specified offenses. This prohibition does not restrict access to and the use of court records or fingerprints in court proceedings 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 (DJS). Subject to certain exceptions, the restriction also does not prohibit access to and confidential use of the court record or fingerprints of a child by DJS or in an investigation and prosecution by a law enforcement agency.

In general, police records concerning a child are confidential and maintained separately from adult records. The contents of these records may not be divulged except by court order for good cause shown, or in specific situations in which police notify school superintendents of the arrest of a student. However, records may still be accessed by DJS or by any law enforcement agency involved in the investigation and prosecution of a child and under specific situations related to writs of attachment to apprehend a child named in the writ.

Child Abuse and Neglect Records

All records and reports about child abuse and neglect are confidential; however, records of child abuse or neglect must be disclosed pursuant to an order of the court or an administrative law judge. Child abuse and neglect records may be disclosed on request to employees or persons of interest as specified in statute, including specified personnel of the Department of Human Resources and local departments of social services, law enforcement personnel, and individuals who are providing treatment or care to a child who is the subject of a report of child abuse or neglect.

Jurisdiction of the Juvenile Court and Reverse Waivers

In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for alcoholic beverage violations. The juvenile court may waive jurisdiction over a child alleged to be delinquent who is age 15 or older, or who is younger than age 15 and is charged with committing an act which, if committed by an adult, would be punishable by death or life imprisonment. The court may waive its jurisdiction only after it has conducted a waiver hearing held prior to the adjudicatory hearing and after notice has been given to all parties. The court may not waive its jurisdiction over a case unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures. The following criteria must be considered by the court: (1) the child's age; (2) the mental and physical condition of the child; (3) the child's amenability to any available treatment; (4) the nature of the offense and the child's alleged participation in it; and (5) public safety. These criteria must be considered individually and in relation to each other on the record. If jurisdiction is waived, the court must order the child held for trial under the regular procedures of the court which would have jurisdiction over the offense if committed by an adult.

The juvenile court does not have jurisdiction over children at least age 16 who are alleged to have committed specified violent crimes, children age 14 and older charged with a capital crime, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. However, a circuit court may transfer a case involving such a child to the juvenile court if such a transfer is believed to be in the interests of the child or

society (“reverse waiver”). A reverse waiver is not permitted in certain circumstances, including if a child was previously transferred to juvenile court and adjudicated delinquent. At a transfer hearing, the court must consider the same criteria as set forth above relating to a waiver, and may order that a study be made concerning the child, the child’s family and environment, and other matters concerning the disposition of the case.

A court exercising criminal jurisdiction in a case involving a child must determine whether to transfer jurisdiction to a juvenile court at sentencing if (1) as a result of trial or a plea entered (in lieu of trial), all charges that precluded the juvenile court from exercising jurisdiction did not result in a finding of guilty and (2) pretrial transfer was prohibited because the alleged crime was first degree murder and the child was 16 or 17 years old at the time of its commission or the court did not transfer jurisdiction after a hearing on a motion for reverse waiver.

The court may not transfer jurisdiction to juvenile court at sentencing if (1) the child agrees that jurisdiction is not to be transferred as part of a plea bargain or (2) pretrial transfer was prohibited because the child previously had a case transferred to juvenile court and was adjudicated delinquent or was convicted in an unrelated case otherwise excluded from juvenile court jurisdiction.

Expungement of Records

A person may file and a court is required to grant a petition for expungement of a criminal charge that was transferred to the juvenile court under reverse waiver provisions or for disposition at sentencing.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Cecil, Harford, Montgomery, Queen Anne’s, and St. Mary’s counties; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2013
mm/kdm

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