

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 634
Judiciary

(Delegates Dumais and Proctor)

Juvenile Law - Adjudication of Delinquency - Collateral Consequences

This bill requires that, before a child admits to the commission of a delinquent act, the child's counsel inform the child in developmentally and age-appropriate language of specified collateral consequences that may result from an adjudication of delinquency.

Fiscal Summary

State Effect: None. The bill is procedural in nature and does not directly affect governmental finances.

Local Effect: None. The bill is procedural in nature and does not directly affect governmental finances.

Small Business Effect: None.

Analysis

Bill Summary: The child's counsel must inform the child of the following collateral consequences that may result from an adjudication of delinquency:

- that an adjudication of delinquency may be used in future criminal proceedings, including bail determinations and sentencing;
- that an adjudication of delinquency may be disclosed to the school system;

- that future employers, including the military, may inquire about past adjudications of delinquency;
- that an adjudication of delinquency may impede the ability to obtain public housing;
- if applicable, the requirement to register as a sex offender, immigration consequences, and that an adjudication for a qualifying offense may prohibit an individual from possessing a firearm;
- that an adjudication of delinquency may affect eligibility for college admission or Pell grants; and
- any other collateral consequences that the child's counsel determines are applicable.

Current Law/Background: An adjudication of delinquency is a finding that a child has committed an act which would be a crime if committed by an adult and requires guidance, treatment, or rehabilitation.

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.

The court, on its own motion or on petition, and for good cause shown, may order the court records of a child sealed. After a child has reached age 21, on its own motion or on petition, the court must order them sealed. Once sealed, the court records of a child may not be opened for any purpose, except by order of the court upon good cause shown. In specified circumstances set forth in statute, a juvenile may also petition the court to have his or her records expunged.

Despite the confidentiality provisions of juvenile records, an adjudication of delinquency can have collateral consequences for the juvenile. Examples of the collateral consequences noted within the bill include (1) a judicial officer considering, when determining eligibility for pretrial release, any prior adjudications of delinquency if the individual is charged as an adult with an offense and the relevant court record concerns an adjudication that

occurred within three years of the date the defendant is charged as an adult; (2) State sentencing guideline worksheets taking into account prior juvenile dispositions; and (3) requiring juveniles who are at least age 14 to register as a sex offender in a nonpublic database maintained by DJS upon being adjudicated delinquent of committing specified acts.

Collateral Consequences of Convictions

The Maryland Rules of Professional Conduct require a defense attorney to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions.” (Maryland Rule of Professional Conduct 1.4(b)). This standard includes advising an individual of the collateral consequences surrounding a criminal conviction. In criminal cases, the legal requirement for advising an individual of a guilty plea’s collateral consequences is outlined in Maryland Rule 4-242(f). The judge, State’s Attorney, or the defendant’s attorney must advise the individual on the record:

- that by entering the plea, if the defendant is not a U.S. citizen, the defendant may face additional consequences of deportation, detention, or ineligibility for citizenship;
- that by entering a plea to the offenses set out in § 11-701 of the Criminal Procedure Article, the defendant shall have to register with the defendant’s supervising authority as defined in § 11-701(p) of the Criminal Procedure Article; and
- that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea.

In some situations, improper advisement could deem the plea invalid.

Additional Information

Prior Introductions: None.

Cross File: SB 209 (Senator Kelley, *et al.*) - Judicial Proceedings.

Information Source(s): Office of the Public Defender, Department of Juvenile Services, Maryland State Commission on Criminal Sentencing Policy, Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2016
md/kdm

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510