

# SENATE BILL 452

E3, E2  
SB 257/18 – JPR

9lr2945  
CF HB 11

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By: **Senators Carter, Lee, Smith, and Washington**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2019

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Juveniles Charged as Adults – Confidentiality of ~~Photos and Videos~~ Records**

3 FOR the purpose of establishing that, pending a determination by a court exercising  
4 criminal jurisdiction in a case involving a child whether to transfer its jurisdiction to  
5 the juvenile court, provisions of law relating to confidentiality of juvenile records  
6 apply to ~~certain photographs or videos taken of the child during the arrest or booking~~  
7 ~~of the child; and generally relating to photographic and video records of juveniles~~ all  
8 police records and court records concerning the child from the time of the child's  
9 arrest until a certain event occurs; establishing that, if a case is transferred to the  
10 juvenile court, certain provisions of law relating to confidentiality of juvenile records  
11 continue to apply to certain records and a certain criminal charge is subject to  
12 expungement under a certain provision of law; establishing certain exceptions to  
13 certain provisions of law relating to confidentiality of juvenile police records; and  
14 generally relating to juveniles charged as adults and juvenile records.

15 BY repealing and reenacting, without amendments,  
16 Article – Courts and Judicial Proceedings  
17 Section 3–8A–27(a)(1) and (b)(1)  
18 Annotated Code of Maryland  
19 (2013 Replacement Volume and 2018 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – Courts and Judicial Proceedings  
22 Section 3–8A–27(a)(2)  
23 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2013 Replacement Volume and 2018 Supplement)

2 BY repealing and reenacting, without amendments,  
3 Article – Criminal Procedure  
4 Section 4–202(b) and (h)  
5 Annotated Code of Maryland  
6 (2018 Replacement Volume)

7 BY adding to  
8 Article – Criminal Procedure  
9 Section 4–202(i)  
10 Annotated Code of Maryland  
11 (2018 Replacement Volume)

12 BY repealing and reenacting, with amendments,  
13 Article – Criminal Procedure  
14 Section 4–202(i) and (j)  
15 Annotated Code of Maryland  
16 (2018 Replacement Volume)

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

19 **Article – Courts and Judicial Proceedings**

20 3–8A–27.

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 subpoena  
23 or otherwise, except by order of the court upon good cause shown or as otherwise provided  
24 in § 7–303 of the Education Article.

25 (2) This subsection does not prohibit:

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

29 (ii) Access to and confidential use of the record by the Baltimore City  
30 Health Department’s Office of Youth Violence Prevention;

31 1. If the Baltimore City Health Department’s Office of Youth  
32 Violence Prevention is providing treatment or care to a child who is the subject of the  
33 record, for a purpose relevant to the provision of the treatment or care;

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

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

5                   (iii) Access to and confidential use of the record by the Baltimore City  
6 Mayor’s Office on Criminal Justice if the Baltimore City Mayor’s Office on Criminal Justice  
7 is providing programs and services to a child who is the subject of the record, for a purpose  
8 relevant to the provision of the programs and services and the development of a  
9 comprehensive treatment plan;

10                  (iv) A law enforcement agency of the State or of a political subdivision  
11 of the State, the Department of Juvenile Services, or the criminal justice information  
12 system from including in the law enforcement computer information system information  
13 about [an]:

14                   1.     AN outstanding juvenile court ordered writ of attachment  
15 OR AN OUTSTANDING CRIMINAL COURT ORDERED WRIT OF ATTACHMENT, for the sole  
16 purpose of apprehending a child named in the writ;

17                   2.     AN OUTSTANDING JUDICIALLY ISSUED WARRANT,  
18 FOR THE SOLE PURPOSE OF APPREHENDING A CHILD NAMED IN THE WARRANT; or

19                   3.     A CHILD WHO HAS BEEN REPORTED MISSING; OR

20                  (v) A law enforcement agency of the State or of a political subdivision  
21 of the State, FOR THE PURPOSES OF FACILITATING APPREHENSION OF A CHILD AND  
22 ENSURING PUBLIC SAFETY, from releasing to the public photographs and identifying  
23 information of a child who [has]:

24                   1.     HAS escaped from a detention center for juveniles [or], a  
25 secure residential facility for juveniles, [for the purposes of facilitating apprehension of the  
26 child and ensuring public safety] OR A CORRECTIONAL UNIT, AS DEFINED IN § 2–401  
27 OF THE CORRECTIONAL SERVICES ARTICLE;

28                   2.     IS THE SUBJECT OF A JUDICIALLY ISSUED WARRANT;

29                   3.     IS SUBJECT TO ARREST FOR A CRIME OR AN ACT THAT  
30 WOULD BE A CRIME IF COMMITTED BY AN ADULT; OR

31                   4.     HAS BEEN REPORTED MISSING.

32                  (b)    (1)    A court record pertaining to a child is confidential and its contents may  
33 not be divulged, by subpoena or otherwise, except by order of the court upon good cause  
34 shown or as provided in §§ 7–303 and 22–309 of the Education Article.

1 **Article – Criminal Procedure**

2 4–202.

3 (b) Except as provided in subsection (c) of this section, a court exercising criminal  
4 jurisdiction in a case involving a child may transfer the case to the juvenile court before  
5 trial or before a plea is entered under Maryland Rule 4–242 if:

6 (1) the accused child was at least 14 but not 18 years of age when the  
7 alleged crime was committed;

8 (2) the alleged crime is excluded from the jurisdiction of the juvenile court  
9 under § 3–8A–03(d)(1), (4), or (5) of the Courts Article; and

10 (3) the court determines by a preponderance of the evidence that a transfer  
11 of its jurisdiction is in the interest of the child or society.

12 (h) (1) Pending a determination under this section to transfer its jurisdiction,  
13 the court shall order the child to be held in a secure juvenile facility unless:

14 (i) the child is released on bail, recognizance, or other conditions of  
15 pretrial release;

16 (ii) there is not available capacity in a secure juvenile facility, as  
17 determined by the Department of Juvenile Services; or

18 (iii) the court finds that detention in a secure juvenile facility would  
19 pose a risk of harm to the child or others.

20 (2) If the court makes a finding under paragraph (1)(iii) of this subsection  
21 that detention in a secure juvenile facility would pose a risk of harm to the child or others,  
22 the court shall state the reasons for the finding on the record.

23 **(I) (1) PENDING A TRANSFER DETERMINATION UNDER THIS SECTION,**  
24 **THE PROVISIONS OF § 3–8A–27 OF THE COURTS ARTICLE RELATING TO**  
25 **CONFIDENTIALITY OF RECORDS APPLY TO ~~PHOTOGRAPHS OR VIDEOS TAKEN OF THE~~**  
26 **~~CHILD BY A GOVERNMENTAL ENTITY DURING THE ARREST OR BOOKING OF THE~~**  
27 **~~CHILD~~ ALL POLICE RECORDS AND COURT RECORDS CONCERNING THE CHILD FROM**  
28 **THE TIME OF THE CHILD’S ARREST UNTIL:**

29 **(I) THE TIME FOR THE FILING OF A MOTION TO TRANSFER TO**  
30 **JUVENILE COURT UNDER THE MARYLAND RULES HAS EXPIRED AND NO SUCH**  
31 **MOTION HAS BEEN FILED; OR**

1                    **(II) A MOTION TO TRANSFER TO JUVENILE COURT HAS BEEN**  
2 **DENIED.**

3                    **(2) IF A CASE IS TRANSFERRED TO THE JUVENILE COURT UNDER THIS**  
4 **SECTION:**

5                    **(I) THE PROVISIONS OF § 3-8A-27 OF THE COURTS ARTICLE**  
6 **RELATING TO CONFIDENTIALITY OF RECORDS CONTINUE TO APPLY TO ALL POLICE**  
7 **AND COURT RECORDS CONCERNING THE CHILD; AND**

8                    **(II) THE CRIMINAL CHARGE IS SUBJECT TO EXPUNGEMENT**  
9 **UNDER § 10-106 OF THIS ARTICLE.**

10            **[(i)] (J)**        (1) A victim or victim's representative shall be given notice of the  
11 transfer hearing as provided under § 11-104 of this article.

12                    (2)        (i) A victim or a victim's representative may submit a victim impact  
13 statement to the court as provided in § 11-402 of this article.

14                                (ii) This paragraph does not preclude a victim or victim's  
15 representative who has not filed a notification request form under § 11-104 of this article  
16 from submitting a victim impact statement to the court.

17                                (iii) The court shall consider a victim impact statement in  
18 determining whether to transfer jurisdiction under this section.

19            **[(j)] (K)**        (1) Regardless of whether the District Court has jurisdiction over  
20 the case, at a bail review or preliminary hearing before the District Court involving a child  
21 whose case is eligible for transfer under subsection (b) of this section, the District Court:

22                                (i) may order that a study be made under the provisions of  
23 subsection (e) of this section; and

24                                (ii) shall order that the child be held in a secure juvenile facility  
25 pending a transfer determination under this section unless:

26                                        1. the child is released on bail, recognizance, or other  
27 conditions of pretrial release;

28                                        2. there is not available capacity at a secure juvenile facility  
29 as determined by the Department of Juvenile Services; or

30                                        3. the District Court finds that detention in a secure juvenile  
31 facility would pose a risk of harm to the child or others.

1                   (2) If the District Court makes a finding under paragraph (1)(ii)3 of this  
2 subsection that detention in a secure juvenile facility would pose a risk of harm to the child  
3 or others, the District Court shall state the reasons for the finding on the record.

4                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2019.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.