

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 406

(Senator Augustine)

Judicial Proceedings

Public Safety - Local Youth Violence Review Committees

This bill authorizes a county in the State to establish a youth violence review committee, the purpose of which is to prevent violence and homicides involving youth assailants and youth victims through specified programs and services. The bill establishes procedures for local committees and provisions governing (1) committee meetings; (2) access to information and records; and (3) the confidentiality and disclosure of information. The bill establishes criminal penalties for specified violations.

Fiscal Summary

State Effect: It is assumed that State agencies can generally provide requested information to local committees using existing resources, subject to the comments discussed below. The bill's criminal penalty provisions do not have a material impact on State finances or operations.

Local Effect: As the bill is authorizing in nature, the bill is not anticipated to have a significant impact on local finances. It is assumed that local governments who choose to use the bill's authority can establish committees with existing resources and that other local agencies can generally provide requested information using existing resources, subject to the comments discussed below. The bill's criminal penalty provisions do not have a material impact on local finances or operations.

Small Business Effect: Minimal, subject to the comments discussed below.

Analysis

Bill Summary:

Organization, Membership, Purpose, and Procedures of Local Committees

A county is authorized to establish a youth violence review committee, and the State's Attorney and the head of the primary law enforcement agency may organize a local committee.

The members of a local committee must be drawn from specified persons, organizations, agencies, and areas of expertise from within the county, as available. Members may designate representatives from their departments or offices to represent the members on the local committee. Each local committee must elect a chair, as specified.

The purpose of a local committee is to prevent violence and homicides involving youth assailants and youth victims by (1) promoting cooperation and coordination among agencies involved in investigating deaths related to youth violence; (2) developing and providing youth services; (3) developing an understanding of the causes and incidence of youth violence and youth-related homicide in the county; and (4) developing plans for and recommending changes within the agencies the members represent.

To achieve its purpose, a local committee must (1) establish and implement a protocol for the local committee; (2) review specified homicides and cases of serious physical injury related to youth violence that have occurred in the county; (3) meet on a regular basis, as specified, to review the status of youth-related homicide cases and recommend specified actions among and within member agencies; and (4) provide reports that include recommendations, as specified.

A local committee must determine the number and types of cases that the committee will review. A local committee is authorized to review criminal cases only at the conclusion of the case in trial court or after the investigation of a suicide has been closed.

Access to Information and Records

On request of the chair, and as necessary to carry out the purpose and duties of the local committee, the local committee must be immediately provided (1) with access to information and records by a provider of medical care, including dental and mental health care, regarding a person whose death or serious physical injury is being reviewed by the local committee and (2) access to *all* information and records maintained by any State or local government agency.

Applicability of the Open Meetings Act and the Disclosure of Information during Meetings

Meetings of a local committee must be closed to the public and not subject to the Maryland Open Meetings Act when the local committee is discussing individual cases. Meetings of a local committee must be open to the public and subject to the Maryland Open Meetings Act when the local committee is not discussing individual cases.

Information identifying a deceased person, a family member, or an alleged or suspected perpetrator may not be disclosed during a public meeting. In addition, information regarding the involvement of any agency, organization, or person with a deceased person or the person's family may not be disclosed during a public meeting. However, a local committee is not prohibited from requesting the attendance at a committee meeting of a person who has information relevant to the exercise of the committee's purpose and duties.

A violation of these provisions is a misdemeanor and is punishable by a fine of up to \$500 and/or imprisonment for up to 90 days.

Confidentiality and Disclosure of Records

Except as specified, all information and records acquired by a local committee in the exercise of its purpose and duties (1) are confidential; (2) are exempt from disclosure under Maryland's Public Information Act (PIA); and (3) may be disclosed only as necessary to carry out the local committee's duties and purposes. Statistical compilations of data that do not contain any information that would permit the identification of any person to be ascertained are public records. Reports of a local committee that do not contain any information that would permit the identification of any person to be ascertained are public information.

Except as necessary to carry out a local committee's purpose and duties, members of a local committee and persons attending a local committee meeting may not disclose (1) what transpired at a meeting closed to the public or (2) any information the disclosure of which is prohibited by the bill.

Members of a local committee, persons attending a local committee meeting, and persons who present information to a local committee may not be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting. However, a person may testify to information obtained independently of the local committee or information that is public.

Information, documents, and records of a local committee are generally not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding. However, such records otherwise available from other sources are not immune from

subpoena, discovery, or introduction into evidence through those sources solely because they were presented during proceedings of a local committee or are maintained by a local committee.

A violation of these provisions is a misdemeanor and is punishable by a fine of up to \$500 and/or imprisonment for up to 90 days.

Current Law:

Local Fatality Review Teams

Under Maryland law, there are three types of local fatality review teams: local child fatality review teams (Title 5, Subtitle 7 of the Health-General Article); local drug overdose fatality review teams (Title 5, Subtitle 9 of the Health-General Article); and local domestic violence fatality review teams (Title 4, Subtitle 7 of the Family Law Article). Each county is required to have a child fatality review team (or a multicounty local team), while counties are authorized to establish a drug overdose fatality review team or a domestic violence fatality review team.

Confidentiality of Juvenile Records

In general, police and court records concerning a child are confidential, and their 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 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 police and court records of a child by DJS or in an investigation and prosecution by a law enforcement agency.

Disclosure of Medical Records

Generally, a health care provider may not disclose medical records without the authorization of the person in interest. However, a health care provider must disclose a medical record without the authorization of the person in interest under specified circumstances, including to a local drug overdose fatality review team. Chapters 165 and 166 of 2017 require disclosure to a guardian *ad litem* appointed by a court to protect the best interest of a minor or a disabled or elderly individual who is a victim of a crime or a delinquency act under specified circumstances.

Chapters 700 and 701 of 2017 alter the circumstances under which a health care provider may disclose directory information and medical records without the authorization of the person in interest, including information that was developed primarily in connection with mental health services. Unless the patient has restricted or prohibited the disclosure of directory information, a health care provider may disclose directory information to an individual who has asked for the patient by name. Additionally, a health care provider may disclose a medical record without the authorization of a person in interest to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if the disclosure is limited to information that is directly relevant to the individual's involvement in the patient's health care and other conditions are met.

In addition to restrictions in State law, federal law and regulations restrict the ability of a health care provider to disclose a medical record (also referred to as protected health information) without the authorization of the person in interest. Generally, federal law and regulations preempt state law with respect to protected health information confidentiality. However, the federal Health Insurance Portability and Accountability Act (HIPAA) and its standards do not preempt state law if the state provision (1) relates to the privacy of individually identifiable health information and (2) is "more stringent" than HIPAA's requirements.

Under HIPAA regulations, a health care provider is authorized, under exigent circumstances, to use or disclose protected health information if the health care provider believes in good faith that the use or disclosure is "necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public" and the disclosure is made to a person "reasonably able to prevent or lessen the threat."

Maryland Public Information Act

PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative whom a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any *Public Information Act Manual* published by OAG.

A custodian *must* deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. PIA also requires denial of inspection for personal and confidential records, including, for example, hospital and medical records, financial records, certain police and related criminal records, and licensing records.

Unless otherwise specified, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian *may* deny inspection to the applicant of that part of the record. PIA specifies the types of records that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

A custodian who denies inspection of a public record must, within 10 working days, provide a written statement to the applicant that gives (1) the reason for denial; (2) if denying a part of a record on a discretionary basis, a brief explanation of why the denial is necessary and why redacting information would not address the reasons for the denial; (3) the legal authority for the denial; (4) a brief description of the undisclosed record (without disclosing the protected information); and (5) notice of the available statutory remedies.

Open Meetings Act, Generally

Under Maryland's Open Meetings Act, with limited exceptions, a public body must (1) meet in open session in places reasonably accessible to potential attendees and (2) provide reasonable advance notice of the time and location of meetings, including, when appropriate, whether any portion of a meeting will be in closed session. With specified exceptions, a "public body" is any entity that (1) consists of at least two individuals and (2) is created by the Maryland Constitution; a State statute; a county or municipal charter; a memorandum of understanding or a master agreement to which a majority of the county boards of education and the Maryland State Department of Education are signatories; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision.

A public body may not meet in closed session unless at least one member of the body has been designated to receive training on the requirements of the open meetings law. If a designated individual cannot be present at an open meeting at which the public body votes to hold a closed session, the body must complete a specified compliance checklist developed by OAG and include the checklist in the meeting minutes.

Additional Comment: The Department of Legislative Services advises that while the bill intends to authorize local youth violence review communities to access individual records of juveniles, the bill is ambiguous as to how the committees obtain access to records that are protected by both State and federal law. For example, DJS advises that it would not be able to provide information related to a juvenile's involvement in the juvenile justice system, his/her medical or treatment records, or any acknowledgment of his/her involvement in a fatality. Generally, HIPAA authorizes a provider to disclose protected health information to a *public health authority*, as defined in federal law, to receive those

records; the bill is silent as to the status of a local committee acting as a public health authority.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 93 (Delegate Henson) - Judiciary.

Information Source(s): Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of Juvenile Services; Maryland Department of Health; Department of Human Services; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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