

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 358
Department of Juvenile Services – Juvenile Offense Database
DATE: February 1, 2023
(2/9)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 358. This legislation adds a provision requiring the Department of Juvenile Services (the “Department”), in coordination with the Administrative Office of the Courts, to develop a publicly accessible database. The database will provide certain information that does not violate provisions of the law mandating the confidentiality of certain juvenile records.

Although this bill is almost identical to HB 1142 from last year, this year’s bill adds language requiring “searchable database of all offenses involving juveniles that would be a crime if committed by an adult” [underlined language is new]. While this language addressed some points raised in the Judiciary’s position paper from last year, it did not mitigate the other issues raised by the bill.

First, there is no discernable way to obtain information on prior offenses committed by a juvenile and no practical and accurate way for the court to research a juvenile’s record in Maryland or outside Maryland. Such information generally resides in separate databases maintained by other state and federal agencies. Developing a database would necessitate expenditure of significant hours and would likely take months or years to create. Apart from developing the database, the larger concern is that the courts have no current mechanism for populating the data which resides in other databases.

Further, the population of individuals to whom the bill applies is not clear. The term “juvenile” is not defined in the bill. The term is defined in Code only in Human Services Article, § 9-303 (the definitional section for the laws around the Interstate Compact for Juveniles), where it is defined as meaning “any person defined as a juvenile in any member state or by the rules of the Interstate Commission”. *Id.*, Subsection (i)(1). The term could be interpreted to apply to all individuals served by the Department of Juvenile Services, in which case it would include certain individuals age 18 and over. Alternatively, it could be interpreted to mean “child” in which case the term would mean

an individual under the age of 18 years per Courts and Judicial Proceedings § 3-8A-01(d).

It is similarly unclear whether the bill is intended only to apply to an individual who is before the juvenile court or whether it would also apply to a child whose case is being heard in adult criminal court pursuant to Courts and Judicial Proceedings §§ 3-8A-03 or 3-8A-06, and whether it would include a juvenile who is a victim of such a crime.

In addition, Courts and Judicial Proceedings Title 3-8A allows for both the sealing and the expungement of juvenile police and court records. Courts and Judicial Proceedings §§ 3-8A-27(c), 3-8A-27.1. It is unclear what effect sealing or expungement would have on the database. For example, would the database processes have to include the removal of information related to a sealed or expunged case. Additionally, if the database is public, the efficacy of expungement and sealing would be limited by the bill.

Finally, while the proposal does not explicitly state whether the database is intended to be available to the public, the amendment to § 3-8A-27 and the language of proposed § 9-224(c) suggests that intent. If so, practical experience indicates that through google and other sources, it may be possible to identify individual children - and their treatment plans and other personal services - through the type of information that is required to be posted. This can be particularly true in smaller jurisdictions.

cc. Hon. Dalya Attar
Judicial Council
Legislative Committee
Kelley O'Connor