

# **Testimony of Tom Rawlings.pdf**

Uploaded by: Cody Arigo

Position: FAV

February 7, 2024

Maryland General Assembly  
Judicial Proceedings Committee

RE: Support for SB 89

Dear Members of the Committee,

I am pleased to present this written testimony in support of SB 89, which I believe is an important step to ensuring transparency and accountability in Maryland’s child protection system.

I write based on almost 25 years’ experience working in every aspect of child welfare: as a juvenile court judge, Georgia’s independent child protection ombudsman, policy advocate, board-certified child welfare law attorney, and former director of the Georgia Division of Family and Children Services. I write a regular newsletter on child welfare issues, <https://tomrawlings.substack.com>, in which I cover national issues in child protection.

What I have seen in my years is that when the system fails to protect a child, state agencies often hide behind “confidentiality.” The problem is that confidentiality prevents the public and the policymaker from understanding *what* happened and how the system might be improved to better protect children. Most child welfare tragedies do not involve a single failure by a single caseworker but rather result from systemic issues that can best be addressed by a comprehensive review.

Fortunately, federal law allows – even requires – that state child welfare agencies provide greater public transparency in cases involving deaths of and severe injuries to children who have current or previous contact with the child protection system. The Child Abuse Prevention and Treatment Act, 42 USC § 5106a, requires each state to have “provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality.”

We adopted a law allowing such transparency in Georgia 15 years ago, and in my opinion it has worked well to give the public and our state leaders better insight into the challenges child protection agencies face. Face it: when you tell a journalist or a state legislator that you can’t share information about a child death that was just publicized on the news due to “confidentiality,” the natural human tendency is to think you’re hiding something. Creating greater transparency leads to greater public confidence in the child protection system, increased understanding of the difficult job child protection workers have, and increased ability to diagnose and fix the system when it fails.

In enacting this legislation, Maryland is joining other states that are moving to create this needed window into how child protection agencies work. Kansas, West Virginia, New Mexico, and other states are making progress in these areas.

This particular bill properly balances the need for public disclosure against the desire to ensure that some details of a family's struggle remain private or that a criminal investigation not be hindered. I commend the committee and the sponsor on this valuable legislation.

Kind regards,

A handwritten signature in blue ink, appearing to read "Tom C. Rawlings". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tom C. Rawlings

# **SB 89 Testimony.pdf**

Uploaded by: David Probert

Position: FAV

MARY-DULANY JAMES  
Legislative District 34  
Harford County



James Senate Office Building  
11 Bladen Street, Room 103  
Annapolis, Maryland 21401  
410-841-3158 · 301-858-3158  
800-492-7122 Ext. 3158  
MaryDulany.James@senate.state.md.us

Judicial Proceedings Committee  
Executive Nominations Committee

Senate Chair  
Joint Committee on  
Children, Youth, and Families

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Mary-Dulany James**  
**In Favor of SB 89 - Child Abuse and Neglect - Reports and Records - Disclosure**  
**Before the Judicial Proceedings Committee**  
**On February 7<sup>th</sup>, 2024**

Mr. Chairman, Vice Chair, and Members of the Committee,

This bill was before the Judicial Proceedings Committee last year and, at that time, the Senate sponsor of the bill, the Maryland State's Attorneys' Association, and stakeholder experts in Georgia, who had passed an analogous law several years ago, engaged in time-intensive collaboration so that the Judicial Proceedings hearing, favorable report, and unanimous Senate vote all came too late in session for the House of Delegates to give full consideration of the bill.

It is hoped that this fully-vetted legislation, with an earlier start in the Senate, will meet with success in the House this year.

To briefly remind the Committee, SB 89 has a simple goal of better aligning Maryland's obligation under the federal law CAPTA (Child Abuse Prevention and Treatment Act) to release, upon request, information publicly from the Department of Human Services (DHS) and/or a local department of social services (hereinafter referred to as "social services") when a child suffers a fatality or near-fatality.

Maryland's public disclosure laws generally, including the one we are revising here, were enacted before and/or without knowledge of the federal CAPTA law and

**its disclosure requirements, the aim of which is to enhance transparency and accountability. Thus, as a matter of practice currently in Maryland, even if an individual in the affected community, the press, or a non-profit that is advocating for better child welfare services requested information about a child who died while under the protection of social services, no information is provided. State's Attorneys and social services overwhelmingly block any and all details from release under the broad and highly subjective decision that disclosure could undermine an investigation. There are no time constraints on this decision and no attempt to redact certain sensitive information versus completely blocking all information to the public.**

**Maryland, in other important areas, has recognized that giving some information to the public is critical to keeping government actors accountable and the public informed—for instance, body cameras on law enforcement officers. So too should this good government policy be applied when a child that the state has intervened to protect has died or nearly died.**

**Under SB 89, both social services and the State's Attorneys will have strict but collaborative deadlines to respond in a timely manner to public disclosure requests and to redact, rather than wholesale prevent, information from being released before the conclusion of an investigation or prosecution. It also allows for the balance of information to be provided after an investigation or prosecution is complete.**

**SB 89 - MSAA Favorable.pdf**

Uploaded by: Patrick Gilbert

Position: FAV



## Maryland State's Attorneys' Association

3300 North Ridge Road, Suite 185

Ellicott City, Maryland 21043

410-203-9881

FAX 410-203-9891

Rich Gibson  
President

Steven I. Kroll  
Coordinator

**DATE:** February 7, 2024

**BILL NUMBER:** SB 89

**POSITION:** Support

The Maryland State's Attorney's Association (MSAA) supports SB 89.

SB 89 is drafted to bring MD. CODE ANN., HUM. SERVS. § 1-203 into compliance with the federal Child Abuse Prevention and Treatment Act ("CAPTA"), and strikes the appropriate balance between transparency in matters that are of significant importance to Marylanders with the need of the State to afford an accused a fair trial by an impartial jury of their peers in the jurisdiction where the offense is alleged to have occurred.

The language in SB 89 requires the release of certain information related to incidents resulting in the death or near death of children in the custody of the State or in the care of a foster parent, and provides for notice to the local State's Attorney's Office prior to the release of such information. The State's Attorney's Office is afforded the opportunity to review the information prior to its release and to redact portions that would, if made public, "seriously hinder the ability of the State's Attorney's Office to prosecute a criminal case arising from the incident."

These types of cases – cases in which a child in the custody of the State or the care of a foster parent has died or has almost died – already attract a great deal of attention from the community and from the press. This is precisely why SB 89 is needed, and one of the reasons why CAPTA was enacted in the first place: to increase transparency into these significant and tragic incidents. Some of the information SB 89 requires to be disclosed, though – like the findings of the Department of Social Services' investigation into the incident and the number of times the alleged perpetrator has been referred for professional services – has the potential to prejudice potential jurors, and could preclude the trial of the offense in the jurisdiction where it is alleged to have occurred. As ministers of justice, prosecutors have an ethical obligation to scrupulously observe the due process rights of an accused, and communities have an interest in observing and participating in the trial of such important cases.

MSAA expresses its gratitude to the sponsors of this legislation for including the necessary language to ensure prosecutors can protect the integrity of their cases and afford the accused a fair trial, and urges this Committee to report favorably on SB 89.



# **OPD Testimony SB89 2024 Session Report of Child In**

Uploaded by: Maria Nenutzka Villamar

Position: UNF



**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
CHIEF OF EXTERNAL AFFAIRS

**ELIZABETH HILLIARD**  
ACTING DIRECTOR OF GOVERNMENT RELATIONS

## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB89 Report of Child Injury or Fatality**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 2/5/2024**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 89 – Report of Child Injury or Fatality. SB 89 is overly broad, is unclear, and violates Maryland’s statutes and rules. This bill requires the Secretary of the Department of Human Services “to disclose certain reports and records of child abuse and neglect within a certain period of time if certain conditions are met.” Conditions include the child being in State or local department of social services custody, or in the care of a foster parent; is the subject of an investigation, a report, a referral, or a complaint received by DSS or DHS; and suffered a near-fatality or fatality.

The bill does not limit the individual or entity who may seek disclosure of this report. Thus, any individual or organization, for whatever purpose, may seek the name of the child, the names of the parents, foster care providers, or any other caregivers of the child, regardless of the purpose of seeking such information. While some requests for disclosure might be in the public interest (for example, if a journalist were writing an article about the dangers of foster care), some requests could potentially be for nefarious reasons (for example, a vigilante who hopes to retaliate against an alleged abuser). As written the bill places no limits on who may seek disclosure of this information or for what purpose the disclosure is intended.

The bill would also require disclosure of numerous other details, including any services provided to the alleged abuser or neglector, the allegedly abused or neglected child, and the household or family members; and any other information that the State determines is in the public interest to disclose. For example, if someone in the household where a child suffered a near-fatality or fatality were referred to psychological counseling, that personal information would be required to be disclosed. More

importantly, information about a child who survives is required to be disclosed, in violation of that child's privacy. The child's medical, therapeutic, and educational records would have to be disclosed.

Finally, and critically, Senate Bill 89 would render null and void Courts & Judicial Proceedings § 3-827 and Maryland Rule 11-203, both of which prohibit the disclosure of court records in a Child In Need of Assistance case. Specifically, CJP § 3-827 and Md. Rule 11-203 require that court records pertaining to a child shall be kept confidential and may not be divulged by subpoena or otherwise except by order of the court after good cause is shown. However, SB 89 would require disclosure in every case of near-fatality or fatality, meaning children and their families in these circumstances do not have the same protection of their privacy.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 89.**

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**Submitted by: Maryland Office of the Public Defender, Government Relations Division.**

**Authored by: Nenutzka C. Villamar, Chief of Parental Defense Division,**

**[nenavillamar@maryland.gov](mailto:nenavillamar@maryland.gov), 410-458-8857.**

**SB89 - INFO - DHS.pdf**

Uploaded by: Rachel Sledge Government Affairs

Position: INFO

February 7, 2024

The Honorable Will Smith, Chair  
Judicial Proceedings Committee  
Miller Senate Office Building, 2 East  
Annapolis, Maryland 21401

**RE: TESTIMONY ON SB0089 - Child Abuse and Neglect - Reports and Records - Disclosure - POSITION: INFORMATIONAL ONLY**

Dear Chair Smith and Members of the Judicial Proceedings Committee:

The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide the following information for Senate Bill 89 (SB89). With offices in every one of Maryland's jurisdictions, DHS helps Marylanders in economic need, provides preventive services, and protects children and adults. The Social Services Administration (SSA) within DHS implements the Child Protective Services program. The children and families we serve through child protective services are impacted by SB 89.

SB 89 would authorize anyone in the public, without limitation, to review Child Abuse and Neglect reports and records related to a fatality or near-fatality of a child in DHS care at the time of the critical incident. COMAR 07.02.07.21(A)(1) establishes that records and reports concerning child abuse or neglect are confidential, and section (A)(2) establishes that unauthorized disclosure is a criminal offense. In addition, COMAR 07.02.07.21(B) requires disclosure of records, reports, or information to authorized entities including the court; under an order of an administrative law judge; the State Council on Child Abuse and Neglect; the State Citizens' Review Board of Children or their designees; to a health care practitioner or agency, institution, or program treating or caring for an alleged victim if the information or record is relevant to the treatment or care of the child; to the State Medical Director for Children Receiving Child Welfare Services and all personnel under the direct supervision of State Medical Director; or to a child fatality review team, as necessary to carry out their official functions. COMAR 07.02.07.21(C) provides a process for releasing reports of child fatalities or near fatalities in response to a written request by authorized persons or entities. Current regulations carefully balance confidentiality with transparency. Senate Bill 89 would authorize all persons to review otherwise confidential reports and records related to a fatality or near-fatality of a child in DHS care at the time of the critical incident.

Our first concern is regarding the bill's requirement that the State Attorney's office notify either the local department of social services (LDSS) or the Secretary and is related to the statutory structure of executive authority, vested by statute in the Secretary. The bill would inadvertently diminish the authority of the Secretary to make decisions to disclose case-specific fatality or near fatality information appropriately; a prerogative flowing from the Governor, not the LDSS. Thus all requests and information about fatalities and near fatalities must go through the Secretary's office or the Secretary's designee because it is the Secretary who is accountable for all decisions in these matters. The State's Attorney should not be authorized to bypass the Secretary to communicate only with the LDSS at the State Attorney's discretion.



Similarly, SB 89 would require the LDSS and Secretary to consult each other as functional co-equals. The new requirement would disrupt existing and effective executive authority. The Secretary is the head of the Department and is accountable for carrying out specific duties, including those relating to the “orderly and efficient administration of the Department” (§ 2-203) and the authority to review, approve, disapprove, or revise plans, proposals, and projects of each unit in the Department (§ 2-211). The Secretary’s existing statutory requirements and authorities are not currently, and should not be, subject to consultation with subordinate divisions of the Department of Human Services.

If the bill’s sponsor intends, as in prior legislative sessions, to authorize elected officials to request access to redacted, confidential child welfare records when there is a fatality or near fatality, then the bill text could be more narrowly tailored to that purpose. As a matter of policy, it is crucial to limit the individuals authorized to request otherwise confidential information to those persons with treatment, investigatory, or other authorities to act on such information in the best interests of all Marylanders.

We appreciate the opportunity to provide the aforementioned information to the Committee for consideration during your deliberations. We look forward to the decision of the Committee and welcome continued collaboration on SB 89.

If you require additional information, please contact Rachel Sledge, Director of Government Affairs, at [rachel.sledge@maryland.gov](mailto:rachel.sledge@maryland.gov).

In service,



Rafael López  
Secretary