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POSITION ON PROPOSED LEGISLATION

BILL: SB 404 Juvenile Law - Police Record Concerning a Child - Confidentiality Exception

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: January 31, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on SB 404.

Since its inception in 2021, the Independent Investigations Division of the Office of the Attorney General (OAG) has investigated 65 cases of police involved fatalities or police involved serious injuries across the state. To date, OAG has completed investigations in 52 of those cases. In 50 of those 52 cases (96%), OAG or the local State's Attorney's Office to whom OAG issued its findings declined to bring charges against the police officers involved. In other words, the conclusions reached were that the police officers' actions were not criminal but rather explained by the negligent, reckless, or criminal actions of the deceased or injured.¹

This is important context. SB 404 seeks to erode current law that protects the confidentiality of police records concerning a child by allowing OAG to publicly disclose the name of a child who has died or been seriously injured in a police encounter. Proponents of SB 404 rely upon the bill's parental consent provision as the protective factor against children being stigmatized or harmed as the result of the public release of their names in connection with these serious incidents. However, when OAG asks for this consent, parents likely do not understand nor fully appreciate that it is extremely likely that their child will be scrutinized, blamed or accused of a crime within a publicly published report at the conclusion of OAG's investigation. OAG has explained to the Maryland Office of the Public Defender the course that their investigations take². OAG investigators respond

¹ <https://www.marylandattorneygeneral.gov/Pages/IID/IID.aspx>

² In September 2024, the Maryland Office of the Public Defender met with OAG to discuss this bill.

to the scene and contact the families of the deceased or injured within hours of the incident. They forge a relationship with the grieving family as the law enforcement agency that will be investigating the death or serious injury of their loved one. It is at this early stage that OAG would seek parental consent per this bill. This is not conducive to true voluntary and informed consent. What follows in relatively quick succession is an OAG press release, OAG's public release of the deceased or injured person's name, and the name, rank, and Body Worn Camera footage of the officers involved. It is not until months later that OAG issues its report with findings and conclusions.

Furthermore, SB 404 offers no protections regarding how and to what extent the child will be discussed in public after they are named. In all 5 cases since 2021 in which a child died or was seriously injured during a police encounter, various media outlets covered the incident and reported wrongdoing on the part of the child, citing police officer accounts or other sources.

It is important to note that if a parent decides that they want their child to be named publicly, they are not restricted under current law from sharing their child's name themselves, directly with the media or advocates. They may do so to the extent and in the manner that they wish under current law.

Protecting the identity and records of children is an established tenet throughout our culture in recognition of the vulnerabilities of children and the risk of exploitation that children encounter. Maryland statutory law has specifically long required the confidentiality of police records involving children, recognizing that children should not be publicly stigmatized for their encounters with police and that their involvement with police as children should not follow them in ways that will hamper their development as healthy, productive citizens. Maryland Code, Courts and Judicial Proceedings § 3-8A-27, which SB 404 seeks to amend, requires the confidentiality of police records involving a child with only very limited exceptions. The limited exceptions that are currently in the law predominantly allow only inter-governmental sharing for specified purposes such as the investigation and prosecution of offenses allegedly committed by the child or advancing a treatment plan for the child. In contrast, SB 404 seeks to disclose a child's name to the public and not for any investigative purpose, prosecutorial function, or treatment plan. The police records of these incidents are already available to law enforcement, including OAG, so that the OAG may complete its investigation.

A child who has died or been seriously injured in a police officer involved incident should be protected by the law from public scrutiny. SB 404 is wholly unnecessary for the proper investigation of these incidents or for the healing of the child. However, SB 404 clearly would create opportunities for public scrutiny of the child and that scrutiny's attendant long-lasting negative consequences.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 404.

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