

SB 404_OAG_Green_IID.pdf

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January 31, 2025

TO: Honorable Chair William C. (Will) Smith, Jr.
Chair, Judicial Proceedings Chair

FROM: *Allison V. Green*
Chief, Independent Investigations Division, Office of the Attorney General

RE: SB404– *Juvenile Law - Police Record Concerning a Child - Confidentiality Exception* - **SUPPORT**

The Office of the Attorney General (OAG) urges the Judiciary Committee to favorably report **Senate Bill 404**, Juvenile Law - Police Record Concerning a Child - Confidentiality Exception, sponsored by Senator Charles E. Sydnor.

The OAG's Independent Investigations Division (IID) was created by the General Assembly in 2021. It expanded the following two legislative sessions to investigate and prosecute when appropriate police-involved incidents that result in the death or injuries likely to result in the death of an individual. The IID was one of several police reform initiatives enacted into law over the last few years as the General Assembly has worked to increase transparency and accountability in police misconduct cases. **Senate Bill 404** is consistent with these prior legislative enactments and the IID's practice of publicly releasing its findings.

If enacted, **Senate Bill 404** would allow the OAG to publicly release limited information when a child under 18 years of age is killed or seriously injured as a result of a police-involved incident, subject to the express consent of the child's parent or guardian.

Under Md. Code, Courts & Judicial Proceedings § 3-8A-27(a), the contents of a "police record concerning a child" must remain confidential and are not generally subject to public release. While this law exists to protect juvenile privacy, it has the potential to severely restrict what information, if any, the OAG could make public in cases handled by the IID when the seriously injured or deceased person at the center of an investigation is a juvenile. Relevant investigatory information is exclusively contained in "protected" police records. There are nuances related to this statute, which, based on the

incident facts, may make the decision of whether the information is protected unclear. For instance, in a plain reading of the statute, § 3-8A-27(a) does not apply to records identifying a child as a victim or witness. However, it is not as clear regarding records that, while focused on conduct by the officer, also identify a potentially delinquent child.

Although § 3-8A-27(a) is the primary statute at issue, other law sources enacted after § 3-8A-27(a) should be considered, as some lean in favor of greater disclosure. The Public Information Act expresses a general legislative intent that the public should have access to government records. Md. Code, General Provisions § 4-103. Further, with the creation of the IID and passing of Anton's Law (which authorized the disclosure of certain police internal affairs records that were previously confidential), 2021 Md. Laws, ch. 62, the General Assembly expressed a legislative intent in favor of greater public disclosure and accountability for police misconduct.

Senate Bill 404 would remedy this issue by providing a clear and narrowly tailored exception to the existing confidentiality requirement.

Senate Bill 404 limits the disclosures in three important ways:

1. The exception applies in cases that are under active investigation by the IID, which fall within the division's statutory authority pursuant to Md Code, State Gov't § 6-602 (c)(1) and § 6-604 (a)(1).
2. Disclosure is only permitted if the child's parent or guardian expressly consents to the disclosure.
3. **Senate Bill 404** only permits disclosure of records related to the injured or deceased child that prompted the IID investigation and would not apply to another juvenile who may be involved in the police interaction under investigation.

Senate Bill 404 is a targeted measure that balances juvenile privacy with the IID's mandate for transparency and will act to support greater police accountability in Maryland. In IID cases involving a seriously injured or deceased child, the bill would permit the OAG to publicly release the name and age of the child, just as the IID does in cases involving adult decedents. It is distinguishable from adult decedents but like adult witnesses. As with juvenile witnesses, the IID would redact images and portions of video recordings containing identifying information of the juvenile decedent.

The name and age information would generally be disclosed at two points. The first disclosure is within the OAG's names disclosure press release, which is generally issued within two days of the IID assuming an investigation, and the second – at the end of the investigation, in either the declination report or in relation to the prosecution. Of the sixty-six death investigations that the IID has assumed since 2021, five involved juvenile decedents who were 14, 16, or 17 years old, whose deaths occurred in Anne Arundel County, Baltimore City, Montgomery County, and Charles County.

Senate Bill 404 does not circumvent or override Md Code, State Gov't § 6-602 (c)(1) or § 6-604 (a)(1). The concern of others who are not parents or custodial guardians of the juvenile decedents should not override or outweigh the position and perspective of the parents. Families deserve to have the option not to have their child remain as a nameless victim in any incident – as they would if their child was a victim in incidents that are not police involved.

For the foregoing reasons, the OAG urges the Committee to give **Senate Bill 404** a favorable report.

Sen Sydnor_testimony SB 404 Fav.pdf

Uploaded by: Charles E. Sydnor III

Position: FAV

CHARLES E. SYDNOR III, ESQ.
Legislative District 44
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DEPUTY MAJORITY WHIP

Judicial Proceedings Committee
Executive Nominations Committee

Joint Committees

Administrative, Executive, and
Legislative Review

Children, Youth, and Families

Senate Chair, Legislative Ethics



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony for Senate Bill 404
Juvenile Law- Police Record Concerning a
Child - Confidentiality Exception
Before the Judicial Proceedings Committee
February 04, 2025**

Good afternoon Chair Smith, and members of the Judicial Proceedings Committee,

In 2021 we passed legislation¹ that ensured that the juvenile would not be tried in the court of public opinion by shielding certain juvenile information.

Senate Bill 404 provides a limited exception, at the request of the Attorney General. Since 2021, its Independent Investigations Division has investigated 66 deaths, there have been five juvenile decedents because of police-involved encounters. To be accountable to the public, it is the division's practice to release the names of the decedent(s) and the involved police officers in every case. However, the Office does not disclose any information related to juvenile decedents. However, to provide more thorough information to the public and humanize the juvenile decedent's, in line with division's practices for adult decedent, it would like to disclose certain enumerated information.

SB 404 would permit the Attorney General to release the name and age of a child whose death or injury was related to a police-involved incident, upon receipt of permission of the parent or guardian.

Based on its reading of the law² the Attorney General believes it is not permitted to release the names of juvenile decedents nor discuss facts related to the actions that led to the police-involved encounter in their final report or public releases as it may contain information that possibly indicates delinquency. More specifically, because this Division obtains the information regarding the juvenile decedent's name and demographic information from records or information gathered by a law enforcement agency, the division believes that disclosure would violate the law. I believe

¹ SB 314 was passed and signed into law as Chapter 12 of 2021.

² section 3-8A-27(a) of the Courts and Judicial Proceedings ("CJP") Article provides that "[a] police record concerning a child is confidential,"

that this narrow exception – with the consent of the decedent juvenile’s legal guardian is appropriate and certainly in no way undermines the purpose of the law we passed in 2021. For these reasons stated above, I ask for a favorable report on SB 404.

SB 404 Written Testimony.pdf

Uploaded by: Alycia Capozello

Position: UNF



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CHIEF OF STAFF

ELIZABETH HILLIARD
DIRECTOR OF GOVERNMENT RELATIONS

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.
Authored by: Alycia Capozello, Deputy District Public Defender for Baltimore City, Alycia.
capozello@maryland.gov**

MCPA-MSA SB404 Testimony OPP.pdf

Uploaded by: Samira Jackson

Position: UNF



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William C. Smith, Jr., Chair and
Members of the Judicial Proceedings Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee
Samira Jackson, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 4, 2025

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

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE SB 404**. This bill authorizes the public disclosure by the Office of the Attorney General of the name and age of a child injured or killed in a police-involved incident, subject to the express consent of the child's parent or guardian.

The identity of juveniles under the age of 18 charged with committing a crime is treated differently than adults. The goals of the juvenile court and the juvenile justice system are to address the causes of misconduct while protecting the community and the juvenile. Maintaining confidentiality of a juvenile's name, age and other identifiers applies in all circumstances with limited exception as stipulated in MD Code, Courts and Judicial Proceedings, § 3-8A-27, specifically stated:

Police records kept confidential

(a)(1) A police record concerning a child is confidential and shall be maintained separate from those of adults. Its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown or as otherwise provided in § 7-303 of the Education Article.

Court records kept confidential

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

Rule 11-403 - CONFIDENTIALITY OF RECORDS, Md. Rules, further states:

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- (a) Generally. Files and records of the court in juvenile proceedings under this Chapter, including docket entries and indices, are confidential and shall not be open to inspection except by order of the court or as otherwise expressly provided by law.
- (b) Sealing.
 - (1) Generally. On motion or petition, or on its own initiative, the court (A) may order the court records of a child sealed for good cause shown, and (B) shall order them sealed after the child has reached the age of 21 years.
 - (2) Opening. If sealed, court records of a child may not be opened, for any purpose, except by order of the court for good cause shown.

These rules adopted by the Maryland Courts exist and are evenly and equally applied in all cases involving juveniles under Subtitle 8A (juvenile delinquency proceedings, peace order proceedings against juveniles, Child In Need of Supervision (CINS) proceedings, and citation proceedings).. This bill seeks to provide for a solitary exclusion and exception to these well-defined and responsible protections for juveniles, by a unilateral decision of the Attorney General, with parental consent, in cases of a “Police–involved incident resulting in the death or injury of a child...” SB 404 also appears to be intended to give the Office of the Attorney General unilateral authority to release the name and age of a child even if a law enforcement agency conducting a related criminal investigation would withhold that information from public release to protect the ongoing investigation.

Furthermore, the language contained in the bill contradicts the current statute, specifically as it relates to releasing information regarding “injury of a child.” § 6-602. Independent Investigations Division states:

The Division is the primary investigative unit for police-involved incidents that result in the death of individuals or **injuries likely to result in death** [emphasis added].

SB 404, as written, permits the disclosure for any injury, no matter how slight, contrary to the existing statute.

Not only does this bill compromise the juvenile’s confidentiality and potentially affect related investigations, the very nature subjects law enforcement personnel, who are likewise and often forgotten as traumatized by the seriousness of events, in the perilous position of facing community outcry over their involvement in “the death of a child.” In essence, this language is upsetting and appears to completely dismiss the suffering and pain experienced by the officers, and their families, that are involved in these unfortunate and saddening incidents.

The MCPA and MSA view this, again, as just another act that further demoralizes and vilifies the 16,000 men and women who serve every day to protect our communities. SB 404 neglects any thought or consideration of those law enforcement officers and their families, spouses, significant others, children, etc., live in these communities, attend school in these communities, attend worship in these communities, and attend events in these communities. This bill has the propensity to exacerbate the risk and subjection of these officers and their families to undeserved public criticism and condemnation.

For these reasons, the MCPA and MSA strongly **OPPOSE SB 404** and request an unfavorable report.