

**Testimony of The University of Baltimore School of Law's Sayra and Neil Meyerhoff  
Center for Families, Children and the Courts (CFCC)**

**In Opposition to HB 649**

**Family Law - Children in Foster Care - Background Information**

**February 20, 2025**

The Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC) at the University of Baltimore School of Law. The CFCC envisions communities where children and families thrive without unnecessary involvement in the legal system. We engage communities as we work towards transforming systems that create barriers to family well-being.

**CFCC respectfully submits this testimony in opposition to HB 649**, which seeks to require a child placement agency to provide to the prospective resource caregivers<sup>1</sup> (more commonly known as, foster parents) a background report of a child that indicates whether the child has had any sort of law enforcement interaction, including arrests, criminal charges and convictions, or whether the child has been a member of associated with a gang, or has been suspended or expelled from school before the resource caregiver may consent to the placement of the child in his or her home. If enacted, **HB 649 will violate foster youth's right to privacy and confidentiality, perpetuate the criminalization of foster youth, and create a burden on child placement agencies,**

**I. HB 649 violates foster youths' rights to privacy.**

**Our federal and state laws require that children's judicial and educational records be kept confidential.** The United States Supreme Court held in *In re Gault*, 387 U.S. 1 (1967), that the Due Process Clause of the 14th Amendment applies to youth and the confidentiality of juvenile delinquency records. Maryland Code, § 3-8A-27 Privacy of Records, (a)(1) and (2) also declare that children's police records are confidential and that, "...[ the record's]contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown or as otherwise provided..."<sup>2</sup> Additionally, the Family Educational Rights and Privacy Act

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<sup>1</sup> CFCC uses "resource caregiver" in lieu of "foster parent" out of respect for irreplaceable role that parents place in the lives of children.

<sup>2</sup> Md. Code, Courts and Judicial Proceedings § 3-8A-27 Privacy of Records, (a)(1),(2) Police records concerning children.

<https://mgaleg.maryland.gov/mgawebwebsite/Laws/StatuteText?article=gcyj&section=3-8A-27&enact>

(FERPA) specifically prohibits local child welfare agencies from disclosing student's school discipline data, "except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records."<sup>3</sup> School discipline information is protected from non-consensual disclosure unless provided for in the FERPA regulations at 34 CFR § 99.31.<sup>4</sup> Requiring child placement agencies to divulge juvenile court, police interaction, or school discipline information to a prospective resource caregiver (especially without consent from the youth's parent or themselves if they are 18 or older) will violate the federal law, state law and children's rights to privacy.

**Privacy rights are of critical importance to the success of court-involved children and youth.** A 12-state study conducted by The Council of State Governments (CSG) Justice Center found that unfettered access to juvenile records can significantly reduce educational and employment opportunities, increasing the risk of reoffending.<sup>5</sup> Even after youth have "done their time" court and school discipline records can be used against youth as they try to enrich our communities as servants in the military or in law enforcement or to apply themselves through obtaining post-secondary education or employment in health care or childcare. These records also contribute to racial inequities.<sup>6</sup> The CSG Justice Center recommended that state policies make all juvenile records confidential at all times, with limited exceptions for "clearly designated public safety purposes."<sup>7</sup> Providing youth's legal system involvement to prospective resource

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<sup>3</sup> 20 U.S.C. § 1236g (b)(1)(L)

<https://www.govinfo.gov/app/details/USCODE-2023-title20/USCODE-2023-title20-chap31-subchapIII-part4-sec1232g&collectionCode=USCODE>.

<sup>4</sup> U.S. Dept. Ed. Protecting Student Privacy. "FERPA: 34 CFR PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY," (Dec. 2011). Available at [https://studentprivacy.ed.gov/ferpa#0.1\\_se34.1.99\\_131](https://studentprivacy.ed.gov/ferpa#0.1_se34.1.99_131). Note that the non-consensual disclosure of a child's information to resource caregivers is not authorized because resource caregivers are not the child's parents nor are they persons with a "legitimate educational interest." (see Maryland State Department of Education, "Technical Assistance Bulletin: Improving Results for Children: The Sharing of Child/Student Early Intervention and Special Education Information for "Legitimate Educational Interests," (2019). Available at

<https://www.marylandpublicschools.org/programs/Documents/Special-Ed/TAB/19-05-LegitimateEducationalInterests.pdf>).

<sup>5</sup> The Council of State Governments Justice Center - "New Analysis Finds States Limit Employment, Education Opportunities for People with Juvenile Records." (Mar. 2021). Available at <https://csgjusticecenter.org/2021/03/16/new-analysis-finds-states-limit-employment-education-opportunities-for-people-with-juvenile-records/>

<sup>6</sup> The Sentencing Project. "Black Disparities in Youth Incarceration." Available at

<https://www.sentencingproject.org/app/uploads/2023/12/Black-Disparities-in-Youth-Incarceration.pdf>

<sup>7</sup> Id.

parents for the purpose of their decision making contradicts that rehabilitative purpose of the juvenile justice system and the evidence that youth are unlikely to reoffend.<sup>8</sup>

## **II. HB 649 creates a burden for child placement agencies.**

**HB 649 would create more work for agency workers** who need to prioritize finding safe housing for Maryland's foster children. While much improvement has occurred under the leadership of Department of Human Services Secretary Rafael Lopez, Maryland has not yet been able to avoid housing foster children in hotels.<sup>9</sup> Child placement workers need to utilize their time to ensure that resources caregivers have the resources they need make the placement stable, safe, and enriching. HB 649 would burden placement workers with the task of creating a report and providing it to the prospective resources caregiver. Because the information in the report is highly sensitive and confidential, the placement worker would also need to ensure that the prospective resource caregivers understand how to store and protect the child's information. The prospective resource caregivers would also need to be trained by the placement worker on how to properly dispose of the child's information once the child was no longer in their home.

## **III. HB 649 detracts from the Agency's responsibility to keep children in foster care safe.**

Child placing agencies' primary responsibility is to ensure the safety of the children in their care, but **HB 649 could result in more foster youth being unsafe physically and emotionally**. This bill would negatively impact a foster child's access home-based placements and the normalcy and supportive structures that come with them, such as extracurricular experiences and school continuity. As a result, children who have been removed from their families will be further destabilized and the foster care system will be burdened with more unhoused and unsupported children. The racial inequities in our juvenile justice systems would translate in more Black and Hispanic youth having their privacy rights violated and likely exclusion from home-based placements.

Most resource caregivers are perfectly safe people who want to help children and families. However, the child placing agencies cannot guarantee that every caregiver is safe and therefore, these **agencies need to be cautious with providing information that a predator might use against a child in care**. Children who have been harmed in foster care have reported that their histories were used against them—as their adult “**caregivers**” forced them to submit to treatment that was harsh or abusive. Child placement worker's need to be assessing whether a

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<sup>8</sup> Office of Juvenile Justice and Delinquency Prevention. Juvenile Court Statistics (2018). Available at <https://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2018.pdf>.

<sup>9</sup>Baltimore Sun. “Housing Maryland foster children in hotels: ‘unsafe situations for everyone’” <https://www.baltimoresun.com/2024/10/31/foster-children-staying-in-hotels/>

resource caregiver's biological children are safe for the foster youth to be housed with,<sup>10</sup> or whether the adult is the type to lock a child out of their foster home or keep the refrigerator under lock and key. It is our understanding that child placing agencies do not inquire into the legal system involvement or school discipline history of biological children in a prospective foster home. Children in foster care are entitled to safety, but neither they nor their parents are afforded the privilege that is proposed in HB 649. Child placement agencies provision of a report to prospective resources caregivers of the legal system involvement or school discipline records of foster youth should be secondary to ensuring that the foster home and its residents continue to be safe for the child in foster care.

#### **IV. HB 649 contributes to the criminalization of youth in foster care.**

Requiring child placement agencies to report a child's past legal system involvement is a punitive measure upon an already vulnerable population, as it further inhibits the child's ability to gain foster housing and support. The foster care to prison pipeline is a researched and documented pathway to the adult criminal system.<sup>11</sup> A study found that "by the age of 17, over half of youth in foster care experienced an arrest, conviction, or overnight stay in a correctional facility."<sup>12</sup> Behind every arrest, adjudications, conviction, suspension or expulsion is a child's experience of feeling pressured, scared, misunderstood, hungry, bullied or ignored. Providing a child's "wrap sheet" without their consent, the context of their strengthens or even their needs is not in their best interests.

**For these reasons, the CFCC strongly oppose HB 649 and urge an unfavorable report.**

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<sup>10</sup> See the movie, "Foster Boy" (2019). Dalya Alberge. "The film is like their mouthpiece': Foster Boy gives voice to kids in care." The Guardian. (Jul 2021)  
<https://www.theguardian.com/film/2021/jul/04/the-film-is-like-their-mouthpiece-foster-boy-gives-voice-to-kids-in-care>.

<sup>11</sup> Juvenile Law Center. "What is the foster care to prison pipeline"  
<https://jlc.org/news/what-foster-care-prison-pipeline>

<sup>12</sup> Id.