

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 11 (Delegate Sydnor)
 Judiciary

Juveniles Charged as Adults - Confidentiality of Photos and Videos

This bill establishes that, pending a transfer determination from adult criminal court to the juvenile court (“reverse waiver”), specified provisions relating to the confidentiality of juvenile records apply to photographs or videos taken of the child by a governmental entity during the arrest or booking of the child.

Fiscal Summary

State Effect: General fund expenditures increase by \$52,700 in FY 2020 only for programming changes, as discussed below. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	52,700	0	0	0	0
Net Effect	(\$52,700)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for specified violations. The juvenile court does not have jurisdiction over children at least age 16 who are alleged to have committed specified violent crimes, children age 14 and older charged with a

capital crime, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. However, a circuit court may transfer a case involving such a child to the juvenile court if such a transfer is believed to be in the interests of the child or society (“reverse waiver”). A reverse waiver is not permitted if the child was convicted in an unrelated case excluded from the jurisdiction of the juvenile court or the alleged crime is murder in the first degree and the accused child was at least age 16 when the alleged crime was committed. At a transfer hearing, the court must consider specified criteria and may order that a study be made concerning the child, the child’s family and environment, and other matters concerning the disposition of the case. Statutory provisions also set forth a process by which a court exercising criminal jurisdiction in a case involving a child must determine whether to transfer jurisdiction to a juvenile court at sentencing.

Juvenile Records

In general, police and court records concerning a child are confidential, and their contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or in certain circumstances relating to notification of a local superintendent or nonpublic school principal upon the arrest of a child for specified offenses. This prohibition does not restrict access to and the use of court records in court proceedings involving the child by personnel of the court, the State’s Attorney, counsel for the child, a court-appointed special advocate for the child, or authorized personnel of the Department of Juvenile Services (DJS). Subject to certain exceptions, the restriction also does not prohibit access to and confidential use of police and court records of a child by DJS or in an investigation and prosecution by a law enforcement agency.

Statutory provisions also set forth circumstances under which the police and court records of a child may be accessed and used by various entities for specified purposes. For example, the Department of Human Services may have access to and confidential use of a court record for the purpose of claiming federal funds.

State and Local Fiscal Effect: General fund expenditures increase by \$52,686 in fiscal 2020 only for the Judiciary to make necessary programming changes. The Judiciary notes that because the bill does not define the term “pending a transfer determination,” it is unclear what event triggers application of the confidentiality language (*e.g.*, the filing of a criminal case against a juvenile defendant or the filing of a motion to transfer jurisdiction). However, the Judiciary advises that the programming estimate is applicable regardless of the triggering event.

Otherwise, it is estimated that any changes in procedures for law enforcement agencies, DJS, the courts, and State’s Attorneys’ offices to ensure the confidentiality of additional juvenile records do not materially impact State and local finances.

Additional Information

Prior Introductions: HB0 555 of 2018, a similar bill, was withdrawn. Its cross file, SB 257, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Caroline County; City of Takoma Park; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Juvenile Services; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - January 21, 2019
an/kdm

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