

HOUSE BILL 426

D1, E3

01r0142

By: **Chair, Judiciary Committee (By Request – Departmental – Public Safety and Correctional Services)**

Introduced and read first time: January 29, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Confidentiality of Records – Access by Division of Pretrial**
3 **Detention and Services**

4 FOR the purpose of establishing an exception to a provision providing for the
5 confidentiality of juvenile records by authorizing the Division of Pretrial
6 Detention and Services to access certain juvenile records under certain
7 circumstances; and generally relating to juvenile records.

8 BY repealing and reenacting, with amendments,
9 Article – Courts and Judicial Proceedings
10 Section 3–8A–27
11 Annotated Code of Maryland
12 (2006 Replacement Volume and 2009 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article – Courts and Judicial Proceedings**

16 3–8A–27.

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

21 (2) This subsection does not prohibit:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) Access to and confidential use of the record by the
2 Department of Juvenile Services or in the investigation and prosecution of the child by
3 any law enforcement agency;

4 (ii) Access to and confidential use of the record by the Baltimore
5 City Health Department:

6 1. If the Baltimore City Health Department is providing
7 treatment or care to a child who is the subject of the record, for a purpose relevant to
8 the provision of the treatment or care;

9 2. If the record concerns a child convicted of a crime or
10 adjudicated delinquent for an act that caused a death or near fatality; or

11 3. If the record concerns a victim of a crime of violence,
12 as defined in § 14–101 of the Criminal Law Article, who is a child residing in
13 Baltimore City for the purpose of developing appropriate programs and policies aimed
14 at reducing violence against children in Baltimore City;

15 (iii) A law enforcement agency of the State or of a political
16 subdivision of the State, the Department of Juvenile Services, or the criminal justice
17 information system from including in the law enforcement computer information
18 system information about an outstanding juvenile court ordered writ of attachment,
19 for the sole purpose of apprehending a child named in the writ; or

20 (iv) A law enforcement agency of the State or of a political
21 subdivision of the State from releasing to the public photographs and identifying
22 information of a child who has escaped from a detention center for juveniles or a
23 secure residential facility for juveniles, for the purposes of facilitating apprehension of
24 the child and ensuring public safety.

25 (3) (i) The Baltimore City Health Department shall be liable for
26 the unauthorized release of a police record under this subsection.

27 (ii) Within 180 days after the Baltimore City Health
28 Department accesses a police record under this subsection, the Baltimore City Health
29 Department shall submit a report to the law enforcement agency from which the
30 record was received detailing the purposes for which the record was used.

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

34 (2) This subsection does not prohibit access to and the use of the court
35 record or fingerprints of a child described under Title 10, Subtitle 2 of the Criminal
36 Procedure Article in a proceeding in the court involving the child, by personnel of the
37 court, the State's Attorney, counsel for the child, a court-appointed special advocate
38 for the child, or authorized personnel of the Department of Juvenile Services.

1 (3) (i) Except as provided in subparagraph (ii) of this paragraph,
2 this subsection does not prohibit access to and confidential use of the court record or
3 fingerprints of a child described under Title 10, Subtitle 2 of the Criminal Procedure
4 Article by the Department of Juvenile Services or in an investigation and prosecution
5 by a law enforcement agency.

6 (ii) The court record or fingerprints of a child described under §§
7 10–215(a)(21) and (22), 10–216, and 10–220 of the Criminal Procedure Article may not
8 be disclosed to:

9 1. A federal criminal justice agency or information
10 center; or

11 2. Any law enforcement agency other than a law
12 enforcement agency of the State or a political subdivision of the State.

13 (4) (i) The Department of Juvenile Services may provide access to
14 and the confidential use of a treatment plan of a child described under Title 10,
15 Subtitle 2 of the Criminal Procedure Article by an agency in the District of Columbia
16 or a state agency in Virginia, if the agency:

17 1. Performs the same functions in the jurisdiction of the
18 agency as described in § 9–216(a) of the Human Services Article; and

19 2. Has a reciprocal agreement with the State that
20 provides that the specific information to be shared by the State is the same type of
21 information that will be shared by the agency; and

22 3. Has custody of the child.

23 (ii) A record that is shared under this paragraph may only
24 provide information that is relevant to the supervision, care, and treatment of the
25 child.

26 (iii) The Department of Juvenile Services shall be liable for an
27 unauthorized release of a court record under this paragraph.

28 (iv) The Department of Juvenile Services shall adopt regulations
29 to implement this paragraph.

30 (5) (i) This subsection does not prohibit access to and use of a court
31 record by a judicial officer who is authorized under the Maryland Rules to determine a
32 defendant’s eligibility for pretrial release, counsel for the defendant, or the State’s
33 Attorney if:

34 1. The individual who is the subject of the court record is
35 charged as an adult with an offense;

1 2. The access to and use of the court record is strictly
2 limited for the purpose of determining the defendant's eligibility for pretrial release;
3 and

4 3. The court record concerns an adjudication of
5 delinquency that occurred within 3 years of the date the individual is charged as an
6 adult.

7 (ii) The Court of Appeals may adopt rules to implement the
8 provisions of this paragraph.

9 (6) (i) This subsection does not prohibit access to and confidential
10 use of a court record by the Baltimore City Health Department:

11 1. If the Baltimore City Health Department is providing
12 treatment or care to a child who is the subject of the record, for a purpose relevant to
13 the provision of the treatment or care;

14 2. If the record concerns a child convicted of a crime or
15 adjudicated delinquent for an act that caused a death or near fatality; or

16 3. If the record concerns a victim of a crime of violence,
17 as defined in § 14-101 of the Criminal Law Article, who is a child residing in
18 Baltimore City for the purpose of developing appropriate programs and policies aimed
19 at reducing violence against children in Baltimore City.

20 (ii) 1. The Baltimore City Health Department shall be liable
21 for the unauthorized release of a court record under this paragraph.

22 2. Within 180 days after the Baltimore City Health
23 Department accesses a court record under this paragraph, the Baltimore City Health
24 Department shall submit a report to the court detailing the purposes for which the
25 record was used.

26 (7) (i) This subsection does not prohibit access to and confidential
27 use of a court record by the Department of Human Resources for the purpose of
28 claiming federal Title IV-E funds.

29 (ii) The Department of Human Resources shall be liable for the
30 unauthorized release of a court record under this paragraph.

31 (c) The court, on its own motion or on petition, and for good cause shown,
32 may order the court records of a child sealed, and, upon petition or on its own motion,
33 shall order them sealed after the child has reached 21 years of age. If sealed, the court
34 records of a child may not be opened, for any purpose, except by order of the court
35 upon good cause shown.

1 (d) This section does not prohibit access to or use of any juvenile record by
2 the Maryland Division of Parole and Probation or the Maryland Parole Commission
3 when the Division or the Commission is carrying out any of their statutory duties
4 either at the direction of a court of competent jurisdiction, or when the Maryland
5 Parole Commission is carrying out any of its statutory duties, if the record concerns a
6 charge or adjudication of delinquency.

7 (e) This section does not prohibit access to and use of any juvenile record by
8 the Maryland Division of Correction when the Division is carrying out any of its
9 statutory duties if: (1) the individual to whom the record pertains is committed to the
10 custody of the Division; and (2) the record concerns an adjudication of delinquency.

11 **(F) THIS SECTION DOES NOT PROHIBIT ACCESS TO AND USE OF ANY**
12 **JUVENILE RECORD BY THE DIVISION OF PRETRIAL DETENTION AND SERVICES**
13 **WHEN THE DIVISION IS CARRYING OUT ANY OF ITS STATUTORY DUTIES AND THE**
14 **RECORD CONCERNS A PETITION ALLEGING DELINQUENCY OR AN ADJUDICATION**
15 **OF DELINQUENCY AND EITHER:**

16 **(1) THE INDIVIDUAL TO WHOM THE RECORD PERTAINS IS IN THE**
17 **CUSTODY OF THE COMMISSIONER OF THE DIVISION; OR**

18 **(2) THE INDIVIDUAL TO WHOM THE RECORD PERTAINS IS**
19 **SUPERVISED BY THE DIVISION'S PRETRIAL RELEASE SERVICES.**

20 **[(f)] (G)** Subject to the provisions of §§ 9–219 and 9–220 of the Human
21 Services Article, this section does not prohibit access to or use of any juvenile record
22 for criminal justice research purposes. A record used under this subsection may not
23 contain the name of the individual to whom the record pertains, or any other
24 identifying information which could reveal the individual's name.

25 **[(g)] (H)** This section does not prohibit a victim or victim's representative
26 who has filed a notification request form from being notified of proceedings and events
27 involving the defendant or child as provided in this subtitle, the Criminal Procedure
28 Article, or the Criminal Law Article.

29 **[(h)] (I)** This section does not prohibit the Department of Public Safety and
30 Correctional Services or a supervising authority, as defined in § 11–701 of the
31 Criminal Procedure Article, from accessing or using the part of a juvenile record that
32 identifies an offense committed by a juvenile for purposes of complying with Title 11,
33 Subtitle 7 of the Criminal Procedure Article.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2010.