

# SENATE BILL 314

E3, E2

0lr1471  
CF 0lr3600

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By: **Senators Sydnor and Carter**

Introduced and read first time: January 22, 2020

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 5, 2020

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

### 2 **Juveniles Charged as Adults – Confidentiality of Records**

3 FOR the purpose of establishing that, ~~pending a determination by a court exercising~~  
4 ~~criminal jurisdiction in a case involving a child whether to transfer its jurisdiction to~~  
5 ~~the juvenile court, certain~~ provisions of law relating to confidentiality of juvenile  
6 records apply to all police records and court records concerning ~~the~~ a child excluded  
7 from the jurisdiction of the juvenile court under a certain provision of law from the  
8 time of the child's arrest until a certain event occurs; establishing that, if a case is  
9 transferred to the juvenile court, certain provisions of law relating to confidentiality  
10 of juvenile records continue to apply to certain records and a certain criminal charge  
11 is subject to expungement under a certain provision of law; establishing certain  
12 exceptions to certain provisions of law relating to confidentiality of juvenile police  
13 records; and generally relating to juveniles charged as adults and juvenile records.

14 BY repealing and reenacting, with amendments,  
15 Article – Courts and Judicial Proceedings  
16 Section 3–8A–27(a)  
17 Annotated Code of Maryland  
18 (2013 Replacement Volume and 2019 Supplement)

19 BY repealing and reenacting, without amendments,  
20 Article – Courts and Judicial Proceedings  
21 Section 3–8A–27(b)(1)  
22 Annotated Code of Maryland  
23 (2013 Replacement Volume and 2019 Supplement)

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



BY repealing and reenacting, without amendments,  
Article – Criminal Procedure  
Section 4–202(b) and (h)  
Annotated Code of Maryland  
(2018 Replacement Volume and 2019 Supplement)

BY adding to  
Article – Criminal Procedure  
Section 4–202(i)  
Annotated Code of Maryland  
(2018 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,  
Article – Criminal Procedure  
Section 4–202(i) and (j)  
Annotated Code of Maryland  
(2018 Replacement Volume and 2019 Supplement)

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

### **Article – Courts and Judicial Proceedings**

3–8A–27.

(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.

(2) This subsection does not prohibit:

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

(ii) Access to and confidential use of the record by the Baltimore City Mayor’s Office on Criminal Justice if the Baltimore City Mayor’s Office on Criminal Justice is providing programs and services to a child who is the subject of the record, for a purpose relevant to the provisions of the programs and services and the development of a comprehensive treatment plan;

(iii) A law enforcement agency of the State or of a political subdivision of the State, the Department of Juvenile Services, or the criminal justice information system from including in the law enforcement computer information system information about [an]:

1                   1.     AN outstanding juvenile court ordered writ of attachment  
2     OR AN OUTSTANDING CRIMINAL COURT ORDERED WRIT OF ATTACHMENT, for the sole  
3     purpose of apprehending a child named in the writ;

4                   2.     AN OUTSTANDING CRIMINAL COURT ISSUED  
5     WARRANT, FOR THE SOLE PURPOSE OF APPREHENDING A CHILD NAMED IN THE  
6     WARRANT; OR

7                   3.     A MISSING CHILD AS DEFINED IN § 9-401 OF THE  
8     FAMILY LAW ARTICLE; or

9                   (iv)   A law enforcement agency of the State or of a political subdivision  
10    of the State, WHEN NECESSARY AND FOR THE SOLE PURPOSES OF FACILITATING  
11    APPREHENSION OF A CHILD AND ENSURING PUBLIC SAFETY, from releasing to the  
12    public photographs and identifying information of a child who [has]:

13                   1.     HAS escaped from [a]:

14                   A.     A detention center for juveniles[or a];

15                   B.     A secure residential facility for juveniles[, for the purposes  
16    of facilitating apprehension of the child and ensuring public safety]; OR

17                   C.     A CORRECTIONAL UNIT AS DEFINED IN § 2-401 OF  
18    THE CORRECTIONAL SERVICES ARTICLE; ~~OR~~

19                   2.     IS A MISSING CHILD AS DEFINED IN § 9-401 OF THE  
20    FAMILY LAW ARTICLE; OR

21                   3.     THE COURT DOES NOT HAVE JURISDICTION OVER  
22    PURSUANT TO § 3-8A-03(D)(1), (4), OR (5) OF THIS SUBTITLE AND WHO IS SUBJECT  
23    TO:

24                   A.     ARREST; OR

25                   B.     AN ARREST WARRANT ISSUED BY A CRIMINAL COURT.

26                   (3)    The Baltimore City Mayor's Office on Criminal Justice shall be liable  
27    for the unauthorized release of a police record it accesses under this subsection.

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

**Article – Criminal Procedure**

4–202.

(b) Except as provided in subsection (c) of this section, a court exercising criminal jurisdiction in a case involving a child may transfer the case to the juvenile court before trial or before a plea is entered under Maryland Rule 4–242 if:

(1) the accused child was at least 14 but not 18 years of age when the alleged crime was committed;

(2) the alleged crime is excluded from the jurisdiction of the juvenile court under § 3–8A–03(d)(1), (4), or (5) of the Courts Article; and

(3) the court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society.

(h) (1) Pending a determination under this section to transfer its jurisdiction, the court shall order the child to be held in a secure juvenile facility unless:

(i) the child is released on bail, recognizance, or other conditions of pretrial release;

(ii) there is not available capacity in a secure juvenile facility, as determined by the Department of Juvenile Services; or

(iii) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others.

(2) If the court makes a finding under paragraph (1)(iii) of this subsection that detention in a secure juvenile facility would pose a risk of harm to the child or others, the court shall state the reasons for the finding on the record.

**(I) (1) ~~PENDING A TRANSFER DETERMINATION UNDER THIS SECTION,~~  
~~THE~~ THE PROVISIONS OF § 3–8A–27 OF THE COURTS ARTICLE RELATING TO  
CONFIDENTIALITY OF RECORDS APPLY TO ALL POLICE RECORDS AND COURT  
RECORDS CONCERNING THE CHILD EXCLUDED FROM THE JURISDICTION OF THE  
JUVENILE COURT UNDER § 3–8A–03(D)(1), (4), OR (5) OF THE COURTS ARTICLE  
FROM THE TIME OF THE CHILD’S ARREST UNTIL:**

**(I) THE TIME FOR FILING OF A MOTION TO TRANSFER TO  
JUVENILE COURT UNDER THE MARYLAND RULES HAS EXPIRED AND NO SUCH  
MOTION HAS BEEN FILED; OR**

**(II) A MOTION TO TRANSFER TO JUVENILE COURT HAS BEEN  
DENIED.**

1                   **(2) IF A CASE IS TRANSFERRED TO THE JUVENILE COURT UNDER THIS**  
2 **SECTION:**

3                   **(I) THE PROVISIONS OF § 3–8A–27 OF THE COURTS ARTICLE**  
4 **RELATING TO CONFIDENTIALITY OF RECORDS CONTINUE TO APPLY TO ALL POLICE**  
5 **AND COURT RECORDS CONCERNING THE CHILD; AND**

6                   **(II) THE CRIMINAL CHARGE IS SUBJECT TO EXPUNGEMENT**  
7 **UNDER § 10–106 OF THIS ARTICLE.**

8           **[(i)] (J)**       (1) A victim or victim's representative shall be given notice of the  
9 transfer hearing as provided under § 11–104 of this article.

10                   (2)   (i) A victim or a victim's representative may submit a victim impact  
11 statement to the court as provided in § 11–402 of this article.

12                               (ii) This paragraph does not preclude a victim or victim's  
13 representative who has not filed a notification request form under § 11–104 of this article  
14 from submitting a victim impact statement to the court.

15                               (iii) The court shall consider a victim impact statement in  
16 determining whether to transfer jurisdiction under this section.

17           **[(j)] (K)**       (1) Regardless of whether the District Court has jurisdiction over  
18 the case, at a bail review or preliminary hearing before the District Court involving a child  
19 whose case is eligible for transfer under subsection (b) of this section, the District Court:

20                               (i) may order that a study be made under the provisions of  
21 subsection (e) of this section; and

22                               (ii) shall order that the child be held in a secure juvenile facility  
23 pending a transfer determination under this section unless:

24                                       1. the child is released on bail, recognizance, or other  
25 conditions of pretrial release;

26                                       2. there is not available capacity at a secure juvenile facility  
27 as determined by the Department of Juvenile Services; or

28                                       3. the District Court finds that detention in a secure juvenile  
29 facility would pose a risk of harm to the child or others.

30                   (2) If the District Court makes a finding under paragraph (1)(ii)3 of this  
31 subsection that detention in a secure juvenile facility would pose a risk of harm to the child  
32 or others, the District Court shall state the reasons for the finding on the record.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2020.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.