



1212 New York Ave. N.W.
Suite 900
Washington, D.C. 20005
202-525-5717

Free Markets. Real Solutions.
www.rstreet.org

Testimony from:

Jesse Kelley, Government Affairs Manager, Criminal Justice & Civil Liberties, R Street Institute

In SUPPORT of SB 314, “AN ACT concerning Juveniles Charged as Adults – Confidentiality of Records”

February 11, 2020

Senate Judicial Proceedings Committee

Chairman and members of the committee,

My name is Jesse Kelley, and I am the government affairs manager for Criminal Justice & Civil Liberties at the R Street Institute, which is a nonprofit, center-right public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government. As part of this mission, our Criminal Justice and Civil Liberties team focuses on evaluating policies related to the criminal and juvenile justice systems as well as ways of effectively reintegrating the formerly incarcerated into society. Therefore, SB 314 is of special interest to us.

Each year, hundreds of Maryland youth are automatically charged as if they were adults in the criminal justice system.¹ Increasing privacy for those youth who are automatically placed in the adult system by requiring a “shield” from media publications prior to their transfer hearing is a critical step toward protecting young people from the stain of a publicized criminal arrest.

In fiscal year 2019 alone, more than 300 youth were transferred back to the youth system.² Those young people’s names and criminal charges were not protected during the period of time they were housed in the adult system, and that is a real problem.

It is impossible to “unring the bell” for those minors whose mugshot and arrest information has been publicly shared. The internet will forever remember and keep a record of them, creating a huge barrier for youth attempting to reestablish their lives after involvement with the justice system—and an extra barrier for those young people who are then transferred back into the juvenile court system. The juvenile system protects such information from being released publicly, but youth transferred from the adult system often find these protections are null and void due to the public nature of their original charges. As commented by Michael Pinard, professor and director of the Clinical Law Program at the

¹ Jeffrey Zuback, “Juveniles Charged as Adults in Maryland,” Governor's Office of Crime Control and Prevention, Dec. 12, 2018. <http://goccp.maryland.gov/wp-content/uploads/juveniles-charged-as-adults-201801-201806.pdf>.

² Maryland Department of Juvenile Services, “Data Resource Guide: Fiscal Year 2019,” December 2019, p. 116. https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2019_.pdf.

University of Maryland's Francis King Carey School of Law, this can lead to phenomena in which an arrest record tarnishes a person's future opportunities by "confirm[ing] a stereotype about an applicant based on race and socioeconomic status."³ Indeed, research has shown that criminal records have a deleterious impact on employment.⁴

Unfortunately, the bigger problem with Maryland's "transfer" system is that it allows for a child to be automatically charged as an adult. Charging kids as adults is not an effective mechanism to enhance public safety.⁵ Rather than increasing accountability or deterring crime, it can harm children and hinder rehabilitation.⁶ Minors in the adult system are at risk of victimization and solitary confinement, and are less able to access needed age-appropriate services.⁷ Furthermore, an adult criminal record can permanently hurt a youth's odds of accessing education, housing and employment. For these reasons, we believe it is in the best interest of youth to be first charged and housed in the juvenile system, with later allowance for a juvenile court judge to determine whether or not that young person has breached a threshold and should be tried as an adult.

Until current transfer and statutory exclusion laws are changed, we would ask that you advance SB 314 as a step toward reforming Maryland's juvenile justice system and protecting vulnerable youth from violations of privacy in the form of internet-accessible arrest records.

Thank you for your time,

Jesse Kelley, Esq.
R Street Institute
jkelley@rstreet.org

³ Tina Rosenberg, "Have You Ever Been Arrested? Check Here," *The New York Times*, May 24, 2016. <https://www.nytimes.com/2016/05/24/opinion/have-you-ever-been-arrested-check-here.html?auth=link-dismiss-google1tap>.

⁴ Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology* 108:5 (2003), pp. 937-970. <http://faculty.washington.edu/matsueda/courses/587/readings/Pager%202003%20Mark.pdf>.

⁵ Steven N. Zane, et al., "Juvenile Transfer and the Specific Deterrence Hypothesis," *Criminology and Public Policy*, July 26, 2016, <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12222>.

⁶ National Prison Rape Elimination Commission Report, June 2009. <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

⁷ Irene Ng, et al., "Comparison of Correctional Services for Youth Incarcerated in Adult and Juvenile Facilities in Michigan," *The Prison Journal*, 2012. https://www.researchgate.net/publication/258194434_Comparison_of_Correctional_Services_for_Youth_Incarcerated_in_Adult_and_Juvenile_Facilities_in_Michigan/citation/download.