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Disability Rights Maryland

Testimony before the House Judiciary Committee

House Bill 1558 – Residential Treatment Centers and Facilities – Sexual Abuse and Harassment – Reporting and Prevention POSITION: SUPPORT

Disability Rights Maryland (DRM) is Maryland’s designated Protection & Advocacy agency, and is federally mandated to advance the civil rights of individuals with disabilities. DRM monitors abuse, neglect, and rights violations in Maryland’s state and private psychiatric hospital and in Residential Treatment Centers (RTCs) for youth. A large portion of our mental health related advocacy focuses on enforcing and reforming sexual abuse response, prevention, and treatment laws and regulations designed to protect children with behavioral health disabilities from sexual abuse. We strongly support House Bill 1558, which strengthens sexual abuse prevention and response requirements for Maryland children with behavioral health disabilities.

House Bill 1558 is consistent with the intent and underlying purpose of the *Demby* regulations and codifies existing regulations.

In 2006, Ms. Demby and Ms. Williams, individuals with developmental disabilities, filed suit against the Maryland Department of Health and Mental Hygiene (Department) alleging that they and other individuals with disabilities were routinely sexually abused by staff in a sheltered workshop. *See Demby v. Md. Dep’t of Health & Mental Hygiene*, No. CCB-06-1816, 2011 U.S. Dist. LEXIS 133977 (D. Md. Nov. 21, 2011). This lawsuit culminated in the *Demby* Settlement Agreement in 2011 which required the State to make systemic reforms by developing comprehensive mandatory sexual abuse reporting and training requirements for certain state-run facilities and programs, as well as Department licensed facilities and programs. The *Demby* requirements were later codified in State regulations.

Under the *Demby* regulations, all “covered programs” comply with mandatory reporting requirements for sexual abuse complaints of residents served by the program. *See* COMAR 10.01.18.05. “Any staff member who observes, receives a complaint regarding, or otherwise has reason to believe that an individual has been subjected to, inappropriate sexual behavior shall file a report with the program director promptly, but in no circumstances more than 1 working day after becoming aware of the situation.” *Id.* The program director must not only immediately ensure the safety, security, privacy, and emotional support of the individual and individuals involved, but must also provide medically appropriate and necessary care to the individuals. *Id.* Within 1 business day after receiving the sexual abuse report, the program director must report it to 1) the Behavioral Health Administration (BHA) or the Developmental Disabilities Administration (DDA), or both, as applicable; 2) The Office of Health Care Quality (OHCQ); 3) DRM; and 4) the appropriate law enforcement authorities if the reported inappropriate sexual behavior violates or may violate the law. *Id.* Additionally, the covered program must promptly report the results of their investigation of the sexual abuse complaint to the agencies above. *Id.*

The *Demby* regulations contain additional requirements for covered programs to establish a complaint process and give notice of the process to each resident, conduct staff training, and establish policies consistent with the regulations. *Id.*

In the words of the *Demby* Court, the explicit purpose of the systemic reforms achieved by the plaintiffs and the State was to "... protect others from such abuse in the future..." *Demby v. Md. Dep't of Health & Mental Hygiene*, No. CCB-06-1816, 2011 U.S. Dist. LEXIS 133977, at *2. House Bill 1558 furthers this goal by: (1) bolstering implementation requirements and (2) including both allegations and complaints of sexual abuse or sexual harassment within existing law.

House Bill 1558 strengthens and expands existing protections for youth in all residential treatment facilities.

During the 2018 General Assembly Session, Delegate Valentino-Smith sponsored HB 1130, "Residential Treatment Centers – Mandatory Reporting of Inappropriate Sexual Behavior," which passed unanimously. The bill (now law, at Health General § 19-347.1) requires Maryland's private residential treatment centers (RTCs) for youth to report allegations of sexual abuse to the Behavioral Health Administration or Developmental Disabilities Administrations, as appropriate, the Maryland Office of Health Care Quality, and Disability Rights Maryland (DRM), whenever a staff member observes, receives a complaint or has reason to believe that an individual has been subjected to inappropriate sexual behavior. An RTC is a psychiatric institution that provides campus-based intensive and extensive evaluation and treatment of children and adolescents with severe and chronic emotional disabilities who require self-contained therapeutic, educational, and recreational program in a residential setting. Maryland has 7 RTCs that are licensed by the Maryland Department of Health. Two facilities serve only boys, and one services younger children ages 5-13. The other RTCs are co-ed and serve adolescents.

Prior to HB 1130's passage, DRM, as the state's federally mandated protection and advocacy organization for individuals with disabilities, was already required to receive reports of sexual abuse from Maryland's two-state operated RTCs. Now, DRM receives reports from all Maryland RTCs. Since HB 1130 went into effect on July 1, 2018, DRM has received over 50 reports of sexual abuse from RTCs, including approximately 45 from the five private RTCs that are newly required to report. It is likely that DRM would not have been aware of the reports without the passage of HB 1130, or would have found out about them only incidentally, when monitoring the facilities, making it difficult to timely investigate and ensure the safety of the children involved. When DRM receives reports of sexual abuse, we follow up to meet with the child or youth, ensure they are safe and that the facility has responded appropriately to the report of sexual abuse.

About a dozen of the reports have been extremely serious and involved sexual abuse between children and staff or forcible sexual assault. In such cases, DRM investigates to ensure that the victim is protected, and works collaboratively with the child and his or her guardian, as appropriate, to ensure they receive timely medical treatment, including counseling, understand their legal rights, and that there is appropriate follow-up and response from the facility. This may

involve changing policies, improving staff training, ensuring that culpable staff are terminated and prosecuted, and engaging consultants to determine how changes can be made to ensure that such incidents are prevented in the future.

House Bill 1558 requires that covered entities, including private RTCs, implement preventive measures proportionate to and in consideration of an individual's unique vulnerabilities which may increase their risk of sexual or physical abuse.

Recent Sexual Abuse Allegations Demonstrate Why HB1558 is Imperative to Close Loopholes

Since HB1130 went into effect in July 2018, DRM has observed, firsthand, how critical HB1558's passage is to bolster protections of youth with behavioral disabilities in Maryland, a population at high risk for sexual assault.

First, in the decade prior to HB1130's passage, from FY 2008 to 2018, DRM received 52 sexual abuse complaints involving children in RTCs, primarily through informal reports. In the single year after HB1130's implementation, which required all RTC's to report sexual abuse allegations to us, DRM received over 50 reports of sexual abuse from RTC's. These numbers demonstrate that sexual abuse of youth with behavioral disabilities in Maryland is likely more prevalent than we had anticipated. Further, they point to the need to proactively address sexual abuse of youth by strengthening statutory protections, as HB1558 does.

Second, in June 2019, DRM received over a dozen reports of sexual abuse of adolescents at one Maryland RTC, reports we received in response to the passage of HB1130. These reported allegations, which later led to the arrests of three of the RTC's staff, are disturbing. The RTC provides residential and day school programs to youth ages 12 to 21 with behavioral and emotional disabilities, and includes a program for children who have been sexually exploited. According to the allegations and reports DRM received, three staff at the RTC had been sexually assaulting residential youth from late 2018 to the early summer of 2019. The assaults took place both on and off campus by the staff members in charge of their daily care. The three staff appeared to be operating in concert with one another and to be targeting children in the program for sexually exploited youth. In addition to the staff-on-youth sexual assault reports, DRM also received notifications of peer-on-peer sexual abuse, suggested a broader culture of sexual abuse within the institution. Along with other agencies, DRM has been providing support to the individual victims of sexual abuse at the RTC and working with the RTC to address systemic reforms.

The sexual assaults at this RTC illustrate why HB1558 is needed. HB1558 requires increased protections for youth with behavioral health disabilities in institutional settings such as the RTC described, a population among the most vulnerable for sexual abuse. In addition to reporting obligations, the bill will expand statutory protections to proactively and systemically work toward prevention of sexual abuse of these youth, while providing appropriate trauma-informed responses and care. Had these protections been in place, it is possible that the rampant sexual abuse alleged to have occurred at the RTC, may have been prevented or caught and addressed earlier.

HB1558, if passed, will be one significant step forward in strengthening much-needed protections for youth with behavioral and emotional disabilities in Maryland.

For the reasons stated above, we urge that House Bill 1558 be given a favorable report. For more information, please contact Brianna Kitchelt, Esq. at 410-727-6352, ext 2501 or briannak@disabilityrightsmd.org.