

February 5, 2021

Ways & Means Committee  
Room 131  
House Office Building  
Annapolis, Maryland 21401

RE: HB 526 – St. Mary’s County – Public and Nonpublic Schools – Prohibition  
on Possession of Tobacco Products by Minors – Letter of Opposition

Dear Chair Kaiser:

This letter is in opposition to HB526, which prohibits a minor from possessing a tobacco product in a school building or on school grounds in St. Mary’s County and provides for civil money penalties for violations. Prior to 2019, School Resource Officers (SROs) had authority to enforce certain tobacco laws against students under age 18. However, in 2019, the Maryland General Assembly passed HB 1169 which, among other things, repealed a provision that previously allowed law enforcement to issue a civil citation to a minor who purchased, used, or possessed a tobacco product (PUP laws). In Senate testimony, the removal of the PUP laws was described as an unintended consequence of that bill. In fact, the provision was purposely removed as there is no evidence showing that penalizing youth is effective in reducing youth smoking.<sup>i</sup> Research shows that laws penalizing youth are likely not to be effective in reducing youth smoking, and instead shift the blame from industry and retailers to addicted youth.<sup>ii</sup> Re-introducing civil penalties to youth is antithetical to the 2019 law and has no proven basis of efficacy.

Given the repeal of PUP laws, a minor’s use or possession of an ESD is no longer against the law; thus, SROs seemingly have no authority to confiscate these devices under the law. Similarly, SROs have no authority to confiscate these devices pursuant to school rules. Schools execute memoranda of understanding (MOUs) with SROs that define the SRO authority. As written, MOUs do not allow SROs to go beyond traditional law enforcement duties to enforce school disciplinary rules. However, SROs can be legally authorized to address this problem without amending the law: (1) MOUs can be amended to increase SRO involvement in tobacco product policy enforcement, as long as the SRO’s actions would not violate the Constitution; and (2) if students are found to violate other provisions of state law, namely §10-107 of Maryland Criminal Code pertaining to distributing tobacco products to minors, an SRO may confiscate the student’s tobacco product and issue a citation.

Maryland’s “Safe to Learn Act” leaves the drafting of MOUs with SROs up to the local school system.<sup>iii</sup> Section 7-1508, entitled “Information on the role and authority of school resource officers” merely requires each local school system to “post on the school system’s website information on the role and authority of school resource officers assigned to public schools within the school system.” The Act is devoid of any drafting requirements, prohibitions, or other guidance regarding MOUs and the scope of SROs’ authority. Local school systems appear to have leeway to draft these agreements according to the needs of the school community, so long as the SRO’s authority does not violate any laws or Constitutional requirements.

Given that state law does not mandate model MOU language regarding an SRO’s role, and that St. Mary’s County permits amendments by mutual agreement of the parties, school systems should amend their MOUs to address the possession of a tobacco product by a student instead of utilizing the legislative process. Amending the MOU is a simple and streamlined process that can effectively meet the needs of all parties.

Sincerely,



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<sup>i</sup> Hana Ross & Frank J. Chaloupka, *The Effect of Public Policies and Prices on Youth Smoking*, *ImpacTeen* 22–25 (2001); Tworek et al., *State-Level Tobacco Control Policies and Youth Smoking*, 97 *Health Policy* 136, 142–44 (2010).

<sup>ii</sup> M. Wakefield & G. Giovino, *Teen Penalties for Tobacco Possession, Use, and Purchase: Evidence and Issues*, 12 *Tobacco Control Supp.* i6, i10–11 (2003); Becca Knox, *Youth Access Laws that Penalize Kids for Purchase, Use, or Possession are not Proven to Reduce Tobacco Use* (2018), <https://www.tobaccofreekids.org/assets/factsheets/0074.pdf>.

<sup>iii</sup> Maryland Code, Education Article, § 7-1501 – § 7-1512.