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## **POSITION ON PROPOSED LEGISLATION**

**BILL: HB146 - Education – Reportable Offenses and Student Discipline – Alterations**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable with Amendments**

**DATE: March 28, 2022**

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report with amendments on House Bill 146.

Under current Maryland law, police are required to report to schools whenever a student is arrested in the community for one of over 50 potential offenses. Some schools have abused this law to remove students from school with very little process, even if the arrest had nothing to do with school and the student's presence has no impact on school safety. This is one of the last and most draconian features of our former school discipline system, and perpetuates the school to prison pipeline. HB 146 provides the first steps towards essential reform to ensure that all children continue to receive access to a free and appropriate education, while balancing concerns regarding school safety.

Under current law, school districts routinely and unilaterally remove students for indefinite periods of time when students are arrested off of school grounds for conduct unrelated to schools. While Maryland has numerous statutes and regulations requiring important due process protections for children regarding disciplinary procedures for in-school conduct, our laws are silent surrounding the due process protections for children subject to a reportable offense, an arrest for *alleged* out-of-school conduct. The allegations subject to reporting often have no nexus to the child's educational needs or school safety.

The practices and policies around reportable offenses vary largely between jurisdictions, and there is currently *no data that is required to be collected on the treatment of children arrested for a reportable offense*. That means we have nothing beyond anecdotes from our clients and families to understand the scope of reportable offense removal abuse, and no way to hold school systems accountable.

Finally, under current law a student can be removed from school with minimal process for a mere arrest outside of school that they are never proven to have committed. In the past three years:

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- Almost 50% of all cases forwarded to the Department of Juvenile Services were resolved with no formal or informal action taken;
- Almost 60% were resolved without ever being formalized in court;
- 20-30% of all cases that were formalized for court action were ultimately dismissed.<sup>1</sup>

These statistics make clear that under the current law, the vast majority of children who can be and are removed from school are never found guilty of anything at all, making the removal all the more harmful to the child and divorced from school safety.

While removed from school awaiting disposition of the reportable offense cases, these children suffer irreparable harm. Quite often, they are moved to alternative schools that do not offer the education they need, whether it is special education services, advanced placements, or elective classes. At times, instead of being moved to another school, they are placed on home tutoring, receiving workbooks that they are expected to complete on their own with only a few hours of instruction from a tutor each week. During the period when they are removed from school, students cannot participate in extra-curricular activities such as athletics and student government, leaving a gaping hole in their academic transcripts. And, when the case is adjudicated, the students are placed back at their home schools without any compensatory services to help them through the transition, vital when students as young as 11 have missed out on the important socialization of early middle school.

HB 146, as amended by the House, provides solutions to prevent some of these harms. The bill requires school systems to follow the general and special education discipline procedures in order to remove a child for a reportable offense, and directs the Maryland State Department of Education to collect data on removals of students for reportable offenses.

What the amendments to HB 146 eliminated were the clear definition of a reportable offense as an offense that happens off of school property so that children are not removed from school through the reportable offense procedure for events that happen in school. Prior to amendments in the House, the bill would have also limited those offenses that a child can be removed for to “crimes of violence” and offense for which children are charged as adults to ensure that there was a nexus between the offenses subject to reporting and school safety. In addition, the bill as originally drafted would have also changed the point of reporting from arrest to a finding of delinquency or a conviction, and would have ensured the involvement of the student’s attorney. These protections were eliminated in the committee and those changes resulted in the need for some technical amendments, including replacing language referring to “adjudicated delinquent or convicted” with “arrested for” as the committee reverted to the current point of reporting, and specifying that the data collection is for reportable offenses and not limited to school disciplinary action so as to effectively collect data on reportable offenses.

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<sup>1</sup> Maryland Department of Juvenile Services *Data Resource Guide: Fiscal Year 2021* at 28, available at [https://djs.maryland.gov/Documents/DRG/Data\\_Resource\\_Guide\\_FY2021.pdf](https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2021.pdf)

While the version of HB 146 that is before the Committee does not fully fix the many problems with reportable offenses, it does take two important steps forward in ensuring that data is collected and there is a process followed prior to removal. **For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report with amendments on HB 146.**

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**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

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