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POSITION ON PROPOSED LEGISLATION

BILL: HB 203 – Education – Reporting Arrests of Students -- Alterations

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: January 27, 2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 203.

Under current Maryland law, police are required to report to school administrators whenever a student is arrested in the community for one of over 50 offenses. Schools statewide have used that information to routinely and unilaterally remove children from classrooms for indeterminate terms based on alleged conduct in the community. HB 203 would increase the scope of reporting, expanding the use of otherwise confidential information to the detriment of school age children stigmatized by the simple association of their name and unadjudicated charges.

The law already permits schools to exclude students from their regular educational program, with minimal due process, for conduct generally unrelated to school or to the safety of other students.¹ During the last legislative session, the statute was amended to add an annual reporting requirement, including the nature of the reportable offense, any change in school programming that resulted, the length of any such change, the effect on academic performance, as well as the grade of the student, and the race, ethnicity, gender and disability status of the student.²

Although that data is not yet available, we, as youth defenders representing public school students across the state, have observed the harmful effect of the reportable offense statute on

¹ COMAR 13A.08.01.17; see MD Code, Education, § 7-303 and § 7-305(h).

² See Maryland House Bill 146 (2021); [Legislation - HB0146 \(maryland.gov\)](https://legislation.maryland.gov/legislation.aspx?bill=HB0146)

their education, development and overall well being. We have also observed the disproportionate impact on children of color, and children with diagnosed learning differences and mental health disorders, in other words: the children most in need of the services afforded in public schools.

Students who are removed from their regular educational program while waiting for resolution of their reportable offense suffer a series of common injuries. There is inevitably a gap between their removal from their regular education program and the start of an alternative program during which they are receiving no education. The alternative offered is either virtual education, a few hours each week with a tutor, or an alternative school program, all of which are invariably inferior to their regular education program. Students with special education services, advanced placement classes, or elective classes are often unable to access those opportunities and fall behind their peers in acquiring knowledge and credits. They also lose access to extracurricular activities such as athletics, student government, theater, music, and art, diminishing their academic transcripts.

The overall effect of these observed harms is difficult to quantify without reliable data. But it has been enough to garner the attention of educational advocates in at least one jurisdiction. In November 2020, the Joint Initiative to Eliminate the Opportunity Gap³ in Anne Arundel County Schools published its recommendations, which counted reportable offenses among the reasons for the opportunity gap. The report noted that the school system did not collect disaggregated data for reportable offenses, but included some data and observations obtained by our attorneys in the course of their representation of children enrolled in Anne Arundel County Schools.

During the 2018–2019 school year, principals recommended and the Office of Safe and Orderly Schools removed 111 students from county schools for a broad range of unproven allegations within the [definition of reportable offenses] (Anne Arundel County Public Defender’s Office, 2020). Those students were, with few exceptions, placed on home teaching until their charges were resolved. The gap in their in-school education lasted anywhere from one to eight months. Although Anne Arundel County Schools are required to provide alternative education, some students never receive those services and those who do often report that in-home school is inferior to in-school education. Students who live in high crime areas are

³ Anne Arundel County Public Schools, *Joint Initiative to Eliminate the Opportunity Gap: Committee Recommendations (2020)*, available at <https://www.aacps.org/cms/lib/MD02215556/Centricity/Domain/1741/OpportunityGapReport2020-11-06.pdf>.

sometimes excluded from the home school program because teachers refuse to go to their homes.⁴

While the harm of reportable offense removals seems clear, the benefit is harder to determine. A large portion of those removed from school because of reportable offenses are never formally charged by the State's Attorneys Office or never adjudicated delinquent. The Department of Juvenile Services Data Resource Guide is instructive. In the past three years:

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

The data suggests that the harm to children whose education is interrupted by the reporting of unadjudicated allegations is more often than not unjustified and unmitigated.

HB 203 expands the scope of reporting to statewide agencies, but offers no rational basis for doing so, partly because there is no data to support the effect of the statute on students or the efficacy of the statute in making schools safer. The potential harm to children is foreseeable based on our experience representing school age children, while any potential benefit can only be speculative in the absence of reliable data. We have an obligation to at least do no more harm.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 203.

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

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⁴ Anne Arundel County Public Schools, *Joint Initiative to Eliminate the Opportunity Gap: Committee Recommendations (2020)* at 35.