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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 69 Parent and Guardian Accountability Act

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 1/30/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 69. This bill serves to criminalize parents and guardians for failing to seek and participate in counseling when directed by a school system after their child engages in “violent and disruptive behavior” at school. The proposed statute is vague and overbroad, and there is no basis for presuming that mandatory parent/child counseling will actually remedy the problem. Moreover, creating another family policing initiative will further burden an already overburdened court system and create a financial burden for already-impooverished families and social service providers.

Vague and Overbroad

Pursuant to HB 69, a parent or guardian’s legal obligation to seek and participate in counseling with the child is triggered when a school principal provides written notice to the parent or guardian that the child has engaged in violent and disruptive behavior two or more times. There is no definition of what constitutes “violent” or “disruptive” behavior, leaving the terms subject to interpretation by each school principal. Is it “disruptive behavior” if the child speaks out of turn in class while the teacher is lecturing and the entire class laughs at the child’s comments? Does a child engage in “violent” behavior if he or she hits a classmate on the back of the hand? One principal might answer yes to these questions while another principal at a school down the road might answer no. Because the statute is vague and overbroad, it would not be applied fairly but subject to the personal views of school employees. Vagueness and overbreadth will make this statute vulnerable to Constitutional challenges.

Moreover, there is no definition of “parent” in the bill. Does “parent” mean the biological parent? The custodial parent? Is a parent who is not custodial and lives in another state required to attend counseling? If the child has two parents, are both required to attend counseling? Does “parent” include a foster care provider if the child is placed in foster care? Does “parent” include a de facto parent or the other partner in a same sex marriage who is not the biological parent of the child?

The term “counseling” is also vague. There is no definition of what constitutes “counseling,” who should provide the counseling, or who evaluates the situation to determine what type of counseling is sufficient to comply with the law. Moreover, the bill fails to recognize that even parents or guardians who want counseling face barriers including lack of insurance coverage and a limited number of qualified providers. Unless school systems are able to provide free counseling to all students, the state cannot mandate counseling and then impose criminal sanctions for a parent/guardian's failure to pursue counseling.

Proposed Remedy May Not Be The Appropriate Remedy

This bill presumes that having the parent and child’s participation in counseling will prevent the child from engaging in “violent and disruptive” behavior in the future. However, that presumption may be incorrect. A child’s disruptive behavior at school may be caused by something that might be exacerbated by forced counseling. For example, if a child’s behavior is in reaction to abuse by the parent, forcing the child to participate in counseling could further traumatize the child. On the other hand, the child’s behavior could be triggered by something happening at the school or due to bullying. In these circumstances forcing the parent and child to participate in counseling is a waste of time and resources and not likely to address the problem. In addition, the behavior may be related to a disability and/or an unmet need which should be addressed through the IEP team process and not through a one-size-fits-all response of mandated counseling.

Added Burden on the Legal System

This bill will have a financial impact on an already overburdened justice system and social service system. Poor parents who are prosecuted for non-compliance will need representation by the Office of the Public Defender, and the criminal justice system will have to add more cases to its already-full dockets to punish parents for a problem more appropriately addressed by

educational, social, and public health systems. Notwithstanding the increased burden on the legal system, forced counseling with the threat of conviction is not likely to lead to a positive therapeutic result. While counseling can be a positive intervention, it should be done voluntarily and at the discretion of a child's parent or guardian.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 69.

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

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