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POSITION ON PROPOSED LEGISLATION

BILL: SB 1145 Public and Nonpublic Schools - Child Sex Offenders Prohibition on In-Person Attendance

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: March 13, 2024

The Maryland Office of the Public Defender (OPD) respectfully urges the Committee to issue an unfavorable report on Senate Bill 1145, which would prohibit a child from in-person attendance at a public school or a nonpublic school that receives State funds if the child has been convicted or adjudicated delinquent of rape or other sexual offenses. We strongly oppose SB 1145 because it would violate students' due process rights, it is not necessary as there are other protections in place, and it will likely cause significant and unnecessary harm to students.

Children who are adjudicated for a sex offense are under the jurisdiction of the court and the Department of Juvenile Services (DJS). With the court's oversight, an adjudicated child is generally receiving treatment either in an out-of-home placement or in the community. Most importantly, courts routinely assess whether it is dangerous for a child charged or adjudicated to be in the community. There are multiple levels of court review and DJS uses objective assessment tools during every stage of the process.¹ The court is also required to consider reasonable protections, such as a no contact order, for the safety of victims if a student is released pending adjudication. Md. Code Ann. Cts. & Jud. Proc. § 3-8A-15(j). In effect, the court, with detailed information about the case, makes a determination about whether a student poses an "imminent

¹ See Maryland Department of Juvenile Services Data Resource Guide: Fiscal Year 2022 at 22-24, available at https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2022.pdf (describing the various objective assessment tools used to evaluate risk and safety when determining whether a young person should be detained or not and what level of services a young person may need).

threat” to a person or specific geographic location, including the neighborhood and school. In many situations, with DJS supervision, court involvement, and the provision of services to the youth, students are safer and less of a safety threat and they should be permitted to return to their regular school program. Senate Bill 1145 is based on a fundamental misunderstanding of the level of scrutiny that both DJS and the courts engage in before a student is permitted to return to or remain in the community after an arrest and/or disposition of a charge.

Moreover, the likelihood of a youth under a court’s jurisdiction, supervised by DJS, and receiving services in the community sexually offending at school where they are under the supervision of administrators, teachers, and staff is infinitesimally small. Senate Bill 1145 is based on fear and not supported by data. Mandatory exclusion of students from the education environment and isolating them due to an unfounded fear is not good public policy and will only create additional safety concerns.

In addition to the protections provided by the court and DJS through services and interventions, there are in place significant reporting requirements under the “reportable offense” statute, [Md. Code, Educ. § 7-303](#). When an offense is considered “a reportable offense”, which includes a sexual offense, law enforcement is required to notify the school system of the arrest “within 24 hours” or “as soon as practicable.” The school system must then follow the school discipline procedures and determine if allowing the student to attend school would cause “imminent threat of serious harm to other students or staff.” This process provides appropriate and necessary due process protections and allows a school system to consider the facts and circumstances related to a student’s specific situation, while also ensuring the safety of the school community.

Creating a blanket prohibition of in-person attendance, as SB 1145 proposes, raises significant due process concerns. Senate Bill 1145 provides no process to evaluate whether a threat actually exists based on facts to support a need to exclude a student, there is no ability to appeal, and most notably, there is no review process or end date for the exclusion. As the Supreme Court

noted in *Goss v. Lopez*,² students have a property interest in education which cannot be denied without adequate due process. As a court has determined that a student is safe to be in the community, the Legislature cannot then by broad sweeping edict deny education without due process. In contrast, the reportable offense statute described above, Md. Code, Educ. § 7-303, provides a level of due process which is required before the right to full education services in a student's regular school program can be denied.

In addition, dictating the placement of a student with disabilities through the Criminal Code would run afoul of the requirements of federal law, the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act, which require that students with disabilities receive a free appropriate public education in the least restrictive environment. Senate Bill 1145 also denies children the number one protective factor in preventing youth from recidivism: education. Relegating children to an indefinite placement in a virtual school program or home and hospital instruction (which requires only 6 hours a week of instruction)³ further isolates a student and precludes critical educational opportunities that go beyond course subjects. During the pandemic, we learned that virtual school is an inferior form of education, especially for youth with learning disabilities or other educational deficits, and created an ongoing mental health crisis.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 1145.

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

² 419 U.S. 565 (1975).

³ COMAR 13A.03.05.01.