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POSITION ON PROPOSED LEGISLATION

BILL: SB89 Report of Child Injury or Fatality

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/5/2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 89 – Report of Child Injury or Fatality. SB 89 is overly broad, is unclear, and violates Maryland’s statutes and rules. This bill requires the Secretary of the Department of Human Services “to disclose certain reports and records of child abuse and neglect within a certain period of time if certain conditions are met.” Conditions include the child being in State or local department of social services custody, or in the care of a foster parent; is the subject of an investigation, a report, a referral, or a complaint received by DSS or DHS; and suffered a near-fatality or fatality.

The bill does not limit the individual or entity who may seek disclosure of this report. Thus, any individual or organization, for whatever purpose, may seek the name of the child, the names of the parents, foster care providers, or any other caregivers of the child, regardless of the purpose of seeking such information. While some requests for disclosure might be in the public interest (for example, if a journalist were writing an article about the dangers of foster care), some requests could potentially for nefarious reasons (for example, a vigilante who hopes to retaliate against an alleged abuser). As written the bill places no limits on who may seek disclosure of this information or for what purpose the disclosure is intended.

The bill would also require disclosure of numerous other details, including any services provided to the alleged abuser or neglector, the allegedly abused or neglected child, and the household or family members; and any other information that the State determines is in the public interest to disclose. For example, if someone in the household where a child suffered a near-fatality or fatality were referred to psychological counseling, that personal information would be required to be disclosed. More

importantly, information about a child who survives is required to be disclosed, in violation of that child's privacy. The child's medical, therapeutic, and educational records would have to be disclosed.

Finally, and critically, Senate Bill 89 would render null and void Courts & Judicial Proceedings § 3-827 and Maryland Rule 11-203, both of which prohibit the disclosure of court records in a Child In Need of Assistance case. Specifically, CJP § 3-827 and Md. Rule 11-203 require that court records pertaining to a child shall be kept confidential and may not be divulged by subpoena or otherwise except by order of the court after good cause is shown. However, SB 89 would require disclosure in every case of near-fatality or fatality, meaning children and their families in these circumstances do not have the same protection of their privacy.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 89.

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

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