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## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 314 - Juvenile Law - Willful Misconduct of a Minor - Civil Liability of a Parent, Legal Guardian, or Custodian (Parental Accountability Act)**

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

**POSITION: Unfavorable**

**DATE: February 13, 2024**

The Maryland Office of the Public Defender (OPD) respectfully requests that the Committee issue an unfavorable report on Senate Bill 314. This bill would impose joint and several liability on a parent, guardian, or custodian of a child who commits an act of “willful misconduct” that results in death or injury of an individual or damage to property. Senate Bill 314 also seeks to increase the financial liability of a parent, guardian or custodian to \$25,000 for damages caused by their child. OPD is in the unique position of providing representation to children charged with committing offenses, as well as parents through the OPD Parental Defense Division. Based on our experience representing both children and parents/guardians, we oppose this bill for several reasons.

**Senate Bill 314 is not necessary as there already exists a provision that allows for restitution.**

Under current Maryland law, a victim may seek restitution for a crime committed by a child, from the parent for personal harm or property damage.<sup>1</sup> In representing our clients, however, we see how difficult it is for many low-income families to pay restitution. It creates a financial burden on parents who are already struggling to meet the needs of their families, pushing them further into poverty. Increasing the financial liability through this bill will not increase the ability of families to meet that burden. Moreover, there is a body of reports that shows that financial punishment is not effective and results in a negative impact on young people and their families.<sup>2</sup> As one report has stated: “For families already experiencing financial hardship, this added financial burden can

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<sup>1</sup> Maryland Code, Criminal Procedure § 11-603 and § 11-604.

<sup>2</sup> Lindsey E. Smith and Nadia Shabnam Mozaffar, *Five Key Findings About Restitution in the Juvenile Justice System*, ABA Litigation Section (Sept. 28, 2022), <https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/five-key-findings-about-restitution-juvenile-justice-system/>.

harm their ability to provide for their family’s basic needs, and the conflict about whether or not to divert paychecks to the court for restitution can impact family relationships and dynamics.”<sup>3</sup>

**Senate Bill 314 fails to provide an exception for disability-related behavior.**

Children with disabilities with challenging behavior, including children who may have autism, other developmental disabilities, or emotional disabilities, may engage in behavior related to their disability that leads to property damage. Parents should not be held liable and subject to such a high level of damages for behavior related to a disability. In addition, we have worked with many parents and guardians who have sought assistance from state agencies to help address their child’s behavior, only to be turned away. Senate Bill 314 continues an increasingly punitive trend towards parents for the misconduct of their child, yet fails to take into account the circumstances that may lead to the actions of the child, including behavior that may be related to a disability.

**The term “willful misconduct” is ambiguous and overly broad.**

OPD is further concerned that “willful misconduct” is an ambiguous term and is not defined within the bill. Such a broad term creates a risk that it will be applied in a manner that will disproportionately impact students and families of color, as well as students with disabilities and their families.

Senate Bill 314 is punitive and does not create an evidence-based remedy to address juvenile behavior. This bill also does little to ensure that victims are compensated for any loss caused by a crime. Victim compensation funds are a more effective means of meeting victims’ financial needs.<sup>4</sup> Rather than pursuing more punitive measures that will disproportionately impact low-income parents and guardians of color, our communities need access to restorative justice programs that repair the harm and make our communities safer.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 314.**

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

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<sup>3</sup> Lindsey E. Smith, et al., *Reimagining Restitution: New Approaches to Support Youth and Communities*, Juvenile Law Center, (2022), at 13, <https://debtorsprison.jlc.org/documents/JLC-Reimagining-Restitution.pdf>.

<sup>4</sup> See information on the Maryland Victim of Crimes Fund (MVOC), <https://goccp.maryland.gov/grants/programs/mvoc/>.