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## **POSITION ON PROPOSED LEGISLATION**

**BILL: HB 18 – Education – Reporting Arrests of Students -- Alterations**

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

**POSITION: Unfavorable**

**DATE: February 1, 2023**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 18.

Under current law, Md. Code, Educ. § 7-303, which was amended in 2022, law enforcement is already required to inform school districts if a student has been arrested for one of the many listed offenses set forth in the statute. Schools statewide have routinely used that information to remove children unilaterally from their classrooms for indeterminate terms based on alleged conduct in the community which is unrelated to school. House Bill 18 would increase the scope of reporting requirements imposed on law enforcement officers. These requirements expand the use of otherwise confidential information to the detriment of school age children stigmatized by the simple association of their name and unadjudicated charges.

Based on a report of an arrest for one of the enumerated charges in the statute, school systems may exclude a student from their regular educational program, with minimal due process and for conduct generally unrelated to school, if it is determined that the student's presence in school would cause "imminent threat of serious harm to other students and staff."<sup>1</sup> During the 2022 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.<sup>2</sup>

Although that data for the 2022-23 is not yet publicly available, we, as youth defenders representing public school students across the state, have observed the harmful effect of the reportable offense statute on students' education, development, and overall well being. We have also observed the disproportionate impact on children of color, and on children with disabilities, who are most in need of the services afforded in public schools.

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<sup>1</sup>Under Md. Code, Educ. § 7-305(h), the school discipline provisions apply to removals arising out of a reportable offense under Section 7-303.

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

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 is either virtual education or an alternative school program, both of which are invariably inferior. Students with special education services, advanced placement classes or elective classes are often unable to access those opportunities and fall behind their peers. They also lose access to extracurricular activities such as athletics, student government, theater, music and art, diminishing their academic transcripts. For students put in virtual programs, they are isolated from peers and struggle to stay engaged.

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 Gap<sup>3</sup> in Anne Arundel County Public 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 the school system.

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

While the harm seems clear, the benefit is harder to determine. A large portion of those charged with reportable offenses are never formally charged by the State’s Attorney’s Office or never adjudicated delinquent. The Department of Juvenile Services Data Resource Guide for 2023 is instructive. Over the past year, 65.5% of the juvenile complaints were resolved without ever being formalized in court.<sup>5</sup> More than 50% of all cases forwarded to the Department of Juvenile Services were resolved with no formal or informal action taken. 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.

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<sup>3</sup> 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>.

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

<sup>5</sup> See Department of Juvenile Services Data Resource Guide, Fiscal Year 2023, at p. vi, available at [https://djs.maryland.gov/Documents/DRG/Data\\_Resource\\_Guide\\_FY2023.pdf](https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2023.pdf).

House Bill 18 unnecessarily seeks to expand the scope of reporting to statewide agencies without any rational basis for doing so. Data regarding reportable offenses is already collected by local school systems and reported at the state level through the Maryland State Department of Education. Local school systems are also in the best position to determine if they need to act on a notice of a reportable offense to ensure safety. Therefore, there is no compelling reason for confidential and sensitive information regarding pre-adjudicated community offenses to be further reported to the Maryland Center of School Safety and the Maryland State Board of Education.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 18.**

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

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