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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 27, 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 and the rights of students with disabilities, it is not necessary as there are other statutory protections in place, and it will likely cause significant and unnecessary harm to students.

As SB 1145 was rushed through a Senate hearing and vote, the Senate did not have an opportunity to consider the legal deficiencies of this bill, the extensive research on this topic, or the bill's negative policy implications. In fact, the fiscal and policy note likewise fails to even mention some of the glaring problems with the bill. For the reasons set forth below, we urge the House Committees to oppose this bill and protect the rights of all children to attend school and receive in-person instruction which, as the pandemic showed us, is more effective and appropriate.

Senate Bill 1145 is based on a fundamental misunderstanding of the level of scrutiny that both the Department of Juvenile Services (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. Children who are adjudicated for a sex offense are under the jurisdiction of the court and 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 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. 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 infinitely small. In fact, extensive research supports the finding that this group of children have a remarkably small rate of recidivism and are highly amenable to treatment.² 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 concern 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

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).

² Caldwell, M., *Quantifying the decline in juvenile sexual recidivism rates*, Psychology, Public Policy, and Law 22(4) (2016), at 414–426, <http://dx.doi.org/10.1037/law0000094>. See also the written testimony of Prof. Elizabeth Letourneau, Johns Hopkins Bloomberg School of Public Health.

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. The Supreme Court held in *Goss v. Lopez*³ that students have a property interest in education which cannot be denied without adequate due process. SB 1145 fails to provide that constitutionally protected due process. In addition, there is significant concern that this bill will lead to the exclusion and uprooting of students, who may have a closed case for any level of sex offense, which would occur without any due process. Such consequences of this bill would be unconscionable and detrimental to those children. 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)⁴ 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

³ 419 U.S. 565 (1975).

⁴ COMAR 13A.03.05.01.

disabilities or other educational challenges, and created an ongoing mental health crisis.

Senate Bill 1145 is a misguided effort to ensure safety in our schools and would have an enduring detrimental impact on students. As proposed legislation (HB 814 and SB 744) seeks to expand the juvenile court's jurisdiction to include 10-12 year olds charged with a sex offense in the 3rd degree, the imposition of SB 1145 would prohibit such young children from attending in-person public school until graduation. Such a consequence would be damaging to that young child and to our communities. Senate Bill 1145 violates the rights of students on many levels, is not supported by the extensive research by experts, attempts to address a safety concern that does not exist, and is not necessary as the reportable offense statute already allows for a change in a student's placement if a real threat exists.

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.