

SENATE JUDICIAL PROCEEDINGS COMMITTEE

SENATE BILL 78 – Juvenile Child Sex Offenders – Juvenile Sex Offender Registry and Prohibition on In-Person School Attendance

January 28, 2025

POSITION: OPPOSE

Local and national civil rights groups are deeply alarmed about the potential passage of Senate Bill (SB) 78. We are writing to request your opposition to this bill, which, if enacted, 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. SB 78 would have detrimental impacts on children, raises serious due process concerns, and runs afoul of the rights of students with disabilities under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA). We urge you to consider the following points in your decision-making process and oppose this bill:

Violation of IDEA, Section 504, ADA Rights: SB 78 directly contravenes the requirements and principles of the IDEA, which mandate that children with disabilities receive a free appropriate public education (FAPE) in the least restrictive environment (LRE), as well as Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against individuals with disabilities in programs receiving federal financial assistance. Unilaterally excluding these children from in-person schooling without individualized review and due process and requiring them to attend alternative education at home either through virtual learning or home and hospital instruction undermines their fundamental right to education in the least restrictive environment and violates their rights to non-discrimination and reasonable accommodations under Section 504 and the Americans with Disabilities Act.

Existing Safeguards: Last year, during the 2024 session, the Maryland legislature deliberated this very issue with SB 1145 and ultimately passed the more narrow HB 814 which prohibits in-person instruction in public schools for students placed on the nonpublic juvenile sex offender registry. There is no reason to again debate this redundant and regressive bill. Moreover, Maryland's current reportable offense statute (Md. Code, Educ. § 7-303) and regulations already provide robust safeguards to address safety concerns while ensuring that children with disabilities are not unfairly and illegally deprived of their educational opportunities. The reportable offense statute and regulations allow for case-by-case evaluations and alternative placements if deemed necessary, maintaining a balance between school safety and educational rights.

Due Process Concerns: Creating a blanket prohibition of in-person attendance, as SB 78 proposes, raises significant due process concerns. SB 78 provides no process to evaluate whether a threat actually exists to support exclusion of a student from in-person school, the bill does not build in any opportunity for appeal, and most notably, there is no review process or end date for the exclusion from in-person school attendance. For students with disabilities, who can attend school through their 21st year, a student could be banned from in-person school for a detrimentally significant period of time. As the United States Supreme Court noted in *Goss v. Lopez*, students have a property interest in education which cannot be denied without adequate due process. Since a juvenile court has determined that the students targeted by this bill are 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 discussed above 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.

Risk of Isolation, Harm, and Long-Term Consequences: Lack of in-person school attendance can lead to the isolation of children, depriving them of crucial social interactions, support services, and academic progress. This isolation increases the risk of mental health concerns, hinders their overall development, and creates a stigma for the child regarding their inability to attend in-person school. Excluding children with disabilities from in-person schooling without individualized consideration of their needs and circumstances can have long-lasting detrimental effects on their educational outcomes, social integration, and overall well-being.

Moreover, SB 78 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 a minimum of six hours a week of instruction and seldom amounts to more than 10 hours a week) isolates students 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.

SB 78 is a shocking denial of the most basic rights of a child. We urge you to prioritize the legal rights and educational needs of children and oppose SB 78. Thank you for your attention to this critical matter.

For more information, please contact Megan Berger at Disability Rights Maryland:
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Disability Rights Maryland

Maryland Office of the Public Defender

Public Justice Center

Juvenile Law Center

The Advocacy Institute

ACLU of Maryland

National Center for Youth Law

National Disability Rights Network (NDRN)

National Youth Justice Network

Washington Lawyers' Committee for Civil Rights and Urban Affairs

The Legal Aid Justice Center

Council of Parent Attorneys and Advocates

Youth, Education and Justice Clinic, University of Maryland Francis King Carey School of Law

Disability Rights Arizona