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POSITION ON PROPOSED LEGISLATION

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

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: January 28, 2025

The Maryland Office of the Public Defender (OPD) respectfully urges the Committee to issue an unfavorable report on Senate Bill 78, which aims to expand the juvenile sex offender registry and the list of reportable offenses and 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 a felony sex offense. We strongly oppose SB 78 because it would violate students' due process rights and the rights of students with disabilities, it is unnecessary, and it will likely cause significant harm to students. Additionally, SB 78 would have a chilling effect on the reporting of sexual offenses and subsequent sex offender treatment when families discover that when they attempt to seek help it will mean that their child will be precluded from attending in person school or participating in school-based activities ever again.

Senate Bill 78 is unnecessary and is overly broad. During the 2024 legislative session, the legislature already took the extreme step of prohibiting children on the nonpublic juvenile sex offender registry from attending public schools in person. *See* Md. Code, Crim. Pro. § 11-722. Senate Bill 78 goes significantly further by permanently banning, from all public and nonpublic schools that receive state funding, children who have been found involved in a felony sex offense, regardless of the child's age or completion of treatment. This is an incredibly broad and extreme deprivation that is not supported by the research or facts around safety. Additionally, SB 78 is unnecessary because of Maryland's reportable offense law.¹ Under Maryland's current reportable offense law, schools are obligated to assess whether a child presents an ongoing, imminent threat of serious harm if they have a reportable offense charge which occurred in the community. If such

¹ *See* Md. Code, Educ. § 7-303.

a threat is identified, the child may be removed from their regular school program or a safety plan can be developed. Along with this existing framework which provides for individualized safety assessments, as well as the current prohibition for children on the juvenile sex offender registry from attending school, SB 78 is unnecessary and overly broad.

Senate Bill 78 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 sex offense charge. With the court's oversight, a child found involved in a sex offense is generally required to receive treatment either in an out-of-home placement or in the community. Additionally, if a child is before the courts for a sex offense charge, the courts routinely assess the public safety risks associated with keeping a child accused of committing a sex offense in the community and have the authority to detain children who pose a risk. There are multiple levels of court review and an objective assessment tool used is during every stage of the process.² In addition to these safeguards, the court is required to consider reasonable protections, such as a no contact order, for the safety of victims if a student is released pending adjudication.³ In effect, the court makes a determination about whether a student poses an "imminent threat" to a person or specific geographic location, including the neighborhood and school. The court does so with uniquely detailed information about the child and the case. In many situations students are safer with supervision, court involvement, and the provision of treatment and services to the youth. As discussed below, education and access to education further ensures a child is less of a safety threat; thus, if a court with all the information makes the decision that a child can be safely in school they should generally be permitted to return to their regular school program. The reportable offense process provides an additional layer of review at the school level. Moreover, the likelihood of a youth under a court's jurisdiction, under supervision, and receiving sex offender treatment in the community, offending at school where they are under the supervision of administrators, teachers, and staff is extremely low.

A blanket in-person ban for all children who have an adjudicated sex offense does not make schools safer. Senate Bill 78 is contrary to decades of peer reviewed research that has shown the following to be true: (1) Youth who sexually offend are vastly different from adult sex offenders, (2) Sexual recidivism rates for youth who sexually offend are extremely low⁴, even without treatment, (3) Youth reported, adjudicated, or convicted for sexual crimes are highly responsive to

² See Maryland Department of Juvenile Services Data Resource Guide: Fiscal Year 2023, 33, (Dec. 2023), https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2023.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 they may need).

³ Md. Code, Cts. & Jud. Pro § 3-8A-15(j).

⁴ 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>.

proven treatments, and (4) Isolating these youth from typical educational and other prosocial settings is harmful to them, leads to more delinquent behavior, and does not improve community safety.⁵ Regarding recidivism, for example, one study that evaluated the sexual recidivism rate among the entire population of male youth adjudicated for sex crimes in South Carolina found an extremely low recidivism rate of 2.75% during an average nine year follow up period.⁶

We are aware of no other state in the nation that has a law even remotely like the one proposed by Senate Bill 78.

Senate Bill 78 does not provide adequate due process. Creating a blanket prohibition of in-person attendance, as SB 78 proposes, raises significant due process concerns. Senate Bill 78 provides no process to evaluate whether a student poses a threat which warrants an exclusion, 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*⁷ that students have a property interest in education which cannot be denied without adequate due process. Senate Bill 78 fails to provide that constitutionally protected 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.

This bill will cause a chilling effect on reporting and access to treatment. Many sexual offenses committed by children take place within families. Parents or guardians who would otherwise seek help will be reluctant to report such offenses and pursue treatment for their child once they realize the impact on school and school-based activities under this bill.

Senate Bill 78 will negatively impact the possibility of resolving cases through plea agreements. In practice, many juvenile sex offense cases end in plea agreements. Plea agreements allow the respondent to access immediate and effective treatment, while sparing victims (often also children) from testifying in open court. Due to the extreme consequences under SB 78, it is likely that there will be far fewer plea agreements. Defense attorneys and their clients will insist upon taking every one of these cases to trial. This will be damaging to families, will negate the many benefits of plea agreements in these cases, and will result in a great many more unnecessary trials.

Senate Bill 78 violates the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act. Dictating the placement of a student with disabilities through the

⁵ See the written testimony of Prof. Elizabeth Letourneau, Johns Hopkins Bloomberg School of Public Health.

⁶ Letourneau, E. J., Bandyopadhyay, D., Armstrong, K. S., & Sinha, D. (2010). Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes? *Criminal Justice and Behavior*, 37, 553-569.

⁷ 419 U.S. 565 (1975).

Criminal Code would run afoul of the requirements of federal law, the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act. These acts require that the individualized placement decision of a student with a disability be determined by the IEP or 504 team and that the student receive a free appropriate public education in the least restrictive environment. Requiring students to receive education in a home setting—the most restrictive environment—directly conflicts with this federal requirement and could lead to significant legal costs resulting from litigation and the possible loss of federal funds due to noncompliance. There are no in-person alternatives provided under SB 78 leaving children with disabilities relegated to an overly restrictive home setting which is contrary to the least restrictive environment mandate under federal law.

Communities are not made safer when children are left unsupervised at home which will occur under SB 78. Removing students from school and leaving them isolated and unsupervised at home can exacerbate mental health challenges and hinder their emotional and social development. School provides essential structure and support, and depriving students of this environment can lead to lasting negative consequences. Senate Bill 78 will create significant economic strain on families, particularly low-income households. Requiring students to participate in virtual learning without the proper resources—such as reliable Wi-Fi or internet access—places an undue burden on families, forcing parents to miss work or make other financial sacrifices to accommodate their children’s education. Additionally, children removed from school would lose access to essential resources, such as free breakfast and lunch, exacerbating food insecurity for many families.

Senate Bill 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 only 6 hours a week of instruction)⁸ further isolates a student and precludes critical educational opportunities that go beyond course subjects. During the pandemic, we learned that virtual instruction was challenging for children, especially for children with disabilities or other educational challenges, and created an ongoing mental health crisis.

Senate Bill 78 is a misguided effort that would not ensure safety in our schools; yet would have an enduring detrimental impact on children. Since recent legislation expanded the juvenile court’s jurisdiction to include 10-12 year olds charged with a sex offense in the 3rd degree,⁹ the imposition of SB 78 would prohibit such young children from attending in-person public school until graduation. The legislature expanded juvenile jurisdiction to children as young as 10 in these cases

⁸ COMAR 13A.03.05.01.

⁹ See Md. Code, Cts. & Jud. Pro § 3-8A-03(a)(1)(ii).

because it thought it important for courts to be involved. Yet, SB 78 takes the court completely out of the picture and mandates a draconian non-discretionary "one size fits all" policy. Such a consequence would be damaging to that young child and to our communities. Senate Bill 78 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 an ongoing threat exists.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 78.

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