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POSITION ON PROPOSED LEGISLATION

BILL: HB 638 - Juveniles - Sexual Offenses - Registration and Reporting Requirements

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 26, 2025

The Maryland Office of the Public Defender (MOPD) respectfully urges the Committee to issue an unfavorable report on House Bill 638, which would require a juvenile to remain on the nonpublic juvenile sex offender registry until 21 years of age even when the court terminates jurisdiction, and expands the list of eligible offenses to non-violent 3rd degree sex offenses based on age difference alone. MOPD strongly opposes HB 638 as it seeks to circumvent the jurisdiction of the court, unnecessarily expands the registry, and will cause significant harm to students.

During the 2024 legislative session, the legislature in House Bill 814 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(c). House Bill 638 goes even further by ensuring that a student is permanently banned from attending school in person even where a court has terminated jurisdiction after determining that the student is safe to be in the community and has met their treatment goals and the requirements of the court. By expanding the list of eligible offenses to include 3rd degree sex offenses based solely on age difference, it would also preclude children adjudicated for these non-violent offenses from ever attending in person school again. House Bill 638 is not about safety. Rather, its main goal seems to be punitive by banning children permanently from in-person school with little regard for the research or the impact on children.

House Bill 638 is also 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 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, HB 638 is unnecessary and overly broad.

¹ *See* Md. Code, Educ. § 7-303.

House Bill 638 is based on a fundamental misunderstanding of the level of scrutiny that both the Department of Juvenile Services (DJS) and the courts make when terminating jurisdiction.

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 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. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-15(j). 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. Ultimately, the court only closes a sex offense case and terminates its jurisdiction after having: (1) heard testimony from the victim or their representative at disposition, (2) closely monitored the child's program of treatment and rehabilitation for at least a year and often for much longer, (3) heard multiple times from the parties while the case is open, (4) heard testimony from experts from the State and defense, and (5) heard testimony from or read written reports from the therapist providing sex offender treatment to the child.

Thus if a court with all of this information makes the decision that it is appropriate to terminate jurisdiction, knowing that the child will no longer be on the juvenile registry and can be safely in school, that child should generally be permitted to return to their regular school program.

Requiring that a child's name remain on the juvenile registry until the child is 21 years old is unnecessary, usurps the court's discretion in determining the risk a child poses on a case by case basis consistent with the purposes of the Juvenile Causes Act, and will lead to absurd unintended collateral consequences.

The apparent purpose of this requirement is to close some perceived "loophole" in the current system, which removes a child's name from the juvenile registry when the juvenile court terminates its jurisdiction over the child. The proposal to require that a child remain on the non-public registry in all cases until the age of 21, even after a Court terminates its jurisdiction over a child, doesn't close a loophole. It usurps the judicial authority to exercise discretion based upon the facts before it. Courts are fully capable of making safety determinations. They do it every day in both adult criminal court and in juvenile court, where judicial discretion is especially

² See Maryland Department of Juvenile Services Data Resource Guide: Fiscal Year 2024, 31- 33, (Dec. 2024), https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2024.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).

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essential when dealing with both community safety and the rehabilitative needs of children.

Additionally, requiring that children remain on the juvenile registry until age 21 will lead to absurd unintended consequences. Criminal Procedure §11-704.1(e) requires that anyone on the juvenile registry shall report in person before the Department of Juvenile Services every 3 months. It would be odd indeed for a child no longer under the jurisdiction of the juvenile court, perhaps one who has not had an open juvenile case for years, to have to report to the Department of Juvenile Services every 3 months until 21. In addition to precluding a child from attending in person school in Maryland during high school, HB 638 would now preclude them from attending college out of state unless they returned to Maryland every 3 months to report to DJS. An adult under 21 who joined the military could not be deployed overseas because they would need to be in Maryland every 3 months to report to DJS. These, and likely other unforeseen collateral consequences, are the kind of problems that are created by crafting one-size-fits-all laws governing a court system designed for child-specific, fact-specific, case-specific determinations made by judges specially assigned to make them.

Finally, in the highly unlikely event that the juvenile court terminates its jurisdiction over a child at least 18 years old that still is perceived to pose a threat to the public, Criminal Procedure §11-704(c) already provides the opportunity to petition the court to place a child on the public sex offender registry for an offense committed as a child.

Expanding the universe of offenses where children are eligible for inclusion on both the adult sex offender registry and the juvenile sex offender registry to include 3rd degree sex offenses based solely on the difference in ages between the offender and the victim is unnecessary, misunderstands the nature of these offenses, and will unnecessarily capture these situations between children that has not until now and does not necessitate registration.

Currently children age 14 and older are eligible for inclusion on the juvenile registry and, if ordered by a court, on the adult registry for 3rd degree sex offenses involving sexual contact with the use of violence, threats of violence, or with a helpless individual (which would include a very young child) or a mentally incapacitated individual. See Md. Code, Crim. Pro. § 11-704.1. Current law does not subject children to registration for sexual contact based on age difference alone. There is an important distinction between these types of offenses that HB 638 fails to recognize. Such an extreme change in the law is not supported by research or data.

Sexual contact between children that is unlawful due to age difference alone often involves children who are not sufficiently supervised or do not understand appropriate boundaries. These situations are easily addressed through treatment and highly effective sex offense therapy for children and do not necessitate a child as young as 14 being placed on the juvenile registry until the termination of juvenile jurisdiction or, under the terms of HB 638 until the age of 21, for

“playing doctor” with a younger sibling. Additionally, it does not necessitate expanding the list of offenses for which a child, who was as young as 13 when it was committed, might be eventually eligible for inclusion on the adult registry.

House Bill 638 conflicts with extensive research regarding children who offend sexually.

Decades of peer reviewed research has shown the following to be true: (1) Youth who sexually offend are vastly different from adult sex offenders; a court’s decision to terminate jurisdiction and thereby remove a child from the registry is done with the understanding that children who sexually offend are vastly different from adult sex offenders; (2) Sexual recidivism rates for youth who sexually offend are extremely low³, even without treatment;⁴ (3) Youth reported, adjudicated, or convicted for sexual crimes are highly responsive to 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

House Bill 638 also violates the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act.

MOPD, with our fellow advocates, have maintained that the provision that passed last legislative session in HB 814 which bans in-person school attendance for children on the juvenile registry violates federal disability law, including the IDEA and Section 504. We assert that dictating the placement of a student with disabilities through the Criminal Code runs afoul of the requirements of these federal laws, which 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— or the other restrictive settings outlined in Md. Code, Crim. Pro. § 11-722(e)(2), 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. House Bill 638 further limits any opportunity to comply with the federal law by precluding the child from attending in-person school even after a court terminates its jurisdiction. By permanently bootstrapping the placement decision for a child with a disability to the juvenile registry, HB 638 would ensure further harm to children.

Communities are not made safer when children are left unsupervised at home which will occur under HB 638.

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

³ 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>.

⁴ See e.g., 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.

⁵ See the written testimony of Prof. Elizabeth Letourneau, Johns Hopkins Bloomberg School of Public Health. Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
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provides essential structure and support, and depriving students of this environment can lead to lasting negative consequences. House Bill 638 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.

House Bill 638 denies children the number one protective factor in preventing youth from recidivism: education. House bill 638 is a misguided effort that would not ensure safety in our schools; yet would have an enduring detrimental impact on children.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 638.

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

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