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POSITION ON PROPOSED LEGISLATION

BILL: HB 952 - Juvenile Sex Offender Registry - Qualifying Offenses and Access

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 952, which would remove the 14 year old age limit for the nonpublic juvenile sex offender registry, would require a juvenile to remain on the registry until 18 years of age even when the court terminates jurisdiction, would compromise the confidentiality of the registry, and adds additional offenses that would require registration. MOPD strongly opposes HB 952 as it seeks to circumvent the jurisdiction of the court, unnecessarily expands the registry, and will cause significant harm to children.

During the 2024 legislative session, in House Bill 814, 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(c). House Bill 952 goes even further by impacting children as young as 10 years old and ensuring that a child is permanently banned until 18 years of age 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. House Bill 952 is a misguided bill which would harm children and would not make our schools or community safer.

House Bill 952 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 952 is unnecessary and overly broad.

¹ *See* Md. Code, Educ. § 7-303.

House Bill 952 is an extreme piece of legislation that expands the age restriction for the non-public registry from age 14 to children as young as 10 years old, which, coupled with last year's restrictions, would preclude them from ever again attending in person school.

The juvenile non-public sex offender registry has since its inception been limited to offenses committed by children age 14 and older. *See* Md. Code, Crim. Pro. § 11-704.1. Last year this body expanded juvenile jurisdiction to include almost all sexual offenses committed by a child as young as 10 years old. *See* MD Code, Courts and Judicial Proceedings, § 3-8A-03(a). By removing the age restriction for inclusion on the registry, HB 952 would expand it to include 10 year olds. This body last year also precluded any child on the non-public sex offender registry from attending in-person school. Thus, under HB 952, 5th graders who commit a sexual offense could be precluded from ever attending in-person school again.

House Bill 952 decimates the distinction between the non-public juvenile registry and the adult registry by making a registry of children as young as 10 widely available with no requirements that this information remain confidential.

Under current law, the non-public juvenile sex offender registry is available only to law enforcement for law enforcement purposes. House Bill 952 would make this information available to the schools with no requirement for confidentiality. By making these names available to the Superintendent or the Superintendent's designee, HB 952 would essentially be making the non-public registry a public registry. Neither the Superintendent nor the designee, who could be anyone employed by the school, is required to keep this information confidential. Even if they were required to keep it confidential, this kind of sensitive information has a way of leaking out. Additionally, the Superintendent, designee, and anyone else they elect to inform, would have access not just to the names of youth on the registry who are enrolled in their district, they would have access to the names of all registered children, some as young as 10 years old, enrolled in school districts throughout the state. There is a high risk posed by HB 952 that the names of children on the non-public registry will become public. The bill proposes no measures to preclude this from occurring. This could result in severe reputational damage to the child that would be impossible to repair and could lead to dire consequences, including suicide.

House Bill 952 vastly expands the number of offenses that require registration for children as young as 10 years old to include 3rd degree sex offenses based solely on age difference and children as young as 13 who commit 4th degree sex offenses.

Currently children 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. 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 952 disregards.

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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 best handled through treatment and proven, highly effective sex offense therapy for children. They do not require a child as young as 10 to be placed on the juvenile registry and be barred from attending in person school until the age of 18 for behaviors like “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.

HB 952 proposes to expand the registry to include 4th degree sex offenses, impacting children as young as 13. The only prong of 4th degree applicable to children involves unwanted touching of an intimate area. Squeezing someone’s behind over their clothes, inappropriate to be sure, should not result in a 13 year-old being precluded from attending in person school ever again.

House Bill 952 is based on a fundamental misunderstanding of the level of scrutiny that both the Department of Juvenile Services (DJS) and the courts make when determining service, assessing safety, and eventually 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, for all children accused of a sex offense, the juvenile court is required to assess the public safety risks associated with keeping the child in the community, and courts 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, 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) considered 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, the child should generally be permitted to return to their

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).

regular school program. The reportable offense process provides an additional layer of review at the school level.

House Bill 952 inappropriately usurps the authority of the juvenile court judge by keeping a child on the registry until age 18 for an offense committed when they were as young as 10, irrespective of whether the court has found that the child poses no threat and no longer requires being under the jurisdiction of the juvenile court.

The apparent purpose of HB 952 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 18, 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 essential when dealing with both community safety and the rehabilitative needs of children.

House Bill 952 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 Expanding the offenses that would require registration is misguided and must be rejected.

House Bill 952 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

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.

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 952 further limits any opportunity to comply with the federal law after a court terminates jurisdiction. By permanently bootstrapping the placement decision for a child with a disability to the juvenile registry, HB 952 would ensure further harm to children.

Communities are not made safer when children are left unsupervised at home which will occur under HB 952.

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. House Bill 952 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 952 denies children the number one protective factor in preventing youth from recidivism: education. House bill 952 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 952.

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

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