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POSITION ON PROPOSED LEGISLATION

BILL: HB 951 – School Systems – Reportable Offenses – Alterations

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 25, 2025

The Maryland Office of the Public Defender (MOPD) respectfully requests that the Committee issue an unfavorable report on House Bill 951 (HB 951), which seeks to significantly expand the list of offenses for which a student can be removed from school under the reportable offense statute. House Bill 951 would also require law enforcement to notify the State’s Attorney’s Office of every case in which a student is a “suspect” in an investigation for a crime of violence or adult felony case; the State’s Attorney’s Office would then have the authority to notify the school system of a student’s “suspect” status. MOPD strongly opposes HB Bill 951 as it is not necessary, would not make schools safer, and violates basic due process rights. House Bill 951 would also cause significant disruption putting students at academic risk and would disproportionately impact Black students and students with disabilities.

House Bill 951 unnecessarily expands the number of offenses which could lead to exclusion from school. Maryland’s reportable offense statute already allows for student removal for a wide range of offenses that have no nexus to the school or the student’s behavior in school. Current law mandates timely communication between law enforcement and schools when a student is arrested for a reportable offense, including the most serious offenses, crimes of violence,¹ as well as non-violent, low-level offenses. In response to concerns that students were being inappropriately removed from school and were not provided adequate due process, the reportable offense statute was amended in 2022 and the Maryland State Board of Education issued new regulations in July 2024. It is not necessary to revisit the statute and expand the offenses at this time. There is not a safety crisis in our schools that warrant this extreme expansion of the reportable offense list. Based on the most recent data, school discipline incidents remain low. The trend shows that our schools are suspending less students, 4.8% statewide, as compared to 7.0% in 2009.² The most recent data from the 2022-23 school year also shows a decrease

¹ Md. Ann. Code, Educ. § 7-303; COMAR 13A.08.01.17.

² See Maryland State Department of Education, *Suspensions, Expulsions, and Health Related Exclusions Maryland Public Schools 2023-2024*,

<https://marylandpublicschools.org/about/Documents/DCAA/SSP/20232024Student/2024-Student-Suspension-Expulsion-Publication-A.pdf>.

statewide in school-based arrests as compared to prior years.³ Overall, the data indicates that despite the media focus on singular high profile cases, safety in schools, while an issue that requires ongoing attention, does not warrant the expansion of offenses listed in HB 951.⁴

House Bill 951 violates the presumption of innocence and infringes on fundamental Constitutional due process protections. When an arrest for a serious offense, such as crime of violence or felony occurs, law enforcement with “probable cause” may arrest a suspect and bring them into custody.⁵ Law enforcement makes a determination about safety and can keep the juvenile in custody. DJS staff then determine if detention is necessary to protect the youth or others, or if the youth is deemed likely to leave the jurisdiction of the court.⁶ The judge, with evidence and after hearing from all parties, including the State’s Attorney’s Office, makes a detention decision based upon a complete understanding of the evidence presented. If the decision is to place the student on community detention, the school system should have already been notified by law enforcement of the arrest which sets in motion the reportable offense process under Maryland Code, Education § 7-303. Rather than examining whether law enforcement is meeting its obligation under the current framework to ensure safety, HB 951 seeks to impose an additional notice burden on law enforcement related to a student’s potential status as a suspect, which raises significant due process concerns.

While House Bill 951 fails to address the implications of sharing information regarding a student’s suspect status or any presumptions that follow, it is presumed that school systems would be permitted to remove students based on this notification from the State’s Attorney’s Office despite the lack of a formal arrest or charge. Pursuant to HB 951, school systems could potentially remove a student from their school placement based on the student’s status as a “suspect” without the due process protections provided in a criminal or juvenile matter based on an arrest. **Without probable cause, altering a student’s right to their education based solely on mere police officer suspicion is an overreach of government authority, eroding the rights of students and parents, and must be rejected.** Sharing this type of information prior to a determination of probable cause and a formal arrest or charge also has the potential of damaging a student’s reputation. The bias that attaches due to the initial suspicion can have lasting negative consequences.

³ See Maryland State Department of Education, Maryland Public Schools Student Arrest Data School Year 2022 - 2023 (April 2024), <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/StudentArrest/MarylandPublicSchoolsArrestDataSY20222023-A.pdf>.

⁴ See e.g., The Sentencing Project, *The Real Cost of ‘Bad News’: How Misinformation is Undermining Youth Justice Policy in Baltimore* (December 11, 2024), <https://www.sentencingproject.org/reports/the-real-cost-of-bad-news-how-misinformation-is-undermining-youth-justice-policy-in-baltimore/>.

⁵ Md. Code, Criminal Proceedings § 2-202(c) states that “a police officer without a warrant may arrest a person if the police officer has probable cause to believe that a felony has been committed or attempted and the person has committed or attempted to commit the felony whether or not in the presence or within the view of the police officer.”

⁶ See Maryland Department of Juvenile Services Data Resource Guide: Fiscal Year 2024, 32-33, 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).

In *Goss v. Lopez*,⁷ the U.S. Supreme Court recognized that students have a property interest in education, as well as a liberty interest in their reputation, which cannot be denied without adequate due process.

House Bill 951 has the very real potential of jeopardizing ongoing investigations.

Investigations require confidentiality and the control of information. Requiring law enforcement and the State's Attorney's Office to share discreet and sensitive information with school officials creates opportunities for compromised investigations and leaked information.

House Bill 951 will have a disproportionate impact on Black students and students with disabilities, putting more students at risk of academic failure. Maryland has a long history of implementing school discipline policies and procedures which disproportionately impact Black students.⁸ House Bill 951 is yet another effort to exclude students and it will disproportionately impact Black children, who are already overrepresented at every stage of the youth legal system, as well as negatively impact students with disabilities. During the 2023-24 school year, Black students represented 69% of the reportable offense cases but only represented 33% of the statewide student population, while students with disabilities represented 39% of students arrested for reportable offenses, but are only 13% of the statewide student population.⁹ Sending children home or placing them in alternative schools based on a belief that they “may” have committed a crime jeopardizes any chance of success for students who may already be struggling academically. Furthermore, these actions put students at further risk of academic failure and exacerbate already known inequities related to education outcomes. House Bill 951 should therefore be rejected.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 951.

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

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⁷ 419 U.S. 565 (1975).

⁸ See Maryland Commission on the School-to-Prison Pipeline and Restorative Practices, *Final Report and Collaborative Action Plan* (December, 20, 2018), 23 - 25, <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/023600/023694/20190078e.pdf>.

⁹ See Maryland State Department of Education, *Reportable Offenses Data: Maryland Public Schools, School Year 2023-2024* (Dec. 30, 2024), [https://dlslibrary.state.md.us/publications/Exec/MSDE/ED7-303\(j\)_2024.pdf](https://dlslibrary.state.md.us/publications/Exec/MSDE/ED7-303(j)_2024.pdf).