

March 11, 2020

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The Hon. Delores G. Kelley  
Chair, Senate Finance Committee  
3 East Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

Re: **SB 818: SUPPORT**

Dear Chairperson Kelley and Members of the Committee:

I write in two capacities: first, as counsel for the class of Baltimore City foster children in the federal class action *L.J. v. Massinga*, and second, as co-counsel, with Disability Rights Maryland, in the *Doe v. DHMH* case addressing some of the protections at issue in SB 818.

I support passage and enactment of SB 818, which closes a gaping loophole in our system for protecting children placed in private residential treatment centers (“RTC”s) licensed by the Maryland Department of Health (“MDH”) from sexual assault. Under current law, pursuant to the “*Doe*” settlement, individuals who are placed in MDH psychiatric hospitals and facilities, as well as children placed in Regional Institutes for Children and Adolescents (“RICAs”), must have individualized “protection plans” and other safeguards against sexual assault and mandated procedures for investigating such claims. Likewise, individuals who attend MDH day programs receive certain (but lesser) protections under the “*Demby*” regulations. SB 818 expands upon those protections and extends them to children in private RTCs (which functionally are similar to public RICAs) and mandates use of protective plans at all MDH facilities. This closes an important loophole in the system for protection against sexual assault at MDH-licensed or operated facilities.

Last year’s arrest of three employees at the Jefferson School and the discovery of widespread sexual abuse at that private RTC facility make this legislation imperative. It is certainly possible that, had the full array of protections and procedures required by the *Doe* settlement been in place at RTCs, some of the abuse might have been prevented.

That said, SB 818 does not go far enough. Maryland should have a uniform set of safeguards and investigatory procedures for all residents or patients at MDH-licensed facilities. Otherwise, the system becomes confusing and the requirements will overlap and become difficult to follow. For instance, under SB 818, SETTs (Secure Evaluation and Therapeutic Treatment Centers) will be added to the statutory definition of “facility” and therefore made subject to the lesser *Demby* regulations when they already have maximum protection under the *Doe* settlement. Protective plans are not defined and will be decided by future MDH regulation, even though, under

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the *Doe* settlement, they are carefully and extensively defined. The regulations mandated by the *Doe* settlement are overdue and have not yet been promulgated by MDH; legislative action either to codify *Doe* or to compel immediate compliance would be helpful.

In sum, SB 818 is a good start, but I hope that, next year, the General Assembly will pass a bill that achieves full harmony of requirements across the spectrum of MDH programs.

I have reviewed MDH's comments to the companion bill, HB 1558, and do not see any concern that requires significant changes. MDH's comment that the bills would "narrow the list of entities that report sexual abuse and harassment" is wrong. No facility or entity is excused from its reporting obligations. The bills do not diminish or complicate any entity's reporting obligations, nor does MDH identify any specific cause for substantive concern.

First, MDH asserts that "unintended exclusions" will result from the bills. Not so. Private psychiatric hospitals are not subject to current reporting requirements in Health General § 10-705 and instead have their own licensing requirements. Expanding the definition in Section 10-705 from "State facilities" to "Covered Entities" (which includes all State facilities and adds the SETTs and private RTCs) *expands* coverage. Private psychiatric hospitals are not covered now, and they will not be covered under the proposed legislation. MDH's concern is misplaced.

Second, MDH complains that SETTs are added to Health General § 10-705 when they already are covered by the provisions governing DDA in Health General § 7-1005. This is a complaint about redundancy, nothing more.

Third, MDH points out that the reference to Maryland Disability Law Center should be updated to Disability Rights Maryland. I agree.

Fourth, MDH identifies a technical error that would cause reports of adult abuse to be sent to child protective services. This technical error is easily fixed and is not a material problem.

What is most noteworthy about MDH's comments is that MDH does not object to SB 818's primary purpose: to add RTCs to the existing protections available for other MDH licensed or operated facilities for sexual assault and harassment. It is thus clear that SB 818 closes a significant gap in coverage of the laws for children in MDH-licensed facilities. I urge its passage.

Very truly yours,

/s/ Mitchell Y. Mirviss