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POSITION ON PROPOSED LEGISLATION

BILL: HB 1320 – Criminal Law – Sexual Crimes – Allowing Minor Who Is a Previous Offender to Be in the Presence of Another Minor

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: March 8, 2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 1320.

House Bill 1320 would criminalize parents or legal guardians for allowing their child to be in the presence of other minors without certain adult supervision if the child had previously committed any one of a long list of sexual offenses. The proposed bill specifies that the minor is considered a "previous offender" regardless of whether the behavior was reported to law enforcement or even charged. Parents or guardians charged with violating this law could face up to two years in prison, a fine of \$10,000, or both.

People who are convicted of sexual offenses are among the least likely to reoffend,¹ and the recidivism rate is even lower for youth who have committed sexual crimes.² In fact, studies show that youth convicted of sexual offenses do not have an elevated risk of committing new sex crimes as compared with other youthful offenders; a 2007 study revealed that just 17 sex offenders were charged with a new sexual offense as compared with 101 non-sex offenders.³ Despite these statistics, people who are convicted of sexual offenses face the most severe and protracted punishments. HB 1320 would add to the severity of repercussions faced by youth offenders without any public safety benefit, and it would extend the punishment to parents and legal guardians of those children.

¹ Alper, M. (2019). Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14). Bureau of Justice Statistics, U.S. Department of Justice, 35. <https://bjs.ojp.gov/content/pub/pdf/rsorsp9yfu0514.pdf>.

² Lobanov-Rostovsky, C. (2007). Recidivism of Juveniles Who Commit Sexual Offenses. Ofce of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, 8. <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/juvenilerecidivism.pdf>.

³ Sawyer, W. *BJS Fuels Myths About Sex Offense Recidivism, Contradicting Its Own New Data*, Prison Policy Group, June 6, 2019, available at <https://www.prisonpolicy.org/blog/2019/06/06/sexoffenses/>.

Most states have “parental responsibility” (also referred to as “parental liability”) laws in place that make parents or guardians liable for the actions of their minors.⁴ However, HB 1320 would expand the limits of parental responsibility beyond that of any other state in the country. There are three main kinds of parental responsibility laws in the United States: 1) civil liability laws, which allow victims to sue parents or guardians for civil damages caused by the child; 2) criminal liability laws, which allow victims to bring criminal charges against parents of children who commit criminal offenses; and 3) parental involvement statutes that require a certain level of participation in their child’s case (e.g., covering court costs).⁵ It is clear that HB 1320 does not fit within the purview of these categories.

Unlike these categories of parental responsibility laws—which involve the charged offense itself or the court proceedings related to the offense—HB 1320 seeks to impose requirements on parents that are unrelated to public safety or the children’s needs. In particular, the bill would impose a blanket requirement that parents prevent their children from interacting with other minors in unsupervised settings, and impose criminal sanctions regardless of whether any harm came from the unsupervised interactions. Such a restriction would greatly reduce or entirely eliminate the child’s ability to be with other children, an essential element of healthy child development.

Moreover, prosocial interactions and community support is critical to a youth’s treatment, rehabilitation, and societal re-integration. A Department of Justice report has noted that multisystemic therapy (MST), a community-based intervention that works with youth, their families, and their schools, has been proven to be particularly effective at reducing recidivism.⁶ While concerns about the safety of other students is understandable, research suggests the “school system may actually be a platform to better target risk and protection to not only *reduce likelihood* for harmful sexual behavior within the setting but to also more holistically rehabilitate youthful sexual offenders.”⁷ One study found that youth who had committed sexual offenses were less likely to complete treatment when their school placement was disrupted, but were almost four times more likely to successfully complete treatment when they were able to engage in extracurricular activities in school, and were three times more likely to successfully complete treatment when a school representative was involved in their treatment team.⁸ These should be the focus of our interactions with young persons who have previously offended, not preventing social interactions.

⁴ Parental Responsibility Laws In All 50 States. (n.d.). Matthiesen, Wickert & Lehrer S.C. Retrieved March 2, 2022, from <https://www.mwl-law.com/resources/parental-responsibility-laws-50-states/>.

⁵ Aizpurua, E., Applegate, B., Bolin, R., Vuk, M., & Ouellette, H. (2020). The Sins of the Child: Public Opinion about Parental Responsibility for Juvenile Crime. Children and Youth Services Review, 105023. <https://doi.org/10.1016/j.chidyouth.2020.105023>.

⁶ Przybylski, R. *The Effectiveness of Treatment for Juveniles Who Sexually Offend*, DOJ Sex Offender Management Assessment and Planning Initiative (2015).

⁷ Yoder, J, Hansen, J., Ruch, D., & Hodge, A. *Effects of School-Based Risk and Protective Factors on Treatment Success Among Youth Adjudicated of a Sexual Crime*, Journal of Child Sexual Abuse, 25:3, 310-325, at 315, DOI: 10.1080/10538712.2016.1137668 (2016); see also Letourneau, E. J., & Borduin, C. M. *The effective treatment of juveniles who sexually offend: An ethical imperative*. Ethics & Behavior, 18(2–3), 286–306. doi:10.1080/ 10508420802066940 (2008).

⁸ *Id.* at 317.

Changes in school placement can be particularly stigmatizing and reinforce symptoms of antisociality.⁹ In fact, “when an adolescent experiences isolation from peers, this anxious attachment could contribute to feelings of further isolation and alienation, and is related to feelings of inadequacy, especially in the masculine role... Sexual offending may be an attempt to compensate for this inadequacy.”¹⁰ Essentially, the research supports that the protective factors of young offenders developing and maintaining school attachment may mitigate any supposed risks associated with their attendance. Involving school personnel in supporting and monitoring reintegration and involvement in prosocial activities with other youth does more to protect other young people than stigmatizing and ostracizing young offenders. Requiring a parent to prevent a “previous offender” from being alone with another child would inherently create complications with a young person’s education and school programming.

Experts warn against reactionary legislation to worst-case scenarios when dealing with youthful sexual offenders. The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, a Department of Justice program under the purview of the Attorney General, published a report in 2014 on the available research around youthful sex offenders. The second chapter of that report ends with a summary of the research and warning to legislators:

“While research has documented the heterogeneity and differential treatment and supervision needs that exist within the juvenile offender population, policy responses tend to be designed with only the highest risk offenders in mind. **Rather than using a one-size-fits-all approach, legislative initiatives should encourage risk assessment and the application of aggressive strategies and the most intensive interventions only for those offenders who require the greatest level of supervision, treatment and personal restriction.** In this way, both community safety and the successful rehabilitation of youth who offend can be ensured.”¹¹

House bill 1320, with its broad, vague, and overreaching language is exactly the one-size-fits-all legislative approach researchers warn against.

Requiring that parents prevent their children from being with other children is unfeasible, unfair, and a disproportionate response to a child who has previously sexually offended. Further contributing to the impracticability of enforcing this proposed bill is that it applies to parents or guardians of minors who are previous offenders *regardless of whether the offense was reported to law enforcement*. It is unclear how unreported crimes would be assessed in the context of this bill or if it would even be possible, and the vague language of the bill may very well encompass behavior such as “playing doctor.” Further, a child is considered a “previous offender” under the

⁹ Gasper, J., DeLuca, S., & Estacion, A. *Coming and going: Explaining the effects of residential and school mobility on adolescent delinquency*. Social Science Research, 39(3), 459–476. doi:10.1016/j.ssresearch.2009.08.009 (2010).

¹⁰ Leversee, T. “Chapter 2: Etiology and Typologies of Juveniles Who Have Committed Sexual Offenses” *Sex Offender Management Assessment and Planning Initiative*, Department of Justice Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, available at <https://smart.ojp.gov/somapi/chapter-2-etiology-and-typologies-juveniles-who-have-committed-sexual-offenses>, citing Miner, M.H., Robinson, B.E., Knight, R.A., Berg, D., Swinburne Romine, R. & Netland, J. *Understanding sexual perpetration against children: Effects of attachment style, interpersonal involvement, and hypersexuality*, Sexual Abuse: A Journal of Research and Treatment, (20)3 at 147 (2010).

¹¹ *Id.* (emphasis added).

bill even if acquitted of the conduct, as the bill applies whether or not the child was “charged with, convicted of, or found responsible” of the previous offense.

Finally, this law becomes completely unworkable when considering a family comprised of numerous children. The language as written requires a parent to prevent the “previous offender” from being in the presence of another minor without adult supervision....” Without any clarifying language this bill indicates that the parent would be responsible for keeping siblings or children who live together under constant supervision.

HB 1320 seeks to impose restrictions on children and their parents that are unreasonable, unenforceable in scope, and would cause a detrimental impact on the child, their parent(s), and the broader community.

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For these reasons, the Maryland Office of the Public Defender urges an unfavorable report on House Bill 1320.

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