

Erin Davies, Executive Director, Juvenile Justice Coalition
Testimony before the Ohio House Education Committee On HB 498
December 5, 2016

Chair Brenner, Vice Chair Slaby, Ranking Member Fedor and Members of the Senate Education Committee, thank you for the opportunity to testify on HB 498.

As you know, education is critical to students' success. The National Crime Prevention Council recognizes that schools are one of the safest places students can be and being in school and receiving an education serve as protective factors to keep students on a path to success. In addition, keeping students in school helps avoid the enormous costs associated with drop out, including increased involvement in the adult criminal justice system, decreased lifetime earnings, less stable employment, and increased reliance on social programs at taxpayer expense. Therefore, as a state, we must focus on keeping students positively engaged in school.

Unfortunately, HB 498 would create another avenue to remove and disconnect students from school. HB 498 would expand Ohio's current expulsion law by allowing a student to be expelled for up to 60 days for "communicating a threat to kill or do physical harm to persons or property" and making a "substantial step" to carry out that threat. This expulsion can be extended for up to a calendar year if the student does not undergo an assessment to determine whether the student poses a danger to him or herself or others. Finally, the bill creates a path for the school district or law enforcement agencies to seek restitution from the student's caregiver for costs associated with the student's conduct.

Ohio law on school discipline and juvenile courts already provides tools for administrators and consequences for youth to deal with situations contemplated under HB 498. Ohio's school discipline laws already clearly address the situations covered by HB 498. ORC 3313.66(C) states that if a student poses a "continuing danger to persons or property," the student can be immediately be removed from school by the superintendent, principal, or assistant principal. This removal can last up to 80 days – half a school year – longer than the 60 days laid out in HB 498. In addition, students who make threats can also be held accountable in Ohio juvenile courts. For example, the misdemeanor offenses of Menacing and Aggravated Menacing (ORC 2903.22 and 2903.21) provide that "no person shall knowingly cause another to believe that the offender will cause physical harm [or – under aggravated menacing –serious physical harm]" to people or property.

Removing a student from school could put public safety at risk. Unfortunately, simply removing a student from school will not solve the underlying issue of the student's threatening behavior. Instead, that student will be at home, potentially unsupervised for extended periods of time, and able to return to the school without receiving treatment he or she may need. Although the goal of HB 498 seemed to be to increase mental health access and support for students, HB 498 would not serve this purpose and may in fact make the student and school's situation worse. As stated above, school is a one of the safest, most pro-social places a child can be. Removing a student from school takes that student out of an environment where he or she has access to supports – including peers and adult role models and counselors – and leaves the child unsupervised in his or her communities, including potentially placing them back in unsafe or negative home environments. An American Psychological Association Task Force recognized that removing youth from school can "create, enhance, or accelerate negative mental health outcomes for youth by creating increases in student alienation, anxiety, rejection, and breaking of healthy adult bonds."¹

¹ American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>, p 856 (2006).

The assessment under HB 498 is problematic and conflicts with federal education law. Under HB 498, a student who makes a threat may be required to undergo an assessment to determine whether the student poses a danger to him or herself or others. This assessment is problematic for several reasons. First, the bill does not address the details of this assessment, including what assessment should be utilized (or even if such an assessment exists), who should administer the assessment, how the student can access this assessment (particularly if the student's family is low-income or does not have insurance), or any due process rights around the assessment (such as a right to appeal a decision). Second, the assessment contemplated under HB 498 seems to be a mental health evaluation of the student. It is difficult to imagine circumstances where this type of evaluation would not trigger – or already constitute – an evaluation under the federal Individuals with Disabilities Education Act (IDEA) and require the school to move forward with the substantive supports and due process rights afforded under IDEA.

During Interested Party meetings on the bill on the Senate side, we – along with other organizations – submitted an alternative proposal that would have alleviated many of our concerns with this bill; this proposal is attached to my testimony. This alternative proposal would have focused on ensuring the student has access to mental health services, could receive the programming needed to address these underlying issues, and maintained public safety both in the school and in the broader community. Unfortunately, these suggestions were not adopted and our concerns remain.

While it is critical to keep Ohio schools safe, on the whole it is much safer to keep students positively engaged in school, where they have access to positive supports. In circumstances where a student poses a threat to him or herself or others that requires removal, Ohio law already provides schools with an immediately accessible solution.

Thank you for the opportunity to testify on HB 498 and I welcome any questions about my testimony.

Resources:

American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>, p 856 (2006).

Jay Smink and Joanna Zorn Heilbrunn, *Truancy Prevention in Action: Legal and Economic Implications of Truancy* (2005), available at http://web.ccsu.edu/uploaded/websites/ISCJ/Clemson_Study_on_TRP.pdf. See also Center for American Progress, *The High Cost of Truancy* (August 2015), available at <https://cdn.americanprogress.org/wp-content/uploads/2015/07/29113012/Truancy-report4.pdf> and The Council of State Governments, *Resolution on Dropout Prevention* (2006), available at <http://www.csg.org/knowledgecenter/docs/DropoutPreventionResolution.pdf>.

Schubert Center for Child Studies, *Issue Brief: School Climate, Social and Emotional Learning and Student Success: A Look at Safety, Bullying, Positive Behavior Interventions and Supports*, available at <http://schubert.case.edu/files/2014/01/SchoolSafetyandClimate.Sept2013.pdf> (September 2013).

Cohen, J., McCabe, L., Michelli, N. M., & Pickeral, T. (2009). *School climate: Research, policy, practice, and teacher education*. *The Teachers College Record*, 111(1).