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To: Delegate Sheila Ruth and Senator Mary Washington
From: Maryland Office of the Public Defender
RE: HB84/SB119, Crimes on School Grounds—Exemptions

HB84/SB119 would exclude students from being prosecuted under Education Law 26-101, disturbing school activities. In Fiscal Year 2019, the Maryland Department of Juvenile Services (DJS) received 1,700 referrals for young people charged with disturbing school activities or personnel. Corresponding school arrest data shows that students of color and students with disabilities are disproportionately charged with this offense; additionally, this charge is most often the way in which the very youngest children—those in elementary and middle school—are brought into the juvenile legal system.

In our experience, children are charged with this offense for behavior consistent with typical adolescent development. Children are charged for disturbing school activities for behaviors such as walking out of class, talking back to teachers or staff members, and behaviors that are consistent with the students' documented disabilities. This type of behavior should not result in students being charged in juvenile court, but rather school based interventions should take place, when necessary.

While this bill is meant to curb students being charged for conduct that is part of typical adolescent development and should not be criminalized, when appropriate students can still be charged in juvenile court for conduct that arises to criminal in nature. For example:

- A school fight or threatening to hurt someone can be charged as assault, a crime under Md. Crim. 3-203;
- If a student takes another's backpack, headphones, homework, phone, bike, or any property – no matter its value – he or she could be charged for theft, a crime under Md. Crim. 7-104. If a student uses force to take another student's property, he or she could be charged for robbery, a crime *and* a felony under Md. Crim. 3-402;
- A student who buys cigarettes or vaping products for another student who is under 21 could be charged with distribution of tobacco to a minor, a crime under Md. Crim. 10-107;
- Underage drinking could be charged as a crime under Md. Crim. 10-114;
- A student who possesses under 10 grams of marijuana cannot be charged with a crime but they can be arrested and referred to court for legal proceedings under Md. Crim. 5-601;
- A student who sets a fire on school grounds can be charged with the crime of arson under Md. Crim. 6-102;
- A student who commits a sexual offense against another student can be charged under any relevant charge under Md. Crim. 3-301 *et seq.*, the criminal code chapter on sexual crimes;
- A student who harasses or threatens another student could be charged with harassment under Md. Crim. 3-803;
- A student who makes a bomb threat or threatens other violence at school could be charged with Md. Crim. 3-1001, threats of crimes of violence;
- Firearm and other weapons charges can still be prosecuted pursuant to Title 4 of Criminal Law, including Md. Crim. 4-102 for possession of a Deadly Weapon on School Property;

- Schools, specifically “institution[s] of elementary, secondary, or higher education,” are considered public places pursuant to Md. Crim. 10-201, Disturbing the Public Peace and Disorderly Conduct, and disruptions at school can be prosecuted as they would in any other public place; and
- A student who is on school property when they shouldn’t be there or were told to leave can be charged with trespass, Md. Crim. 6-401 *et seq.*