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POSITION ON PROPOSED LEGISLATION

BILL: HB1256 Education - Discriminatory Concepts in Instruction - Prohibition

(Ending Discrimination in Public Education Act of 2022)

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 3/8/2022

The Maryland Office of the Public Defender (OPD) requests that the Committee issue an unfavorable report on House Bill 1256. This bill is part of a disturbing national trend to limit perspectives and discussion within public schools, particularly as it relates to racism and other forms of discrimination.

HB1256 bill is intended to suppress teaching and learning about the role of racism, and to prevent discussion that could cause “discomfort” about what is an uncomfortable and complicated subject. Educators and First Amendment scholars can detail the violations of constitutional law and education best practices that are implicated here. While OPD agrees with those concerns, our testimony will focus on the specific impact that HB1256 would have on our clients and our mission.

All of OPD’s work takes place in a framework with well-established and deeply entrenched racial disparities. Maryland has the highest percentage of Black prisoners among states nationwide – a rate (70%) that is more than double the rate for both the state’s Black population (31%) and the national average for the Black population in state prisons (32%).¹ Black youth in

¹ THE SENTENCING PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITIES IN STATE PRISONS 20, Table 5, available at <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

Maryland are six times more likely to be incarcerated than Maryland white youth, which is also higher than the disparity nationally.² Internal data collected by our Mental Health Division further confirms that people of color are more likely to be involuntarily committed than their white peers, which is also consistent with national studies.

In recognition of these disparities, this body has instituted a pilot program to assess the racial and ethnic equity impact of key criminal justice bills. Other Maryland governance entities have similarly established structures to examine and address racial disparities, including the Judiciary's Equal Justice Committee, the Department of Juvenile Services' Race Equity Framework, and the Attorney General's Policy & Race Equity Committee. HB1256 will undermine these efforts, and decrease constituent understanding of current efforts to redress past wrongs.

At OPD, all of our work comes from a race equity lens as we seek to magnify the voice of the marginalized and to advocate for fair and just treatment. The American Bar Association has noted the relevance of a race conscious approach for lawyers like OPD's defenders who focus on civil rights protections. Specifically, to address the racial injustices experienced by our clients requires:

“a centering of the stories and voices of those who are impacted by the laws, systems, and structures.... It requires the abandonment of a deficit approach that perceives those impacted by unjust laws and policies as deficient, defective, or helpless. ... Particularly in devising legal and policy interventions to address racial inequality, CRT calls for considering unintended consequences of proposed remedies, addressing intersecting policies and structures, and acting intentionally to ensure that harm is not further replicated by the legal system.”³

HB1256 targets concepts used to educate individuals on systemic barriers and discrimination that people of color and other marginalized groups still face in this country. Prohibiting

² Nationally, Black youth are four times more likely to be incarcerated than white youth. THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH INCARCERATION PERSIST (2021), available at <https://www.sentencingproject.org/wp-content/uploads/2021/02/Racial-Disparities-in-Youth-Incarceration-Persist.pdf>.

³ Janel George, Amer. Bar Ass'n, A Lesson on Critical Race Theory (2021), available at https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/a-lesson-on-critical-race-theory/.

teachers from using concepts or terms like “systemic racism” and “white privilege” reduce the effectiveness of teaching about slavery and providing a historical context for disparities seen in society today, including law enforcement action and other criminal justice disparities from arrest through sentencing. Without the ability to confront these topics, and grapple with uncomfortable concepts, Maryland students will have a limited understanding of, among other areas, the criminal and juvenile justice systems, key concepts in constitutional and civil rights law, and the broader role of defense attorneys and due process.

While the Legislature has some latitude in mandating curricula for K-12 education, precluding concepts and discussion oversteps this authority. The General Assembly has required topics for education (including most recently sexting), but this would be an unprecedented step in silencing learning. And it does so for issues of profound importance, both for Maryland and the nation.

Banning conversations about race in schools also risks maintaining or creating education environments that are unwelcoming to students of color. Our juvenile clients, who are overwhelming youth of color, will be among the most harmed by this. By prohibiting a context for the discrimination and disparities that their families have experienced to be intellectualized, students of color will be alienated – in a system that already disproportionately subjects them to discipline and suspension.⁴ All young people deserve an inclusive education and the right to express themselves around issues such as race.

This bill may also preclude valuable extracurricular learning. OPD staff participate in a variety of community outreach and volunteer activities above and beyond their casework. Know your rights presentations at area schools, community centers, and other venues are considered among the most relevant and impactful means for us to connect with young residents and inform

⁴ In academic year 2018-2019, Black students were 33.6% of the enrolled student population, but received 60.5% of school suspensions and expulsions. MARYLAND STATE BOARD OF EDUCATION, MARYLAND PUBLIC SCHOOL SUSPENSIONS BY SCHOOL AND MAJOR OFFENSE CATEGORY 2018-2019, available at <https://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20182019Student/2019SuspensionsbySchoolOUT.pdf>; MARYLAND STATE BOARD OF EDUCATION, MARYLAND PUBLIC SCHOOL ENROLLMENT BY RACE/ETHNICITY AND GENDER, SEPTEMBER 30, 2009, available at <https://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20182019Student/2019EnrollRelease.pdf>. See also MARYLAND ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS, DISPARITIES IN SCHOOL DISCIPLINE IN MARYLAND, OCTOBER 2019, available at <https://www.usccr.gov/files/pubs/2020/01-14-MD-SAC-School-Discipline-Report.pdf>.

community members about their rights and our work. To the extent that school-based presentations would be implicated by this law, we would be hindered in effectively presenting the complex principles underlying these rights, explaining how and why violations occur, and addressing the concerns most often raised by participants who have had discriminatory police encounters.

The refusal to allow for Marylanders to be educated on uncomfortable topics and learn about racial disparities and discrimination will also impact the job sector. As a state agency representing individuals across Maryland, our preference is to hire lawyers and staff who were raised and educated here. However, this bill would significantly hamper our ability to do so. Future attorneys and other professionals who are unable to identify or think critically about the racial issues surrounding them will be ill-equipped to serve our clients.

For all of us, discomfort is an opportunity for learning, challenge, and growth. It is a disservice to our state and our residents to shield them from concepts, which they are free to reject or challenge. While the language of HB1256 includes a wide range of discussions about race, it is intended to focus on particular perspectives with the intent to silence the history and experience of our most disenfranchised citizens.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 1256.

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

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