

# **Notes and Forms: Defending School Truancy Cases in the District Court of Maryland<sup>1</sup>**

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**ABSTRACT:** This article is a collection of notes and draft forms regarding criminal defense of charges brought against parents for compulsory school attendance violations (Maryland Education Article 7-301). Some of the more unique topics covered include a Motion to Dismiss for Territorial Equal Protection; Motion for Tangible Evidence Prior to Trial in District Court; and argument for a right to trial by jury, despite the maximum sentence being less than ninety days of incarceration.

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## Discussion and Overview of Maryland Education Article Section 7-301

Maryland law allows for criminal charges to be brought against a parent whose child does not regularly attend school. Charges are brought under Maryland Education Article Section 7-301 (e)(2).<sup>3</sup> For a first conviction, the maximum penalty is 10 days incarceration and a fine of \$50.00 per day of unlawful absence.<sup>4</sup> For a subsequent offender the maximum penalty is 30 days incarceration and a fine of \$100.00 per day of unlawful absence.<sup>5</sup>

Although violations of Maryland Education Article Section 7-301 is statutorily based, there are voluminous supplemental material regarding these cases. Two of particular importance are the *Maryland Student Records Manual* (a publication made by the State of Maryland, the content of which is adopted by reference in COMAR)<sup>6</sup>; and the case, *In Re: Jeannette L.*, where the Maryland Court of Special Appeals gives a comprehensive review of the statute.<sup>7</sup> Additional materials include the Maryland Code Education Article; COMAR regulations; case law; and supplemental publications.<sup>8</sup> Of these, many are referenced in greater detail in the example forms section of this article.

In truancy cases, there are at least four unique witnesses that defense counsel should be aware. These four are the Pupil Personnel Worker, School Principal, County Superintendent, and School Resource Officer. A Pupil Personnel Worker is a liaison position between student, families, and the school administration, commonly called as State witnesses to testify towards a student's truancy.<sup>9</sup> A Principal of a school, in addition to being a chief administrator, is recognized under Maryland law as being the custodian of record for all student files at his institution.<sup>10</sup> The Superintendent is the chief administrator for a territory and is presumed under

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<sup>3</sup> "Any person who has legal custody or care and control of a child who is 5 years old or older and under 17 who fails to see that the child attends school or receives instruction under this section is guilty of a misdemeanor."

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See COMAR 13A.08.02.09 (2013); *Maryland Student Records Manual*, available <http://marylandpublicschools.org>

<sup>7</sup> 71 Md. App. 70 (1987)

<sup>8</sup> Maryland Courts and Judicial Proceedings Section 3-8C-01; 3-8C-02; 3-8C-03; and 4-402; Maryland Criminal Procedure Section 6-101; Maryland Education Article 4-205; 5-110; 7-301; 7-302; 7-302.2; *In Re: Gloria* 410 MD 562 (2009); *In Re: Jeannette L.* 71 Md. App. 70 (1987); *In Re: Trader*, 272 Md. 364 (1974); COMAR 13A.07.03.01; 13A.08.02.01; 13A.08.02.05; 12A.08.02.06; 13A.08.02.09; and 13A.08.02.19; 72 Md. Op. Atty. Gen. 29 (Md.A.G.) 1987

<sup>9</sup> See: COMAR 13A.12.03.04 which defines powers and duties of Pupil Personnel Worker.

<sup>10</sup> "Each principal is responsible for collecting, maintaining, and using the student record in accordance with the guidelines set forth in" the *Maryland Student Records Manual*. *Maryland Student Records Manual* 2011 Edition Section A-4, See COMAR 13A.08.02.09 (2013), See Generally COMAR 13A.08.02.

the law to have knowledge of all truancy cases in his jurisdiction.<sup>11</sup> Resource officers are law enforcement agents assigned to a particular school. Although, they are not always a present participant in a case, initial inquiry ought to be made to verify what, if any, level of involvement exists.

In addition to a standard discovery demand, there are five offense specific pretrial motions the defense may want to consider. These five are 1) a supplemental discovery demand pursuant to Maryland Rule 5-1006; 2) a motion to dismiss based on territorial equal protection; 3) motion for tangible evidence prior for trial (School Principal); 4) motion for tangible evidence prior for trial (Superintendent); and 5) demand for trial by jury.

Defense counsel may want to file a supplemental discovery demand for content of attendance records. In several jurisdictions, it is common for the State to attempt to enter into evidence a spreadsheet document (usually created by the school system) that outlines the attendance history of a child in question. Under Maryland Rule 5-1006, notice has to be made prior to trial to allow the Defendant the opportunity to demand to inspect the source material for a spreadsheet.<sup>12</sup> Based on circumstance, it may benefit a defendant to be proactive and file the motion in the preliminary stages of litigation. A sample motion is included in the forms section.

<sup>13</sup>

A second, fairly unique, motion is one to dismiss based on territorial equal protection. A model example with full argument is in the forms section.<sup>14</sup> The sum of the argument is that Education Article Section 7-301 is written in such a way that the elements and defenses change depending on county and courthouse. The State is permitted to have different penalties for an offense from county to county if a rational basis is present. However, no rational basis justifies changing the elements and defenses from county to county. Under this argument, since no rational basis to discriminate exists, the criminal offense codified in Maryland Education Article Section 7-301 is unconstitutional.

Another option to consider is to file a motion for a subpoena for tangible evidence prior to trial in District Court. The purpose in doing so is to have access to the child's academic records and any internal investigations regarding truancy. The Maryland Rules do not expressly

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<sup>11</sup> “Immediate report required. The principal . . . of each public or private school in this State shall report immediately to the county superintendent [or designated agent] . . . the name of each child enrolled in his school who has been absent or irregular in attendance, without lawful excuse, or who shows evidence of maladjustment, so that the causes may be studied and solutions worked out.” Maryland Education Code Ann. Section 7-302 (a).

<sup>12</sup> See: *Davies v. State*, 198 Md. App. 400, 1(2011)

<sup>13</sup> *Infra* page 7.

<sup>14</sup> *Infra* page 8.

state the District Court's power to grant such subpoenas, as they do the Circuit Court.<sup>15</sup> However, Rule 4-264 is a procedural path for the constitutional right of compulsory process that exists in both Courts.<sup>16</sup> Maryland Rule 4-251's (b)(5) "catch all" provision, implies that such a motion may be granted, provided a Defendant may demonstrate good cause and just circumstance to the District Court. Motions for tangible evidence may be brought against both the Principal (who is the custodian of records for all student files) and the superintendent (who is presumed under Maryland law to have knowledge of each case of truancy). In the forms section of this article are sample motions for tangible evidence; sample subpoenas; and schedule of documents.<sup>17</sup>

Lastly, another unusual pretrial filing is to make a demand for a trial by jury for a violation of Education Article Section 7-301, despite having a maximum sentence of less than ninety days. A sample motion and argument justifying its position is included in the forms section.<sup>18</sup> The sum of the argument is that a constitutional right to a trial by jury attaches in a criminal matter if the legislature has added penalties to indicate it considered the offense serious, rather than petty. In the case of violations of Education Article Section 7-301, the maximum conceived fine is \$9,000.00 for a first offense and \$18,000.00 for a subsequent offense, dwarfing any other criminal charge in Maryland that have a penalty of incarceration of ninety days or less. Assuming a jury demand is made and is not honored by the District Court, the defense may want to consider filing a petition for writ of certiorari in the Circuit Court. An example is included.<sup>19</sup>

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<sup>15</sup> Maryland Rule 4-264

<sup>16</sup> (Article Four of the Maryland Declaration of Rights; United States Constitution Sixth and Fourteenth Amendments, *See Generally: Darby v. State*, 47 Md. App. 1, 1980, *Pennsylvania v. Ritchie*, 480 U.S. 39, 94 L.Ed.2d 40 (1987)).

<sup>17</sup> *Infra* pages 11-22

<sup>18</sup> *Infra* page 23

<sup>19</sup> *Infra* pages 25-33

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STATE OF MARYLAND,

PLAINTIFF,

v.

CRIMINAL CASE NO.

J. DOE,

DEFENDANT.

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**SUPPLEMENTAL DISCOVERY REQUEST**

COMES NOW: The above captioned Defendant, by and through counsel, makes the following supplemental request for Discovery in the captioned matter:

ONE: The Defense anticipates that the State plans to enter a spreadsheet “Attendance History,” of the children in question, for the captioned case. If that is so, pursuant to MD Rule 5-1006 and the common law, (*See*: *Davies v. State*, 198 Md. App. 400, 1(2011) the Defense would demand the opportunity to inspect and copy all documents and other tangible things used to compile the spreadsheet: in particular:

(1) The entire and complete school tardy logs in regards to the children, (as defined in Maryland Student Records Manual 2011, section C59,)

(2) All “Source Documents” as defined in the Maryland Student Records Manual 2011, section C59. Including any “bubble sheet,” “scan sheet,” “lists of absent students,” and/or similar documents.

(3) In the event the School has adopted an automated or online system, printout of the digital history of changes/amendments made to the child’s attendance history and printouts of verification or digital signatures indicating when amendments or changes were made for the Children’s digitally recorded attendance records.

(4) All written notes or other documents regarding the absence/tardy of the children used to compile the spreadsheets.

Respectfully Submitted: *END FORM*

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STATE OF MARYLAND,

PLAINTIFF,

v.

CRIMINAL CASE NO.

J. DOE,

DEFENDANT.

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**MOTION TO DISMISS FOR VIOLATION EQUAL PROTECTION; & MEMORANDUM IN  
SUPPORT**

COMES NOW: The above captioned Defendant, by and through counsel, pursuant to the Constitution of the United States of America, the Maryland Declaration of Rights, the common law, and all other applicable law, and offers as follows:

ONE: That the Defendant is charged with one count of Failure to Send Child to School (Maryland Education Article Section 7-301).

TWO: That Maryland Education Article 7-301 is violative of the equal protection guarantees of the Constitution of the United States of America and the Maryland Declaration of Rights. The statute is unconstitutional in two respects. One, it makes violations a strict liability offense with the exception of charges brought in seven specific juvenile courts. Two, in those seven specific juvenile courts, defendants enjoy an affirmative defense denied to defendants in the rest of the State of Maryland.

THREE: That the Defendant provides the following argument:

**Argument**

Maryland Education Article Section 7-301, on its face, violates the equal protection clause of the Constitution of the United States of America and the Maryland Declaration of Rights. “No person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes in the same place under like circumstance.” (*Missouri v. Lewis*, 101 US 22, 30 (1880); the Fourteenth Amendment of the Constitution of the United States of America; and Article Twenty Three of the Maryland Declaration of Rights.) “Maryland cases seem to require a rational basis for territorial discrimination as between different parts of the State.” (*In Re Trader*, 272 Md. 364, 389 (1974) *superseded on other grounds*). In terms of equal protection, the Legislature is permitted to make “distinctions and classifications relate[d]

to the territorial divisions of a State.” (*Id.*) However, for a statute to be valid it must be rooted in “proper basis” or “reasonable grounds.” (*Id.* citing *Maryland v. Broadbelt*, 89 Md 565 (1899)). The Maryland Court of Appeals has frequently acknowledged that a statute may be invalidated by an arbitrary or unreasonable classification or discrimination in respect to territory. (*In Re Trader*, 272 Md 364 citing *Dasch v. Jackson*, 170 Md. 251, (1936); *Criswell v. State*, 126 Md. 103 (1915); *Clark v. Harford Agricultural & Breeders' Ass'n*, 118 Md. 608, (1912); *Watson v. State*, 105 Md. 650, (1907); *Herbert v. County Comm'rs of Baltimore County*, 97 Md. 639, (1903). “The classification must be based on reasonable grounds; it cannot be a mere arbitrary selection.” (*Maryland v. Broadbelt*, 89 Md. 565, 579 (1899)). The United States Supreme Court has held that “a State cannot achieve its objectives by totally arbitrary means . . . differing treatment must bear some relevance to the object of the legislation. (*Bullock v. Carter*, 405 US 134, 145 (1972)).

Until the last ten years, Maryland’s compulsory school attendance laws were exclusively codified under Education Article Section 7-301 and its predecessors. This statute provides for criminal charges for parents that violate this section. (*Id.*) Specifically “any person who has legal custody or care and control of a child who is 5 years old or older and under 16 who fails to see that the child attends school or receives instruction under this section is guilty of a misdemeanor.” (Maryland Education Article Section 7-301 (e)(2)). This statute had remained substantively unchanged for decades and was uniform across the State of Maryland. (*Id.*)

However, in the past ten years, the Legislature has enacted several new provisions to the Maryland Code relating to school truancy. The Legislature created the Courts and Judicial Proceedings Title 3 Section 3-8C and amended portions of Maryland Education Article 7-301. The new statutes provide for a truancy diversion court in seven counties in Maryland: Dorchester, Somerset, Wicomico, Worcester, Talbot, Harford, and Prince George’s Counties. (Maryland Courts and Judicial Proceedings Article Section 3-8C-02). The State is given discretion, in those counties, to file criminal charges for violation of Maryland Education Article 7-301 in either a court of general jurisdiction, the juvenile court, or to file a civil offense in a truancy court. (Maryland Courts and Judicial Proceedings Article Section 3-8C-01 and 03).

The Legislature also added to Maryland Education Article Section 7-301 subsection “E-1.” Section E-1 is **only applicable** in the juvenile courts of counties that are authorized to have truancy diversion courts. (Maryland Education Article Section 7-301 (E-1)). E-1 states that in those seven identified Juvenile courts, and only those courts, “it is an affirmative defense to a charge under this section that the person made reasonable and substantial efforts to see that the child attended school as required by law but was unable to cause the child to attend school.” (*Id.* at (E-1); (E-1)(1); and (E-1)(3)). By limiting the affirmative defense to only certain courts in certain counties, the Legislature made Maryland Education Article Section 7-301 a strict liability

offense for the remainder of the State.

The objective of the Legislature is to prevent child truancy; but the denial of a defense and the random use of a strict liability standard do nothing to further that goal. There is no reasonable basis to make a criminal offense strict liability in every courthouse in the State of Maryland, save seven arbitrarily selected juvenile courts. Furthermore, undersigned counsel has searched, and can find no example of any other crime in Maryland where an affirmative defense is dependent on the court in which a charge is filed. On its face, Education Article 7-301 is arbitrary, has no reasonable basis for its classification, and is constitutionally offensive. As the statute is constitutionally invalid, this charge must be dismissed.

FIVE: That the Defendant intends on offering further argument should a hearing be held on this motion.

WHEREFORE: The Defendant respectfully moves to have the charge in the matter dismissed and for any further relief which this Honorable Court finds appropriate.

Respectfully Submitted: *END FORM*

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STATE OF MARYLAND,

PLAINTIFF,

v.

CRIMINAL CASE NO.

J. DOE,

DEFENDANT.

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**MOTION FOR SUBPOENA: PRINCIPAL FILE; & MEMORANDUM IN SUPPORT THEREOF**

COMES NOW: Now comes the Defendant in the above entitled case, by and through counsel and respectfully moves pursuant to Maryland Rule 4-251, the Constitution of the United States of America, the Maryland Declaration of Rights, the common law, and all other applicable law, for the issuance of a subpoena commanding a person or persons to produce for inspection and copying before trial various documents and physical evidence, and avers in support thereof:

ONE: That the Defendant is charged in the District Court of \_\_\_\_\_ County with charges related to failing to send a child to school, in the captioned matter.

TWO: That the child in this matter is a student at \_\_\_\_\_, whose principal is \_\_\_\_\_. These charges were brought by the \_\_\_\_\_ County Board of Education, and that the Defendant reasonably believes the principal identified in paragraph two possesses a student file on said child<sup>20</sup>.

THREE: That the Defendant avers and believes that the principal identified in paragraph two is in possession of a report that was submitted to the office of the county superintendent, or an agent thereof, regarding the absences of the child in question.<sup>21</sup>

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<sup>20</sup> “Each principal is responsible for collecting, maintaining, and using the student record in accordance with the guidelines set forth in” the Maryland Student Records Manual. *Maryland Student Records Manual* 2011 Edition Section A-4, *See* COMAR 13A.08.02.09 (2013), *See Generally* COMAR 13A.08.02.

<sup>21</sup> “Immediate report required. The principal . . . of each public or private school in this State shall report immediately to the county superintendent [or designated agent] . . . the name of each child

FOUR: That the Defendant avers and believes that the content of the school records contains potential admissible character evidence, impeachment material, and/or material that may be exculpatory in nature.

FIVE: That the Defendant requests that the subpoena be deliverable unto undersigned counsel prior to trial, and that this request is appropriate for a case of this nature for the following reasons:

### **Argument**

When a criminal Defendant is charged with a violation of Maryland Education Article 7-301, it is appropriate for the District Court to issue a subpoena, requiring tangible evidence to be delivered unto the Defendant prior to trial. The Maryland Rules do not expressly state the District Court's power to grant such subpoenas, as they do the Circuit Court. (Maryland Rule 4-264). However, Rule 4-264 is a procedural path for the constitutional right of compulsory process that exists in both Courts. ("The several Courts existing in this State at the time of the adoption of this Constitution shall, until superseded under its provisions, continue with like powers and jurisdiction, and in the exercise thereof, both at Law and in Equity, in all respects" Article Four of the Maryland Declaration of Rights; United States Constitution Sixth and Fourteenth Amendments, *See Generally: Darby v. State*, 47 Md. App. 1, 1980, *Pennsylvania v. Ritchie*, 480 U.S. 39, 94 L.Ed.2d 40 (1987)). Defendant argues that the absence of an enumerated procedure does not erase a constitutional right. Maryland Rule 4-251's (b)(5) "catch all" provision, implies that such a motion may be granted, provided a Defendant may demonstrate good cause and just circumstance to the District Court.

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enrolled in his school who has been absent or irregular in attendance, without lawful excuse, or who shows evidence of maladjustment, so that the causes may be studied and solutions worked out." Maryland Education Code Ann. Section 7-302 (a).

In criminal matters concerning charges of violation of Maryland Education Article 7-301, the circumstances are just for a motion for tangible evidence prior to trial.. The justification is three fold. First, it allows third parties to satisfy and secure their rights and legal obligations collaterally impacted by the subpoena. Second, it secures the Defendant's right to compulsory process. Finally, it satisfies the needs of judicial economy, which the simplified rules in District Court were meant to obtain.

From the perspective of the third party, the Board of Education, it is appropriate and necessary to have a subpoena issued for return prior to trial. COMAR allows a local school system to disclose personally identifiable information from student records under a lawfully issued subpoena under certain circumstances. One of those provisions requires that a reasonable effort is made to "notify the parent or guardian of the student or the eligible student of the order or subpoena in advance of compliance, so that the parent, guardian, or eligible student may seek protective action."<sup>22</sup> The Board of Education is bound to have the time to compile the documents, send applicable notice, and have notice done in such a manner that intervening action might be sought by other interested parties. See COMAR 13A.08.02.19 (2013) (copy attached).

From the perspective of the Defense, it is appropriate and necessary to have a subpoena issued for return prior to trial. The Defendant has a right to compulsory process, guaranteed under both the United States Constitution and the Maryland Declaration of Rights. The Defendant reasonable anticipates that not only will the subpoenas yield both documented evidence, but that that documentation will identify additional potential witnesses that the Defense may wish to call. Those anticipated, but yet unidentified, witnesses are the members of the Pupil Services Committee that investigated the alleged truancy of the child and the identity of persons authorized to excuse absences pursuant to Maryland Education Article 7-301(b). To withhold

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<sup>22</sup> "A local school system or educational institution may disclose personally identifiable information from the student records without the written consent of the parent or guardian of the student or the eligible student, if the disclosure is . . . to comply with a judicial order or lawfully issued subpoena if the local school system or educational institution makes a reasonable effort . . . to notify the parent or guardian of the student or the eligible student of the order or subpoena in advance of compliance, so that the parent, guardian, or eligible student may seek protective action. . ." COMAR 13A.08.02.19 (2013).

this information from the Defendant, until day of trial, will disservice the Defendant and infringe upon their constitutional right to subpoena the additional parties.

Lastly, in the interests of judicial economy, it is appropriate and necessary to have a subpoena deliverable prior to trial. The Defendant respectfully offers that part of the purpose of the simplified rules of procedure in District Court is to promote judicial economy. The alternative to having the documents presented prior to trial, would be to require the documents to be presented at trial. The Defense anticipates that the scope of the material the Defendant is entitled to is of such length that it would cause the Defenses to either request a continuance or request a lengthy mid trial recess in order for those materials to be properly evaluated for their specific use in the Defense's case.

WHEREFORE: the Defendant prays this Honorable Court (1) That a subpoena issue requiring the principal identified in paragraph two to produce the student file and records for the child identified in the charging document, and (2) for any and all other relief this Honorable Court finds just and equitable.

Respectfully Submitted: *END FORM*

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STATE OF MARYLAND,  
PLAINTIFF,

v. CRIMINAL CASE No.

J. DOE,

DEFENDANT.

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**MOTION FOR SUBPOENA REGARDING SUPERINTENDENT INVESTIGATION FILE**

COMES NOW: Now comes the Defendant in the above entitled case, by and through counsel, and respectfully moves pursuant to Maryland Rule 4-251, the Constitution of the United States of America, the Maryland Declaration of Rights, the common law, and all other applicable law, for the issuance of a subpoena commanding a person or persons to produce for inspection and copying before trial various documents and physical evidence, and avers in support thereof:

ONE: That the Defendant is charged in the District Court of \_\_\_\_\_ County with one count of failure to send a child to school in the captioned matter.

TWO: These charges were brought by the \_\_\_\_\_ County Board of Education, and that the Defendant reasonably believes that \_\_\_\_\_, Superintendent of Schools for the \_\_\_\_\_ County Public School System, or his designated agents, are in possession of an investigation file and related documents regarding the child's truancy.<sup>23</sup>

THREE: That the Defendant avers and believes that the content of the school records contains potential admissible character evidence, impeachment material, and/or material that may be exculpatory in nature.

FOUR: That the Defendant's Right to exculpatory material, right to compulsory process, right to present evidence and right to Due Process of Law override any interest the State may have in not releasing the referenced documents.

FIVE: That the disclosure requested in this motion is without the need of written consent from either the parents, guardians, or student under COMAR.<sup>24</sup>

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<sup>23</sup> "Immediate report required. The principal . . . of each public or private school in this State shall report immediately to the county superintendent [or designated agent] . . . the name of each child enrolled in his school who has been absent or irregular in attendance, without lawful excuse, or who shows evidence of maladjustment, so that the causes may be studied and solutions worked out . . . on receipt of [said] report from a principal . . . the appropriate representative of the school system . . . shall initiate an investigation into the cause of the child's truancy." Maryland Education Code Ann. Section 7-302.

<sup>24</sup> "A local school system or educational institution may disclose personally identifiable information from the student records without the written consent of the parent or guardian of the student or the eligible student, if the disclosure is . . . to comply with a judicial order or lawfully issued subpoena if the local school system or

SIX: That the Defendant requests that the subpoena be deliverable unto undersigned counsel prior to trial, and that this request is appropriate given the sensitive nature of the materials requested and their anticipated use in formulating the Defendant's trial strategy and any applicable defenses and offers the following argument in support:

### **Argument**

When a criminal Defendant is charged with a violation of Maryland Education Article 7-301, it is appropriate for the District Court to issue a subpoena, requiring tangible evidence to be delivered unto the Defendant prior to trial. The Maryland Rules do not expressly state the District Court's power to grant such subpoenas, as they do the Circuit Court. (Maryland Rule 4-264). However, Rule 4-264 is a procedural path for the constitutional right of compulsory process that exists in both Courts. ("The several Courts existing in this State at the time of the adoption of this Constitution shall, until superseded under its provisions, continue with like powers and jurisdiction, and in the exercise thereof, both at Law and in Equity, in all respects" Article Four of the Maryland Declaration of Rights; United States Constitution Sixth and Fourteenth Amendments, *See Generally: Darby v. State*, 47 Md. App. 1, 1980, *Pennsylvania v. Ritchie*, 480 U.S. 39, 94 L.Ed.2d 40 (1987)). Defendant argues that the absence of an enumerated procedure does not erase a constitutional right. Maryland Rule 4-251's (b)(5) "catch all" provision, implies that such a motion may be granted, provided a Defendant may demonstrate good cause and just circumstance to the District Court.

In criminal matters concerning charges of violation of Maryland Education Article 7-301, the circumstances are just for a motion for tangible evidence prior to trial.. The justification is three fold. First, it allows third parties to satisfy and secure their rights and legal obligations collaterally impacted by the subpoena. Second, it secures the Defendant's right to compulsory process. Finally, it satisfies the needs of judicial economy, which the simplified rules in District Court were meant to obtain.

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educational institution makes a reasonable effort . . . to notify the parent or guardian of the student or the eligible student of the order or subpoena in advance of compliance, so that the parent, guardian, or eligible student may seek protective action. . ." COMAR 13A.08.02.19 (2013).

From the perspective of the third party, the Board of Education, it is appropriate and necessary to have a subpoena issued for return prior to trial. COMAR allows a local school system to disclose personally identifiable information from student records under a lawfully issued subpoena under certain circumstances. One of those provisions requires that a reasonable effort is made to “notify the parent or guardian of the student or the eligible student of the order or subpoena in advance of compliance, so that the parent, guardian, or eligible student may seek protective action.”<sup>25</sup> The Board of Education is bound to have the time to compile the documents, send applicable notice, and have notice done in such a manner that intervening action might be sought by other interested parties. See COMAR 13A.08.02.19 (2013) (copy attached).

From the perspective of the Defense, it is appropriate and necessary to have a subpoena issued for return prior to trial. The Defendant has a right to compulsory process, guaranteed under both the United States Constitution and the Maryland Declaration of Rights. The Defendant reasonable anticipates that not only will the subpoenas yield both documented evidence, but that that documentation will identify additional potential witnesses that the Defense may wish to call. Those anticipated, but yet unidentified, witnesses are the members of the Pupil Services Committee that investigated the alleged truancy of the child and the identity of persons authorized to excuse absences pursuant to Maryland Education Article 7-301(b). To withhold this information from the Defendant, until day of trial, will disservice the Defendant and infringe upon their constitutional right to subpoena the additional parties.

Lastly, in the interests of judicial economy, it is appropriate and necessary to have a subpoena deliverable prior to trial. The Defendant respectfully offers that part of the purpose of the simplified rules of procedure in District Court is to promote judicial economy. The alternative to

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<sup>25</sup> “A local school system or educational institution may disclose personally identifiable information from the student records without the written consent of the parent or guardian of the student or the eligible student, if the disclosure is . . . to comply with a judicial order or lawfully issued subpoena if the local school system or educational institution makes a reasonable effort . . . to notify the parent or guardian of the student or the eligible student of the order or subpoena in advance of compliance, so that the parent, guardian, or eligible student may seek protective action. . .” COMAR 13A.08.02.19 (2013).

having the documents presented prior to trial, would be to require the documents to be presented at trial. The Defense anticipates that the scope of the material the Defendant is entitled to is of such length that it would cause the Defenses to either request a continuance or request a lengthy mid trial recess in order for those materials to be properly evaluated for their specific use in the Defense's case.

WHEREFORE: the Defendant prays this Honorable Court (1) That a subpoena issue requiring \_\_\_\_\_, Superintendent, to produce the student file and records for the child identified in the charging document, and (2) for any and all other relief this Honorable Court finds just and equitable.

Respectfully Submitted: *END FORM*

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STATE OF MARYLAND,  
PLAINTIFF,

v.

CRIMINAL CASE No.

J. DOE,

DEFENDANT.

\*\*\*\*\*

**SUBPOENA FOR TANGIBLE EVIDENCE PRIOR TO TRIAL**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

YOU ARE HEREBY COMMANDED to personally appear at the (ADDRESS OF COUNSEL), the \_\_\_\_\_th day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m., and to produce at that time for inspection and copying the documents, recordings, photographs or other tangible evidence as described in the attached schedule.

In lieu of personally appearing, you may comply with this subpoena by mailing or delivering the requested documents or objects (including an executed copy of the attached certification of custodian of records or other qualified individual) directly to the attorney at whose request this Subpoena was issued: \_\_\_\_\_, Esq, (ADDRESS OF COUNSEL), before the date set forth above.

DATE ISSUED: \_\_\_\_\_  
Clerk

**NOTICE: You are liable to body attachment and fine for failure to obey this subpoena.**

**SHERIFF'S RETURN**

- ( ) - Served and copy delivered on date indicated below.
- ( ) - Unserved, by reason of \_\_\_\_\_.

Date: \_\_\_\_\_ Fee \$ \_\_\_\_\_

\_\_\_\_\_  
Sheriff

\*\*\*\*\*

STATE OF MARYLAND,

PLAINTIFF,

v.

CRIMINAL CASE No.

J. DOE,

DEFENDANT.

\*\*\*\*\*

**SCHEDULE OF DOCUMENTS AND OBJECTS**

**DEFINITION:** “The Child” refers to \_\_\_\_\_.  
“The School” refers to \_\_\_\_\_.

ONE: Entire and Complete Student File of Child; “Entire and Complete” includes, but is not limited to the following:

- (1) Student Record Card 1, Side 1, Personal Data (Maryland Student Records Manual B-15)
- (2) Student Record Card 1, Side 2, School Attendance (Maryland Student Records Manual B-16)
- (3) All other Student Record Cards for the Child, or data content from cards including 2, 3, 3B, 4, 5, 7. (Maryland Student Records Manual B-17 - B-31)

TWO: Entire and Complete Attendance Records for Child; “Entire and Complete” is not simply a printout of the ASPEN online records. More specifically, it includes, but is not limited to the following:

- (1) ALL “Source Documents” as defined in the Maryland Student Records Manual 2011, section C-59. Including any “bubble sheet,” “scan sheet,” “lists of absent students,” and/or similar documents.
- (2) The attendance record keeping policy or operating procedures for the School; identify whether the school uses a “Manual System,” “Automated System;” “Online System;” or alternative system as defined in the Maryland Student Records Manual 2011, section C-59.
- (3) The names, titles, and identities of ALL persons responsible for creating the source documents for the Child’s attendance, or had authorization to amend or change the schools

recording of documents, including, but not limited to: homeroom teacher; classroom teacher; and other attendance recorders;

(4) The entire and complete school tardy log in regards to the Child, and the names of the persons responsible for recording and maintaining that log (as defined in Maryland Student Records Manual 2011, section C-59,) “Entire and Complete” includes, any verification document or report submitted by either administrative staff or teachers regarding the verification of a tardy/absence.

(5) In the event the School has adopted an automated or online system, the School’s internal control policy regarding maintaining the integrity of the records as defined in the Maryland Student Records Manual 2011, section C-59, including, but not limited to the following:

(A) The names, titles, and business addresses of persons responsible for maintaining the automated or online system;

(B) Printout of the digital history of changes/amendments made to the child’s attendance history and printouts of verification or digital signatures indicating when amendments or changes were made for the Child’s digitally recorded attendance records.

(6) ALL written notes or other documents regarding the absence/tardy of a child that were submitted to the School (examples: parent notes, doctor notes, etc.) Regardless of whether the note was accepted and an absence was reclassified as excused or unexcused.

THREE: All documents and reports relating to the mandatory and immediate reporting requirements to the county superintendent relating to the Child’s absences and maladjustment as described in Maryland Education Code Ann Section 7-302.

FOUR: The names, titles, and addresses of any member of the “Pupil Services Committee”(AKA “School Attendance Committee”) who reviewed the Child’s case, and any notes or written reports related to said committee’s review of the Child.

FIVE: The names, titles, and address of any individual authorized by the principal to excuse a lawful absence of the Child as defined in Maryland Education Article 7-301(3)(b).

SIX: All other documents and records, relating to student behavior, misconduct, discipline, sanctions, placements, and behavioral goals, including IEP, related to the Child.

## CERTIFICATION OF CUSTODIAN OF RECORDS OR OTHER QUALIFIED INDIVIDUAL

I, \_\_\_\_\_, do hereby certify that:  
(PRINTED NAME)

1.) I am the custodian of records or am otherwise qualified to administer records for:

\_\_\_\_\_  
(IDENTIFY THE ORGANIZATION THAT MAINTAINS THE RECORDS)

2.) The attached records:

- of
- a.) Are true and correct copies of records that were made at or near the time the occurrence of the matters set forth by, or from the information transmitted by, a person with knowledge of these matters; and
  - b.) Were kept in the course of regularly conducted activity; and
  - c.) Were made and kept by the regularly conducted business activity as a regular practice.

I declare under the penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

\*\*\*\*\*

STATE OF MARYLAND,

PLAINTIFF,

v.

CRIMINAL CASE NO.

J. DOE,

DEFENDANT.

\*\*\*\*\*

### **JURY TRIAL PRAYER**

COMES NOW: The above captioned Defendant, by and through counsel, pursuant to Maryland Rule 4-311, Maryland Criminal Procedure 6-101, the Sixth Amendment of the Constitution of the United States of America, Article Twenty One of the Maryland Declaration of Rights, the common law, and all other applicable law, to make the demand to be tried by a jury in the captioned matter and offers:

ONE: The captioned matter involves a crime charged and that there is a constitutional right to a trial by jury.

TWO: The Defendant is charged with one count of violation of Maryland Education Article 7-301 for a child during the academic year of 20\_\_ to 20\_\_, which carries a maximum sentence of ten days incarceration and a fine of \$50.00 per day of unlawful absence and as a subsequent offender penalty of thirty days of incarceration and a fine of \$100.00 per day.

THREE: By statute, the length of a school year is at minimum, 180 days. (Maryland Education Article 7-103 (a)(1)(ii))

FOUR: That under a first offense theory the maximum financial penalty in this matter ranges from \$50.00 to \$9,000.00.

FIVE: That under a subsequent offender theory the maximum financial penalty in this matter ranges from \$100.00 to \$18,000.00.

SIX: That the potential fine establishes a constitutional right to a jury trial in this matter under the 6th Amendment to the United States Constitution and Maryland law. The United States Supreme Court has held that there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision. (*Lewis v. U.S.* 518 U.S. 322, 325 (1996)). In terms of a right to a trial by jury, an offense must be categorized as “petty” or “serious” for the

purposes of the 6th Amendment. (*Id.* at 326). In making this determination, the maximum penalty attached to the offense is considered. (*Id.*) The term of imprisonment is the primary focus in this analysis. (*Id.*) “An offense carrying a maximum prison term of six months or less is presumed petty, unless the legislature has authorized additional statutory penalties to serve as to indicate that the legislature considered the offense serious.” (*Id.*)

In this case, the legislature has added additional penalties that indicate violations of Education Article 7-301 are serious. Specifically, that the maximum potential penalty ranges from \$50.00 to \$9,000.00 and as a subsequent offender, the maximum potential penalty ranges from \$100.00 to up to \$18,000.00, depending on the number of unlawful absences. As the legislature has indicated that this offense is serious, a right to a trial by jury attaches.

WHEREFORE: The Defendant respectfully requests that this matter be forwarded to the Circuit Court for \_\_\_\_\_ County and be set for a trial by jury.

Respectfully Submitted: *END FORM*

\*\*\*\*\*

NAME

PETITIONER,

v.

CASE No.

DISTRICT COURT OF MARYLAND

RESPONDENT.

NAME, Administrative Clerk.

INTERESTED PARTY.

NAME, Esq. State's Attorney

INTERESTED PARTY.

\*\*\*\*\*

**PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY;  
REQUEST FOR A HEARING AND MEMORANDUM IN SUPPORT**

COMES NOW: The Petitioner, by and through counsel, pursuant to Maryland Rule 7-301, and any other applicable law, and makes a petition for a writ of certiorari, and offers:

ONE: That the Petitioner makes the following offerings of fact:

Pursuant to Maryland Rule 7-301(b)(1), the name of the Respondent is the District Court of Maryland for \_\_\_\_\_ County, and \_\_\_\_\_, Administrative Clerk of said court is an interested party. Furthermore, as this matter involves a criminal case prosecuted in \_\_\_\_\_ County, \_\_\_\_\_ Esq., State's Attorney for \_\_\_\_\_ County, is an interested party.

Pursuant to Maryland Rule 7-301(b)(2) the matter sought to be reviewed by this Honorable Court by a writ of certiorari is whether the respondent committed an unconstitutional act by denying the Petitioner's Demand for Trial by Jury and refusing to transfer the matter to the Circuit Court of \_\_\_\_\_ County.

Pursuant to Maryland Rule 7-301(b)(3) the Petitioner in this matter is the Defendant for a District Court matter whose Demand for Trial by Jury was wrongly denied.

That pursuant to Maryland Rule 7-301(b)(4), the Petitioner relies on the following set of facts set forth in the Statement of Facts in the Petitioner's memorandum in support to demonstrate that the respondent lacked jurisdiction or committed an unconstitutional act reviewable by writ of certiorari.

### **MEMORANDUM IN SUPPORT**

#### **Issues Presented**

ONE: Does the Circuit Court of \_\_\_\_\_ County have jurisdiction to issue a writ of certiorari regarding a criminal matter in the District Court of Maryland for \_\_\_\_\_ County for an allegation of wrongful denial of request for trial by jury?

TWO: Does a violation of Maryland Education Article Section 7-301 carry a right to trial by jury?

#### **Statement of Facts**

The Petitioner was charged in the District Court of Maryland for \_\_\_\_\_ County in case identified as *State of Maryland v. \_\_\_\_\_ 0w00000000*. In that matter, the Petitioner was charged with a single count of violation of Maryland Education Article Section 7-301. That on or about \_\_\_\_\_, the Defendant, through counsel, filed a demand for trial by jury in the captioned matter. On \_\_\_\_\_, the District Court noted the demand for trial by jury and denied the motion, holding that no right to a trial by jury existed for a violation of Maryland Education Article Section 7-301. To date, the Petitioner's demand for trial by jury has not been honored by the District Court of Maryland for \_\_\_\_\_ County, and the file has yet to be transferred to the Circuit Court of \_\_\_\_\_ County.

### Argument to Issue One

The Circuit Court for \_\_\_\_\_ County has jurisdiction to issue a writ of certiorari from a decision in the District Court of Maryland for \_\_\_\_\_ County. “It has long been the common law rule of Maryland that a circuit court has jurisdiction to issue a writ of certiorari to a lower court for the purpose of inquiring into that tribunal’s jurisdiction.” (*Kawamura v. State*, 299 Md. 276, 282 (1984)). The purpose of a writ of certiorari is to empower a proper appellate court to determine whether trial court has proceeded in a summary manner or in a course contrary to the law or in excess of its jurisdiction. (*Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486 (1975)). “An application for a writ of certiorari shall be by petition filed in the circuit court for the county where the acts sought to be reviewed take, have taken, or would take effect.” (Maryland Rule 7-301).

Under Maryland law, the jurisdiction of the District Court ceases upon a criminal defendant making a demand to be tried by jury. (Maryland Courts and Judicial Proceedings Section 4-302 (E-1) *note*: Maryland Criminal Procedure Section 6-101 states there is a right to a trial by jury if “1) the crime charged is subject to a penalty of imprisonment; or 2) there is a constitutional right to a jury trial for the crime” which is in conflict with Maryland Courts and Judicial Proceedings Section 4-302 (E-2(ii)) which states “unless the penalty for the offense with which the defendant is charged permits imprisonment for a period in excess of 90 days, a defendant is not entitled to a jury trial in a criminal case”) Maryland Rule 4-301(b) states in pertinent part “upon demand by the defendant for jury trial that deprives the District Court of jurisdiction pursuant to law . . . The clerk shall promptly transmit the case file to the clerk of the circuit court . . .”

In the case at hand, the matter originated in the District Court of Maryland for \_\_\_\_\_

County as a criminal matter. The Circuit Court of \_\_\_\_\_ County is the proper appellate court as the case originated in the District Court of Maryland for \_\_\_\_\_ County. The Petitioner sought a trial by jury to the Circuit Court of \_\_\_\_\_ after making appropriate notice. The District Court refuse to transmit the record pursuant to Maryland Rule 4-301(b). The District Court of Maryland for \_\_\_\_\_ County, as a trial court, has acted in a manner contrary to the law by refusing to transmit the record in question. Therefore, the Circuit Court of \_\_\_\_\_ County has jurisdiction to issue a writ in this matter.

### **Argument to Issue Two**

The District Court of Maryland for \_\_\_\_\_ County wrongfully denied the Petitioner's demand for trial by jury, holding that no right to a trial by jury exists for a single violation of Maryland Education Article 7-301. The Petitioner contends that there is in fact a right to a trial by jury for a violation of Maryland Education Article 7-301 under the Sixth Amendment of the Constitution of the United States of America and Article Twenty One of the Maryland Declaration of Rights and provides the following argument in support:

A violation of Maryland Education Article Section 7-301 carries a right to trial by jury. In criminal matters, Maryland law recognizes the right to a trial by jury in two situations, 1) when the maximum period of incarceration is in excess of ninety days, or 2) when a constitutional right to trial by jury exists. (Maryland Courts and Judicial Proceedings Section 4-302 and Maryland Criminal Procedure Section 6-101). Maryland Education Article Section 7-301, under a first offense theory, carries a maximum period of incarceration of ten days and a fine of \$50.00 per day that a child has been unlawfully absent from school. (Maryland Education Article 7-301 (e)(2)). For a subsequent offender theory, the statute carries a maximum penalty of thirty days of incarceration and a fine of \$100.00 per day that a child has been unlawfully absent from school. (*Id.*) By statute, the length of a school year is at minimum, 180 days. (Maryland Education Article 7-103 (a)(1)(ii)). The legislature's stated maximum penalty, for a first offense theory, would be \$9,000.00 and \$18,000.00 for a subsequent offense.

Under Maryland law, there are numerous examples of criminal cases which do not

contain a right to trial by jury. To the best of counsel's knowledge, there are approximately eighty-five recognized criminal offenses in Maryland which have a penalty of 90 days incarceration or less.<sup>26</sup> Of these, virtually all carry a fine and no one single charge carries a maximum fine larger than \$1,500.00. (*Id.*) There are nine traffic offenses that do not carry a period of incarceration, but have maximum fines established at \$1,000.00 for first offense, \$2,000.00 for second offense, and \$3,000.00 for third or subsequent offense. (Maryland Transportation Article Section 27-101 (g) and (l)).

Under Maryland law, there are numerous situations where a right to trial by jury is protected. By way of example, the maximum penalty for a violation of Criminal Law Section 6-107 Arson Threat is \$5,000.00 and five years incarceration; the maximum penalty for Criminal Law Section 3-203, Assault in the Second Degree is \$2,500.00 and ten years incarceration. In civil matters, the right to a trial by jury in Maryland is guaranteed in controversies exceeding \$15,000.00 (Maryland Constitution, Declaration of Rights, Article 23).

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<sup>26</sup> Cited from District Court of Maryland Charging Language Rev 10/1/2015 CR 3-901(c) \$1,000.00 - 30 DAYS; CR 6-108 \$500.00 - 30 DAYS; CR 10-109 \$100.00 - 30 DAYS; CR 10-110(c) \$1,500.00 - 30 DAYS; CR 10-110(c) \$1,500.00 - 30 DAYS; ED 7-301 \$500.00 - 30 DAYS; FL 5-801 \$500.00 - 30 DAYS; FL 9-304 \$250.00 - 30 DAYS; FL 9-304 \$250.00 - 30 DAYS; FL 9-304 \$250.00 - 30 DAYS; HG 4-226(f) \$1,000.00 - 30 DAYS; BR 17-1804 \$300.00 - 30 DAYS; BR 17-2103 \$300.00 - 30 DAYS. CR 6-301 \$500.00 - 60 DAYS; CR 7-106 \$500.00 - 60 DAYS; CR 8-108 \$100.00 - 60 DAYS; CR 8-407 \$1,000.00 - 60 DAYS; CR 8-520(c)(1)(2) \$1,000.00 - 60 DAYS; CR 8-520(c)(1)(2) \$1,000.00 - 60 DAYS; CR 10-201(c)(1) \$500.00 - 60 DAYS; CR 10-201(c)(2) \$500.00 - 60 DAYS; CR 10-201(c)(3) \$500.00 - 60 DAYS; CR 10-201(c)(4) \$500.00 - 60 DAYS; CR 10-201(c)(5) \$500.00 - 60 DAYS; CR 12-206 \$100.00 - 60 DAYS; (\$1,000.00) CJ 3-1503(d) \$1,000.00 - 90 DAYS; CJ 3-1508 \$1,000.00 - 90 DAYS; CP 5-212 \$500.00 - 90 DAYS; CR 3-707 90 days \$100.00; CR 3-803 500.00 90 days; CR 3-904 (c) \$100.00 - 90 DAYS; CR 3-904(c) \$100.00 - 90 DAYS; CR 6-402 \$500.00 - 90 DAYS; CR 6-403 \$500.00 - 90 DAYS; CR 6-403 \$500.00 - 90 DAYS; CR 6-404(b) \$500.00 - 90 DAYS; CR 6-405 \$500.00 - 90 DAYS; CR 6-406 \$500.00 - 90 DAYS; CR 6-407 \$500.00 - 90 DAYS; CR 6-408 \$500.00 - 90 DAYS; CR 7-104(3) \$500.00 - 90 DAYS; CR 8-103(a) \$500.00 - 90 DAYS; CR 8-103(b) \$500.00 - 90 DAYS; CR 8-103 (c) \$500.00 - 90 DAYS; CR 8-103 (d) \$500.00 - 90 DAYS; CR 8-103(e) \$500.00 - 90 DAYS; CR 8-206(a)(1) \$500.00 - 90 DAYS; CR 8-206(a)(2) \$500.00 - 90 DAYS; CR 8-206(b) \$500.00 - 90 DAYS; CR 8-207(a)(1) \$500.00 - 90 DAYS; CR 8-207(a)(2) \$500.00 - 90 DAYS; CR 8-209(a) \$500.00 - 90 DAYS; CR 9-608 \$500.00 - 90 DAYS; CR 9-610(c) \$500.00 - 90 DAYS; CR 10-204(c) \$1,000.00 - 90 DAYS; CR 10-604(a)(1)(2)(3) \$1,000.00 - 90 DAYS; CR 10-604(a)(4) \$1,000.00 - 90 DAYS; CR 10-604(a)(5) \$1,000.00 - 90 DAYS; CR 10-623(b)(1) \$1,000.00 - 90 DAYS; CR 10-623(b)(2) \$1,000.00 - 90 DAYS; CR 10-623(b)(3) \$1,000.00 - 90 DAYS; CR 10-623(b)(4) \$1,000.00 - 90 DAYS; CR 10-623(b)(5) \$1,000.00 - 90 DAYS; CR 10-624 \$1,000.00 - 90 DAYS; CR 10-624 \$1,000.00 - 90 DAYS; ED 26-104 \$1,000.00 - 90 days; EN 5-10A-02 \$500.00 - 90 DAYS; FL 4-508.1 \$1,000.00 - 90 DAYS; FL 4-509 \$1,000.00 - 90 DAYS; LE 8-1301 \$1,000.00 - 90 DAYS; LE 8-1301 \$1,000.00 - 90 DAYS; LE 8-1302 \$1,000.00 - 90 DAYS; 2B 19-101 \$100.00 - 90 DAYS; 2B 19-101 \$100.00 - 90 DAYS.

See Full Disclaimer on Page 2

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The United States Supreme Court has held that the applicability of the Sixth Amendment right to a jury trial in a criminal matter is determined by severity of offense. (*Lewis v. U.S.* 518 U.S. 322, 325 (1996)). In determining a right to a trial by jury, an offense must be categorized as “petty” or “serious” for the purposes of the 6th Amendment. (*Id.* at 326). The term of imprisonment is the primary focus in this analysis. (*Id.*) “An offense carrying a maximum prison term of six months or less is presumed petty, **unless the legislature has authorized additional statutory penalties to serve as to indicate that the legislature considered the offense serious.**” (*Id.* *emphasis added*)

Maryland courts have adopted a similar rationale in determining whether a right to a trial by jury in a criminal matter attaches under the Maryland Constitution and Declaration of Rights. “Three factors have been distilled to help determine whether the State constitutional right to a jury trial attaches to an offense at the initial trial level. The first factor is whether the offense had historically been considered a petty offense subject to the jurisdiction of justices of the peace or whether it had historically been tried before juries. The second is whether the accused is subject to an infamous penalty—does the offense have a significant statutory penalty or is the accused subject to incarceration in the penitentiary? The third is whether the offense is an infamous crime or considered a serious offense.” (*Abe v. State*, 217 Md. App. 174, 180, 2014, *citing Fisher*, 305 Md. at 365, 365–66 1984).

In this case, the legislature has included a statutory penalty, in the way of excessive fines, for violations of Education Article 7-301 to indicate it is a serious offenses. In these cases, the potential maximum fine can range between \$9,000 and \$18,000.00, depending on the number of unlawful absences and a defendant’s prior record. There are no other criminal offenses with a penalty of less than 90 days which come close to this amount. The maximum conceived fine is in fact larger than maximum fine for numerous felony charges in Maryland which carry a right to jury. The maximum fine for a subsequent offender for Education Article 7-301 is three thousand dollars higher than what is required for a jury trial right to attach in a civil matter.

Despite the relatively low potential jail sentence, the enormity of the potential fine clearly

indicates the legislature's intent that this offense is serious. As the legislature has indicated that this offense is serious, a right to a trial by jury attaches. The District Court erred and acted outside the bonds of its jurisdiction by denying the Defendant her right to a trial by jury.

WHEREFORE: The Petitioner respectfully requests that this Honorable Court grant the following relief:

ONE: Pursuant to Maryland Rule 7-301 (C)(1), grant an order commanding the Respondent; the District Court of Maryland for District \_\_\_\_\_; to file a response to show cause why a writ should not be issued; alternatively

TWO: Pursuant to Maryland Rule 7-301 (C)(2), issue a writ of certiorari commanding the Respondent, the District Court of Maryland for District \_\_\_\_\_; to produce to the Circuit Court for \_\_\_\_\_ County all records in the matter known as *State of Maryland v. Defendant 0w00000000*;

THREE: To grant an order, commanding the District Court of Maryland for District \_\_\_\_\_; to process the jury trial demand in the matter of *State of Maryland v. Defendant 0w00000000*;

FOUR: For any other relief which this Honorable Court finds appropriate.

Respectfully Submitted,

**AFFIDAVIT**

I hereby swear under the penalties of perjury that the facts set forth above in this petition,  
to the best of my knowledge, belief, and information, are true and correct.

\_\_\_\_\_

**REQUEST FOR A HEARING**

The Petitioner requests that a hearing be set in this matter.

\_\_\_\_\_

**MARYLAND RULE 1-351(B) CERTIFICATION**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, a true and accurate  
copy of this petition, along with a letter indicating the Petitioner's intent to file said petition with  
the Circuit Court of \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, was  
mailed, postage prepaid, via the USPS, to the following parties:

NAME, Esq. State's Attorney

NAME, Administrative Clerk

Office of the Attorney General  
Attention: Courts and Judicial Affairs Division  
200 St. Paul Pl.  
Baltimore Maryland 21202

\_\_\_\_\_

*END FORM*

\*\*\*\*\*

NAME

PETITIONER,

v.

CASE No.

DISTRICT COURT OF MARYLAND

RESPONDENT.

NAME, Administrative Clerk.

INTERESTED PARTY.

NAME, Esq. State's Attorney

INTERESTED PARTY.

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**ORDER**

UPON CONSIDERATION: Of the Petitioner's application for a writ of certiorari, any response given and good cause being shown, it is hereby:

ORDERED: This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, that the relief sought is hereby:

(\_\_\_\_\_) GRANTED; and pursuant to Maryland Rule 7-301 (C)(1), the Respondent; the District Court of Maryland for District \_\_\_\_\_; shall file a response no later than the \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_, to show cause why a writ should not be issued.

(\_\_\_\_\_) GRANTED; and pursuant to Maryland Rule 7-301 (C)(2), a writ of certiorari is hereby issued, commanding the District Court of Maryland for District \_\_\_\_\_; to produce to the Circuit Court for \_\_\_\_\_ County all records in the matter known as *State of Maryland v. Name 0w00000000* no later than the \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_.

(\_\_\_\_\_) DENIED; the petition is hereby dismissed upon a determination that the Circuit Court for \_\_\_\_\_ County lacks jurisdiction in this matter.

\_\_\_\_\_  
Judge