

MARYLAND COALITION TO REFORM SCHOOL DISCIPLINE

WAYS AND MEANS COMMITTEE HOUSE BILL 84 EDUCATION – CRIMES ON SCHOOL GROUNDS – APPLICATION

POSITION: SUPPORT

The Maryland Coalition to Reform School Discipline (“CRSD”) brings together advocates, service providers, and community members dedicated to transforming school discipline practices within Maryland’s public-school systems. We are committed to making discipline responsive to students’ behavioral needs, fair, appropriate to the infraction, and designed to keep youth on track to graduate. **CRSD strongly supports House Bill 84**, which would exempt students at the educational institutions they attend, students currently excluded from their educational institutions for disciplinary reasons, and students who are participating in or attending a sporting event or extracurricular activity at another school from the offenses set forth in Maryland Education Code § 26-101. At present, section 26-101 is an overly broad statute that criminalizes behaviors and acts that are criminalized in various provisions of the Maryland Criminal Code, sets forth subjective offenses that disproportionately impact Black students and students with disabilities, and criminalizes normal adolescent development.

Maryland Education Code § 26-101 is overly broad because it criminalizes a wide range of student behaviors, many of which are based on the subjective interpretations of school officials and school police officers. For instance, the statute criminalizes “willful disturbance” of schools. The notion of “disturbance” is exceedingly broad, vague, and subjective. Any number of communications and behaviors – such as words, tone of voice, attitudes, refusals, or defiance – can be interpreted as “willful disturbance.” Thus, a child who is misunderstood, misinterpreted, or agitated is at risk of being criminalized. Notably, in October 2021, the United States District Court for South Carolina held a South Carolina law that made it unlawful to interfere with or disturb students or teachers at any school or college in the State to be unconstitutionally vague as applied to elementary and secondary school students.¹

Likewise, the notion of a “threat,” which is also criminalized in section 26-101, is very board, vague, and subjective. As set forth in the statute, what constitutes a threat is often based on subjective interpretations by school officials and school police officers. This is particularly problematic because in the school context a perceived “threat” may not be a threat at all. It can be an expression, word, or action that is consistent with normal adolescent behavior. It can also be that the school official or school police officer, clouded by biases attached to race, gender, intersectionality, and/or disability, perceives a student to present or express a “threat” that may

¹ *Kenny v. Wilson*, 2021 WL 4711450, 54 (D.S.C. Oct. 8, 2021).

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actually be a moment of frustration, an inability to express a feeling, a childish attempt at humor, or something else. The bottom-line is that any variety of words, non-verbal behaviors, and other expressive conduct – perceived or actual – that fall within this statute have been criminalized. These are crimes rooted not only in the behavior and actions of children in school, but also in the subjective interpretations of these children by school officials and school police officers.

These subjective interpretations very much drive and exacerbate the criminalization of Black children and children with disabilities in schools, including in Maryland. In the 2018-19 school year — the last full year of in-person instruction before the COVID-19 pandemic — the number of arrests in Maryland schools for disruption was exceeded by only three other offenses.² That same year, over 57% of students arrested in Maryland schools for disruption were Black³ and more Black girls were arrested for disruption than White males.⁴ In the truncated in-person 2019-20 school year, the number of arrests in Maryland schools for disruption was exceeded by only four other offenses.⁵ That same year, over 53% of students arrested in Maryland schools for disruption were Black.⁶ Again, more Black girls were arrested for disruption than White males.⁷ In this regard, Maryland is not unique, as “[t]he terms ‘threat,’ ‘harm,’ and ‘disruption’ are subjective terms that are more often applied to the behavior of Black girls.”⁸ Likewise, “[w]hat is perceived as a threat when committed by a Black student is commonly not considered a threat when committed by a White student.”⁹

Moreover, section 26-101 is unnecessary for students because it is duplicative of crimes set out in the Maryland Criminal Code. Indeed, *every* crime in section 26-101 is covered in other criminal statutes. For example, “willful disturbance” is duplicative of disorderly conduct, which in the school context is also frequently rooted in subjective interpretations, particularly when

² MARYLAND STATE DEP’T OF EDUC., MARYLAND PUBLIC SCHOOLS ARREST DATA, SCHOOL YEAR 2018-19, 12-13, <http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/StudentArrest/MarylandPublicSchoolsArrestDataSY20182019.pdf>

³ *Id.* at 130

⁴ *Id.*

⁵ MARYLAND STATE DEP’T OF EDUC., MARYLAND PUBLIC SCHOOLS ARREST DATA, SCHOOL YEAR 2019-20, 12-13, <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/StudentArrest/MarylandPublicSchoolsArrestDataSY20192020.pdf>

⁶ *Id.* at 119.

⁷ *Id.*

⁸ THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., THURGOOD MARSHALL INSTITUTE, OUR GIRLS, OUR FUTURE: INVESTING IN OPPORTUNITY & REDUCING RELIANCE ON THE CRIMINAL JUSTICE SYSTEM IN MARYLAND 14 (2018), https://www.naacpldf.org/wp-content/uploads/Baltimore_Girls_Report_FINAL_6_26_18.pdf.

⁹ Jennifer Martin & Julia Smith, *Subjective Discipline and the Social Control of Black Girls in Pipeline Schools*, 13 J. URB. LEARNING, TEACHING AND RESEARCH 63, 64 (2017) (citation omitted), <https://files.eric.ed.gov/fulltext/EJ1149866.pdf>

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school resource officers (SROs) are stationed in schools.¹⁰ In the recent South Carolina case referenced above, the United States District Court found that the State’s disorderly conduct law, which could criminalize student behavior in classrooms, hallways, and school cafeterias, resulted in disproportionate numbers of students of color and students with disabilities being charged.¹¹ An often-cited study comparing schools with SROs to schools without found that SROs “dramatically increase the rate of arrests with disorderly conduct charges”¹² Also, the “threat” and “molest” crimes in section 26-101 are covered in the Maryland Criminal Code. Accordingly, there is no need for this separate statute, in the Educational Code, to apply to students.

In addition to its over-breadth and redundancy, section 26-101 distracts from the urgency of implementing alternatives to criminalization for behaviors, words, needs, and issues that are best addressed by recognizing biases, understanding youth brain development (and behaviors that are consistent with normal adolescent development), and providing supports to students, such as counseling and behavioral health services, that keep them in school and away from the juvenile and criminal legal systems. Therefore, exempting students from section 26-101 is a necessary step to moving away from laws, policies, and practices that have criminalized children – particularly Black children and children with disabilities – in Maryland’s schools, and moving towards the resources, practices, and focus that support students, better address behaviors, and improve long-term outcomes.

For these reasons, CRSD strongly supports House Bill 84

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CRSD Members

Organizations

ACLU of Maryland

The Arc, Maryland

BMore Awesome, Inc.

¹⁰ For a discussion of the racialized impact of school disorderly conduct statutes see KRISTIN HENNING, *THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH* 135-36 (2021)

¹¹ *Kenny v. Wilson*, *supra* note 1, at 50.

¹² Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUSTICE 280, 285 (2009).

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The Choice Program at UMBC
Community Law in Action
Disability Rights Maryland
Family League of Baltimore
Maryland Office of the Public Defender
Open Society Institute – Baltimore,
Project HEAL at Kennedy Krieger Institute
Public Justice Center
Restorative Counseling Services
Schools Not Jails
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