



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

**House Bill 84 – Education – Crimes on School Grounds – Application
Ways and Means – January 20, 2022
SUPPORT**

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club** (WDC) for the 2022 legislative session. WDC is one of the largest and most active Democratic Clubs in our County with hundreds of politically active women and men, including many elected officials.

WDC urges the passage of HB84 as a first step toward de-criminalization of school misbehavior. HB84 would amend §26-101 of the Maryland Education Code to eliminate the authority being used by school resource officers (SROs) and other law enforcement to charge students with misdemeanors for school behavior, such as disruption, that is developmentally typical of adolescents and that should be treated as a disciplinary matter by school officials, not a crime. For example, between school year 2017-2018 and school year 2019-2020, there were 917 school-based arrests for disruptive behavior in Maryland schools, presumably under §26-101. Alarming, over one-third of the arrests in each of three years were of middle or elementary school students.¹

The arrest of children for normal adolescent misconduct is an unintended effect of the deployment of SROs in Maryland schools whose presence increases the likelihood that school officials will turn to them to intervene in disciplinary incidents. What is problematic is the overlap between a school's code of conduct and the criminal code. When school officials ask an SRO to intervene in an incident, the officer is more likely to see misbehavior typical of adolescents from a law enforcement perspective than from a developmental perspective or as related to a student's disability.² The result is arrests for minor infractions that should have been treated as student code of conduct violations and not a crime under §26-101, for example.

¹Maryland State Department of Education (MSDE), Maryland Public Schools Arrest Data, School Year 2019-2020, Maryland Public Schools Arrest Data, School Year 2018-2019, Maryland Public Schools Arrest Data, School Year 2017-2018, <http://marylandpublicschools.org/about/Pages/DSFSS/SSSP/StudentArrest/index.aspx>

² Aaron Kupchik, Research on the Impact of School Policing. ACLU Pennsylvania (August 2020), <https://fisafoundation.org/wp-content/uploads/2020/08/Research-on-School-Policing-by-Aaron-Kupchik-July-2020.pdf>; Emily M. Homer and Benjamin W. Fisher, "Police in schools and student arrest rates across the United States: Examining differences by race, ethnicity, and gender," *Journal of School Violence* (2019), [Police-in-schools-and-student-arrest-rates-across-the-United-States-Examining-differences-by-race-ethnicity-and-gender.pdf \(researchgate.net\)](https://www.researchgate.net/publication/348888888_Police-in-schools-and-student-arrest-rates-across-the-United-States-Examining-differences-by-race-ethnicity-and-gender); ACLU, Cops and No Counselors. How the Lack of School Mental Health Professionals is Harming Students (2020): 23, <https://www.aclu.org/report/cops-and-no-counselors>; Benjamin W. Fisher and Emily A. Hennessy, "School Resource Officers and Exclusionary Discipline in U.S. High Schools: A Systematic Review and Meta-analysis," *Adolescent Research Review* 1, 217-233 (2016): 218-220, 229, <https://doi.org/10.1007/s40894-015-0006-8>; Jason P. Nance, "Students, Police, and the School-to-Prison Pipeline," (November 2, 2015). 93 *Washington University Law Review* 919 (2016), University of Florida Levin College of Law Research Paper No. 15-20: 976-977, <https://ssrn.com/abstract=2577333>; Amanda Merkwae, "Schooling the Police: Race, Disability, and the Conduct of School Resource Officers," 21 *Michigan Journal of Race and Law* 147 (2015), <https://repository.law.umich.edu/mjrl/vol21/iss1/6>.



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The disproportionately high arrest rates for Black students are particularly troubling. For example, in school year 2019-2020, Black students accounted for 54 percent of the school-based arrests for disruption in Maryland, but only 33 percent of the enrollment³. For the previous school year, Black students accounted for 57 percent of the arrests for disruption. The unequal disciplinary treatment between Black students and white students cannot be explained away by claims that there are differences in behavior among these groups. A report by the Maryland Commission on the School-to-Prison Pipeline found that differences in discipline are likely to result from inconsistent adult responses to various behaviors. There is a real concern that bias, often unconscious, is coming into play, especially where the adults—teachers, school officials, and police—are making a subjective determination.⁴

The harmful effects of a single arrest cannot be overstated. A school-based arrest disrupts the schooling process and the student's social bonds in a way that can jeopardize educational attainment. Like suspensions, arrests can contribute to student disengagement and alienation, resentment, and distrust. An arrest can generate a negative institutional response from teachers and other school officials. Arrests in Maryland's schools are typically accompanied by both suspensions and referrals to the Department of Juvenile Services (DJS). Many studies have found that students who are suspended are at a significantly greater risk of poor academic performance, dropping out, and having subsequent behavioral problems. We know that contact with the juvenile justice system substantially increases a student's risk for later involvement in the adult criminal justice system. The risk of irreparable harm due to an arrest and a referral to DJS is particularly great for students of color.⁵

³See note 1 for sources of arrest data. Enrollment data is found in MSDE, Maryland Public School Enrollment by Race/Ethnicity and Gender and Number of Schools, September 30, 2019, https://p3cdn4static.sharpschool.com/UserFiles/Servers/Server_9046340/File/MSDE%209.30.2019%20Official%20Enrollment.pdf

⁴Maryland Commission on the School-to-Prison Pipeline, Final Report and Collaborative Action Plan, Report to the Maryland Governor and General Assembly pursuant to House Bill 1287(2017) (December 20, 2018): 29-30, <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/023600/023694/20190078e.pdf>; See also Adai Tefera, Genevieve Siegel-Hawley, and Rachel Levy, "Why do racial disparities in school discipline exist? The role of policies, processes, people, and places," Richmond, VA. Metropolitan Educational Research Consortium (2017): 5, https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1103&context=merc_pubs; Cheryl Staats, Implicit Racial Bias and School Discipline Disparities (May 2014) Kirwan Institute Special Report, <http://www.racialequityresourceguide.org/resource/implicit-bias-and-school-discipline-disparities>.

⁵Elaine Bonner-Tompkins, Leslie Rubin, and Kristen Latham, The School-to-Prison Pipeline in Montgomery County, March 1, 2016, Office of Legislative Oversight, Montgomery County, Maryland: 96-97; <https://www.montgomerycountymd.gov/OLO/Resources/Files/2016%20Reports/School%20to%20Prison%20Pipeline%20with%20CAO%20Response%2020166.pdf>; Daniel J. Losen, Cheri L. Hodson, Michael A Keith II, Katrina Morrison, and Shakti Belway, "Are We Closing the School Discipline Gap?" UCLA: The Civil Rights Project (2015), <https://escholarship.org/uc/item/2t36g571>; Council of State Governments Justice Center, The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System (2014), <https://knowledgecenter.csg.org/kc/content/school-discipline-consensus-report>; Nance (2015): 924.



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Education experts and practitioners agree that punitive approaches to school discipline do not work. In its “Framework for Effective School Discipline,” the National Association of School Psychologists states that effective school discipline promotes a positive school climate, reinforces positive behaviors, and keeps students in the classroom and out of the juvenile justice system. It involves addressing the cause of unwanted behavior and teaching alternatives for negative and harmful behavior. It incorporates evidence-based interventions such as positive behavioral supports, social-emotional learning, and restorative justice.⁶

Maryland State education law and guidance reflect the philosophy that discipline needs to promote positive behavior and be restorative, rehabilitative, and educational.⁷ In a 2021 Fact Sheet on Student Discipline, the Maryland State Department of Education (MSDE) recommends that the reaction to “behavioral mistakes” should be responsive interventions that assist students in acquiring skills that increase future success.⁸ For example, mentoring and restorative practices would be appropriate responses to disruptive behavior.⁹

After 18 months of social isolation and a wide range of life-changing experiences, students are reeling from anxiety, depression, grief, stress, and trauma—mental health conditions and emotional problems that are triggering a host of behavioral issues. Children are acting out and fighting. Many are disrespectful, defiant, and disruptive. It is essential that Maryland schools respond with trauma-informed interventions, recognize the vast inequities among the students, and help students cope with their emotional challenges. It is also time for policymakers to bar arresting children for behavioral problems for which a punitive response would do no good.

To end the harm caused by arresting students for minor misbehavior in school, we ask for your support for HB84 and strongly urge a Favorable Committee report.

Respectfully,

Leslie Milano
President

⁶“Framework for Effective School Discipline,” National Association of School Psychologists (2020), [file:///C:/Users/Dell/Downloads/Discipline-Framework-Document%20\(1\)%20\(2\).pdf](file:///C:/Users/Dell/Downloads/Discipline-Framework-Document%20(1)%20(2).pdf)

⁷Code of Maryland Regulations 13A.08.01.11, <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.08.01.11.htm>; Code of Maryland, 7-306 (d)(2)(iii), <https://law.justia.com/codes/maryland/2019/education/division-ii/title-7/subtitle-3/sect-7-306/>

⁸ MSDE Fact Sheet on School Discipline (2021), <file:///C:/Users/Dell/Downloads/Student%20Discipline.pdf>

⁹MSDE, Maryland Guidelines for a State Code of Discipline (July 22, 2014):17, http://archives.marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student_services_alt/docs/MDGuidelinesforStateCodeDiscipline_08072014.pdf