



POSITION ON PROPOSED LEGISLATION

BILL: HB 700 - Education – Disruption of School Activities – Repeal of Prohibition
POSITION: Favorable
DATE: March 26, 2021

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 700.

As public defenders, we represent youth charged in juvenile and adult court, many for incidents that occurred at school. Too often, those arrests are the result of normal adolescent behavior that is disparately criminalized, directly funneling Black students and children with disabilities into the school to prison pipeline. According to the Maryland Commission on the School-to-Prison Pipeline and Restorative Practices' December 2018 report, "[t]he most common arrests in school are simple assault...and the vague category of 'disorderly conduct,' which could be a temper tantrum, cursing, or talking back to a teacher. In other words, '**children develop arrest records for acting like children.**'"¹ These are the traumatic arrests that HB 700 would prevent.

Maryland Education Code §26-101, which HB 700 would amend, is an unnecessary and overbroad statute that criminalizes children's behavior at school. The provisions of §26-101 that cover actual disruptive or threatening behavior are already criminalized by Maryland's Criminal Code; the remainder consists of vague language covering a range of developmentally appropriate behavior that is disparately applied to Black students and children with disabilities. In 2020, 82% of those referred to the Department of Juvenile Services for an intake hearing for Disturbing School Activities or Personnel were youth of color.² The disparate treatment of non-white children begins with school-based arrests based on §26-101: despite representing only 33% of students enrolled in Maryland's public schools,³ 57% of students arrested for disruption in the 2018-2019 school year were Black.⁴ Similarly, 69% of children arrested for making threats to adults were non-white students, as were 55% of those arrested for threats to other students.⁵ Children with disabilities are also disproportionately charged: although data as to specific charges

¹ Maryland Commission on the School-to-Prison Pipeline and Restorative Practices, *Final Report and Collaborative Action Plan* at 26, available at <http://marylandpublicschools.org/stateboard/Documents/AAEEBB/CommissionSchoolPrisonPipeline.pdf>.

² Maryland Department of Juvenile Services, *Data Resource Guide Fiscal Year 2020* at 252, available at https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2020.pdf.

³ Maryland State Department of Education, *Maryland Public School Enrollment by Race/Ethnicity and Gender and Number of Schools September 30, 2019*, available at <http://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20192020Student/2020EnrollRelease.pdf>.

⁴ Maryland State Department of Education, *Maryland Public Schools Arrest Data: School Year 2018-19*, available at <http://marylandpublicschools.org/stateboard/Documents/2020/0623/MarylandPublicSchoolsArrestData20182019.pdf>.

⁵ *Id.*

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is not available, students with Individual Education Programs (IEP), one of two special education classifications, are only 12% of the student population in Maryland yet they receive 23% of school-based arrests.⁶

§26-101 is also disparately applied across the state, thus subjecting children attending one school to arrest for normal adolescent behavior while those attending schools in a neighboring district can continue to behave like children. This disparity exists even when comparing students attending schools in similarly situated communities across the state. In 2020, while 51 students were arrested in Montgomery schools for Disturbing School Activities or Personnel, 217 students were arrested in Baltimore County schools; in Western Maryland, 104 were arrested on that charge in Washington County compared to 9 in Garrett County; on the Eastern Shore, 198 were charged for Disturbing School Activities or Personnel in Wicomico while 9 were arrested in Talbot; and in Southern Maryland, 86 students were arrested in Saint Mary's compared to 39 in Calvert.⁷

These disparities are all the more disturbing when looking at the specific behavior charged as a violation of §26-101. Take, for example, DJ, a Black special education student in Charles County. DJ was charged with Disturbing School Operations and Disorderly Conduct for roaming the school halls instead of remaining in the office. The disturbance: an art teacher closed the door to the classroom and yearbook staff stepped aside when DJ passed, all while being followed by the school police officer and principal. The disorderly conduct: DJ recording on his phone and using profanity. The police officer used force, pushing DJ, then a 9th grade student, into the lockers and knocking him to the ground because the officer said DJ didn't give him one of his wrists. The officer then paraded DJ through the school in handcuffs. Although the Department of Juvenile Services closed the case at intake because the behavior had been managed through the school disciplinary process, the school police officer appealed that decision and DJ was forced to endure the process of juvenile court.

While the language contained in §26-101 may not seem nefarious, the application of §26-101 to students such as DJ certainly is. School is a place where children are sent to learn. An important part of that learning – especially for students with disabilities – is making mistakes and learning from those experiences. While the behavior of a student may be disruptive, and children will say things while frustrated, these are all normal adolescent behavior. We urge the committee to end this punitive practice of criminalizing kids for being kids.

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For these reasons, the Maryland Office of the Public Defender respectfully urges a favorable report on House Bill 700.

⁶ *Id.*

⁷ See Data Resource Guide, *supra* note 2