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# MARYLAND COALITION TO REFORM SCHOOL DISCIPLINE

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## EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE HOUSE BILL 700: EDUCATION – CRIMES ON SCHOOL GROUNDS – EXEMPTIONS

March 26, 2021

### 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 700**, which, as amended, would exempt students 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 impacts 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.

The same is true of a “threat,” which is also criminalized in section 26-101. 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 be actually be a moment of frustration, an inability to express a feeling, 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. As a result, 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.

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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 number of arrests in Maryland schools for disruption was exceeded by only three other offenses.<sup>1</sup> This same year, over 57% of students arrested in Maryland schools for disruption were Black and more Black girls were arrested for disruption than White males.<sup>2</sup> 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.”<sup>3</sup> Likewise, “[w]hat is perceived as a threat when committed by Black student is commonly not considered a threat when committed by a White student.”<sup>4</sup>

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 school resource officers (SROs) are stationed in schools. An often-cited study comparing schools with SROs to schools without SROs found that SROs “dramatically increase the rate of arrests with disorderly conduct charges . . . .”<sup>5</sup> 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 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

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<sup>1</sup> 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>

<sup>2</sup> *Id.* at 130.

<sup>3</sup> 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](https://www.naacpldf.org/wp-content/uploads/Baltimore_Girls_Report_FINAL_6_26_18.pdf).

<sup>4</sup> 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>

<sup>5</sup> Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUSTICE 280, 285 (2009).

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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 700.**

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## **CRSD Members**

### *Organizations*

ACLU of Maryland  
The Arc, Maryland  
Attendance Works  
BMore Awesome, Inc.  
The Choice Program at UMBC  
Community Law in Action  
Disability Rights Maryland  
Family League of Baltimore  
NARAL-Pro-Choice Maryland  
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  
Strong Schools Maryland  
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