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WAYS AND MEANS COMMITTEE
HOUSE BILL 1114
EDUCATION – PROHIBITED BEHAVIOR ON SCHOOL GROUNDS AND PROPERTY – APPLICATION
POSITION: SUPPORT

The Youth, Education, and Justice Clinic at the University of Maryland Carey School of Law represents children excluded from school through suspension, expulsion, or other means. Our Clinic aims to keep children in school and prevent them from being criminalized. **The Clinic strongly supports House Bill 1114**, which would exempt students at the educational institutions they attend 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. HB 1114 solves two problems that currently exist with Section 26-101. First, Section 26-101 is overly broad and duplicative of other provisions of the Maryland Criminal Code. Second, Section 26-101 sets forth subjective offenses that result in Black students and students with disabilities being criminalized at much higher rates than other students.

First, Section 26-101 is overly broad. This section criminalizes a wide range of student behaviors, many of which are based on the subjective interpretations of school officials and school resource officers (SROs).[1] For instance, the statute criminalizes "willful[] disturb[ance]" of schools. However, 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. While one teacher may have a high threshold for what kind of behavior constitutes a "disruption," another teacher may not. Thus, a child who is misunderstood, misinterpreted, or agitated is at risk of being criminalized, depending on who responds.

Section 26-101 also criminalizes "threats." As set forth in the statute, what constitutes a threat is often based on subjective interpretations by school officials and SROs. This is particularly problematic because in the school context, a perceived "threat" may not be a threat at all, but rather an expression, word, or action that is consistent with normal adolescent behavior. Under Section 26-101, any number of words, non-verbal behaviors, and other expressive conduct—perceived or actual—have been criminalized.

Moreover, Section 26-101 is unnecessary 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[] disturb[ance]" is duplicative of disorderly conduct, which in the school context is also frequently rooted in subjective

[1] An SRO is a law enforcement officer who is assigned to a local school system. MARYLAND SRO FAQS—AND ANSWERS, MARYLAND CENTER FOR SCHOOL SAFETY (Feb. 8, 2021), https://news.maryland.gov/mcss/2021/02/08/maryland-sro-faqs-and-answers/.

interpretations, particularly when police officers are stationed in schools.[2] The "threat" and "molest" crimes in Section 26-101 are also covered in the Maryland Criminal Code. Accordingly, there is no need for this separate section in the Educational Code to apply to students.

Second, because Section 26-101 criminalizes subjective offenses, it exacerbates the criminalization of Black students and students with disabilities. It is well documented that Black students and students with disabilities are disciplined at disproportionately high rates in Maryland.[3] However, Section 26-101 goes even further because it extends this disproportionality to arrests, which is particularly concerning because students who interact with the criminal legal system have a higher likelihood of dropping out of school, among other lifelong consequences.[4]

The Maryland data show that Black students are most harmed by school-based arrests. The most recent Maryland data for a fully in-person school year is from 2018-19.[5] That year, the number of arrests in Maryland schools for disruption was exceeded by only three other offenses.[6] Over 57% of students arrested in Maryland schools for disruption were Black,[7] and more Black girls were arrested for disruption than White males.[8] These patterns continued in the truncated in-person 2019-20 school year, when over 53% of students arrested in Maryland schools for disruption were Black,[9] and more Black girls were arrested for disruption that White males.[10]

The disproportionate impact of Section 26-101 on Black students is in part a result of the statute's focus on subjective offenses. Vague terms like "threat," "harm," and "disruption" are "more often used to describe the behavior of Black girls."[11] Similarly,

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[2] 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). For a discussion of how the presence of SROs "dramatically increase[s] the rate of arrests" for disorderly conduct charges," see Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUSTICE 280, 285 (2009).

[3] Johanna Lacoe and Mikia Manley, *Disproportionality in school discipline: An assessment in Maryland through 2018*, REG'L EDUC. LAB'Y MID-ATLANTIC 1 (Sep. 2019), https://files.eric.ed.gov/fulltext/ED598820.pdf.

[4] David S. Kirk and Robert J. Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, 88 SOCIOLOGY OF EDUC. 19-20 (2013).

[5] Arrest data from the 2021-22 school year has not yet been released. Data is available from the 2020-21 school year, but that data was not used because most students in Maryland attended in-person school for a shorter period of time than they did in 2019-20.

[6] 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.

[7] *Id.* at 13.

[8] *Id*.

[9] *Id.* at 119.

[10] *Id*.

[11] 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.

behavior that is perceived as threatening when committed by a Black student is generally not perceived as threatening when committed by a White student.[12] A school official or SRO, clouded by implicit biases attached to race, gender, disability, and the intersection thereof, may perceive a "threat" that is actually a moment of frustration, an inability to express an emotion, a childish attempt at humor, or something else. Put simply, whether a student "is scolded or arrested turns on the whims" of the school official or SRO who is responding to the behavior,[13] and this discretion results in large disparities.

Notably, in February 2023, the United States Court of Appeals for the Fourth Circuit affirmed a decision that found a South Carolina law similar to Section 26-101 to be unconstitutional.[14] The South Carolina law made it a crime for students to act "disorderly" or "act in an obnoxious manner"[15] in or near a school, language that echoes Section 26-101's prohibition on "willfully disturb[ing] . . . activities, administration, or classes." The Fourth Circuit explained that the South Carolina law was unconstitutionally vague because it did not give students a fair warning of what behavior was prohibited.[16] Section 26-101's language is similarly vague, as "willful[] disturb[ance]" and "threat" are not defined and thus open to widely varying interpretations. The Fourth Circuit also recognized that criminalizing subjective behaviors "generates starkly disparate outcomes" for Black students and declared that "[t]he Constitution prohibits this type of inequitable, freewheeling approach."[17]

Finally, Section 26-101 distracts from the urgent need for new and healthier approaches to school discipline. Student misbehavior is most often a cry for help—with academics, with navigating overwhelming emotions, or with processing the trauma that too many Maryland students experience daily. A healthier approach to school discipline responds to this call by (1) recognizing biases, (2) understanding brain development and the behaviors that are consistent with normal adolescent development, and (3) providing supports to students, such as counseling and behavioral health services, that help them manage their behaviors and emotions. HB 1114 gives the General Assembly a chance to move away from the laws and policies that criminalize children, and towards the practices and resources that support students, better address behaviors, and improve long-term outcomes for Maryland children.

For these reasons, the Clinic asks for a favorable report on HB 1114.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.

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[12] 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.
[13] *Carolina Youth Action Project v. Wilson*, No. 21-2166, 2023 WL 2147305, at *8 (4th Cir. Feb. 22, 2023).
[14] *Id.*
[15] *Id.* at *1.
[16] *Id.* at *12.
[17] *Id.* at *8.