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POSITION ON PROPOSED LEGISLATION

BILL: HB 615 Education-Prohibited Behavior on School Grounds & Property

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: February 14, 2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 615, which will clarify the original intent of Maryland Code, Education Article §26-101 prohibiting disruptions of school operations and will help keep children out of the juvenile and criminal justice system. As public defenders, we represent children charged in juvenile and adult court, many for incidents that occurred at school. House Bill 615 is a critical step toward decriminalizing behavior that often constitutes typical childhood and adolescent behavior which is better addressed through school discipline procedures and behavior supports and interventions and not through the criminal and juvenile justice system.

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 House 615 would prevent these types of traumatic and unnecessary arrests and prosecutions and would be an important step to curb the school-to-prison pipeline which disproportionately impacts Black students and students with disabilities.²

¹ Maryland Commission on the School-to-Prison Pipeline and Restorative Practices, *Final Report and Collaborative Action Plan* (December 20, 2018), at 26,

<http://marylandpublicschools.org/stateboard/Documents/AAEEBB/CommissionSchoolPrisonPipeline.pdf>.

² Maryland Advisory Committee to the U.S. Commission on Civil Rights, *Disparities in School Discipline in Maryland* (Oct. 2019), at 10, <https://www.usccr.gov/files/pubs/2020/01-14-MD-SAC-School-Discipline-Report.pdf>.

Maryland Code, Education Article §26-101 is an unnecessary, overbroad, and vague statute that is currently being used to criminalize children’s behavior at school. Under this provision, law enforcement currently charge students of behavior that is typical given their adolescent development, with the dire consequence of pulling students unnecessarily into the juvenile and criminal justice system. House Bill 615 is a commonsense correction that clarifies the original intent of the statute and appropriately excludes students at their home school and students attending extracurricular events at another school from being charged with disturbing school operations. Passing this bill will go a long way to stem the flow of students into the school-to-prison pipeline.

The History of the Current Statute

The Court of Appeals summarized the history of the statute in *In re Jason W.*, 378 Md. 596 (2003) (Washington County):

“In 1970, through the enactment of a new section 123A to Art. 27, the criminal provisions were strengthened, largely as the result of the recent outbreak of riots and organized disturbances on college campuses and in some of the secondary public schools. The broadening and focused application of trespass, disorderly conduct, or school disturbance laws was then a national phenomenon. *See* Sheldon R. Shapiro, *Participation of Student in Demonstration on or near Campus as Warranting Imposition of Criminal Liability for Breach of Peace, Disorderly Conduct, Trespass, Unlawful Assembly, or Similar Offense*, 32 ALR 3d 551 (1970). ...[C]ontemporary press reports reveal that the bill was a response to a wave of rioting, violent racial confrontations, and vandalism at high schools in Prince George's County and Annapolis. *Id.* at 601-602.

“When the 1970 Act was pending before the Legislature, some concern was expressed about its breadth. Debate in the Judiciary Committee of the House of Delegates was extensive, and the fear was raised that, if read literally, the Act “could be applied to a kindergarten pupil throwing a temper tantrum.” *See*

Baltimore Sun, April 1, 1970 at C24, *supra*. Clearly, however, that was not its intent.” *Id.* at 603.

The Misuse of Section 26-101

Despite the legislature’s concern at the time of enactment that Maryland Code, Education Article §26-101 would be used against children for acting as children, it was passed. And soon the cases bore out that reality. Jason W. was one such child, charged under the statute for graffiti-ing a wall. The Court of Appeals reversed, saying that the words “disturb or otherwise willfully prevent” cannot be read too broadly, because of the nature of schools:

“[a] typical public school deals on a daily basis with hundreds—perhaps thousands—of pupils in varying age ranges and with a variety of needs, problems, and abilities, scores of teachers, also with varying needs, problems, and abilities, and a host of other employees, visitors, and occasional trespassers. The “orderly conduct of the activities, administration, or classes” takes into account and includes within it conduct or circumstances that may momentarily divert attention from the planned classroom activity and that may require some intervention by a school official. Disruptions of one kind or another no doubt occur every day in the schools, most of which, **we assume, are routinely dealt with in the school setting by principals, assistant principals, pupil personnel workers, guidance counselors, school psychologists, and others, as part of their jobs and as an aspect of school administration.** Although, undoubtedly, some conduct is serious or disruptive enough to warrant not only school discipline but criminal, juvenile, or mental health intervention as well, there is a level of disturbance that is simply part of the school activity, that is intended to be dealt with the context of school administration, and that is necessarily outside the ambit of Education Code § 26–101(a).” (Emphasis added). *Id.* at 604-605.

Despite this explanation that the statute was not meant to be used for the thousands of instances that momentarily disrupt the school day that are part of the administration of education, cases since *Jason W.* continue to revolve around the prosecution of run-of-the-mill school disruption:

- *In re J.W.*, 2021 WL 943806 (Charles County): A 17 year old came into a classroom

looking for a folder, and when he was upset that he could not find it said jokingly “I’m going to blow up the classroom.” He was disciplined at school and prosecuted for disturbing school activities and threats of mass violence. The courts found that this was a joking and exaggerated “sophomoric attempt at humor” and not even perceived to be a true threat by the witnesses, and therefore not a crime.

- *In re N.H.*, 2018 WL 3602960 (Wicomico County): A high school girl who was convicted of disturbing school activities and making threats on school property for saying to a girl who she accused of previously stealing her cell phone “I’m going to take [your phone] because you stole mine, you’re dead and going to pay.”
- *In re Ryan H.*, 2016 WL 3220636 (Wicomico County): A 17 year old junior who was hit with an orange by another student, and the two fought. Ryan was taken to the principal’s office and became agitated and upset, and said he “would F up” the principal. The principal and another teacher testified that they did not believe these were real threats, but a manifestation of Ryan’s adolescent frustration.
- *In re A.S.*, 2016 WL 3002470 (Wicomico County): A middle school student who was found involved for disrupting school operations for a school fight, which was reversed.
- *In re Micah M.*, 2016 WL 1733272 (Wicomico County): A 15 year old boy where the principal asked Micah at least three times to take the hood of his sweatshirt off of his head. Micah refused, yelling and cursing at the principal and school resource officer. Micah walked away from the adults, and was charged with disorderly conduct and disrupting school operations. The appellate court reversed, saying “This situation, therefore, was a school administrative response, and the State failed to produce sufficient evidence to demonstrate that Appellant disturbed the normal operation of the school.”
- *In re Terrelle A.*, 2016 WL 689004 (Wicomico County): a 14 year old boy prosecuted for cursing at the assistant principal in the hallway while students were changing classes. The appellate court reversed.
- *In re Qoyasha D.*, 2015 WL 5944257 (Wicomico County): a 14 year old boy who had a special education plan (IEP) for an emotional disability, who was prosecuted for disrupting school activities for walking out of class without permission, which is a behavior noted in his IEP. Qoyasha was pepper sprayed and handcuffed by the school police officer.

And anecdotally, public defenders across the state continue to see this statute abused, and used to pull children into the school to prison pipeline just for being kids. We have seen

charges for cursing, roaming the hallways, throwing or tossing various things, including a water bottle, a gummy bear, Cheerios, or accidentally hitting a teacher. Many of our clients have disabilities and these types of impulsive behaviors are often related to a student's disability.

Notably, in February 2023, the United States Court of Appeals for the Fourth Circuit affirmed a holding by the United States District Court of South Carolina that South Carolina's disturbing school operation law was unconstitutionally vague as applied to students in *Carolina Youth Action Project; D.S. by and through Ford v. Wilson*, 60 F.4th 770 (4th Cir. 2023). The court noted that "the terms 'disorderly,' 'boisterous,' 'obscene,' and 'profane' do not explain the law's scope or limit the discretion of those charged with enforcing it." The court went further to say "unless South Carolina intended to criminalize many childish shenanigans...the vagueness that dooms the disorderly conduct law is not 'uncertainty about the normal meaning' of the law's terms but what acts of adolescent mischief are 'covered by the law and what are not.' ...Lacking any meaningful standards, the record confirms that officers deploy a glorified smell test to determine whether a student's disorder is disorderly enough to be criminal." *Id.* at 783-784. Maryland's disturbing school operations statute may contain the same deficits as South Carolina's statute, and in our clients' experience it has been applied randomly and inappropriately to typical adolescent behavior. Moreover, in Maryland, the vast majority of charges are not even petitioned. In FY 23, 83% of the charges for "disrupting school" resolved without being petitioned. And when "disturbing schools" is the only charge, zero cases went forward.³ That tells us that the disturbing school charge is being misused against our children.

³ Data provided by the Maryland Department of Juvenile Services on Nov. 30, 2023 in response to a request pursuant to the Maryland Public Information Act, Md. Code Gen. Prov. §§ 4-101-4-601.

The Disproportionate Impact on Student of Color and Students with Disabilities

The data from the Maryland State Department of Education and the Department of Juvenile Services supports what we know from these individual cases: students of color and students with disabilities are disproportionately arrested and charged under Section 26-101.

The disparities for non-white children begin with school-based arrests. Despite representing only 33% of students enrolled in Maryland's public schools,⁴ 61% of students arrested in school during the 2021-22 school year were Black.⁵ Children with disabilities are also disproportionately charged: students with Individual Education Programs (IEP), one of two special education classifications, are only 12% of the student population in Maryland yet they received 28.2% of school-based arrests. Adding students with 504 plans who need accommodations for a disability, means that over 44% of school based arrests impact students with some type of disability.⁶

The data from the Department of Juvenile Services (DJS) is just as bleak. In Fiscal Year 2020, DJS received 1,259 referrals for "disturbing school," with 82% of those referred for an intake hearing being youth of color.⁷ In Fiscal Year 2022, DJS received 836 such referrals, with 84% of those referred for an intake hearing being youth of color.⁸ And, in Fiscal Year 2023, DJS received 858 referrals, with 82.4% of those referred being youth of color.⁹ Even as the overall number of referrals fluctuates, the racial disparities remain the same.

Section 26-101 is also disparately applied across the state, thus subjecting children attending one

⁴ Maryland State Dep't of Educ., *Maryland Public School Enrollment by Race/Ethnicity and Gender and Number of Schools September 30, 2021*, https://marylandpublicschools.org/about/Documents/DCAA/SSP/20212022Student/2022_Enrollment_ByRace_Ethnicity_Gender_Publication_Accessible.pdf.

⁵ Maryland State Dep't of Educ., *Maryland Public Schools Arrest Data: School Year 2021-22*, <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/StudentArrest/MarylandPublicSchoolsArrestDataSY20212022.pdf>.

⁶ *Id.*

⁷ Maryland Dep't of Juvenile Services, *Data Resource Guide Fiscal Year 2020* at 252, https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2020.pdf.

⁸ Maryland Dep't of Juvenile Services, *Data Resource Guide Fiscal Year 2022* at 242, https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2022.pdf.

⁹ Maryland Dep't of Juvenile Services, *Data Resource Guide Fiscal Year 2023* at 235, https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2023.pdf.

school to arrest for normal adolescent behavior while those attending schools in a neighboring district can continue to behave like children. For example, based on the data from DJS for FY 2023, Anne Arundel County accounted for 26% of all the referrals for disturbing school operations statewide and Wicomico County’s petitions for disturbing school operations accounted for 23%.¹⁰ Yet, other counties, such as Montgomery and Howard Counties, had zero petitions for disturbing school operations.

“Disturbing school operations” is a vague catch-all term that, because of its vagueness, is disproportionately used to criminalize students of color and students with disabilities for typical adolescent behavior. However, when conduct arises to criminal behavior, youth can still be charged with any relevant part of the criminal code, including assault for a school fight under Md. Crim. § 3-203.

School Systems Have Tools to Address Disruption without Charging Students

Maryland’s school systems have specific discipline procedures that can be utilized if a student is disturbing school without having to expose students to the juvenile justice system. The Maryland Guidelines for a State Code of Discipline outlines possible responses to behavior that constitutes “disruption.”¹¹ School administrators can refer students to the student support team to identify additional supports. Students with behavior challenges can be evaluated using a functional behavior assessment and a behavior plan can be developed. School teams can also utilize the many interventions and supports available for students with disabilities through the IEP team or 504 process.¹² Maryland State Department of Education has long promoted Positive Behavior Interventions and Supports (PBIS), which provides a multi-tiered system of support to students.

¹⁰ *Id.* at 235-38. Wicomico County’s petitions for disturbing school operations is particularly alarming as Wicomico County Public Schools had been under a settlement agreement with the U.S. Department of Justice regarding its overuse of school-based arrests and suspensions. See Civil Rights Division, U.S. Dep’t of Justice, *Wicomico County Public School District - Settlement Agreement* (2017), <https://www.justice.gov/crt/case-document/wicomico-county-public-school-district-settlement-agreement>.

¹¹ The Maryland Guidelines for a State Code of Discipline, adopted July 22, 2014, available at

<https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/MDGuidelinesforStateCodeDiscipline08072014.pdf>

¹² See Maryland State Dep’t of Educ., *School Discipline Basics & Integrating Supports: A Focus on Students with Disabilities* (Nov. 2020), <https://marylandpublicschools.org/programs/Documents/Special-Ed/MITP/about/SchoolDisciplineBasics.pdf>.

Maryland's Blueprint also recognizes the need for additional student support through its community schools initiative. These tools and strategies are available to school systems to promote the development and well-being of all its students. It is time for law enforcement, including school resources officers, to stop charging students and employ more evidence-based and restorative practices that actually create safer schools and improve the climate for all.

We urge the committee to end this punitive practice of criminalizing children by ensuring that students can no longer be prosecuted under Maryland Code, Education Article §26-101.

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For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on HB 615.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.