UNIVERSITY of MARYLAND
FRANCIS KING CAREY
SCHOOL OF LAW

Clinical Law Program

500 West Baltimore Street
Baltimore, MD 21201
410 706 3295

Testimony *in Support of* House HB 627 (Favorable)
Education - Prohibited Behavior on School Grounds and Property - Application

To: Delegate Vanessa Atterbeary, Chair, and members of the Ways and Means Committee

From: Catherine Scott, Student Attorney, Youth, Education and Justice Clinic, University of Maryland Francis King Carey School of Law, 500 W. Baltimore Street, Baltimore, MD 21201 (admitted to practice pursuant to Rule 19-220 of the Maryland Rules Governing Admission to the Bar)

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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. The Clinic aims to keep children in school and prevent them from being criminalized. The Clinic supports House Bill 627, 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 Section 26-101 of Maryland Education Code.

Section 26-101 is overly broad, particularly as it applies to schoolchildren. 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). 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 behavior that may constitute 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." However, as applied to schoolchildren, the very notion of 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.

In addition, because Section 26-101 criminalizes subjective offenses, it exacerbates the criminalization of Black students and students with disabilities. It is widely known that Black students and students with disabilities are disciplined at disproportionately high rates in Maryland.[1] However, Section 26-101 goes even further because it extends this disproportionality

[1] MARYLAND STATE DEP'T. OF EDUC., MARYLAND PUBLIC SCHOOL SUSPENSIONS BY SCHOOL AND MAJOR OFFENSE CATEGORY, OUT-OF-SCHOOL SUSPENSIONS AND EXPULSIONS 2022 – 2023 1 (Black students and students with disabilities constituted approximately 58 % percent and 26%, respectively, of students suspended and expelled in the 2021-22 school

to charged offenses, which is particularly concerning because students who interact with the juvenile and criminal legal systems have a higher likelihood of dropping out of school, among other lifelong consequences.[2]

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."[3] Similarly, behavior that is perceived as threatening when committed by a Black student is generally not perceived as threatening when committed by a White student.[4] 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,[5] and this discretion results in large disparities.

Furthermore, without the exceptions proposed in this bill, the current statute could face constitutional challenges. 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.[6] The South Carolina law made it a crime for students to act "disorderly" or "act in an obnoxious manner"[7] 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.[8] 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."[9] Thus, exempting the classes of

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year),https://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20222023Student/2022-2023-MD-PS-Suspensions-By-School-and-Major-Offense-Category-Out-of-School-Suspensions-and-Expulsions.pdfJohanna 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.

[2] *E.g.*, JUSTICE POLICY INSTITUTE, EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS 18 (Nov. 2011) ("Reduced educational achievement and employment are both significant negative outcomes of involving youth in the justice system."), https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf.

[3] 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. *See* UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, K-12 EDUCATION: NATIONALLY, BLACK GIRLS RECEIVE MORE FREQUENT AND MORE SEVERE DISCIPLINE IN SCHOOL THAN OTHER GIRLS 18 (2024) (analyzing data from the 2017-18 school year, the United States Government Accountability Officer finds that "Black girls and American Indian/Alaska Native girls were disciplined for subjective infractions at higher rates than White girls"), https://www.gao.gov/assets/gao-24-106787.pdf

[4] 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.

[5] *Carolina Youth Action Project v. Wilson*, No. 21-2166, 2023 WL 2147305, at *8 (4th Cir. Feb. 22, 2023).

[6] *Id.*

[7] *Id.* at *1.

[8] *Id.* at *12.

[9] *Id.* at *8.

schoolchildren set forth in HB 627 avoids these constitutional issues, which are inherent in the existing 26-101.

Finally, exempting the classes of schoolchildren set forth in HB 627 would help address 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 627 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 627.

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.