

ANOTHER BRICK IN THE WALL: A CALL FOR REFORM TO MARYLAND'S
DISTURBING-SCHOOL LAW

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INTRODUCTION

On a December day in 2013, fourteen-year-old Qoyasha left class without permission and led administrators on a chase through the halls of his Salisbury, Maryland middle school.¹ Qoyasha eventually returned to his technology classroom, but when school officials finally caught up to him, he refused to accompany them to the principal's office.² Unable to convince the student, an assistant principal summoned Sheriff's Deputy Robert Parker to handle the situation.³ When Qoyasha—who has an emotional disability—pushed Deputy Parker away from him, the police officer pepper sprayed the young man in the face, handcuffed him, and escorted him from the scene.⁴

It is not immediately obvious why this episode of teenage defiance required the intervention of police. In Maryland, however, disturbing school is a crime,⁵ and for his misbehavior, Qoyasha was arrested and found to be a juvenile delinquent.⁶

Maryland's disturbing-school law criminalizes student misbehavior and contributes to the "school-to-prison pipeline," a national trend by which campus discipline increasingly leads to the arrest and incarceration of American students. As a discrete statute, the law is particularly amenable to reform, and other states have successfully reduced juvenile interaction with the criminal justice system by amending similar laws. To that end, this contribution argues that Maryland lawmakers must amend the state's disturbing-school law to exempt from prosecution students misbehaving in their own schools.

Part I of this contribution identifies the practices that contribute to the school-to-prison pipeline and explains how school discipline in Maryland reflects this national trend. Part II introduces Maryland's disturbing-school law and explains how it contributes to the arrest and incarceration of students without establishing clear guidelines as to what conduct violates the law. Part III identifies successful efforts at legislative reform to similar laws, providing a roadmap that Maryland lawmakers should

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¹ *In re Qoyasha D.*, No. 1053, Sept. Term, 2014, 2015 WL 5944257, at *2 (Md. Ct. Spec. App. July 8, 2015).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ MD. CODE ANN., EDUC. § 26-101 (West 2019).

⁶ *Qoyasha D.*, 2015 WL 5944257, at *4.

follow in amending the statute. Part IV identifies alternative practices by which school leaders may improve student behavior without relying on criminal punishment.

I. THE SCHOOL-TO-PRISON PIPELINE

The “school-to-prison pipeline” refers to the national trend whereby school discipline leads to student arrests and incarceration.⁷ Maryland’s educational practices reflect this national trend, and throughout the state, thousands of students are arrested each year for in-school misconduct.⁸

A. National Trends

Ineffective disciplinary policies and the criminalization of in-school misbehavior lead to the arrest and incarceration of students nationwide. This phenomenon disproportionately impacts students of color,⁹ and cannot properly be considered independently of its racial disparities. Far from “scaring kids straight,” interaction with the criminal justice system has disastrous consequences for young people.¹⁰

1. Practices that Contribute to the School-to-Prison Pipeline

Harsh school disciplinary practices and policies that criminalize student misconduct lead to the arrest and incarceration of students throughout the country. Specifically, the practice of exclusionary discipline—punishments like suspension and expulsion—increases the likelihood that students will eventually encounter the criminal justice system.¹¹ Likewise, police are increasingly common on middle and high

⁷ See e.g., Jason P. Nance, *Students, Police, and the School-to-Prison Pipeline*, 93 WASH. U. L. REV. 919, 923 (2016) (“The term ‘school-to-prison pipeline’ connotes the intersection of the K-12 public education system and law enforcement, and the trend of referring students directly to law enforcement for committing offenses at school or creating conditions that increase the probability of students eventually becoming incarcerated, such as suspending or expelling them.”).

⁸ MD. STATE DEP’T OF EDUC., MARYLAND PUBLIC SCHS. ARREST DATA 6 (2017–18), [hereinafter MD. ARREST DATA], <http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/StudentArrest/MarylandPublicSchoolsArrestDataSY20172018.pdf> (presenting data showing that, in the 2017-18 school year, 3,167 Maryland students were either arrested at school or in connection with school-based misbehavior).

⁹ See *infra* notes 18–21 and accompanying text.

¹⁰ See *infra* notes 22–28 and accompanying text.

¹¹ Tony Fabelo et al., *Breaking Schools’ Rules: a Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement*, PUBLIC POLICY RESEARCH INSTITUTE, 61 (July, 2011), [HTTPS://KNOWLEDGECENTER.CSG.ORG/KC/SYSTEM/FILES/BREAKING_SCHOOL_RULES.PDF](https://knowledgecenter.csg.org/kc/system/files/breaking_school_rules.pdf)

(presenting empirical data showing that Texas “[s]tudents who were suspended or expelled [in middle school] had a greater likelihood of contact with the juvenile justice

school campuses,¹² and the regular presence of these “school resource officers” increases the likelihood that students will be arrested or referred to law enforcement for misbehavior.¹³ Many states also require that school officials report certain in-school offenses to police.¹⁴ Empirical studies do not clearly demonstrate that any of these practices deter student misconduct.¹⁵

Disturbing-school statutes compound this phenomenon by directly criminalizing student disruption of the school environment. Some twenty states maintain at least one law that can impose criminal penalties on students who disrupt classes at their schools.¹⁶ In 2016, around 10,000 students nationwide were arrested for disturbing school.¹⁷

2. Disproportionate Impact

Each of the practices that contribute to the school-to-prison pipeline disproportionately impacts students of color. Black students are arrested

system in their middle or high school years, particularly when they were disciplined multiple times”); Virginia Costenbader & Samia Markson, *School Suspension: A Study with Secondary School Students*, 36 J. SCH. PSYCHOL. 59, 73 (1998) (presenting empirical finding that “students who have been suspended . . . are more likely to be involved with the legal system than are classmates who have not been suspended”).

¹² Nance, *supra* note 7, at 946.

¹³ *Id.* at 983.

¹⁴ *Id.* at 935.

¹⁵ Empirical evidence demonstrates that exclusionary discipline does not deter student misbehavior. Russel J. Sikba, *The Failure of Zero Tolerance*, 22 RECLAIMING CHILDREN AND YOUTH 27, 29 (2014) (“No data exist to show that out-of-school suspensions and expulsions reduce disruption or improve school climate.”); Christopher Boccanfuso & Megan Kuhfield, *Multiple Responses, Promising Results: Evidence Based Nonpunitive Alternatives to Zero Tolerance*, CHILD TRENDS, Mar. 2011, at 1, 2 (explaining that exclusionary discipline reinforces negative behaviors). No clear evidence indicates that school-resource officers enhance school security. CONG. RESEARCH SERV., SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS 11 (2013) (“The research that is available draws conflicting conclusions about whether [school resource officers] programs are effective at reducing school violence. In addition, the research does not address whether [they] deter school shootings.”); U.S. DEP’T OF JUSTICE, OFFICE OF CMTY. ORIENTED POLICING SERVS., ASSIGNING POLICE OFFICERS TO SCHOOLS 8 (2010) (reporting that studies measuring police officer effectiveness in reducing school violence have mixed results and acknowledging flaws in studies that indicate positive results). Mandatory-reporting laws are likely to be similarly ineffective. Russel J. Sikba, et al., *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCH. 852, 860 (2008) (“Although it seems intuitive that . . . severe punishment will improve the behavior of the punished student or of those who witnessed the punishment . . . evidence consistently flies in the face of these beliefs.”).

¹⁶ See Appendix (identifying disturbing-school statutes from around the country).

¹⁷ Amanda Ripley, *How America Outlawed Adolescence*, ATLANTIC, Nov. 2016, at 1, 2, <https://www.theatlantic.com/magazine/archive/2016/11/how-america-outlawed-adolescence/501149/>.

in school,¹⁸ subjected to exclusionary discipline,¹⁹ and referred to law enforcement for school-based misbehavior²⁰ at rates far exceeding their peers from other racial backgrounds. These disparities exist despite roughly equal levels of misconduct among racial groups.²¹ The school-to-prison pipeline thus fuels racial discrimination as well as over-incarceration.

3. Negative Effects

Interaction with the criminal justice system has disastrous consequences for young people. Arrests increase the probability that students will drop out of school,²² and formal processing into the juvenile justice system increases delinquency.²³ Juvenile detention in a punitive facility is associated with increased recidivism,²⁴ increased likelihood of later interaction with the justice system,²⁵ exacerbation of mental illness,²⁶

¹⁸ U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION, DATA SNAPSHOT: SCHOOL DISCIPLINE 6 (2014) [hereinafter CIVIL RIGHTS DATA COLLECTION], <https://ocrdata.ed.gov/downloads/crdc-school-discipline-snapshot.pdf> (showing that while African-American students represent 16% of total students during the 2011–2012 school year, they represent 31% of students arrested at school).

¹⁹ *Id.* at 2 (showing that while African-American students represented 16% of total students during the 2011–2012 school year, they represent 32–42% of total suspensions and expulsions).

²⁰ *Id.* at 6 (showing that while African-American students represent 16% of total students during the 2011–2012 school year, they represent 27% of students referred to law enforcement for in-school misbehavior).

²¹ U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS & U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., “DEAR COLLEAGUE” LETTER 4 (Jan. 8, 2014), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf> (“[R]esearch suggests that . . . substantial racial disparities of the kind reflected in [data showing more frequent discipline for students of color] are not explained by more frequent or more serious misbehavior by students of color.”); Russell J. Sikba et al., *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCHOL. REV. 85, 104 (2011) (“Across urban and suburban schools, quantitative and qualitative studies, national and local data, African Americans and to some extent Latino students have been found to be subject to a higher rate of disciplinary removal from school. These differences do not appear to be explainable solely by the economic status of those students, nor through a higher rate of disruption for students of color.”).

²² Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462, 463 (2006).

²³ Anthony Petrosino, et al., *Formal System Processing of Juveniles: Effects on Delinquency*, CAMPBELL SYSTEMATIC REV., Jan. 2010, at 1, 6.

²⁴ Barry Holman & Jason Ziedenberg, *The Dangers of Detention: the Impact of Incarcerating Youth in Detention and Other Secure Facilities*, JUST. POL'Y INST. 4 (2006), http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers_of_detention.pdf.

²⁵ *Id.* at 5

²⁶ *Id.* at 8.

reduction in long-term employment prospects,²⁷ and an increase in violent tendencies.²⁸

The school-to-prison pipeline thus represents a national phenomenon, with a particularly insidious impact on black students, that wreaks havoc on the lives of the affected students.

B. *The School-to-Prison Pipeline in Maryland*

Maryland engages in many of the same practices that contribute to the school-to-prison pipeline in the rest of the country. Throughout the state, educators rely on exclusionary discipline,²⁹ students are arrested for school-based misbehavior,³⁰ and school districts are required by statute to maintain a police presence.³¹ In the 2017–18 school year alone, more than 3,000 Maryland students were arrested either in school, or as a result of referral to law enforcement for an offense that occurred on campus.³² More than 400 of these arrests were for disturbing school.³³ Further mirroring the nationwide trend, each practice that contributes to the school-to-prison pipeline in Maryland disproportionately impacts black students.³⁴

II. MARYLAND’S DISTURBING-SCHOOL LAW

The legislative history of Maryland’s disturbing-school law indicates that its criminal provision was passed to penalize large riots. Despite extensive enforcement, judicial opinions interpreting the law are scarce. Those that exist provide only minimal guidance as to what behavior

²⁷ *Id.* at 9–10.

²⁸ Anne M. Hobbs et al., *Assessing Youth Early in the Juvenile Justice System*, 3 J. JUV. JUST. 80, 81 (2013) (citing Mark J. Van Ryzin & Thomas J. Dishion, *From Antisocial Behavior to Violence: A Model for the Amplifying Role of Coercive Joining in Adolescent Friendships*, 54 J. CHILD PSYCHOL. & PSYCHIATRY 661, 661 (2013)) (“[D]etaining juveniles for relatively low-level offenses. . . reinforce[s] violent attitudes due to association with other high-risk youth.”).

²⁹ MD. COMM’N ON THE SCH.-TO-PRISON-PIPELINE AND RESTORATIVE PRACTICES, FINAL REPORT AND COLLABORATIVE ACTION PLAN 7 (2018) [hereinafter MD. REPORT ON THE SCHOOL-TO-PRISON PIPELINE] (“Maryland school discipline and arrest data demonstrate an overreliance on . . . exclusionary discipline, such as suspensions.”).

³⁰ MD. ARREST DATA, *supra* note 8, at 6.

³¹ MD. REPORT ON THE SCHOOL-TO-PRISON PIPELINE, *supra* note 29, at 27; *see also* MD. CODE ANN., EDUC. § 7-1508 (West 2020).

³² MD. ARREST DATA, *supra* note 8, at 6.

³³ *Id.* at 12.

³⁴ MD. REPORT ON THE SCHOOL-TO-PRISON-PIPELINE, *supra* note 29, at 23 (emphasis in original) (internal citations omitted) (“[S]chools . . . suspend black students . . . at rates significantly higher than other students . . . with black students receiving higher rates of [exclusionary consequences] . . . for the same type of infraction.”). *Id.* at 28 (“Black students represented 66% of 2015-16 school-related arrests while comprising 34.6% of the K-12 public school population.”).

constitutes a violation, and indicate that the law is today enforced for disturbances far less dramatic than the riots at which it was initially aimed.

The law, found at section 26-101 of the state’s education code, provides that “[a] person may not willfully disturb or otherwise willfully prevent the orderly conduct of the activities, administration, or classes of any institution of elementary, secondary, or higher education.”³⁵ Violation of the statute constitutes a misdemeanor offense, and may incur a fine of \$2,500, six months imprisonment, or both.³⁶

A. History and Legislative Intent

An exhaustive history of the statute, recounted by Maryland’s high court in *In re Jason W.*, reveals that section 26-101 emerged from a combination of several laws.³⁷ The statute has its roots “in the first statewide public education law enacted in Maryland,” passed in 1865.³⁸ This law provided that any person who “shall willfully disturb, interrupt or disquiet any district school in session” could be fined or imprisoned.³⁹ In 1966, Maryland passed a separate provision in its criminal code to penalize trespass on public property, including schools.⁴⁰ In 1970, Maryland amended this parallel criminal law, making it a misdemeanor “willfully to disturb or otherwise prevent the orderly conduct of the activities . . . of any school, college, or university in Maryland”⁴¹ Lawmakers later combined the original 1865 law with the 1966 criminal provision to create the state’s modern disturbing-school law.⁴²

Contemporary press reports, cited by Maryland’s highest court., indicate that the 1970 amendment passed in response to a wave of intense rioting at high schools throughout the state.⁴³ One such incident involved a clash of nearly sixty students at a Prince George’s County school.⁴⁴ Another involved “roving gangs” of students who destroyed school property in Baltimore.⁴⁵ When the 1970 amendment was signed into law, its primary sponsor noted that it would provide authorities “a handy weapon . . . with which to end these disturbances, disorders, and riots.”⁴⁶ This legislative history, articulated by the Maryland Court of Appeals,

³⁵ MD. CODE ANN., EDUC. § 26-101 (West 2019).

³⁶ *Id.*

³⁷ *In re Jason W.*, 837 A.2d 168, 171–73 (Md. 2003).

³⁸ *Id.* at 171.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 172–73.

⁴² *Id.* at 173.

⁴³ *Id.* at 172.

⁴⁴ *Id.* at 173 n.3 (citing Lawrence Meyer, *Board Acts to Calm Schools*, WASH. POST, Feb. 11, 1970, at C5).

⁴⁵ *Id.* (citing *Student Groups Rip High School*, EVENING CAP. (Annapolis) Feb. 12, 1970, at 1).

⁴⁶ *Id.* at 173 (citing Michael Parks, *Mandel To Sign Bill Making Campus Disruption A Crime*, BALTIMORE SUN, May 21, 1970, at C8).

indicates that the law primarily intended to criminalize disturbances resulting from large-scale riots.

B. *Enforcement and Interpretation*

Maryland now enforces its law extensively, and for much less serious disruptions. In the 2017–18 school year alone, more than 400 students statewide were arrested for disturbing school.⁴⁷ Despite this aggressive enforcement, there exists little published caselaw interpreting the statute. Available jurisprudence provides little insight into exactly what kinds of disturbances violate the law.

In *In re. Jason W.*, Maryland’s highest court found that a student did not violate section 26-101(a) by writing “there is a bomb” on a school wall.⁴⁸ The court explained that to violate the law, “there must not only be an ‘actual disturbance’ but . . . the disturbance must be more than a minimal, routine one. It must be one that significantly interferes with the orderly activities, administration, or classes at the school.”⁴⁹ This decision seems to indicate that violation of Maryland’s disturbing-school law turns on the magnitude of the disturbance in question. However, subsequent decisions demonstrate this standard to be unclear.

Two cases in particular illustrate the impracticality of this standard: *In re Qoyasha D.*, described in the introduction to this contribution, and *In re A.S.* In *A.S.*, a student did not violate the law when he punched a classmate in a school hallway, drawing a large crowd of onlookers, and requiring intervention by a school police officer.⁵⁰ As described above, in *Qoyasha D.*, another student did violate the law when he left class without permission, ran through school hallways, and then refused to go to the principal’s office.⁵¹ From the facts of these cases, it is not clear why the disturbance at issue in *Qoyasha D.* more “significantly interfere[d] with the orderly . . . activities . . . at the school”⁵² than did the disturbance in *A.S.* Indeed, a fight that draws a crowd of onlookers seems *more* dramatic a disruption than a single student running through the halls of a school. What’s more, neither of these situations seems to implicate a large-scale riot of the sort identified by the *Jason W.* court as motivating enactment of section 26-101.

Jason W. announced a standard against which lower courts could evaluate potential violations of section 26-101, but *Qoyasha* and *A.S.* demonstrate this standard not to be useful. To the extent that the *Jason W.*

⁴⁷ MD. ARREST DATA, *supra* note 8, at 12 (identifying 447 students to have been arrested for “disruption” in the 2017–18 school year).

⁴⁸ *In re Jason W.*, 837 A.2d at 173.

⁴⁹ *Id.* at 175.

⁵⁰ *In re A.S.* No. 1490 Sept. Term, 201, 2016 WL 3002470, at *1-2 (Md. Ct. Spec. App. May 25, 2016).

⁵¹ *In re Qoyasha D.*, No 1053, Sept. Term, 2014, 2015 WL 5944257, at *2–4 (Md. Ct. Spec. App. July 8, 2015).

⁵² *In re Jason W.*, 837 A.2d at 173.

rule does provide meaningful guidance, that standard turns on state judges' perceptions regarding the magnitude of a disturbance—an imprudent guidepost in light of the consequences of arrest and incarceration for young people. Maryland's disturbing-school law thus criminalizes student misbehavior far less severe than the riots at which it was aimed, without establishing a practical standard for what conduct violates the law.

III. LEGISLATIVE REFORM

Because Maryland's disturbing-school law is a discrete statute, a legislative amendment would provide the most immediate means of reform. In recent years, several states have successfully amended similar laws to prevent enforcement against misbehaving middle and high school students. These reforms have reduced the number of juveniles arrested in these states. To curb its own school-to-prison pipeline, Maryland must follow suit.

A. *Successful Legislative Efforts*

Reforms to disturbing-school laws in Massachusetts and South Carolina have reduced juvenile arrest in those states, and these efforts may provide a roadmap for amendment to Maryland's disturbing-school law.

1. Massachusetts

In 2018, Massachusetts amended its disturbing-school statute to specifically exempt students from arrest at their own schools.⁵³ Prior to reforms, the law provided that “whoever willfully interrupts or disturbs a school . . . shall be punished by imprisonment . . . or by fine”⁵⁴ The current version provides that “[w]hoever willfully interrupts or disturbs an assembly of people shall be punished by imprisonment . . . or by fine . . . provided, however, that an elementary or secondary student shall not be adjudged a delinquent child for an alleged violation of this section”⁵⁵ The state thus functionally repealed its school-disturbance law as applied to students. Together with a package of criminal law reforms, changes to the disturbing-school statute contributed to statewide

⁵³ See Christian M. Wade, *Youth Arrests Plummeted in Wake of Reforms*, SALEM NEWS (Jan. 9, 2020), https://www.salemnews.com/news/local_news/youth-arrests-plummet-in-wake-of-reforms/article_3d0c518d-06f0-5cb4-ba56-d12427dc1101.html [<https://perma.cc/5SCA-4JUS>].

⁵⁴ MASS GEN. LAWS. ANN. ch. 272, § 40 (West 2017) (current version at MASS GEN. LAWS. ANN. ch. 272, § 40 (West 2019)).

⁵⁵ MASS GEN. LAWS. ANN. ch. 272, § 40 (West 2020).

decline of forty-three percent in juvenile arrests and a seventeen percent decrease in juvenile incarceration over a one-year period.⁵⁶

2. South Carolina

Before a 2018 amendment, around 1,200 South Carolina students each year were charged under the state’s disturbing-school law.⁵⁷ In a 2015 incident, a white deputy was filmed slamming a sixteen-year old black girl to the ground, arresting her for disturbing school after she refused to relinquish her cell phone to a teacher.⁵⁸ Calls for reform to the law followed quickly on the heels of outrage at the officer’s conduct.⁵⁹ In 2018, Governor Henry McMaster signed an amendment to the law.⁶⁰ Prior to the reform, the ordinance made it unlawful “for any person . . . to disturb in any way . . . the students or teachers of any school . . . in th[e] state”⁶¹ As amended, the statute now makes it “unlawful for a person *who is not a student* to . . . interfere with, disrupt, or disturb the normal operations of a school”⁶² Here again, legislative reform chips away at the infrastructure of the school-to-prison pipeline.

Maryland should follow Massachusetts and South Carolina to reform its own law. Specifically, Maryland should amend its disturbing-school statute to expressly exempt from prosecution primary, secondary, and high school students in their own schools. Such an amendment would mirror those in Massachusetts and South Carolina, and would reflect the language of similar statutes in other states.⁶³ It is likely that this reform would have the same effect as those in other states, thereby curbing Maryland’s school-to-prison pipeline.

⁵⁶ Wade, *supra* note 53 (identifying that “arrests of suspects age 18 and under dropped 43% between [the passage of the reform] and June 30, 2019” and “first-time commitments to the Department of youth Youth Services declin[ed] 17% during the one-year period”).

⁵⁷ Ripley, *supra* note 17 at 2.

⁵⁸ Ripley, *supra* note 17 at 2–3.

⁵⁹ See Harriet McLeod, ‘Disturbing Schools’ Law Criticized After South Carolina Student’s Arrest, REUTERS (Oct. 30, 2015), <https://www.reuters.com/article/us-south-carolina-police-idUSKCN0SO2NY20151030>.

⁶⁰ Kayla Robins, *Gov. McMaster Signs ‘Disturbing Schools Law,’* SUMTER ITEM (May 22, 2018, 6:00 PM), <https://theitem.com/stories/gov-mcmaster-signs-disturbing-schools-law,308689> [<https://perma.cc/32G9-NC83>].

⁶¹ S.C. CODE ANN. § 16-17-420 (2017) (current version found at S.C. CODE ANN. § 16-17-420 (2020)).

⁶² S.C. CODE ANN. § 16-17-420 (2020) (emphasis added).

⁶³ See *e.g.*, CAL PENAL CODE § 415.5(f) (West 2020) (“This section shall not apply to any person who is a registered student of the school”); LA. STAT. ANN. § 14:40.6 (2019) (emphasis added) (“Unlawful disruption of the operation of a school is the commission of any of the following acts by a person, *who is not authorized to be on school premises*”); N.H. REV. STAT. ANN. § 193:11 (2020) (emphasis added) (“Any person *not a pupil* who shall willfully interrupt or disturb any school shall be guilty of a misdemeanor.”).

IV. ALTERNATIVES TO CRIMINALIZATION

Schools do not need to threaten criminal consequences against their students to maintain order. Empirical studies have demonstrated that alternatives to punitive school discipline effectively foster positive behavior among students.⁶⁴ For example, targeted support for at-risk students improves individual self-control and anger management.⁶⁵ Curricula implementing larger-scale social-emotional learning improve school safety.⁶⁶ A structured system of school-wide positive behavior intervention is associated with improvements to student academic performance and conduct.⁶⁷ What's more, a school engaging in more than one of these approaches may enhance the effects of each.⁶⁸ By implementing some or all of these well-documented educational practices, Maryland schools may improve student discipline without relying on criminal consequences.

CONCLUSION

Maryland's disturbing-school law represents a direct instrumentality of the school-to-prison pipeline. Though it has origins in a mid-century effort to combat riots, the statute has today transformed into a mechanism for the criminalization of student misconduct in middle and high schools. Jurisprudence emerging from this aggressive enforcement does not provide a workable standard against which conduct can be judged, and it is ultimately not clear what order of disruption violates the law.

To combat the impact of arrest and incarceration, Maryland lawmakers should follow the example of other states and amend the disturbing-school law to exempt from prosecution students misbehaving in their own schools. While a reduction in the arrest of children is itself a desirable end, non-punitive educational practices can foster discipline in Maryland schools without threatening criminal prosecution.

Maryland's disturbing-school law is but one of many bricks in the wall of the school-to-prison pipeline, but through immediate reform to this regressive statute, lawmakers can reduce the arrest and incarceration of students throughout the state.

⁶⁴ See generally Boccanfuso & Kuhfield, *supra* note 15 (providing an overview of non-punitive disciplinary practices empirically demonstrated to improve student conduct).

⁶⁵ See *id.* at 4-5 (providing an overview of programs that have been empirically demonstrated to improve student self-control and anger management for at-risk students).

⁶⁶ See *id.* at 5-7 (providing an overview of social-emotional learning curricula empirically demonstrated to improve school safety).

⁶⁷ See *id.* at 8-9 (providing an overview of empirical studies that demonstrate school-wide positive behavioral intervention and support systems to be associated with improvements in student conduct).

⁶⁸ David Osher et al., *How Can We Improve School Discipline?*, 39 EDUC. RES. 48, 53 (2010).

APPENDIX⁶⁹

State	Pertinent Language	Offense Classification	Statutory Provision
Arizona	Criminalizing disruption of school by “threatening to cause physical injury to any employee or student,” by “threatening to cause damage to any education institution,” by “knowingly entering or remaining on the property of any education institution for the purpose of interfering” with school operations, or by remaining on campus after being ordered to leave.	Interference by threat is a class 6 felony. Interference by impermissibly remaining on or entering campus is a class 1 misdemeanor.	ARIZ. REV. STAT. ANN. § 13-2911 (2020)
Arkansas	“It is unlawful . . . for any person to address to a public school employee using language that . . . is calculated to (A) cause a breach of the peace; (B) . . . interfere with the operation of the school; or (C) arouse the person to whom it is addressed . . . to the extent likely to cause imminent retaliation.”	Not specified	ARK. CODE ANN. § 6-17-106(a) (West 2019)

⁶⁹ This table lists only statutes that can directly impose criminal sanctions on students for disturbing their own schools. Local ordinances to the same effect are excluded. *See, e.g.*, KS. CITY, MO. CODE OF ORDINANCES § 50-170 (2020) (“No person shall . . . intentionally disrupt, disturb or interfere with the teaching of any class of students . . .”). Statutes such as Maine’s, which penalize disturbing school, but impose only civil penalties, are also outside the scope of this contribution. ME. REV. STAT. ANN. tit. 20-A, § 6804 (2019) (“A person who . . . “willfully interrupts or disturbs the teacher or student by loud speaking, rude or indecent behavior . . . commits a civil offense . . .”). Also excluded are disturbing-school statutes that do not apply against students misbehaving in their own schools. *See supra* note 66. Laws held by judicial construction not to apply to students are also excluded. *See* IDAHO CODE ANN § 33-512(11) (West 2020); *see also* State v. Doe, 92 P.3d 521 (Idaho 2004) (holding the Idaho disturbing-school statute not to apply to students in their own schools).

Colorado	“No person shall . . . willfully impede the staff or faculty of [an educational] institution in the lawful performance of their duties or willfully impede a student of the institution in the lawful pursuit of his education activities through the use of restraint, abduction, coercion, or intimidation, or when force and violence are present or threatened.”	Misdemeanor	COLO. REV. STAT. ANN. § 18-9-109 (West 2020)
Delaware	“Whoever disturbs a public school in session . . . shall be fined \$20 . . . or imprisoned not more than 30 days.”	Not specified	DEL. CODE ANN. tit. 14, § 4110 (West 2020)
Florida	“It is unlawful for any person . . . knowingly to disrupt or interfere with the lawful administration or functions of any educational institution”	Second degree misdemeanor	FLA. STAT. ANN. § 877.13 (West 2020)
Georgia	“It shall be unlawful for any person to knowingly, intentionally, or recklessly disrupt or interfere with the operation of any public school”	Misdemeanor of a “high and aggravated nature”	GA. CODE ANN. § 20-2-1181 (West 2020)
Kentucky	“Whenever a teacher [or other school official] is functioning in [his or her official capacity], it shall be unlawful for any person to direct	Not specified	KY. REV. STAT. ANN. § 161.190 (West 2020)

	speech or conduct toward the teacher . . . when such person knows or should know that the speech or conduct will disrupt or interfere with normal school activities”		
Maryland	“A person may not willfully disturb or otherwise willfully prevent the orderly conduct of the activities, administration, or classes of any institution of elementary, secondary, or higher education.”	Misdemeanor	MD. CODE ANN., EDUC. § 26-101 (West 2020)
Mississippi	“If any person shall willfully disturb any session of the public school . . . such person shall be guilty of a misdemeanor”	Misdemeanor	MISS. CODE ANN. § 37-11-23 (West 2020)
Montana	“Any person who shall willfully disturb any school or any school meeting shall be deemed guilty of a misdemeanor”	Misdemeanor	MONT. CODE ANN. § 20-1-206 (2019)
Nevada	“It is unlawful for any person maliciously in any manner to interfere with or disturb any persons peaceably assembled within a building of a public school for school district purposes.”	Misdemeanor	NEV. REV. STAT. ANN. § 392.910(2) (West 2019)
New Mexico	“No person shall willfully interfere with the educational process of any public or private school by committing . . . any	Petty Misdemeanor	N.M. STAT. ANN. § 30-20-13(D) (West 2020)

	act which would disrupt, impair, interfere with, or obstruct the lawful mission, processes, procedures, or functions of a public or private school.”		
North Carolina	Including as disorderly conduct a public disturbance intentionally caused by any person who . . . (6) disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order, or discipline at any public or private educational institution”	Class 2 Misdemeanor	N.C. GEN. STAT. ANN. § 14-288.4(6) (West 2019)
North Dakota	Making it a crime to “(1) Willfully disturb a public school in session; (2) Willfully interfere with or interrupt the proper order or management of a public school by an act of violence, boisterous conduct, or threatening language; or (3) Rebuke, insult, or threaten a teacher in the presence of a student.”	Class B Misdemeanor	N.D. CENT. CODE ANN. § 15.1-06-16 (West 2020)
Rhode Island	Making it a crime for any person to “willfully interrupt or disturb any . . . public or private school . . .”	Not specified	11 R.I. GEN. LAWS ANN. § 11-11-1 (West 2020)
South Dakota	Providing that “[a] person, whether pupil or not, who intentionally disturbs a public or nonpublic	Class 2 Misdemeanor	S.D. CODIFIED LAWS § 13-32-6 (2020)

	school . . . or who intentionally interferes with or interrupts the proper order or management of a . . . school by acts of violence, boisterous conduct, or threatening language, so as to prevent the teacher or any pupil from performing the duty . . .” is guilty of a crime.		
Utah	“A person is guilty of disrupting the operation of a school if the person, after being asked to leave by a school official, remains on school property for the purpose of encouraging or creating an unreasonable and substantial disruption . . . of a class . . . or other function of a public or private school.”	Class B Misdemeanor	UTAH CODE ANN. § 76-9- 106 (West 2020)
Virginia	“A person is guilty of disorderly conduct if, with the intent to cause public inconvenience . . . he: (C) Willfully . . . disrupts the operation of any school . . . if the disruption (i) prevents or interferes with the orderly conduct of the [school] or (ii) has a direct tendency to cause acts of violence by the person . . . at whom . . . the disruption is directed.”	Class 1 Misdemeanor	VA. CODE ANN. § 18.2-415 (West 2019)

Washington	“Any person who shall willfully create a disturbance on school premises during school hours or at school activities or school meetings shall be” guilty of a crime.	Misdemeanor	WASH REV. CODE ANN. § 28A.635.030(C) (West 2020)
West Virginia	“If any person willfully interrupt[s], molest[s], or disturb[s] any . . . school . . . he shall be” guilty of a crime.	Misdemeanor	W. VA. CODE ANN. § 61-6-14 (West 2020)