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Criminalizing kids

Virginia tops nation in sending students to cops, courts: Where does your state rank?

How kicking a trash can became criminal for a 6th grader

By [Susan Ferriss](#)   email 5:00 am, April 10, 2015 Updated: 12:43 pm, May 18, 2015



Kayleb Moon-Robinson —who is diagnosed as autistic— had barely started sixth grade last fall in Lynchburg, Virginia, when a school resource officer filed charges against him. Kayleb was charged with disorderly conduct for kicking over a trash can and then with felony assault on a police officer because he struggled to break free when the cop grabbed him. The Center for Public Integrity analyzed national data and found that Virginia schools refer more students to law enforcement than other

states, and that nationally schools refer black and special-needs kids to cops and courts disproportionately. Charlie Archambault for the Center for Public Integrity

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Kayleb Moon-Robinson was 11 years old last fall when charges — criminal charges — began piling up at school.

Diagnosed as autistic, Kayleb was being scolded for misbehavior one day and kicked a trash can at Linkhorne Middle School in Lynchburg, Virginia, in the Blue Ridge Mountains. A police officer assigned to the school witnessed the tantrum, and filed a disorderly conduct charge against the sixth grader in juvenile court.

Just weeks later, in November, Kayleb, who is African-American, disobeyed a new rule — this one just for him — that he wait while other kids left class. The principal sent the same school officer to get him.

“He grabbed me and tried to take me to the office,” said Kayleb, a small, bespectacled boy who enjoys science. “I started pushing him away. He slammed me down, and then he handcuffed me.”

In an incident report, a teacher confirmed that the officer spoke to Kayleb, then grabbed him around the chest, and that Kayleb cursed and struggled. School officials won’t comment on this case, but say that police in schools are crucial to providing a safe atmosphere and protecting against outside threats. Stacey Doss, Kayleb’s mother and the daughter of a police officer herself, was outraged.

Educators stood by, she said, while the cop took her son in handcuffs to juvenile court. The officer filed a second misdemeanor disorderly conduct complaint. And he also submitted another charge, a very grown-up charge for a very small boy: felony assault on a police officer. That charge was filed, Doss said the officer told her, because Kayleb “fought back.”

“I thought in my mind — Kayleb is 11,” Doss said. “He is autistic. He doesn’t fully understand how to differentiate the roles of certain people.”

About this story:

This story is featured on Reveal, a new public radio show from The Center for Investigative Reporting and PRX. Check out revealnews.org for more.

Key findings:

Referrals of students to law enforcement nationwide in 2011-12 occurred at a rate of 6 for every 1,000 students, with 19 states surpassing that rate.

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Virginia led all states with a rate of almost 16 referrals per 1,000, followed by Delaware and Florida.

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In Virginia, where preteens have been arrested for disorderly conduct, referrals raise questions about whether police are too involved in discipline.

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Special-needs students were 14 percent of U.S. enrollment, but represented 26 percent of students referred to law enforcement.

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African-American students were 16 percent of U.S. enrollment, but represented 27 percent of students referred to law enforcement.

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To Doss' shock, a Lynchburg juvenile court judge found Kayleb guilty of all those charges in early April, which could prove life-altering.

The young student's swift trip into the criminal justice system might seem like a singular case of tough discipline. But he's not alone.

In fact, U.S. Department of Education data analyzed by the Center for Public Integrity show that Virginia schools in a single year referred students to law enforcement agencies at a rate nearly three times the national rate. Virginia's referral rate: about 16 for every 1,000 students, compared to a national rate of six referrals for every 1,000 students. In Virginia, some of the individual schools with highest rates of referral — in one case 228 per 1,000 — were middle schools, whose students are usually from 11 to 14 years old.

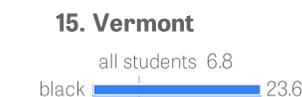
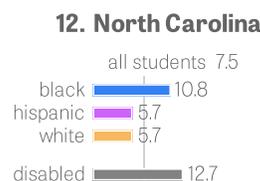
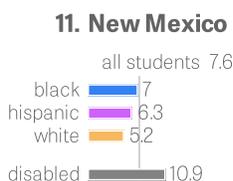
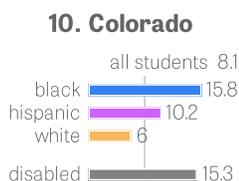
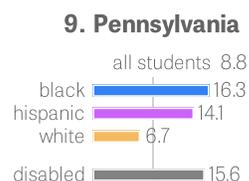
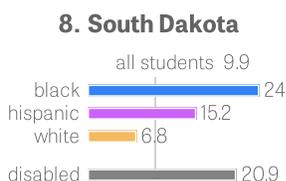
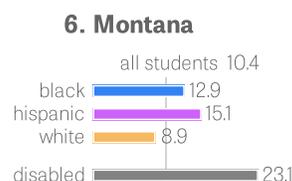
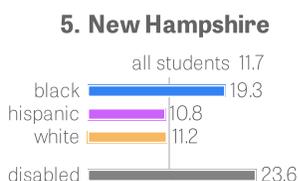
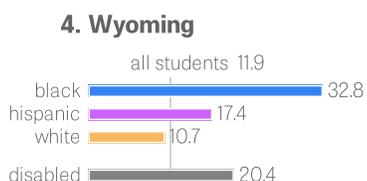
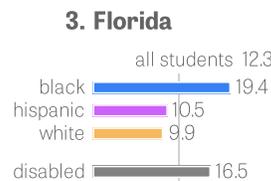
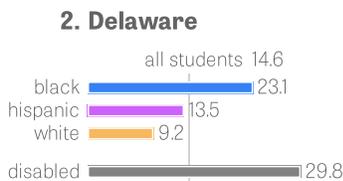
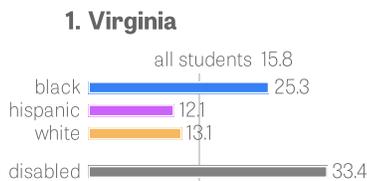
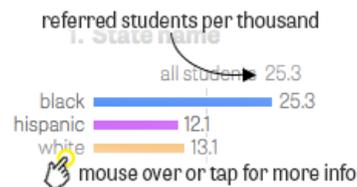
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A state-by-state look at students referred to law enforcement

By Chris Zubak-Skees and Ben Wieder April 10, 2015

U.S. Department of Education data shows that in most states black, Latino and special-needs (disabled) students get referred to police and courts disproportionately. The volume of referrals from schools is fueling arguments that zero tolerance policies and school policing are creating a “school-to-prison pipeline” by criminalizing behavior better dealt with outside courts. The Center for Public Integrity ranked states by their rate of referral for every 1,000 students. Hover or tap each demographic bar to get the percent of a group’s enrollment compared to the percent of referred students who belong to that group.



NOTE: The Center analyzed discipline and enrollment data from the 2011-12 U.S. Department of Education Civil Rights Data Collection. The data was self-reported by school districts or state education agencies and more than 98 percent of school districts are included. Schools didn't have to explain why they referred a student and a referral didn't have to end in an arrest. But it did mean that students were reported to police or courts, or both, in response to an incident. Hawaii failed to report a single referral, an unexplained error. The Center combined data from individual schools and then calculated the rate of referrals in each state per 1,000 students to account for differences in population.



Source: U.S. Department of Education, Civil Rights Data Collection. Graphic by Chris Zubak-Skees, data analysis by Ben Wieder.

The Education Department didn't require that schools explain why, during the 2011-12 school year, they referred students to law enforcement. And a referral did not necessarily have to end in an arrest or charges filed, at least not immediately. But by definition, it did mean that students' behavior was reported to police or courts.

The Center's analysis found that in Delaware, special schools for troubled kids helped drive up that small state's rate to second after Virginia. Florida ranked third.

The findings raise questions about what kind of incidents at school really merit police or court intervention, and provide fodder for a growing national debate over whether children, especially those in minority groups, are getting pushed into a so-called “school-to-prison pipeline” unnecessarily and unjustly. What’s happening in some schools seems almost directly at odds with guidance from the U.S. Department of Education.

Preteens and police

In Virginia, interviews and police records obtained by the Center confirm that referrals of students to law enforcement have eventually turned into thousands of complaints filed in courts, many of them against preteens. The most frequent complaints are for disorderly behavior — allegations similar to those against Kayleb.

Virginia isn’t reliably tracing how many charges in juvenile courts statewide originate with school police. But some public defenders report they’re handling multiple cases with surprisingly harsh allegations against young students.

In southeastern Virginia, for instance, a 12-year-old girl was charged earlier this year with four misdemeanors — including obstruction of justice for “clenching her fist” at a school cop who intervened in a school fight.

Across the country, a movement away from harsh discipline is gaining influence, especially in convincing authorities that **out-of-school suspensions** are counterproductive. But certain schools continue to allow police who patrol their hallways to serve as de facto disciplinarians, with arrest powers, for all manner of indiscretions that a generation ago would almost certainly have been handled by teachers or principals.

Every so often, headlines flare about school police injuring students **with Tasers**, or **wrestling with them** to take away cell phones. In Green County, Virginia, last October, a school cop **handcuffed a 4-year-old** who was throwing blocks and kicking at teachers and drove him to a sheriff’s department.

What draws less scrutiny, though, is the quiet stream of young students into courts.

For some kids, the process creates delinquency records that stigmatize them at school, and stick with them for years. Judges can order students to perform, as penance, community service, and to check in frequently with probation officers. They can order students to wear electronic monitors, or put kids into detention before and after a hearing. A later slip-up at school, such as using profanity, public defenders say, has sent kids back to court and into detention.

Judge Steven Teske, who presides over juvenile court in Clayton County, Georgia, saw a steady rise in cases from schools when he took the bench in 1999 — with 90 percent involving misdemeanor charges, such as disorderly conduct, disrespect and fighting. He wanted to stop it.

“It should come to no one’s surprise that the more students we arrested, suspended, and expelled from our school system, the juvenile crime rate in the community significantly increased,” Teske said at a U.S. Senate [subcommittee hearing on school discipline in 2012](#). “These kids lost one of the greatest protective buffers against delinquency — school connectedness.”

Teske forged a “protocol” limiting arrests at schools, and he’s been urging other jurisdictions to do the same. Last October, he went to Richmond, Virginia, to spread the word with a group of local and state juvenile-justice officials.

That wasn’t long before Kayleb Moon-Robinson was arrested in Lynchburg.



Lynchburg, Virginia resident Stacey Doss holds her toddler, B.J., while son Kayleb plays big brother. Doss, the daughter of a police officer, is outraged that a school resource officer arrested her son after he left a classroom without permission. The autistic 11-year-old, who is sensitive to touch, was charged with felony assault on a police officer because he struggled to get away. Charlie Archambault for the Center for Public Integrity

In March, Stacey Doss said, she turned down a “plea deal” prosecutors offered to reduce the felony to a misdemeanor assault, but require Kayleb do time in a detention center. Doss didn’t think Kayleb should be in court at all. But now, if she appeals and loses, she’s scared that state law will require that the felony remain in court files forever, even if public access is limited.

Kayleb is in an alternative school now and has to return to court in early June to hear what the judge wants to do with him. Doss said the judge had a deputy show him a cell, and told him if he gets into trouble again he could go straight to youth detention.

“He said that Kayleb had been handled with kid gloves. And that he understood that Kayleb had special needs, but that he needed to ‘man up,’ that he needed to behave better,” Doss said. “And that he needed to start controlling himself or that eventually they would start controlling him.”

A public defender argued that Kayleb wasn’t intentionally disruptive, but the prosecution argued, according to Doss, that Kayleb’s “mental issues” were insufficient to claim “diminished capacity.”

Kayleb can perform well on academic tests. But Doss had argued last year with Linkhorne Middle that it might not have appropriate services for him. He’s now in an alternative school the district is paying for that’s more equipped to deal with Kayleb’s difficulty with sudden changes in routine, Doss said. Kayleb said he left class the day he was arrested because he wanted to be with the other kids.

Revealing stats

The data that pinpointed Virginia as a hot spot for referrals was collected by the U.S. Department of Education’s Office for Civil Rights, for the 2011-12 school year, the most recent available. The rights office has the power to withhold funding from a district if investigators find that practices violate students’ civil rights and districts fail to change.

Federal officials didn’t rank states’ rate of referrals. But the Center analysis did, and among the findings are these:

- The national rate of referrals to law enforcement agencies was six students for every 1,000 pupils, with 19 states surpassing that rate.
- Virginia had about 16 referrals for every 1,000 students, followed by Delaware with almost 15; Florida with more than 12; and Wyoming and New Hampshire with nearly 12 referrals for every 1,000 students.
- Massachusetts, Ohio, Nevada and Washington, D.C., reported the lowest

rates of referrals, at two or fewer students per 1,000.

- Even states not among those with the highest overall rates of referrals had individual schools that stood out. Bedford County, Tennessee's Cascade High School had a referral rate of 157 per 1,000 students.
- About 26 percent of all students referred to law enforcement nationally were special-needs kids — kids with physical or learning disabilities — even though these kids represent only 14 percent of U.S. enrollment.
- In most states, black and Latino kids were referred in percentages that were disproportionate to their enrollment numbers.

To find out why kids in Virginia were referred, the Center filed public-record requests for police data in communities where parents have complained publicly about harsh discipline. The data reveal startling details about the tender age of some of the children accused of crimes, and a disturbing racial divide.

In Chesterfield County, a Richmond suburb that's increasingly racially diverse, police data show that officers filed 3,538 criminal complaints against students over the last three academic years, starting in fall 2011. That's a staggering number for a district of about 60,000 students.

The volume of complaints Chesterfield police filed during the 2011-12 academic year alone — 1,499 — was more than half the 2,548 cases that New York City police filed against students that year. Civil-rights groups protested that New York's charges were a sign of excess, and New York has about 16 times as many students.

More than half the 3,538 complaints police filed over three years in Chesterfield were for "simple assault" or disorderly conduct.

More than half the students sent to court were black, even though black students are only 26 percent of enrollment.

And almost half of the students issued criminal complaints were children 14 or younger.

Among the youngest were 27 kids under the age of 10 accused of assault, and five children under 10 accused of making bomb threats.

Falling Creek Middle School in northern Chesterfield County had a referral rate of 228 kids per 1,000 — 39 times the national rate.

Chesterfield's records do show a two-year decline to 951 complaints filed last year compared to the 1,499 in 2011-12. But half of those charges last year were still for simple assault or disorderly conduct — compared to 18 charges related

to weapons and 117 charges for narcotics.

District administrators declined to comment, deferring to Chesterfield County Police Department officials to respond. "Their sworn officers serve as school resource officers in our schools and are charged with upholding and enforcing the law," Chesterfield schools' communications director Timothy Bullis said in an email.

Police spokeswoman Elizabeth Caroon said not all complaints included an arrest, and not every complaint led to a hearing in court. In an email, she said that some students are "diverted" to counseling or other programs by juvenile court intake officials empowered to decide which go to court. School cops can recommend diversion, or that a complaint go to a hearing. On the police department's school [resource webpage](#), a message says: "There will be no exception to the practice of reporting violations of the law."

Chesterfield mother Lelia Grant argues that schools and police are prematurely treating kids like criminals.

In 2013, her daughter, 15, got into a fight with another girl who walked into a class and confronted her, Grant wrote to school officials. Grant's daughter ended up being charged with assaulting a school staff member.

Grant pleaded with school officials to consider that her daughter was in shock and bleeding because a ring the other girl was wearing had deeply cut her forehead. If her daughter pushed a staff person, Grant wrote, it was not intended to be "a separate vindictive action."

Grant also pleaded that her child was in college-prep classes and had never been in a fight before. But a week after the incident, the girl was summoned to court and arrested on the spot. "They told her to stand up, take off her sweater and put her hands behind her back," Grant said. "They held her in a detention hall for a whole day."

"If you have police on your campus, you need to be clear what it is you're asking them to do."

- Catherine Lhamon, assistant secretary of education for civil rights

The school never tried to use mediation or counseling in response to the incident, Grant said. The court ordered 40 hours of community service in a church store, and her daughter's grades slumped because she was removed from school for two months and forced to attend a "dumbed down" night school, Grant said.

“Some laws need to be enacted on behalf of these children,” Grant said. “They need to revisit this zero tolerance stuff.” In a letter to Grant, a school official justified suspending her daughter because the teen “defied repeated requests ... to calm down.” Although officials declined to discuss policing at schools, Bullis said the local school board feels safety is “a responsibility that our parents expect us to fulfill.”

In Virginia’s Henrico County, another increasingly diverse suburban area of Richmond, police said they only began tracking student arrests this school year. In the district of about 50,000 students, records show that in five months, between last September and January, police had already filed 200 complaints against students they arrested.

Four charges were for weapons, one a firearm. The biggest single accusation against students — 78 charges — was disorderly conduct. One-third of the 200 charges were against kids 14 or younger. And even though black students represented 37 percent of enrollment, 77 percent of those arrested and charged were black. Lt. Christopher Eley, Henrico Police communications officer, said, “Our first goal [is] to divert the juvenile from the justice system to the extent possible, consistent with the protection of the public safety.”

Henrico mom Brenda Coles, who is African-American, said a police officer at her son’s school threatened to arrest the fifth-grader this year.

Her son Elijah was one of a minority of black fifth-graders at the Three Chopt Elementary School for academically gifted students. His mom has since transferred him.

Coles accuses a school cop of singling out 10-year-old Elijah last fall. She has asked, in multiple emails to school officials, why Elijah was put into a room at school with an officer interrogating him even though school officials said Elijah hadn’t done anything wrong.

At school, Coles found Elijah with the officer, who was demanding to know if Elijah understood “unwanted touching” and “assault.”

“My son was tormented. He had his head down on a table. He would not hold his head up,” Coles said.

Coles said a classmate grabbed Elijah’s shoulders in the cafeteria and Elijah jerked his arm back and it jabbed the boy. School officials agreed the boys had engaged in mutual “horseplay,” according to a school document.

Yet, Coles said, the principal and a school police officer called her and the officer told her he’d spoken to the other child’s parents and decided that Elijah

had committed assault.

“He said, ‘If it happens again I’m going to arrest him,’ Coles said. “He said, ‘I do arrest fifth graders.’ ”

A letter to Coles from Henrico Police internal affairs said it investigated the officer’s conduct and could not substantiate her complaint. Another letter from a school official to Coles said: “Henrico County Public Schools does not direct the decisions of Henrico law enforcement officials, including decisions regarding charges or potential charges.”

William Noel, Henrico’s director of student support and discipline told the Center much the same. School police “are part of the building, they’re part of the family,” he said, but they work for the police department.

“We don’t tell them what to do,” Noel said.

But that stance is in stark contrast to what Catherine Lhamon, assistant secretary of education for civil rights, expects to happen at schools.

She’s the top federal education official responsible for ensuring all students’ civil rights are respected.

“If you have police on your campus,” she said, “you need to be clear what it is you’re asking them to do.”

Police should be handling criminal activity, she said, not behavior more appropriately handled by school personnel. There are effective discipline methods schools can use, Lhamon said, and her office is ready to provide guidance and assistance for schools to get funding to train staff.

Just last October, in fact, the department **awarded Virginia \$3.5 million** in grants to improve services for students with mental-health needs and to reduce disruptive behavior.



Elijah Coles-Brown is a Henrico County, Virginia fifth grader with an eye on academic achievement. His mother said she is angry that a school resource officer questioned Elijah last fall about “unwanted touching,” and accused Elijah of committing “assault” even though school officials found he hadn’t done anything wrong. Courtesy the family of Elijah Coles-Brown

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“We’ve tried to be very clear in our guidance,” Lhamon added, “that schools are responsible for the actions that their school police engage in when they’re at the school site, so that there’s not a way of saying, ‘Well, that was the police, and not us.’”

Lhamon said she understands calls for safety and for order in schools. Demand for school police mushroomed following the 1999 Columbine High School massacre in Colorado, and has spread after each school shooting since. But she’s also concerned when she hears that school police are issuing a barrage of criminal accusations against students.

“A red flag for us, consistently,” Lhamon added, “is catchall terms, like ‘disorderly conduct,’ that leave too much discretion that is unfettered,” she said. If that term isn’t well defined, she said, then schools leave open the possibility of discrimination against certain students.

In Virginia, according to the national data the Center analyzed, about 30 percent of students schools referred to law enforcement two years ago were special-needs kids — who were only 14 percent of the state’s students. About 38 percent of students referred to law enforcement were black, even though black kids were only a quarter of Virginia’s enrollment.

Virginia Secretary of Education Anne Holton declined an interview request to discuss the Center’s findings. Instead, she sent a statement emphasizing that Virginia has received federal funds to help address “negative behaviors before students receive referrals.”

“We remain committed,” she said “to equity in the classroom.”

Last August, Lhamon’s office struck an agreement with the Lynchburg district that required its administrators take steps to reduce disproportionate suspensions of black students. Lhamon wasn’t happy to hear what happened to Kayleb after that agreement was reached.

“It certainly upsets me,” she said. “I wouldn’t want that for my own daughters. I wouldn’t want that for any child I love in school. I very much



U.S. Assistant Secretary of Education for Civil Rights Catherine Lhamon says that her office tries to be “very clear in our guidance that schools are responsible for the actions that their school police engage in.” U.S. Department of Education/Flickr

hope that we can make sure that all of our kids are treated appropriately in school.”

In eastern Virginia, public defender Linda McCausland is also concerned about students charged for behavior she thinks schools and counseling should handle.

“She can’t do long division, but she can get felony theft.”

- Linda McCausland, Virginia public defender, speaking of an 11-year-old client

Unlike other public defenders the Center contacted, McCausland was willing to speak publicly—as long the precise jurisdiction she was discussing wasn’t named.

One of McCausland’s clients is a 15-year-old charged with assault and sexual battery after she pushed a girl in the bathroom and kissed her. “Sexual abuse, that’s a pretty serious charge,” McCausland said. Another is an 11-year-old with mental-health problems who stole her teacher’s cell phone and was automatically charged with felony theft because the phone is worth at least \$200.

“She can’t do long division, but she can get felony theft,” McCausland said.

McCausland believes the problem is compounded by police who she says “pile” charges on kids.

A 12-year-old client went to pick up her cousin at an elementary school, saw a fight and pulled her cousin out of it, McCausland said, and when a school cop grabbed her she swore. The cop charged her with obstruction of justice for clenching her fist, along with trespassing, disorderly conduct and resisting arrest.

Julie McConnell, who teaches law at the University of Richmond, is a former juvenile prosecutor as well as a former public defender in Richmond. She said some prosecutors feel obligated to press forward with cases from schools, like it or not.

“Some offices have a no-plea-agreement policy,” she said. “You either go to trial or you plead guilty. I think that’s a really unfortunate situation in a few jurisdictions.”

McConnell also said school police don’t necessarily see themselves as mediators at school because that’s not what most are trained to do.

Don Bridges, a school police officer in Maryland, argues that training can correct an overzealous approach to school policing. He is a vice president of the **National Association of School Resource Officers**, a professional group

that offers classes to school resource officers.

“As I’m doing my training,” he said, “one of the phrases I always say is when you’re in the building as a police officer, you have to learn to stay in your lane. You have to know specifically what it is that you should be doing.

“As long as there’s nothing where there’s a weapon, something that’s going to cause immediate public harm,” he said, “charging a student within a school setting should be an absolute last resort.”

Lynchburg prosecutors handling Kayleb Moon-Robinson’s case said confidentiality laws prohibit them from commenting on juvenile cases. But before a case goes forward, they said, a juvenile court intake officer must be satisfied that there is “sufficient probable cause” based on an officer’s or another person’s sworn testimony.

Kayleb’s public defender and Lynchburg Juvenile Court Chief Judge Cary Payne wouldn’t comment either.

Lynchburg School Board President Regina Dolan-Sewell, the school district superintendent and the Lynchburg police chief also declined to talk. They sent a statement that school police are trained to work with kids, including autistic students, and get involved “in incidents that are criminal in nature, that have the potential to result in criminal charges, or that appear to place the safety of students and staff at risk.”

Virginia law requires schools to notify law enforcement about incidents that “may constitute a criminal offense.” An “offense code” chart advises that assaults must be referred to law enforcement, but disorderly conduct doesn’t. Charges aren’t required in either case.

In Lynchburg, Stacey Doss said she’s worried her special-needs son doesn’t grasp the judge’s warnings about his behavior, and that he already feels branded because classmates saw an officer subdue him. “There are people in our apartment complex that make rude comments about Kayleb,” she said. “They’ve talked about how he’s a criminal, how he’s been arrested.”

She’s also incredulous that so many resources have gone into putting Kayleb into court. “As taxpayers we should say, ‘Look, I don’t want my money wasted on frivolous issues,’” Doss said. “Children are going to argue, children are going to push and shove. That should be handled by the school.”

The Center for Public Integrity’s Ben Wieder performed the analysis of U.S. Department of Education data. [This story is featured on Reveal](#), a new public radio show from The Center for Investigative Reporting and [PRX](#). Check