

## **“Education Or Incarceration: Zero Tolerance Policies And The School To Prison Pipeline”**

Nancy A. Heitzeg, Professor of Sociology and Program Director, Critical Studies of Race/Ethnicity, St. Catherine University, St. Paul, MN

### **Abstract**

In the past decade, there has been a growing convergence between schools and legal systems. The school to prison pipeline refers to this growing pattern of tracking students out of educational institutions, primarily via “zero tolerance” policies, and , directly and/or indirectly, into the juvenile and adult criminal justice systems. The school to prison pipeline has emerged in the larger context of media hysteria over youth violence and the mass incarceration that characterize both the juvenile and adult legal systems.

While the school to prison pipeline is facilitated by a number of trends in education, it is most directly attributable to the expansion of zero tolerance policies. These policies have no measureable impact on school safety, but are associated with a number of negative effects” racially disproportionality, increased suspensions and expulsions, elevated drop-out rates, and multiple legal issues related to due process. A growing critique of these policies has lead to calls for reform and alternatives.

### **The School to Prison Pipeline Defined**

*“In the last decade, the punitive and overzealous tools and approaches of the modern criminal justice system have seeped into our schools, serving to remove children from mainstream educational environments and funnel them onto a one-way path toward prison....*

*The School-to-Prison Pipeline is one of the most urgent challenges in education today.”*  
(NAACP 2005)

The promise of free and compulsory public education in the United States is a promise of equal opportunity and access to the “American Dream”. This ideal is billed as the great democratic leveler of the proverbial playing field, and proclaims educational attainment as a source of upward social mobility, expanded occupational horizons, and an engaged, highly literate citizenry. This promise has proven to be an illusionary one, marred by a history of segregation- de jure and de facto, by class and race disparities, and by gulfs in both funding and quality. Despite some fleeting hope in the early years of the post-Civil Rights eras, the promise remains elusive for many. Indeed, shifts in educational policy in the past 15 years have exacerbated the inherent inequities in public education. Rather than creating an atmosphere of learning, engagement and opportunity, current educational practices have increasingly blurred the distinction between school and jail. The school to prison pipeline refers to this growing pattern of tracking students out of educational institutions, primarily via “zero tolerance” policies, and tracking them directly and/or indirectly into the juvenile and adult criminal justice systems.

While schools have long been characterized by both formal and informal tracks that route students into various areas of the curriculum, tracking students *out* of school and into jail is a new phenomenon. Current policies have increased the risk of students being suspended, expelled, and/or arrested at school. Risk of entry into the school to prison pipeline is not random. The School to Prison Pipeline disproportionately impacts the poor, students with disabilities, and

youth of color, especially African Americans, who are suspended and expelled at the highest rates, despite comparable rates of infraction (Witt 2007). Youth of color in particular are at increased risk for being “pushed out” of schools—pushed out into the streets, into the juvenile justice system, and/or into adult prisons and jails. This pattern has become so pronounced that scholars, child advocates, and community activists now refer to it as “the school to prison pipeline”, the “schoolhouse to jailhouse track” or as younger and younger students are targeted, “the cradle to prison track” ( Wald and Losen 2003; NAACP 2005; Advancement Project 2006; Children’s Defense Fund 2007 )

In part, the school to prison pipeline is a consequence of schools which criminalize minor disciplinary infractions via zero tolerance policies, have a police presence at the school, and rely on suspensions and expulsions for minor infractions. What were once disciplinary issues for school administrators are now called crimes, and students are either arrested directly at school or their infractions are reported to the police. Students are criminalized via the juvenile and/or adult criminal justice systems. The risk of later incarceration for students who are suspended or expelled and unarrested is also great. For many, going to school has become literally and figuratively synonymous with going to jail.

The school to prison pipeline is most immediately related to zero tolerance policies and to failing schools that are over-crowded, inadequately resourced and highly segregated, but it is also the result of larger social and political trends. The school to prison pipeline is consistent with media driven fears of crime and “super-predators”, an increasingly harsh legal system for both juveniles and adults, and the rise of the prison industrial complex. What follows is a discussion of the factors that contribute to the school to prison pipeline, an in-depth analysis of the flaws of zero tolerance policies, and recommendations for the interruption of this growing pattern of punishing rather than educating our nation’s youth.

### **The School to Prison Pipeline: The Context**

The school to prison pipeline does not exist in a vacuum. It is deeply connected to a socio-political climate that is increasingly fearful and punitive. The tendency towards criminalization and incarceration has seeped into the schools, and with each year, this legal net ensnares younger and younger children. School funding declines precipitously, while funding for enhanced security measures rises. Behavior that once resulted in a trip to the principal’s office now is grounds for a trip to jail. The willingness of some officials to have handcuffed 5 year olds escorted from school by uniformed police officers cannot be accounted for by educational policy alone. How have some young children come to be viewed as so dangerous? What factors account for the policy shifts that shape the school to prison pipeline? How has the line between school and legal systems become so blurred? Who benefits when a growing number of children pushed out of education and into risk for incarceration? The answers in part can be found by a closer examination of the role of both media constructions and the on-going push towards prisonization.

*Media Construction of Crime and Criminals*

A substantial body of research documents the role of media—especially television – in constructing perceptions of crime, public images of the criminal, and subsequently shaping attitudes, everyday interactions and public policy. Television reaches almost every household, and the average American consumes over 4 hours TV viewing each day (Croteau and Hoynes 2001, 5). Television shapes what issues we think about and how we think about them. This is particularly true with regard to TV news coverage of crime; “the public depends on the media for its pictures of crime” (Dorfman and Schiraldi 2001, 3).

The TV world of crime and criminals, however, is an illusion. TV news does not accurately reflect reality, especially when it comes to reporting on crime. As Walker, Spohn, and Delone (2007, 25) observe,

“Our perceptions of crimes are shaped to a large extent by the highly publicized crimes featured on the nightly news and sensationalized in news papers. We read about young African American and Hispanic males who sexually assault, rob and murder whites, and we assume that these crimes are typical. We assume that the typical crime is a violent crime, that the typical victim is white, and that the typical offender is African American or Hispanic.”

These assumptions are false. TV news constructs a portrait of crime, criminals and victims that is not supported by any data. In general, the research indicates that violent crime and youth crime is dramatically over-represented, crime coverage has increased in spite of falling crime rates, African Americans and Latinos are over-represented as offenders and under-represented as victims, and inter-racial crime, especially crimes involving white victims, is over-reported (Dorfman and Schiraldi 2001, 5)

Beyond over-representation as “criminals”, African American offenders are depicted in a more negative way than their white counterparts. Blacks are mostly likely to be seen on TV news as criminals; they are four times more likely than whites to be seen in a mug shot; twice as likely to be shown in physical restraints; and 2 times less likely to be identified by name. Black suspects are also depicted as more poorly dressed and were much less likely to speak than white suspects, reinforcing the notion that they were indistinct from non-criminal blacks (Entman and Rojecki 2000).

The media’s general misrepresentation of crime and criminals certainly extends to youth; some estimates indicate that as much as two-thirds of violent crime coverage focused on youth under age 25 ( Hancock 2001). The context for the current climate of repressive youth policies was set in the in the late 1980s and throughout the 1990s. Media generated hysteria inextricably linked “teen super-predators”, gang-violence and the crack cocaine “epidemic”, and all were unmistakably characterized as issues of race. The coverage of the youth gangs, which focused almost exclusively on African American and Latino gangs, exaggerated the extent of gang membership and gang violence, contributing the creation of “moral panic” ( McCorkle and Miethe 2000). Headlines screamed dire warnings about the legions of teen super-predators that would come of age by 2010; of course, they were urban, they were black and brown, and they were relentlessly violent (Templeton 1998). Given apparent legitimacy by conservative

academics such as Wilson (1995) and DiIuio (1995) this super-predator script took off among both media and policy-makers. Violence, gangs, crack and youth of color became synonymous (Sheldon, Tracy and Brown, 2001; Walker, Spohn and DeLone 2007).

These media representations have real consequences. TV news coverage of crime reflects and reinforces what Glassner (1999) calls “the culture of fear”. This is supported by decades of research. Study after study finds that heavy TV viewers (i.e. those who watch more than 4 hours a day) overestimate the crime rate, the likelihood of crime victimization, and the extent of stranger related violence. In general, heavy TV viewers are nearly twice as likely as light viewers to report crime as the most serious problem, believe crime rates are rising, and indicate personal fear of victimization (Gerber 1994; Braxton 1997; Farkas and Duffet 1998). They have adopted what Gerbner (1994) calls “the mean-world syndrome”; they are overly fearful and mistrustful of strangers.

And, according to TV news, these “strangers” are young black or Latino males. TV news coverage of crime creates and reinforces the stereotype of the young black male, in particular, as the criminal.. As Perry (2001, 185) observes, “black males historically have been presented as the ‘villain’...The race-crime nexus is inescapable in a culture that defines black males as predators.” Several studies document the impact of TV news coverage of crime on public perceptions of black and Latinos. The images of black males as criminals are so deeply entrenched in the public’s mind that 60% of people watching a newscast without an image of the offender falsely “remembered” seeing one. 70% of these viewers “remembered” the perpetrator as black (Gilliam and Iyengar 2000). In one experimental study, brief exposures to mug shots of blacks and Hispanic males increased levels of fear among viewers, reinforced racial stereotypes, and led viewers to recommend harsh penalties (Gilliam and Iyengar 1998). Another study found that black suspects were more likely than whites to be viewed as guilty, more likely to commit violence in the future, and less likeable (Peffley et al 1996).

Widespread acceptance of this stereotype by the general public has implications for everyday interactions that youth of color have in public places, with employers, with teachers, with public officials, and with the police (Walker, Spohn and DeLone 2007). Certainly, TV-driven notions of blacks and Hispanics as “predators” provide whites and others with justification for pre-judgments and negative responses. Media-based preconceptions may play a role in the school to prison pipeline. Prejudice and stereotype acceptance can lead to miscommunications between black students and white teachers; this is a possible contributor to the racial disproportionality in suspension and expulsion. Some of the highest rates of racially disproportionate discipline are found in states with the lowest minority populations, where the disconnection between white teachers and black students is potentially the greatest (Witt 2007).

Widespread acceptance of the stereotype of youth of color as violent predators also has implications for public policy. The media script of youth of color as violent super-predators provided the backdrop for a series of policy changes as well. Juvenile justice systems across the nation were rapidly transformed in a more punitive direction with media accounts—rather than statistical evidence—driving the agenda.

“Underlying this assault on juvenile justice is the demonization of youth, particularly young people of color, who are stereotypically portrayed as roaming the streets and destroying the fabric of society...The media's imagery reflects confused reporting of crime statistics, at best, and forsakes the reality of crime rates in favor of sensationalized accounts of youthful offenders, at worst.” (Stein 1997)

The policy shifts in juvenile justice are both consistent with and in furtherance of another significant phenomena related to the school to prison pipeline – mass incarceration and the emergence of the prison industrial complex.

### *The Rise of the Prison Industrial Complex*

During the past 40 years there has been a dramatic escalation the U.S. prison population, a ten-fold increase since 1970. The increased rate of incarceration can be traced to the War on Drugs and the rise of lengthy mandatory minimum prison sentences for drug crimes and other felonies. These policies have proliferated, not in response to crime rate nor any empirical data that indicates their effectiveness, due to the aforementioned media depictions of both crime and criminals and new found sources of profit for prisons.(Davis 2003 )

The United States currently has the highest incarceration rate in the world. Over 2.4 million persons are in state or federal prisons and jails—a rate of 751 out of every 100,000. Over 3500 of these are awaiting execution; some for Federal crimes, most for capital offenses in one of the 36 states that still allows for capital punishment. Another 5 million are under some sort of correctional supervision such as probation or parole (PEW 2008).

A similarly repressive trend has emerged in the juvenile justice system. The juvenile justice system shifted sharply from its' original rehabilitative, therapeutic and reform goals. While the initial Supreme Court rulings of the 1960s—*Kent, in re Gault* and *Winship*—sought to offer juveniles some legal protections in what was in fact a legal system, more recent changes have turned the juvenile justice system into a “second-class criminal court that provides youth with neither therapy or justice.” (Feld 2007) Throughout the 1990s, nearly all states and the federal government enacted a series of legislation that criminalized a host of “gang-related activities”, made it easier (and in some cases mandatory) to try juveniles as adults, lowered the age at which juveniles could be referred to adult court, and widened the net of juvenile justice with blended sentencing options that included sentences in both the juvenile and adult systems (Griffin 2008; Heitzeg 2008; Podkopacz and Feld 2001;Walker, Spohn and DeLone 2007). The super-predator youth and rampant media coverage of youth violence provided the alleged justification for this legislation as well as for additional federal legislation such as Consequences for Juvenile Offenders Act of 2002 (first proposed in 1996) and The Gun-Free Schools Act of 1994, which provides the impetus for zero tolerance policies in schools and the school to prison pipeline, the subject of later detailed discussion.

These harsh policies—mandatory minimums for drug violations, “three strikes”, increased use of imprisonment as a sentencing option, lengthy prison terms, adult certification for juveniles, zero tolerance and the expanded use of the death penalty- disproportionately affect

people of color. A brief glimpse into the statistics immediately reveals both the magnitude of these policy changes as well as their racial dynamic. Despite no statistical differences in rates of offending, the poor, the under-educated, and people of color, particularly African Americans, are over-represented in these statistics at every phase of the criminal justice system. (Walker, Spohn & DeLone 2007) While 1 in 35 adults is under correctional supervision and 1 in every 100 adults is in prison, 1 in every 36 Latino adults, one in every 15 black men, 1 in every 100 black women, and 1 in 9 black men ages 20 to 34 are incarcerated (Pew 2008). Approximately 50% of all prisoners are black, 30% are white and 1/6 Latino (Bureau of Justice Statistics 2007).

The racial disparities are even greater for youth. African Americans, while representing 17% of the youth population, account for 45% of all juvenile arrests. (NAACP 2005) Black youth are 2 times more likely than white youth to be arrested, to be referred to juvenile court, to be formally processed and adjudicated as delinquent or referred to the adult criminal justice system, and they are 3 times more likely than white youth to be sentenced to out-of-home residential placement (Panel on Justice 2001; Walker, Spohn and Delone 2007). Nationally, 1 in 3 Black and 1 in 6 Latino boys born in 2001 are at risk of imprisonment during their lifetime. While boys are five times as likely to be incarcerated as girls, girls are at increasing risk. This rate of incarceration is endangering children at younger and younger ages (Children's Defense Fund 2007).

In addition, black youth at additional risk due to the high rates of imprisonment for African American adults. Black youth are increasingly likely to have a parent in prison -- among those born in 1990, one in four black children had a father in prison by age 14. Risk is concentrated among black children whose parents are high-school dropouts; 50% of those children had a father in prison (Wildeman 2009). African American youth are at increasing risk of out-of-home placement due to the incarceration of parents. While young black children represent about 17 percent of the nation's youth, they now account for more than 50% of the children in foster care. This explosion in foster care has been fueled by the destabilization of families and the mass incarceration of Black men and women (Roberts 2004; Brewer 2007; Bernstein 2005).

To complicate matters, punitive policies extend beyond prison time served. In addition to the direct impact of mass criminalization and incarceration, there is plethora of, what Mauer and Chesney-Lind (2002) refer to as "invisible punishments". These additional collateral consequences further decimate communities of color politically, economically and socially. The current expansion of criminalization and mass incarceration is accompanied by legislation that further limits the political and economic opportunities of convicted felons and former inmates. "Collateral consequences" are now attached to many felony convictions and include voter disenfranchisement, denial of Federal welfare, medical, housing or educational benefits, accelerated time-lines for loss of parental rights and exclusion from any number of employment opportunities. Collateral consequences are particularly harsh for drug felons who represent the bulk of the recently incarcerated. Drug felons are permanently barred from receiving public assistance such as TANF, Medicaid, food stamps or SSI, federal financial aid for

education, and federal housing assistance. These policies dramatically reduce the successful re-integration of former inmates, increases the likelihood of recidivism and return to prison.

One of the most insidious aspects of this project in mass incarceration is its' connection to the profit motive (Davis 2003). Once solely a burden on tax payers, the so-called "prison-industrial complex" is now a source of corporate profit, governmental agency funding, cheap neo-slave labor, and employment for economically depressed regions. "The prison industrial complex is not a conspiracy, but a confluence of special interests that include politicians who exploit crime to win votes, private companies that make millions by running or supplying prisons and small town officials who have turned to prisons as a method of economic development." (Silverstein 2003) This complex now includes over 3,300 jails, over 1,500 state prisons, and 100 Federal prisons in the US. Nearly 300 of these are private for-profit prisons. Over 30 of these institutions are super-maximum facilities, not including the super-maximum units located in most other prisons.

As Brewer and Heitzeg (2008, 637) observe: "the prison industrial complex is a self-perpetuating machine where the vast profits and perceived political benefits to policies that are additionally designed to insure an endless supply of "clients" for the criminal justice system". Profits are generated via corporate contracts for cheap inmate labor, private and public supply and construction contracts, job creation for criminal justice professionals, and continued media profits from exaggerated crime reporting and the use of crime/punishment as ratings grabbing news and entertainment. The perceived political benefits include reduced unemployment rates due to both job creation and imprisonment of the poor and unemployed, "get tough on crime" and public safety rhetoric, funding increases for police as well as criminal justice system agencies and professionals.

And these policies—enhanced police presence in poor neighborhoods and communities of color; racial profiling; decreased funding for public education combined with zero-tolerance policies and increased rates of expulsion for students of color; increased rates of adult certification for juvenile offenders; mandatory minimum and "three-strikes" sentencing; draconian conditions of incarceration and a reduction of prison services that contribute to the likelihood of "recidivism"; and "collateral consequences" that nearly guarantee continued participation in "crime" and return to the prison industrial complex following initial release—have major implications for youth of color.

It is youth of color who are being tracked into the prison pipeline via media stereotyping, a punishment-oriented juvenile justice system, and educational practices such as zero-tolerance. All are designed, by intent or default, to insure an endless stream of future bodies into the prison industrial complex. As Donzinger (1996, 87) aptly notes,

"Companies that service the criminal justice system need sufficient quantities of raw materials to guarantee long term growth in the criminal justice field, the raw material is prisoners...The industry will do what it must to guarantee a steady supply. For the supply of prisoners to grow, criminal justice policies must insure a sufficient number of incarcerated Americans whether crime is rising or the incarceration is necessary."

While media coverage was instrumental in creating the climate of fear, the policy shifts that resulted were consistent with larger trends in criminal justice. Critics of these policy changes charge that this is no mere coincidence. The age of mass incarceration and the prison industrial complex calls for the continual replenishment of the ranks of the imprisoned, and it is youth of color that are most often selected to fill that onerous role.

### **The School to Prison Pipeline: Zero Tolerance Policies**

While media and the rise of the prison industrial complex create the context, shifts in educational policy provide the immediate impetus for the flow of children from school to legal systems. The school to prison pipeline is facilitated by several trends in education that most negatively impact students of color. These include growing poverty rates and declining school funding, re-segregation of schools by race and class, under-representation of students of color in advanced placement courses and over-presentation in special education tracks, No Child Left Behind (NCLB) , high stakes testing, and rising drop-out/push -out rates (NAACP 2005; Hammond 2007) . All these factors are correlated with the school to prison pipeline, and each is the subject of lengthy analysis elsewhere .The focus here is increased reliance on zero tolerance policies, which play an immediate and integral role in feeding the school to prison pipeline. These policies, in combination with the aforementioned factors, provide the direct mechanism by which students are removed from school by suspension/expulsion, pushed toward dropping out, charged in juvenile court, and routed into the prison pipeline.

While there is no official definition of the term zero tolerance, generally the term means that a harsh predefined mandatory consequence is applied to a violation of school rules without regard to the —seriousness of the behavior, mitigating circumstances, or the situational context (APA 2006). Zero-tolerance policies are additionally associated with an increased police and security presence at school, metal detectors, security cameras, locker and person searches and all the accoutrements of formal legal control. Violators- disproportionately Black and Latino-are suspended, expelled, and increasingly arrested and charged in juvenile court as a result. (ABA 2001)

Zero tolerance rhetoric, which was borrowed from the War on Drugs, became widespread as school officials and community leaders expressed outrage at gang shootings and the impending wave of “super-predators”. Despite school crime rates that were stable or declining, related policies were implemented by the mid- 1990s. Early on, these policies primarily focused on weapons and drugs at school ( Skiba 2001) National media reports about school shootings, especially Columbine, created a further impetus for states and localities to add additional features such as the increased use of security cameras, metal detectors and a police presence at schools (Birkland and Lawrence 2009; Frymer 2009)

The Gun-Free Schools Act of 1994 (GFSA) provided the initial impetus for zero tolerance policies. The GFSA mandates that all schools that receive federal funding must 1) have policies to expel for a calendar year any student who brings a firearm to school or to school zone,

and 2) report that student to local law enforcement, thereby blurring any distinction between disciplinary infractions at school and the law. Subsequent amendments to The GFSA and changes in many state laws and local school district regulations broadened the GFSA focus on firearms to apply to many other kinds of weapons. (Skiba 2001; Birkland and Lawrence 2009).

Most schools have adopted zero-tolerance policies for a variety of behavioral issues—largely directed towards weapons, alcohol/drugs, threatening behavior, and fighting on school premises, and as the name implies, indicate zero-tolerance for any infractions. According to the Centers for Disease Control (2006), in most cases 100% of school districts had prohibitions against weapons, and fighting, nearly 80% had bans on gang-activity at school, and over 90% had implemented zero tolerance policies for alcohol, tobacco and other drugs. In addition, a growing number of school districts also had an increased security presence at school. It has become routine for districts to assign staff/volunteers to monitor halls and bathrooms, equip staff with communication devices, use metal detectors and cameras, and have uniformed security guards or police present. It is less common, but also possible now for some schools to employ canine units, Tasers, and SWAT team raids for drug and weapons searches (Birkland and Lawrence 2009). Ironically, enhanced security measures were largely inspired by the school-shootings in largely white suburban schools, they have been most readily adopted and enforced in urban schools with low student-to teacher ratios, high percentages of students of color and lower test scores (Skiba 2001).

Zero tolerance policies have generally involved harsh disciplinary consequences such as long-term and/or permanent suspension or expulsion for violations, and often arrest and referral to juvenile or adult court. While the original intent of The GFSA was to require these punishments for serious violations involving weapons, they have frequently been applied to minor or non-violent violations of rules such as tardiness and disorderly conduct. According to the ABA (2001), zero-tolerance policies do not distinguish between serious and non-serious offenses, nor do they adequately separate intentional troublemakers from those with behavioral disorders. They cast a very wide net; students have been suspended and or expelled for nail clippers, Advil and mouthwash. Cases reported by The Justice Policy Institute (2009) and The Advancement Project (2005) outline incidents subject to zero-tolerance policy:

- “A seventeen-year-old junior shot a paper clip with a rubber band at a classmate, missed, and broke the skin of a cafeteria worker. The student was expelled from school.
- A nine-year-old on the way to school found a manicure kit with a 1-inch knife. The student was suspended for one day.
- In Ponchatoula Louisiana, a 12-year-old who had been diagnosed with a hyperactive disorder warned the kids in the lunch line not to eat all the potatoes, or "I'm going to get you." The student, turned in by the lunch monitor, was suspended for two days. He was then referred to police by the principal, and the police charged the boy with making "terroristic threats." He was incarcerated for two weeks while awaiting trial.
- Two 10-year-old boys from Arlington, Virginia were suspended for three days for putting soapy water in a teacher's drink. At the teacher's urging,

police charged the boys with a felony that carried a maximum sentence of 20 years. The children were formally processed through the juvenile justice system before the case was dismissed months later.

- In Denton County, Texas, a 13-year-old was asked to write a "scary" Halloween story for a class assignment. When the child wrote a story that talked about shooting up a school, he both received a passing grade by his teacher and was referred to the school principal's office. The school officials called the police, and the child spent six days in jail before the courts confirmed that no crime had been committed.
- In Palm Beach, Florida, a 14-year-old disabled student was referred to the principal's office for allegedly stealing \$2 from another student. The principal referred the child to the police, where he was charged with strong-armed robbery, and held for six weeks in an adult jail for this, his first arrest. When the local media criticized the prosecutor's decision to file adult felony charges, he responded, "depicting this forcible felony, this strong-arm robbery, in terms as though it were no more than a \$2 shoplifting fosters and promotes violence in our schools." Charges were dropped by the prosecution when a 60 Minutes II crew showed up at the boy's hearing.
- A 5 year old boy in Queens NY was arrested, handcuffed and taken to a psychiatric hospital for having a tantrum and knocking papers off the principals desk.
- In St Petersburg Florida, a 5 year old girl was handcuffed arrested and taken into custody for having a tantrum and disrupting a classroom.
- An 11 year old girl in Orlando Florida was tasered by a police officer, arrested and faces charges of battery on a security resource officer, disrupting a school function and resisting with violence. She had pushed another student.
- In Thurgood Marshall High School, in San Francisco, underscores the tensions between some communities and police. Two groups of students, totaling between three and five, broke into a scuffle, with other students looking on. School Resource Officers (SROs) broke up the fight and escorted the students to the office where they were to be picked up by their parents. When a family member of one of the students confronted some of the students, another small fight ensued and local police were called in to break up what an SRO termed a "riot." Nearly 60 police officers arrived at the scene, some in riot gear, while students were changing classes. Students alleged that the officers brandished their guns, used their batons, and hit, pushed and kicked students. Several students were injured and arrested. Police contend that the students were confrontational.

As the aforementioned examples indicate, zero tolerance policies are target students for minor infractions, increasingly focus on younger elementary and pre-school students, and often rely on force and arrest for relatively minor disciplinary issues.

Zero tolerance policies have proliferated without evidence that they actually improve school safety and security (Skiba 2001). In theory, zero-tolerance policies are intended to have a

deterrent effect for intentionally troublesome students, i.e. the mere presence of the policies is intended to thwart disruptive behavior. But, as with harsh penalties for juvenile and criminal justice, zero tolerance was adopted and expanded in lieu of data supporting either effectiveness or need. There is, however, mounting evidence that these policies do contribute to the school to prison pipeline. According to the Advancement Project (2005)

“Zero tolerance has engendered a number of problems: denial of education through increased suspension and expulsion rates, referrals to inadequate alternative schools, lower test scores, higher dropout rates, and racial profiling of students...Once many of these youths are in “the system,” they never get back on the academic track. Sometimes, schools refuse to readmit them; and even if these students do return to school, they are often labeled and targeted for close monitoring by school staff and police. Consequently, many become demoralized, drop out, and fall deeper and deeper into the juvenile or criminal justice systems. Those who do not drop out may find that their discipline and juvenile or criminal records haunt them when they apply to college or for a scholarship or government grant, or try to enlist in the military or find employment. In some places, a criminal record may prevent them or their families from residing in publicly subsidized housing. In this era of zero tolerance, the consequences of child or adolescent behaviors may long outlive students’ teenage years.”

Several specific problems with zero tolerance policies warrant closer examination: racial disproportionality, increased rates of expulsion, elevated drop-put rates, and denial of due process and equal protection for students.

### *Racial Disproportionality*

On the surface, zero tolerance policies are facially neutral; they are to apply equally to all regardless of race, class and gender. A growing body of research suggests that these policies are anything but (ABA 2001; NAACP 005; Skiba 2002).

Gender and socioeconomic status are correlated with risk of suspension and expulsion; males and students on reduced or free lunch programs are more likely than females or middle class students to face suspension/expulsion. The strongest predictor, however, is race/ethnicity (Skiba 2001). Students of color, especially African Americans, are much more likely than their white counter-parts to be suspended or expelled from school for disciplinary reasons. This trend does not appear to be correlated with actual racial/ethnic differences in disruptive classroom behaviors.

Nationally, black students are being suspended in numbers greater than would be expected from their proportion of the student population. Rates of suspension and expulsion for Latino/as are somewhat higher than expected but black students bear the brunt of these policies. In 21 states that disproportionality is so pronounced that the percentage of black suspensions is more than double their percentage of the student body. In some states, black students are

expelled at 6 times the rate of whites, with certain district showing rates that are more than 10 times. On average across the nation, black students are suspended and expelled at nearly three times the rate of white students. While African American students make up 17% of all school age youth, they account for 37% of suspensions and 35% of all expulsions (Witt 2007). Black students receive more harsh punitive measures (suspension, expulsion, corporal punishment) and less mild discipline than their non-minority peers for the very same conduct, even when controlling for Socio-economic Status. (ABA 2005)

These racial disparities cannot be explained by differences in behavior; they must be explained by differential enforcement of zero tolerance policies. Since research has found no indication that African youth violate rules at higher rates than other groups (Skiba 2002), the persistence of stereotypes of young male males and “cultural miscommunication” between students and teachers is oft cited as one key factor. 83 percent of the nation's teaching ranks are filled by whites, mostly women, and stereotypes can shape the decision to suspend or expel.

“Some of the highest rates of racially disproportionate discipline are found in states with the lowest minority populations, where the disconnect between white teachers and black students is potentially the greatest. White teachers feel more threatened by boys of color. They are viewed as disruptive.” (Witt 2007).

The matter is further complicated by the tendency of teachers and school officials to define disruptive white youth as in need of medical intervention rather zero tolerance consequences. One of the growth sectors of psychiatry is the diagnosis and treatment of Disorders of Infancy, Childhood and Adolescence (DICA), particularly the Disruptive Behavior Disorders of Attention-Deficit Hyperactivity Disorder, Oppositional Defiant Disorder and Conduct Disorder (Diller, 1998, Males 1996; APA 2000). These psychiatric labels perfectly overlap with potential educational and legal labels, and thus offer an alternative mechanism for parents, school officials and law enforcement to deal with disciplinary infractions and drug use by students. Indeed, research indicates that class, insurance coverage, and race are key indicators of who receives treatment (Safer and Malever 2000). These factors play a significant role in the labeling of youth in particular; study after study shows racial disparities in the diagnosis and treatment of ADHD as well as other Disruptive Behavior Disorders, with the indication that teachers were most likely to expect and define ADHD as an issue for white boys. (Currie 2005; Safer and Malever 2001).

his racial disproportionality is cited as one of the key factors in the school to prison pipeline. Students that are already subject to what the Panel on Juvenile Justice (2001) calls compound and cumulative risk for legal processing have that risk magnified by zero tolerance policies that are unequally applied.

### *Increased Rates of Suspensions and Expulsions*

Not surprisingly, zero tolerance policies have led to a dramatic increase in suspensions and expulsions. Annually, there are approximately 3.3 million suspensions and over 100,000 expulsions each year (NCES 2009). This number has nearly doubled since 1974, with rates escalating in the mid 1990s as zero tolerance policies began to be widely adopted (NAACP 2005). These rates have risen even though school violence generally has been stable or declining (Skiba 2002).

In addition to increased rates of suspension/expulsion for elementary and secondary students, zero tolerance policies have seeped downward to impact pre-school children. Nearly seven of every thousand pre-schoolers are expelled from state-funded pre-school programs—over three times the rate of expulsions in grades K-12 (NAACP 2005).

This is not a climate conducive to education, not just for the suspended certainly but for all students. Turning schools into “secure environments”—replete with drug-sniffing dogs, searches and school-based police—lowers morale and makes learning more difficult. It also engenders a sense of mistrust between students and teachers, and contributes negative attitudes towards school in general (Advancement Project 2005).

For students who are suspended or expelled the stakes are even higher. Students are deprived of educational services and, at best referred to sub-standard alternative schools. Many states fail to offer any access to alternative schools. Students are left to fend for themselves, and if they are re-instated are now further behind their peers and more likely to be suspended again (Polakow-Suransky 2000). In fact, rather than deterring disruptive behavior, the most likely consequence of suspension is additional suspension (NASP 2001). There has yet to be a research study identifying a direct correlation between zero tolerance policies and safe schools; a few studies have indicated that the zero tolerance policies do not result in fewer disciplinary infractions or reductions in the number of repeat offenders. The American Psychological Association (2006) reported finding no evidence that zero tolerance reduced are associated with negative outcomes for youth, academically, socially, emotionally, and behaviorally; this includes a decreased commitment to education in light of perceptions of unfair treatment (Arum & Preiss 2009).

Increasingly suspension and expulsion is simultaneously to arrest. Many schools are further expediting the flow of children out of the schools and into the criminal justice system by doling out a double dose of punishment for students who misbehave. In addition to being suspended or expelled, students are also increasingly finding themselves arrested or referred to law enforcement or juvenile court and prosecuted for behavior at school. Students who are suspended or expelled may also be referred to juvenile court by school officials, but in a growing number of schools, zero tolerance policies are directly enforced by police or school resource officers. There is no national data collected on juvenile arrests that originate at school, but reports on a variety of districts indicate that school-based arrests have more than doubled. The presence of police officers at school—most of them large urban pre-dominantly minority schools—adds as well to racial disparities as racial profiling practices are transferred from the

streets to the hallways (Dohrn 2001; Advancement Project 2006). Additionally the majority of these arrests are—not for weapons or drugs—but for minor infractions such as disorderly conduct or disruptions. This criminalization of what were once issues of school discipline is a direct conduit into the prison pipeline.

### *Elevated Dropout Rates*

Zero tolerance policies contribute to the already high drop-out rate for students of color. Students from historically disadvantaged minority groups (American Indian, Hispanic, and Black) have little more than a fifty-fifty chance of finishing high school with a diploma. By comparison, graduation rates for Whites and Asians are 75 and 77 percent nationally. Students in intensely segregated (90-100%) minority schools are more than four times as likely to be in predominantly poor schools than their peers attending schools with less than ten percent minority students (84% compared to 18%)”(Orfield and Lee 2007). And of course, these are the schools that take the most strident approaches to zero tolerance.

Increased drop-out rates are directly related to the repeated use of suspension and expulsion (NASP 2001). Critics have noted that zero tolerance policies have been used to “push –out” low performing students in the era of No Child Left Behind legislation. Since school funding is directly tied to test scores, NCLB gives schools an incentive to get rid of rather than remediate students with low test scores. According to the NAACP (2005)

“Ironically, some of the hallmarks of modern education reform—including demands for greater accountability, extensive testing regimes, and harsh sanctions imposed on schools and teachers—actually encourage schools to funnel out those students whom they believe are likely to drag down a school’s test scores. Rather than address the systemic problems that lead to poor educational performance, harsh discipline policies provide schools with a convenient method to remove certain students and thereby mask educational deficiencies.”

Recent studies show how schools in a number of states have raised test scores by "losing" large numbers of low-scoring students; most of these students are of color. In one Texas city, scores soared while tens of thousands of students--mostly African-American and Latino--disappeared from school. Educators reported that exclusionary policies were used to hold back, suspend, expel or counsel out students in order to boost scores (Hammond 2007).

Even when well-intended educators wish to help these students, schools are often lacking the guidance counselors, intervention programs and other resources to address students with special educational and behavioral needs. They may feel there is no alternative to pushing them out, even if the result may involve immediate or future incarceration. Zero tolerance policies create a venue for doing so.

### *Legal and Constitutional Questions*

Zero tolerance policies raise a myriad of legal issues related to statutory vagueness, inconsistent application, and lack of due process for searches/seizures and arrests that occur on school property (ABA 2005). These policies present clear constitutional questions with regard to both definition and enforcement.

Zero tolerance mandates have come under attack for both statutory vagueness and failure to allow local school administrators discretion in determining application of these policies. Many state laws fail to clearly distinguish between serious and trivial policy violations. For example, many state laws do not define “dangerous weapon”, but then require expulsion under the federal Gun Free School Act. It is this lack of clarity that has allowed for expulsion of students with scissors and nail clippers. Similar vagueness pervades other aspects of zero tolerance, including the failure to define “dangerous drugs”, threatening behavior and so on (Polakow-Suransky, 2000). Statutory vagueness makes it impossible for students to know exactly what is being prohibited, and lack of clearly defined school rules and procedures allows officials tremendous discretion to suspend and expel students for minor infractions.

This vagueness plagues due process expectations as well. Again, many states have no stated requirements or clearly published set of expectations for students and parents. Not only is there no clarity as to exactly what is prohibited, there are also no identified procedure that enumerates students rights, procedural expectations or processes to allow for appeal or re-instatement (Polakow-Suransky 2000). This is clear violation of even the rudimentary due process rights accorded to students under the Supreme Court decision of *Goss v. Lopez* (419 U.S. 565 1975), which held that students may not be suspended without a hearing. Under many state laws, students may currently be suspend and/or expelled without hearings or in fact, without any written policy guidelines as to recourse, appeal or request for re-instatement.

The due process concerns for students are magnified by the shrinking boundaries between school and legal systems. The requirement that school official report certain infractions to law enforcement and the increased presence of police at schools may lead to arrest the due process protections that students may expect outside school (Feld 2007). Evidence used to legally incriminate students may be obtained in violation of the Fourth and Fifth Amendment prohibitions against unreasonable search/seizure and self-incrimination; student expectation of school are different than their expectations of police encounters on the street. And, zero tolerance policies have led to increased student concerns over perceived rights violations at school, with African American students the most likely of any group to report discrimination in disciplinary procedures (Arum and Preiss 2008).

In the past decade, a growing number of legal challenges have been raised to zero tolerance policies. The bulk of their suits involve policies related to drugs and weapons and raise questions regarding vagueness, interrogations in lieu of *Miranda*, and intrusive searches and seizures. The bulk of these cases are brought by students from wealthier, majority white schools (Arum & Preiss 2008). Recently one of these cases made it to the U.S. Supreme Court case. In *Safford Unified School District #1 et al. v. Redding*, the Court ruled that a strip search of a 13

year old Savana Redding (who was accused of bringing prescriptive ibuprofen to school) was, in fact, unreasonable. The decision, which barred some school strip searches for drugs, did not offer school much guidance or students much hope for Fourth Amendment protection. The narrow ruling upheld the school's right to search Redding's backpack and outer garments, and were told only to take account of the extent of danger of the contraband in question and whether there is good reason to think it is hidden in an intimate place (Liptak 2009). For the foreseeable future, students who are the most risk of being pushed out of school and into the prison pipeline can expect few legal protections or due process guarantees.

### Interrupting the School to Prison Pipeline

*"At issue are the values of a nation that writes off many of its poorest children in deficient urban schools starved of all the riches found in good suburban schools nearby, criminalizes those it has short-changed and cheated, and then willingly expends ten times as much to punish them as it ever sent to teach them when they were still innocent and clean."* (Kozol 2005)

The school to prison pipeline has already claimed tens of thousands of young lives. Fueled by poverty and segregation, an under-funded education system pressured by high stakes testing and zero tolerance policies, media misrepresentation of youth crime and an increasingly draconian justice system, this link between education and incarceration continues to threaten the future of untold more. Failure to address these contributing factors is costly, certainly in terms of the funds diverted from education towards incarceration, but also in lost potential and lost lives.

"Many of these young people never reenter the mainstream educational system, and the loss to society is immeasurable. Not only do communities lose the potential talents that these students hold, but they also commit themselves to expending vast resources—far greater than the resources it would take to adequately fund public education—to deal with the problems that these students will likely pose when they grow into adults."(NAACP 2005)

For nearly a decade, scholars and activists have organized and pushed for policy changes- particularly an end to zero-tolerance policies in school—to interrupt the school to prison pipeline. Recommendations have come from scholars, non-profit advocacy organizations (such the Advancement Project, the NAACP, Southern Poverty Law Center, the ACLU, Consortium to Prevent School Violence and Children's Defense Fund) and professional associations (e.g. National Association of School Psychologists, The American Psychological Association, The American Bar Association.) The goal of all these programs is to stymie the steady flow of youth of color from out of school into legal systems.

Since zero tolerance policies represent the most immediate and direct conduit from school to legal systems, they have been the target of reform suggestions. Short of repealing zero tolerance legislation, legislatures and school districts could take steps to alleviate some of the surrounding legal issues and disparities. Recommendations include the following (Advancement Project 2005; American Bar Association 2001; NAACP 2005):

- State legislatures must clarify statutes pertaining to the referral of students to law enforcement agencies.

- State legislatures must protect the civil rights of all students and safeguard against discriminatory practices that lead to disproportionate expulsion of minority students
- States should maintain compulsory attendance requirements for those under 16, mandate and offer alternative educational services
- State legislatures should clearly define and enforce reinstatement procedures
- State legislatures should mandate and school districts engage in data collection of arrest/summons data and should monitor referrals to law enforcement to root out subjective, unnecessary, and discriminatory referrals
- School districts must be sensitive to the experiences communities of color have had with law enforcement
- Schools should notify students and parents under what circumstances the law requires, or standard practice dictates, referral of students to law enforcement agencies and for what conduct.
- Schools should implement policies that require that parents, or an adult advocate for the student, be present for any questioning of children where it is possible that criminal charges may be filed.
- Students should be routinely advised of their *Miranda* rights where criminal charges may be filed.

Similarly, school districts and school administrations could revise their particular policies to reduce suspensions and expulsions and offer meaningful alternatives for disruptive students. Suggestions—which have been established by experience and data as effective alternatives—include (CPSV 2008, APA 2006, NASP 2008):

- Schools must cease criminalizing students for trivial behaviors that can be handled by traditional, educationally-sound school disciplinary measures.
- Schools should avoid incorporating harsh automatic consequences that do not consider mitigating circumstances into school codes of conduct for specific violations, or remove these restrictions if already in place.
- Schools must employ a wide variety of disciplinary consequences in student codes of conduct, and indicate that the use of these should be tailored to the specific circumstances of the student and the violation.
- Schools should specify graduated categories of inappropriate or undesirable behaviors, and align them with categories of consequences—this is a more desirable than specifying punishments for each behavior.
- Schools should minimize the use of exclusionary disciplinary punishments and include an amnesty clause where non-violent students who inadvertently bring banned objects to school or find them can give them to a school official without fear of punishment.
- Schools must utilize their mental health experts—school psychologists, counselors and social workers—to research and develop discipline policies and positive behavior training strategies
- In developing alternatives to zero tolerance, schools should involve families and community resources include violence prevention, social skills training, and early intervention strategies.

Pilot projects in several school districts have achieved success in reducing suspension and expulsions by relying on alternatives to zero tolerance policies. Successful programs have utilized in school suspension and positive re-enforcement for constructive student behavior, clear codes of conduct and an emphasis on prevention rather than reaction (APA 2006; Southern Poverty Law Center 2008; NAACP 2005; NASP 2008)

But as the school to prison pipeline exists in a larger context, so too must efforts to dismantle it. The interruption of the school to prison pipeline requires reforms of educational policies such as zero tolerance, but it also requires a deep examination of our lust for punishment. Current racialized, fear—driven policies such as zero tolerance, mass incarceration, and mandatory minimum sentences are rooted in a socio-political climate that emphasizes punishment rather than prevention. Rather than invest in education, policymakers have chosen instead to subsidize incarceration—yes for corporate profit and political gain, but at exorbitant social costs. While impoverished schools struggle to expend approximately \$10,000 per pupil per year, it costs over \$50,000 annually to incarcerate that same child (Kozol 2005). Different choices might be made if the youth at risk were wealthy or white, but they are not.

Ultimately, the school to prison pipeline can only be truly interrupted by uprooting the racist and classist under-pinning of juvenile and criminal justice, by a return to a separate, less punitive juvenile justice system, and by the re-envisioning of a legal system guided by reparative justice rather than retribution and mass imprisonment (Justice Policy Institute 2008; Council on Crime and Justice 2008). These repressive approaches of the past decades have been failures of both policy and spirit. The future of youth of color depends on our ability to reject the endless cycle of incarceration and recommit to the promise of education.

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