

NOTE

“EDUCATION UNDER ARMED GUARD”: AN ANALYSIS OF THE SCHOOL-TO-PRISON PIPELINE IN WASHINGTON, D.C.

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INTRODUCTION

Nationwide, America’s middle and high school students face the threat of arrest and incarceration as a consequence of their conduct at school. Around the country, kids have been handcuffed and criminally prosecuted for things like feigned burping, leaving class without permission, and getting off a bus too early. Termed the “school-to-prison pipeline,” this phenomenon has drawn increasing attention and advocacy in recent years.

The school-to-prison pipeline remains alive and well in the nation’s capital, Washington, D.C. A substantial majority of the city’s public-school students face police in their schools, and many are referred to law enforcement for classroom misconduct. More still face the prospect of suspension and expulsion, and these punishments substantially increase students’ likelihood of later interaction with the criminal justice system. And while Black students comprise less than two-thirds of the city’s public-school population, they experience nearly all school-related arrests. District policymakers have made some strides toward combatting the school-to-prison pipeline. But further commitment remains necessary to ensure that, as students continue to return to in-person learning, they do not face criminal consequences at school.

To that end, this Note incorporates original research to analyze the school-to-prison pipeline in Washington, D.C., focusing in particular on 2018–19—the last full year of in-person instruction before the COVID-19 pandemic necessitated a shift to online learning. Part I of this Note describes the origins of the school-to-prison pipeline and identifies practices that contribute to the nationwide phenomenon. That Part also shows how these practices disproportionately affect Black students and negatively impact children around the country. Part II analyzes the

degree to which these contributing practices existed in Washington, D.C. during the 2018–19 school year. Finally, Part III proposes reforms that can reduce the rates at which Washington, D.C. students face criminal consequences for classroom misbehavior as they resume in-person learning.

I. THE SCHOOL-TO-PRISON PIPELINE

The “school-to-prison pipeline” is a national phenomenon by which middle and high school discipline leads to criminal consequences for students.¹ Throughout the twentieth century, increasingly punitive justice policies crossed into the realm of education and normalized harsh school discipline that ultimately leads students to arrest and incarceration.² These practices disproportionately affect Black students³ and do not make schools any safer.⁴ In fact, interaction with the criminal justice system has disastrous consequences for young people, and the effects of the school-to-prison pipeline can last a lifetime.⁵

A. *Origins*

Over several decades, a number of interrelated criminal justice and education polices built upon one another to create the school-to-prison pipeline. This process began with efforts to keep order during school integration and to suppress students’ civil rights demonstrations. It continued into the 1980s and 1990s as educators adopted the era’s “tough on crime” mentality, and it accelerated further in the wake of 2000s school shootings. As a result, school discipline policies today funnel students into the criminal justice system.

1. Suppressing Civil Rights Demonstrations

Many school policing programs began during integration, as police engaged with campuses in response to racial violence.⁶ The country’s first school policing program began in Flint, Michigan in 1953,⁷ and similar initiatives soon emerged

1. 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.”).

2. See *infra* notes 6–30 and accompanying text.

3. See *infra* notes 51–59 and accompanying text.

4. See *infra* notes 60–70 and accompanying text.

5. See *infra* notes 71–75 and accompanying text.

6. See MEGAN FRENCH-MARCELIN & SARAH HINGER, *BULLIES IN BLUE: THE ORIGINS AND CONSEQUENCES OF SCHOOL POLICING* 4 (2017) (describing how, following integration, “[v]iolent attacks on Black students in Los Angeles, Boston, and elsewhere were presented as a time bomb that Black students created. Public officials suggested that a closer relationship between schools and law enforcement would result in student accountability”).

7. See ADVANCEMENT PROJECT & ALL. FOR EDUC. JUST., *WE CAME TO LEARN: A CALL TO ACTION FOR POLICE-FREE SCHOOLS* 17 (2018), <https://advancementproject.org/wecametolearn/> [hereinafter *WE CAME TO LEARN*].

around the country.⁸ Police came to Washington, D.C. schools in 1954, where they aimed to prevent integration-related unrest.⁹

Throughout the 1960s and 1970s, policymakers sought to suppress civil rights demonstrations by criminalizing classroom disturbances and stationing additional police on school campuses. For example, on November 17, 1967, police confronted 3,500 Philadelphia students who staged a school walkout in support of civil rights and Black representation in the classroom.¹⁰ This clash resulted in dozens of arrests and at least twenty-two serious injuries.¹¹ In 1970, Maryland police on several occasions arrested Black high school students who protested campus racism.¹² And, by 1972, urban districts in forty states maintained some form of school policing.¹³

These demonstrations prompted many state legislatures to criminalize in-school misconduct. For example, in 1970, the Maryland legislature made “disturb[ing]” school a crime,¹⁴ and the bill’s primary sponsor noted that the law would provide authorities “a handy weapon . . . with which to end [school] . . . disturbances, disorders and riots.”¹⁵ Today, some twenty states maintain similar laws.¹⁶

2. The “Tough on Crime” Mentality

In the 1980s and 1990s, the “tough on crime” mindset that characterized criminal justice policy crossed into the realm of education. Policymakers sought to combat a rise in juvenile crime rates through punishment rather than rehabilitation,¹⁷

8. *Id.*

9. Jeanne Rogers, *D.C. Police Assigned to Public School Duty: No Major Trouble From Integration Anticipated* by Deputy Chief Covell, WASH. POST & TIMES HERALD, Sept. 4, 1954, at 17.

10. See Ron Whitehome, *1967: African American Students Strike, Survive Police Riot to Force Change*, NOTEBOOK (Sept. 25, 2002), <https://thenotebook.org/articles/2002/09/25/1967-african-american-students-strike-survive-police-riot-to-force-change/>, reprinted in CHALKBEAT PHILA (“The students called for the teaching of African American history, the right to wear African dress and the renaming of several predominantly Black high schools after African Americans who have contributed to our history.”).

11. *Id.*

12. See Douglas Watson, *Racial Slur Sparks Md. School Unrest*, WASH. POST & TIMES HERALD, Feb. 27, 1970, at C1 (“At least six [B]lack students were arrested after a brief midmorning sit-in. . .” in response to a racial epithet written on the sidewalk in front of their school); see also Lawrence Meyer, *Board Acts to Calm Schools: Pr. George’s Trouble Recalled*, WASH. POST & TIMES HERALD, Feb. 11, 1970, at C5 (“About 60 students were arrested at Bladensburg last fall after racial disturbances.”).

13. WE CAME TO LEARN, *supra* note 7, at 17.

14. *In re* Jason W., 837 A.2d 168, 171–73 (Md. 2003) (providing an exhaustive history of Maryland’s disturbing school law, including the 1970 criminalization); see also MD. CODE ANN., EDUC. § 26-101 (West 2021).

15. Michael Parks, *Mandel to Sign Bill Making Campus Disruption a Crime*, BALT. SUN, May 21, 1970, at C8.

16. John Marinelli, Note, *Another Brick in the Wall: A Call for Reform to Maryland’s Disturbing-School Law*, 57 AM. CRIM. L. REV. ONLINE 119 app. (2020) (identifying state laws that impose criminal penalties on students that cause disturbances in their own schools).

17. See, e.g., Elizabeth S. Scott, “*Children Are Different*”: *Constitutional Values and Justice Policy*, 11 OHIO ST. J. CRIM. L. 71, 94 (2013) (“The hostility and fear that characterized attitudes toward young offenders in the 1990s resulted in policies and decisions driven primarily by immediate public safety concerns and the goal of punishing young criminals.”); see generally Patricia Torbet & Linda Szymanski, *State Legislative Responses*

and schools soon followed suit. Much the way those in control of the criminal justice system relied on steadily more punitive sentences of incarceration, so too did educators rely on increasingly harsh disciplinary measures.¹⁸

Federal law accelerated this trend. In 1994, Congress passed the Gun-Free School Zones Act, which required, as a condition for receiving federal funds, that all public schools refer to police and immediately expel any student who brought a firearm to school.¹⁹ Though well-intentioned, this statute nonetheless “signaled a validation by the federal government” of criminal prosecution for classroom misconduct.²⁰ At the state level, similar policies soon proliferated beyond gun control to impose harsh discipline for lesser infractions.²¹ But while juvenile crime in schools has dropped consistently for years,²² the resultant criminalization of school discipline endures today.²³

3. Mass Shootings and School Security

School policing expanded in the 2000s and 2010s as a rash of school shootings convinced policymakers that placing police on middle and high school campuses would ensure student safety. Immediately after the 1999 shooting at Columbine High School, the U.S. Department of Justice implemented the “COPS in Schools” program.²⁴ This initiative has since awarded hundreds of millions of dollars in grant money to place thousands of police officers in schools throughout the

to *Violent Juvenile Crime: 1996–97 Update*, JUV. JUST. BULL. 1, 2–14 (Nov. 1998), <https://www.ncjrs.gov/pdffiles/172835.pdf> (collecting information on state responses to rising juvenile crime).

18. See Barbara Fedders, *The Anti-Pipeline Collaborative*, 51 WAKE FOREST L. REV. 565, 567 (2016) (“The importation of criminal justice features into public schools began in the 1990s’ ‘get tough’ era of youthful offending.”); Jason P. Nance, *Rethinking Law Enforcement Officers in Schools*, 84 GEO. WASH. L. REV. ARGUENDO 151, 152 (2016) (“Faced with rising juvenile crime rates from the mid-1980s to the mid-1990s and several high profile incidents of school violence . . . many lawmakers and school officials . . . felt pressure to demonstrate . . . concrete measures to create safe school environments . . .”); Henry A. Giroux, *Racial Injustice and Disposable Youth in the Age of Zero Tolerance*, 16 QUALITATIVE STUD. EDUC. 553, 561 (2003) (observing that zero-tolerance disciplinary policies were modeled on mandatory minimum prison sentences laws and habitual offender laws).

19. 20 U.S.C. § 7961(b)(1), (h)(1).

20. Nance, *supra* note 1, at 932–33.

21. Paul J. Hirschfield, *Preparing for Prison? The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 82 (2008) (explaining that, following the Gun-Free Schools Act of 1994, “a large majority of school districts . . . adopted ‘zero tolerance’ policies for alcohol, tobacco, drugs and violence”).

22. See, e.g., NAT’L CTR. FOR EDUC. STAT., *Number of Nonfatal Victimization Against Students Ages 12–18 and Rate of Victimization per 1,000 Students, by Type of Victimization and Location: 1992 through 2018*, DIG. OF EDUC. STAT. (Sep. 2019), https://nces.ed.gov/programs/digest/d19/tables/dt19_228.20.asp.

23. See Fedders, *supra* note 18, at 568 (“While the increase in juvenile crime proved to be temporary, states and school districts have crafted policies premised on the notion that modern students are scarier than those of previous generations.”).

24. See Chongmin Na & Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 620–21 (2013); see generally *Supporting Safe Schools*, CMTY. ORIENTED POLICING SERVS., <https://cops.usdoj.gov/supportingsafeschools> (last visited Oct. 5, 2020) (providing an overview of the federal program that provides grants for schools to station police officers on campus).

country.²⁵ And since the 2018 shooting at Marjorie Stoneman Douglas High School in Parkland, Florida, states have “allocated an additional \$965 million to increase the presence of law enforcement in their schools.”²⁶ Some jurisdictions even require by law that police patrol public school campuses.²⁷

The National Association of School Resource Officers estimates that between 14,000 and 20,000 police officers now patrol the nation’s public schools.²⁸ The number represents a dramatic increase from less than one hundred such officers in the late 1970s²⁹ and around 12,300 in the late 1990s.³⁰ By 2014, 67% of American high school students and 45% of American middle school students attended a school with at least one officer regularly present.³¹

Over several decades, these historical trends combined to create an environment in which, for many students, school discipline ultimately leads to criminal interaction.

B. Component Practices

Today, these policies create the school-to-prison pipeline. School policing, the criminalization of student conduct, and exclusionary discipline contribute most directly.

1. School Policing

As identified above, police are increasingly prevalent on school campuses. The presence of law enforcement increases the likelihood that students will face criminal consequences for their conduct at school. Several studies show that, controlling for other factors, the regular presence of a police officer increases the likelihood that students will be arrested or referred to law enforcement for in-school

25. See Na & Gottfredson, *supra* note 24, at 621 (“As of July 2005, COPS has awarded in excess of \$753 million to more than 3,000 grantees to hire more than 6,500 [school police officers] . . .”).

26. LISA H. THURAU & LANY W. OR, STRATEGIES FOR YOUTH, TWO BILLION DOLLARS LATER: STATES BEGIN TO REGULATE SCHOOL RESOURCE OFFICERS IN THE NATION’S SCHOOLS—A SURVEY OF STATE LAWS 4 (Johanna Wald ed., 2019), <https://strategiesforyouth.org/sitefiles/wp-content/uploads/2019/10/SFY-Two-Billion-Dollars-Later-Report-Oct2019.pdf>.

27. For example, Arizona requires that schools employ police officers in order to qualify for certain state funding. See Lynn A. Addington, *Cops and Cameras: Public School Security as a Policy Response to Columbine*, 52 AM. BEHAV. SCI. 1426, 1434 (2009). Maryland requires by law a report that identifies for every public school either a dedicated school police officer or the enforcement coverage by local police. MD CODE ANN., EDUC. § 7-1508(d)–(e) (West 2018).

28. *Frequently Asked Questions: How Many School Resource Officers are There in the United States?*, NAT’L ASS’N OF SCH. RES. OFFICERS, <https://www.nasro.org/faq/> (last visited Feb. 17, 2021).

29. Paul J. Hirschfield & Katarzyna Celinska, *Beyond Fear: Sociological Perspectives on the Criminalization of School Discipline*, 5 SOCIO. COMPASS 1, 1 (2011).

30. NATHAN JAMES & GAIL MCCALLION, CONG. RSCH. SERV., R43126, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS 19 (2013).

31. Constance A. Lindsay, Victoria Lee & Tracey Lloyd, *The Presence of Police Officers in US Schools*, URB. INST. (June 21, 2018), <https://www.urban.org/urban-wire/prevalence-police-officers-us-schools>.

misbehavior.³² Reliance on school police also increases the rates at which educators impose exclusionary discipline,³³ which can in turn increase students’ likelihood of criminal interaction.³⁴ School police thus contribute to the school-to-prison pipeline by increasing the rate at which students face both criminal and non-criminal consequences for their conduct at school.

2. The Criminalization of Student Conduct

Students in many places face the prospect that their behavior at school will lead to arrest or referral to police. Some of these criminal consequences emerge from laws that directly target school conduct. These policies include “disturbing-school” laws that make it a crime to disrupt the classroom, as well as mandatory reporting policies that require school officials to refer students to law enforcement. Educators also refer students to police for disruptive conduct even when no law directly criminalizes the behavior.

In some twenty states, there exists at least one statute that can impose criminal penalties on students who disrupt class.³⁵ And, these “disturbing-school laws” are often applied to criminalize fairly trivial behavior. In Florida, for example, a student was prosecuted under the state’s disturbing-school law when he got off his bus at the wrong time.³⁶ In Maryland, a young man faced criminal consequences for an episode of defiance that included leaving class without permission and running through school hallways.³⁷ And in Colorado, over the dissent of then Judge

32. Denice C. Gottfredson, Scott Crosse, Zhiqun Tang, Erin L. Bauer, Michele A. Harmon, Carol A. Hagen & Angela D. Greene, *Effects of School Resource Officers on School Crime and Responses to School Crime*, 19 CRIMINOLOGY & PUB. POL’Y 905, 930 (2020) (“[I]ncreasing SRO[s] . . . in schools increases the number of exclusionary response to disciplinary infractions.”); Nance, *supra* note 1, at 983 (“A police officer’s regular presence at a school is predictive of greater odds that school officials refer students to law enforcement for committing various offenses, including lower-level offenses”); Na & Gottfredson, *supra* note 24, at 642 (“[A]s schools increase their use of police officers, the percentage of crimes involving non-serious violent offenses that are reported to law enforcement increases.”).

33. Gottfredson, Crosse, Tang, Bauer, Harmon, Hagen & Greene, *supra* note 32, at 930 (“[I]ncreasing SRO[s] . . . in schools increases the number of exclusionary responses to disciplinary infractions.”); Benjamin W. Fisher & Emily A. Hennessy, *School Resource Officers and Exclusionary Discipline in U.S. High Schools: A Systematic Review and Meta-analysis*, 1 ADOLESCENT RSCH. REV. 217, 217 (2016) (“One meta-analytic model . . . indicat [ed] that the presence of [school resource officers] in high schools was associated with higher rates of exclusionary discipline.”); *see also* Emily K. Weisburst, *Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-Term Education Outcomes*, 38 J. POL’Y ANALYSIS & MGMT. 338, 338 (2019) (“Exploiting detailed data on over 2.5 million students in Texas, I find that federal grants for police in schools increase middle school discipline rates by 6 percent.”).

34. *See infra* notes 46–50 and accompanying text.

35. *See* Marinelli, *supra* note 16, at App.

36. *M.M. v. State*, 997 So. 2d 472, 473–74 (Fla. Dist. Ct. App. 2008) (finding a violation of Florida’s disturbing-school law where student got off a bus as it prepared to leave and disrupted the school’s transportation schedule).

37. *In re Qoyasha D.*, No. 1053, 2015 WL 5944257, at *2 (Md. Ct. Spec. App. 2015) (finding violation of Maryland’s disturbing-school law where student left class, ran down a hallway, punched lockers, knocked a sign down and refused to subsequently leave a classroom).

Neil Gorsuch,³⁸ the Tenth Circuit upheld the arrest of a middle school boy who disrupted his gym class with fake burping.³⁹

Similarly, many states require that school officials report certain in-school offenses to police. Mandatory reporting has its roots in the Gun-Free School Zones Act. But, since the passage of that law, several states have expanded the practice beyond gun control.⁴⁰ For example, many jurisdictions mandate criminal referral for offenses like bringing alcohol to school,⁴¹ theft,⁴² or vandalism.⁴³

Students may also be arrested for disruptions when no statute directly criminalizes the behavior. In Maryland, for example, the 2018–19 school year saw 22 students arrested for bullying and 25 for disrespect, in addition to the state’s school-specific crimes.⁴⁴ Educators are not required to report any of these behaviors to police, meaning that, even where no statute targets their behavior, students may still be arrested for non-violent disruptive conduct.

The combination of disturbing-school laws, mandatory reporting policies, and other school arrests creates an environment where, in many places, children face the threat of direct criminal prosecution for common childhood and adolescent behavior.

38. *A.M. v. Holmes*, 830 F.3d 1123, 1169 (10th Cir. 2016) (Gorsuch, J., dissenting) (“If a seventh grader starts trading fake burps for laughs in gym class, what’s a teacher to do . . . [M]aybe today you call a police officer . . . [s]o out come the handcuffs and off goes the child to juvenile detention.”).

39. *Id.* at 1139–40.

40. Nance, *supra* note 1, at 934–35 (collecting mandatory reporting statutes on a variety of subjects); *see also* Hirschfield, *supra* note 21, at 82 (explaining that, following the Gun-Free Schools Act of 1994, “a large majority of school districts . . . adopted ‘zero tolerance’ policies for alcohol, tobacco, drugs and violence”).

41. *See* ALA. CODE § 16-1-24.1 (2021); ALASKA STAT. ANN. §§ 14.33.130(b)(2), 04.16.050 (West 2021); CAL. EDUC. CODE §§ 48902(b), 48900(c) (West 2022); FLA. STAT. ANN. § 1006.09(8) (West 2021); IDAHO CODE ANN. § 33-210(1) (West 2021); KAN. STAT. ANN. §§ 72-6143(b)(1), 41-727 (West 2021); MICH. COMP. LAWS ANN. §§ 380.1308a(1), 380.1310a(2) (West 2022); NEB. REV. STAT. ANN. §§ 79-293, 53-180.02 (West 2021); N.J. ADMIN. CODE § 6A:16-6.4 (2022); N.Y. EDUC. LAW § 2801(2)(h) (McKinney 2021); N.Y. ALCO. BEV. CONT. LAW § 65-C (McKinney 2021); *see also* CONN. GEN. STAT. ANN. § 10-221(e) (West 2021) (requiring a process for cooperation with law enforcement when students have alcohol on school property); MD. CODE REGS. 13A.08.01.08 (West 2021) (requiring coordination with law enforcement on procedures to report alcohol related activity); VA. CODE ANN. § 22.1-279.3:1(A), (D) (West 2021) (providing the principal with discretion to report alcohol related conduct to law enforcement).

42. *See* ALASKA STAT. ANN. §§ 14.33.130(b)(2), 11.46.120 (West 2021); HAW. REV. STAT. ANN. § 302A-1002 (West 2021); KAN. STAT. ANN. §§ 72-6142(b)(1), 21-5801 (West 2021); MICH. COMP. LAWS ANN. §§ 380.1308a(1), 380.1310a(2) (West 2022); NEB. REV. STAT. ANN. §§ 79-293, 28-511 (West 2021); N.H. REV. STAT. ANN. § 193-D:4-I(a) (2021); N.Y. EDUC. LAW § 2801(2)(h) (McKinney 2021); N.Y. PENAL. LAW § 155.05 (McKinney 2021).

43. *See* ALASKA STAT. ANN. §§ 14.33.130(b)(2), 11.46.484(a)(1) (West 2021); HAW. REV. STAT. ANN. § 302A-1002 (West 2021); KAN. STAT. ANN. §§ 72-6142(b)(1), 21-5813 (West 2021); KY. REV. STAT. ANN. § 158.154; MICH. COMP. LAWS ANN. §§ 380.1308a(1), 380.1310a(2) (West 2022); NEB. REV. STAT. §§ 79-293, 28-519 (West 2021); N.H. REV. STAT. ANN. § 193-D:4-I(a) (2021); N.Y. EDUC. LAW § 2801(2)(h) (McKinney 2021); N.Y. PENAL. LAW § 145 (McKinney 2021).

44. MD. STATE DEP’T OF EDUC., MARYLAND PUBLIC SCHOOLS ARREST DATA: SCHOOL YEAR 2018–2019 12–13, <https://perma.cc/PS3N-BZPP>.

3. Exclusionary Discipline

While the presence of law enforcement and the criminalization of student conduct *directly* fuel the school-to-prison pipeline, exclusionary discipline—suspension and expulsion—does so *indirectly*. Punishments of this sort, and the zero-tolerance policies that mandate them, increase the likelihood that students will later be arrested and incarcerated.

The practice of exclusionary discipline fuels the school-to-prison pipeline by increasing the likelihood that affected students will interact with the justice system at some point in their lives.⁴⁵ One empirical study found that students who are suspended or expelled in middle school are more likely to eventually interact with the justice system than students who have not experienced such punishments.⁴⁶ Another study found that exclusionary discipline increases students’ likelihood of arrest within the same month.⁴⁷

Zero-tolerance rules compound this phenomenon. Such policies mandate predetermined punishments—typically exclusionary discipline—for targeted behaviors.⁴⁸ Like mandatory reporting, zero-tolerance policies have roots in the Gun-Free School Zones Act.⁴⁹ But these policies have also expanded beyond gun control and in some places require suspension or expulsion for trivial offenses like dress-code violations and tardiness.⁵⁰

45. David M. Ramey, *The Influence of Early School Punishment and Therapy/Medication on Social Control Experiences During young Adulthood*, 54 CRIMINOLOGY: AN INTERDISC. J. 113, 113 (2016) (“[S]chool punishment is associated with greater odds of involvement in the criminal justice system . . .”); Kathryn C. Monahan, Susan VanDerhei, Jordan Bechtold, & Elizabeth Cauffman, *From the School Yard to the Squad Car: School Discipline, Truancy, and Arrest*, 43 J. YOUTH & ADOLESCENCE 1110, 1110 (2014) (“Being suspended or expelled from school increased the likelihood of arrest in the same month . . .”). TONY FABELO, MICHAEL D. THOMPSON, MARTHA PLOTKIN, DOTTIE CARMICHAEL, MINER P. MARCHBANKS III, ERIC A. BOOTH, BREAKING SCHOOLS’ RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE JUSTICE INVOLVEMENT 61 (2011) [hereinafter BREAKING SCHOOLS’ RULES] (“Students who were suspended or expelled [in middle school] had a greater likelihood of contact with the juvenile justice 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, 74 (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”).

46. BREAKING SCHOOLS’ RULES, *supra* note 45 at 61.

47. Monahan, VanDerhei, Bechtold & Cauffman, *supra* note 45.

48. See, e.g., Christopher Boccanuso & Megan Kuhfeld, *Multiple Responses, Promising Results: Evidence-Based Nonpunitive Alternatives to Zero Tolerance*, CHILD TRENDS 1, 1 (2011), https://www.childtrends.org/wp-content/uploads/2011/03/Child_Trends-2011_03_01_RB_AltToZeroTolerance.pdf (“A zero tolerance policy assigns explicit, predetermined punishments to specific violations of school rules, regardless of the situation or context of the behavior.”).

49. Hirschfield, *supra* note 21, at 82 (explaining that, following the Gun-Free Schools Act of 1994, “a large majority of school districts soon adopted ‘zero tolerance’ policies for alcohol, tobacco, drugs and violence”).

50. See Nance, *supra* note 1, at 933 (“These laws and policies have extended well beyond bringing a firearm to school. States and localities have applied zero tolerance to a multitude of offenses, including . . . dress-code violations . . . and tardiness.”).

Exclusionary discipline thus indirectly fuels the school-to-prison pipeline by increasing the likelihood that affected students will encounter the criminal justice system.

C. Disparate Impact

All of the practices that contribute to the school-to-prison pipeline disproportionately affect students of color and Black students in particular. Black students are subjected to exclusionary discipline⁵¹ and arrested or referred to law enforcement⁵² at rates that far exceed those of their peers from other racial backgrounds. In 2015–16, for example, Black students represented 15% of the nation’s student population, but they experienced 31% of all school-related arrests and referrals.⁵³ In that year, Black boys represented just 8% of the student population but experienced 25% of all suspensions.⁵⁴ Students of color are also more likely to have police in their schools than are white children.⁵⁵ And when police patrol a school, rates of arrest go up *more* for Black students than for peers.⁵⁶

These inequities exist despite roughly equal levels of misconduct among all demographics⁵⁷ and do not emerge from economic disparities between racial groups.⁵⁸ Some of the inequities in policing may emerge from officers’ racial biases—police who patrol schools attended primarily by white students see their role as protecting children from outside threats, while officers who patrol schools attended by students

51. OFF. FOR CIV. RTS., U.S. DEP’T OF EDUC., 2015–16 CIVIL RIGHTS DATA COLLECTION: SCHOOL CLIMATE AND SAFETY 13 (2019) [hereinafter C.R. DATA SCHOOL CLIMATE AND SAFETY REPORT 2015–16], <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf> (showing that, in 2015–16, while Black boys represented 8% of national enrollment, they represented 25% of suspensions, and while Black girls represented 8% of enrollment, they represented 14% of suspensions).

52. *Id.* at 3.

53. *Id.*

54. *Id.* at 13.

55. See Lindsay, Lee & Lloyd, *supra* note 31 (“Students attending high schools that have substantial shares of [B]lack or Hispanic students attend schools with police officers at higher rates than students attending schools with few [B]lack and Hispanic students.”); Katherine Irwin, Janet Davidson & Amanda Hall-Sanchez, *The Race to Punish in American Schools: Class and Race Predictors of Punitive School-Crime Control*, 21 CRITICAL CRIMINOLOGY 47, 59–60 (2012) (finding that one factor which predicates reliance on law enforcement and security is a higher proportion of students of color).

56. See Emily M. Homer & Benjamin W. Fisher, *Police in Schools and Student Arrest Rates Across the United States: Examining Differences by Race, Ethnicity, and Gender*, 19 J. SCH. VIOLENCE 192, 196–7 (2020) (presenting empirical evidence that “[t]he relationship between police presence and arrest was stronger for Black students than both [w]hite and [L]atinx students”).

57. See Russell J. Skiba, Robert H. Horner, Choong-Geun Chung, M. Karega Rausch, Seth L. May & Tary Tobin, *Race is not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCH. REV. 85, 104 (2011) (explaining that, across multiple comprehensive studies, “differences [in rates of discipline between races] 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”).

58. See *id.*

of color view their role as policing the students themselves.⁵⁹ The school-to-prison pipeline thus fuels not only juvenile incarceration but also racial inequity.

D. Negative Consequences

The practices that contribute to the phenomenon do not promote school safety or deter student misbehavior. And, at every successive phase, interaction with the criminal justice system has an increasingly negative impact on children.

1. Ineffective Policies

All the practices that contribute to the school-to-prison pipeline fail to deter student misbehavior or promote school safety.

School police provide little safety benefit. The political forces that brought law enforcement to school campuses largely responded to fears of school shootings.⁶⁰ But no clear evidence indicates that police deter these tragedies.⁶¹ Nearly two hundred school shootings occurred between 1999 and 2018, and some sixty-eight such incidents occurred at schools with a regular police presence.⁶² Nevertheless, nearly all shootings ended before police intervened in any way, and in only one shooting did police end the incident by shooting the perpetrator.⁶³ During the Parkland, Florida massacre—which inspired a nationwide surge in school policing⁶⁴—the officer stationed at the school failed to take any action to stop the shooter.⁶⁵ School police do not seem to improve school safety or deter *other* crimes, either.⁶⁶ For

59. See Benjamin W. Fisher, Ethan M. Higgins, Aaron Kupchik, Samantha Viano, F. Chris Curran, Suzanne Overstreet, Bryant Plumlee & Brandon Coffey, *Protecting the Flock or Policing the Sheep? Difference in School Resource Officers' Perceptions of Threats by School Racial Composition*, 62 SOC. PROBS. 1, 15 (2020).

60. See *supra* notes 24–26 and accompanying text.

61. See Aaron Kupchik, *Research on the Impact of School Policing*, ACLU PA. 2 (Aug. 2020), <https://www.endzerotolerance.org/impact-of-school-policing> (“While some school shootings have occurred in schools without [police officers] or other armed security present . . . others occurred in schools with such protections in place.”); DANIEL J. LOSEN & PAUL MARTINEZ, LOST OPPORTUNITIES: HOW DISPARATE SCHOOL DISCIPLINE CONTINUES TO DRIVE DIFFERENCES IN THE OPPORTUNITY TO LEARN 34–35 (2020), <https://escholarship.org/content/qt7hm2456z/qt7hm2456z.pdf?t=qj8ll9&v=lg> (“The effort to deter school shootings is likely one contributing factor to the increase in police on campus, but the research available does not indicate that armed security guards deter school shooters.”); see also John Woodrow Cox & Steven Rich, *Scarred by School Shootings*, WASH. POST (Mar. 25, 2018), <https://www.washingtonpost.com/graphics/2018/local/us-school-shootings-history/> (“[G]un violence has occurred in at least 68 schools that employed a police officer or security guard.”).

62. Cox & Rich, *supra* note 61 (finding that school police shot an active shooter in only 1 of 197 documented school shootings, despite the fact that police regularly patrolled 68 of the schools where shootings occurred).

63. *Id.*

64. See THURAU & OR, *supra* note 26, at 4 (describing how states allocated nearly one billion dollars in additional funding to school policing in the wake of the Parkland, Florida and Santa Fe, Texas school shootings).

65. See, e.g., *Judge: School Officer Who Hid During Shooting Facing Charges*, ASSOCIATED PRESS (Aug. 19, 2021), <https://apnews.com/article/shootings-parkland-florida-school-shooting-bb5c5fe81cecb63886bd325b53b2e597>.

66. See ALEXIS STERN & ANTHONY PETROSINO, WHAT DO WE KNOW ABOUT THE EFFECTS OF SCHOOL-BASED LAW ENFORCEMENT ON SCHOOL SAFETY? 3 (2018), <https://www.wested.org/wp-content/uploads/2018/04/JPRC-Police-Schools-Brief.pdf> (explaining that “what evidence exists to date” regarding the effects of school police on school safety “fails to support a school safety effect”); Nance, *supra* note 18, at 153–54 (“[W]hile seeing police

example, a study of North Carolina's school policing grant program found that after using state funds to hire and train police officers, schools did not report any reduction in disciplinary reports.⁶⁷

Criminalizing student conduct does not deter misbehavior either. In fact, processing into the juvenile justice system *increases* delinquency,⁶⁸ and incarceration in a juvenile facility *promotes* recidivism.⁶⁹

Empirical studies also do not show that exclusionary discipline deters student misconduct.⁷⁰ And evidence indicates that the zero-tolerance policies that mandate this sort of punishment have little effect.⁷¹

All the practices that comprise the school-to-prison pipeline thus provide no benefit to school safety. And, as described below, they often have the opposite effect.

2. Impact of Criminal Consequences

Interaction with the criminal justice system—the eventual consequence of the school-to-prison pipeline—has disastrous consequences for young people. Court appearances increase the probability that students will drop out of school,⁷² and formal processing into the juvenile justice system increases delinquency.⁷³ Juvenile detention in a punitive facility is associated with increased recidivism,⁷⁴ increased likelihood of extensive interaction with the justice system,⁷⁵ exacerbation of mental illness,⁷⁶ reduction in long-term employment prospects,⁷⁷ and an

officers in schools may help some feel that children are safer, in reality, how effective SROs programs are at promoting school safety is far from clear.”); JAMES & MCCALLION, *supra* note 30, at 10–11 (“The research that is available draws conflicting conclusions about whether SRO programs are effective at reducing school violence. In addition, the research does not address whether [they] deter school shootings.”); BARBARA RAYMOND, U.S. DEP’T OF JUST., OFF. OF CMTY. ORIENTED POLICING SERVS., *ASSIGNING POLICE OFFICERS TO SCHOOLS* 8 (2013) (reporting that studies measuring SRO effectiveness in improving safety and reducing crime have mixed results and acknowledging flaws in studies that indicate positive results).

67. Kenneth Alonzo Anderson, *Policing and Middle School: An Evaluation of a Statewide School Resource Officer Policy*, 4 MIDDLE GRADES REV., Sept. 2018, at 1, 5, 9, 16 (explaining that a study of 110 school districts and 471 middle schools found no relationship between increased funding for police and reported disciplinary acts).

68. Anthony Petrosino, Carolyn Turpin-Petrosino & Sarah Guckenberger, *Formal System Processing of Juveniles: Effects on Delinquency*, CAMPBELL SYSTEMATIC REV., Jan. 2010, at 1, 6.

69. See BARRY HOLMAN & JASON ZIEDENBERG, JUST. POL’Y INST., *THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES* 4 (2006), http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers_of_detention.pdf.

70. See Russel J. Skiba, *The Failure of Zero Tolerance*, 22 RECLAIMING CHILD. & YOUTH 27, 29 (2014) (“No data exist to show that out-of-school suspensions and expulsions reduce disruption or improve school climate.”).

71. *Id.* at 31 (explaining that data shows zero-tolerance policies have not “worked in promoting improved student behavior or school safety”).

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

73. Petrosino, Turpin-Petrosino & Guckenberger, *supra* note 68, at 6.

74. HOLMAN & ZIEDENBERG, *supra* note 69, at 4.

75. *Id.* at 5.

76. *Id.* at 8.

77. *Id.* at 9–10.

increase in violent tendencies.⁷⁸ Thus, even where children engage in serious behavior that might lead to the arrest of adults, the uniquely damaging impact of criminal interaction on children means that, where possible, policymakers and educators should avoid imposing criminal consequences on juveniles.

The school-to-prison pipeline is thus a national phenomenon, with a particularly insidious impact on Black children, that wreaks havoc in the lives of the students it affects.

II. THE SCHOOL-TO-PRISON PIPELINE IN WASHINGTON, D.C.

All the factors that contribute to the school-to-prison pipeline exist to some extent in Washington, D.C. School police are prevalent in the city, and while Washington, D.C. does not maintain many laws that directly criminalize in-school misbehavior, students still face criminal consequences for their conduct. However, the city has made tremendous progress in reducing exclusionary discipline, and gains in that area seem likely to continue.

A. School Police in Washington, D.C.

Washington, D.C. students faced heavy policing in 2018–19. Mirroring national trends, law enforcement first arrived in Washington, D.C. schools during integration, then expanded over the ensuing decades. In 2018–19, most District middle and high school students—including all students at Washington, D.C.’s conventional,⁷⁹ non-charter public schools—regularly encountered police on campus. Fortunately, a recent push for reform has committed the city to phasing out this police presence over the next five years.

1. The Origins of School Policing in Washington, D.C.

The story of policing in Washington, D.C. schools largely reflects that of the rest of the country. Policymakers stationed some police at public schools during the early years of integration,⁸⁰ though they initially declined to make this presence permanent.⁸¹ However, the 1969 murder of an assistant principal⁸² and the 1970

78. See Anne M. Hobbs, Timbre Wulf-Ludden & Jenna Strawhun, *Assessing Youth Early in the Juvenile Justice System*, 3 J. JUV. JUST. 80, 81 (2013) (reporting that detaining juveniles for relatively minor offenses “reinforce[s] violent attitudes due to association with other high-risk youth”).

79. Public schools in Washington, D.C. include both conventional public schools and public charter schools. Conventional public schools are those included in District of Columbia Public Schools (DCPS), which is a direct agency of the local government. See D.C. CODE ANN. § 38-171 (West 2021) (establishing DCPS schools as a government agency). Public charter schools are open-enrollment schools that are managed by other organizations operating through a charter agreement with the city. See D.C. CODE ANN. §§ 38-1800.02(16), (29) (West 2021) (defining “eligible applicant” and “public charter school” in the District of Columbia).

80. Rogers, *supra* note 9, at 17.

81. See Jeanne Rogers, *Murray Refutes Williams’ Charge on School Police*, WASH. POST TIMES HERALD, May 19, 1956, at 17.

82. George Davis, *Bandits Slay Cardozo High Vice Principal*, WASH. POST TIMES HERALD, Jan. 25, 1969, at A1.

shooting death of a middle school student⁸³ led city leaders to increase police engagement on public school campuses.⁸⁴ Reports of this early police presence include telling premonitions of the role police would soon play in Washington, D.C. schools. In one article, teachers explained that students think the police “make[] school like a prison.”⁸⁵ In another account, the president of the Washington Teachers Union told journalists, “[y]ou cannot dispense education under armed guard.”⁸⁶

Notwithstanding some student and educator objections, a system by which police patrolled schools through “beats,” occasional check-ins, and limited permanent stations continued into the ensuing years.⁸⁷ By 1980, some 105 Metropolitan Police Department (MPD) officers regularly patrolled city schools.⁸⁸ And by the 1990s, MPD maintained a force of dedicated school officers.⁸⁹

Fears of campus violence redoubled in the following decades,⁹⁰ leading policy-makers to further expand and institutionalize the presence of police in schools. The 1994 shooting of a high school student prompted the Mayor to increase the roster of dedicated school officers from 38 to 98.⁹¹ And a 2004 shooting at Ballou High School prompted another bump in the school police force.⁹² The 2004 incident also led to reforms that gave MPD control over schools’ private security guards.⁹³ Legislation in the early part of the 2000s instituted special training for school

83. Martin Weil & Alfred E. Lewis, *Student Slain in Jr. High: Patrols Added in D.C. After 4 Gun Incidents*, WASH. POST TIMES HERALD, Jan. 6, 1970, at A1.

84. *Id.*; see also Lawrence Feinberg, *School Patrols Continue: Mayor to Keep Police Guard Indefinitely*, WASH. POST TIMES HERALD, Jan. 20, 1970, at C1 (“[P]olice [t]o remain in the halls of [Washington, D.C.’s] 46 junior and senior high schools at least for three weeks.”); Lawrence Feinberg, *Board Acts to Keep Police in Schools*, WASH. POST TIMES HERALD, Feb. 15, 1970, at A1 (“[Washington, D.C.] school board voted . . . to keep policemen in . . . schools for an indefinite period.”); Lawrence Feinberg, *Schools Establish Safety Committees*, WASH. POST TIMES HERALD, Apr. 3, 1970, at A2 (“Regular police patrols continue at 90 schools.”).

85. David R. Boldt, *Jittery Hine Locks Doors: Police Patrol City Schools After Fatal Shooting*, WASH. POST TIMES HERALD, Jan. 7, 1970, at B1.

86. Lawrence Feinberg, *City Police Patrols in Schools Scored*, WASH. POST TIMES HERALD, Jan. 7, 1970, at A1.

87. See Robert F. Levy, *Officer Gets an ‘A’ on the High School Beat*, WASH. POST, Jan. 17, 1980, at DC1.

88. See *id.*

89. See Santiago O’Donnell & Linda Wheeler, *D.C. Schools Add Police: Chief Shifts Officers from Special Units*, WASH. POST, Mar. 12, 1994, at A1.

90. See Paul Duggan, *Assaults Common in D.C. Schools, Police Report*, WASH. POST, Mar. 18, 1994, at B3.

91. *Id.*

92. See Henri E. Cauvin, *Teen Acquitted of Murder in Ballou Shooting*, WASH. POST (Dec. 14, 2004), <https://www.washingtonpost.com/archive/politics/2004/12/14/teen-acquitted-of-murder-in-ballou-shooting/d1013a8f-00c9-48b8-8789-b8d1fdb9d512/> (“The shooting . . . created pandemonium at Ballou Senior High School and led to demands for tighter security throughout the city’s public schools.”); Sewell Chan, *Three Fired Over Delay in Opening D.C. School*, WASH. POST, Sep. 2, 2004, at A1 (“[C]ity officials announced a major reorganization of school security in response to recent violence in and around school buildings. . . . Police will provide 99 school resource officers this school year, compared with 72 last year.”).

93. See D.C. CODE ANN. § 5-132.02 (West 2021) (establishing MPD control over school security contracting); John Henry, *MPD May Lose Control of Hiring DCPS Security Officers*, WUSA9 (July 7, 2020), <https://perma.cc/VU79-M3XP>.

police and formalized their role as “school resource officers.”⁹⁴ A 2009 reform extended law enforcement coverage to the city’s charter schools—and with them, the city’s entire school system.⁹⁵

This gradual progression over several decades thus mirrored the expansion of school policing throughout the United States and created the heavily-policed environment that students faced in 2018–19.

2. School Policing in 2018–19

Prior to COVID-19, Washington, D.C. students faced extensive policing in their schools. In the 2018–19 school year, MPD maintained a number of dedicated school resource officers through the Department’s School Safety Division.⁹⁶ These officers were not permanently stationed at any schools but instead patrolled several campuses over the course of each day. In 2018–19, police patrolled schools attended by a substantial majority of Washington, D.C.’s public middle and high school students.⁹⁷

The School Safety Division numbered 122 dedicated school resource officers in the 2018–19 school year.⁹⁸ This number represents an increase from 111 school resource officers in both the 2016–17 and 2017–18 school years.⁹⁹ The city’s public schools also maintained a force of several hundred non-police security officers, many of whom perform roles like screening or detaining students and checking in visitors.¹⁰⁰

No schools appear to have permanently stationed police officers. According to MPD, school police officers patrol schools in either “short beats” or “clusters.”¹⁰¹ Officers on a “short beat” will actively patrol between one to three schools.¹⁰² Officers on a “cluster” will briefly check in to each of a larger group of

94. See D.C. CODE ANN. § 5-132.03 (West 2021) (outlining training goals for school police).

95. Anonymous, Editorial, *An Unequal Equation at D.C. Schools; The City is Finally Taking Steps to Provide More Police Protection for Charter Campuses*, WASH. POST, Nov. 27, 2009, at A24.

96. See Scott MacFarlane, *Many DC-Area Schools Already Have Assigned Police Officers*, NBC4 WASH. (Mar. 19, 2018), <https://www.nbcwashington.com/news/local/many-dc-area-schools-already-have-assigned-police-officers/164724/>.

97. See *infra* notes 105–08 and accompanying text.

98. D.C. PUB. SCHS., RESPONSES TO FY2019 PERFORMANCE OVERSIGHT QUESTIONS 16 (2019) [hereinafter D. C.P.S. OVERSIGHT RESPONSES 2019], https://dccouncil.us/wp-content/uploads/2020/02/dcps_Part1.pdf.

99. *Id.* at 16.

100. *Id.* at 16, 18. While these security forces may resemble police in some ways, this Note focuses on sworn police officers in its discussion of school policing as research clearly establishes that sworn police officers contribute to the arrest and incarceration of students and does not consistently mention non-police security forces. See Nance, *supra* note 1, at 983 (“A police officer’s regular presence at a school is predictive of greater odds that school officials refer students to law enforcement for committing various offenses, including lower-level offenses”); Na & Gottfredson, *supra* note 24, at 642 (“[A]s schools increase their use of police officers, the percentage of crimes involving non-serious violent offenses that are reported to law enforcement increases.”).

101. METRO. POLICE DEP’T, SCHOOL SAFETY AND SECURITY IN THE DISTRICT OF COLUMBIA: SY 2018–2019 2 [hereinafter MPD SCHOOL SAFETY REPORT 2018–19], https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/SchoolSafetyReport_2018_2019.pdf.

102. *Id.*

campuses.¹⁰³ So, some schools—those included on the “short beats”—experience officer patrols of longer duration, while others—those in “clusters”—experience only brief daily check-ins.

In 2018–19, police patrolled a significant number of the city’s conventional public schools¹⁰⁴ and public charter schools.¹⁰⁵ An estimated 87% of all D.C. public high school students, and an estimated 78% of all middle school students regularly encountered police at school in 2018–19.¹⁰⁶ By comparison, in 2013–14, 67% of American high school students and 45% of American middle school students attended a school with at least one regular officer nationwide.¹⁰⁷ D.C. students thus experience fairly heavy policing.

3. Recent Reform Efforts

Since Summer 2020, Washington, D.C. policymakers have taken several steps aimed at curbing police presence in the city’s public schools, and the most recent budget provides for the gradual phase-out of school police. An October 2020 City Council hearing included extensive discussion of the effort to reimagine local school security and safety.¹⁰⁸ Experts testified from diverse research and advocacy organizations, including the ACLU, Georgetown University’s Juvenile Justice Initiative, and the Equity Project at Indiana University.¹⁰⁹ For a time, there seemed

103. *Id.*

104. See MPD SCHOOL SAFETY REPORT 2018–19, *supra* note 101, at 8–10; D.C. PUB. SCHS., LIST OF SCHOOLS – SCHOOL YEAR 2018-2019, https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/SY%2018-19%20School%20Designations_0.pdf.

105. See MPD SCHOOL SAFETY REPORT 2018–19, *supra* note 101, at 8–10.

106. This estimate was reached by comparing the number of students who attend *all* public schools that MPD patrols with *total* middle and high school public-school enrollment in Washington, D.C. The list of schools that MPD patrols is found in the School Safety and Security Report. MPD SCHOOL SAFETY REPORT 2018–19, *supra* note 101, at 8–10. Because MPD patrols all conventional public schools, the number of conventional public-school students who attend a school that MPD patrols is equal to total conventional public middle and high school enrollment, found in the Office of the State Superintendent of Education’s School Year Audit. *2018-19 School Year Enrollment Audit Report and Data*, D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., <https://osse.dc.gov/node/1390091> (last visited Oct. 28, 2020) (linking to excel file with 2018-19 School year Enrollment Audit Report Data). Enrollment at the patrolled charter schools was again found in each school’s Annual D.C. Public Charter School Board Report. *Charter School Annual Reports*, D.C. PUBLIC CHARTER SCHOOL BD., <https://dcpsb.org/charter-school-annual-reports> (last visited Oct. 28, 2020). And total enrollment across all charter schools is also found in the Office of the State Superintendent of Education’s School Year Audit. *2018-19 School Year Enrollment Audit Report and Data*, D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., <https://osse.dc.gov/node/1390091> (last visited Oct. 28, 2020) (linking to excel file with 2018-19 School year Enrollment Audit Report Data). A spreadsheet compiling this data is on file with the author.

107. Lindsay, Lee & Lloyd, *supra* note 31.

108. *School Security in District of Columbia Public Schools (DCPS)*, Council of the D.C. Comm. of the Whole & Comm. on Educ. Pub. Roundtable (D.C. 2020) [hereinafter *School Security in District of Columbia Public Schools (DCPS)*]; Council of the District of Columbia, *Joint Public Hearing*, (Oct. 21, 2020), http://dc.granicus.com/MediaPlayer.php?view_id=4&clip_id=5784.

109. *School Security in District of Columbia Public Schools (DCPS)*, *supra* note 108.

to be little appetite on the D.C. Council for more extensive reform.¹¹⁰ But, in a move that surprised many advocates, the Council’s 2022 Budget provided for the gradual phase-out of school-policing by 2025.¹¹¹ While it is not yet clear whether this commitment will materialize into a full-blown withdrawal of police from D.C. schools, it seems likely that local students will soon face a gradually reduced police presence in their schools.

B. Criminalizing Student Conduct in Washington, D.C.

Washington, D.C. students likewise face criminal consequences as a *direct* result of misbehavior at school. The District of Columbia maintains few laws that immediately criminalize student misbehavior. But educators still refer students to law enforcement throughout Washington, D.C.¹¹² And, in keeping with national trends, the city’s Black students face tremendous disparities in the imposition of criminal penalties for school misbehavior.

1. Criminal Laws

Washington, D.C. does not directly criminalize very many in-school behaviors. Pursuant to the Gun-Free Schools Act, educators are required to refer to law enforcement any student who brings a gun or explosive device to school.¹¹³ Beyond this federal requirement, Washington, D.C. does not seem to maintain any of the sort of disturbing-school laws or mandatory reporting policies that fuel the school-to-prison pipeline in other jurisdictions.¹¹⁴

110. In October 2020, then-councilmember David Grosso said there was insufficient political will to eliminate school resource officers in D.C. schools. Telephone Interview with David Grosso, Councilmember, D.C. City Council (Oct. 27, 2020).

111. Eliana Golding, Qubilah Huddleston & Danielle Hamer, *Committee Leaves DC Police Budget Largely Untouched But Advances Police-Free Schools*, DC FISCAL POL’Y INST. BLOG (Jul. 8, 2021), <https://www.dcfpi.org/all/committee-leaves-dc-police-budget-largely-untouched-but-advances-police-free-schools/>.

112. Local and national data collections track both arrests at school and referrals of student behavior to law enforcement. But it is not clear whether the two categories always reflect separate incidents. In other words, it is not clear whether a child arrested at school is also counted as a referral to law enforcement or whether that child arrested at school would be considered separately from students who are not arrested but only referred to law enforcement. Demonstrating this confusion, the 2015–16 Civil Rights Data School Climate Report says “[a]ll arrests are considered referrals to law enforcement” but displays data that treats all arrests as separate incidents from all referrals to law enforcement. C.R. DATA SCHOOL CLIMATE AND SAFETY REPORT 2015–16, *supra* note 51, at 3. For that reason, this Note uses only the number of referrals to law enforcement to track the rates at which students face criminal prosecution for in-school misbehavior.

113. D.C. CODE ANN. § 38-232 (West 2021) (codifying the terms of the Gun-Free Schools Act of 1994 into D.C. law); *see also* 20 U.S.C. § 7961 (establishing the federal terms of the Gun-Free Schools Act).

114. This conclusion is drawn from an original Westlaw jurisdictional search using terms gleaned from disturbing-school laws in other districts such as the laws in Colorado, COLO. REV. STAT. ANN. § 18-9-109 (West 2021), and Maryland, MD. CODE ANN., EDUC. § 26-101 (West 2020). *See generally* U.S. DEP’T OF EDUC., *District of Columbia Compilation of School Discipline Laws and Regulations* (Mar. 31, 2021), <https://savesupportivelearning.ed.gov/discipline-compendium?state=District+Of+Columbia> (linking to comprehensive report for D.C.).

2. Recent Trends

Nonetheless, Washington, D.C. students still face criminal prosecution of in-school misconduct. While referrals to law enforcement from Washington, D.C. schools have fluctuated considerably over recent years, students faced criminal consequences for in-school misconduct at moderate rates.

In the 2011–12 school year, seventy-nine Washington, D.C. students were referred to law enforcement for conduct at school.¹¹⁵ This figure translates to a rate of roughly 1 in every 1,000 students.¹¹⁶ Nationally, students received referrals at a rate of roughly 6 per 1,000 that year,¹¹⁷ so Washington, D.C. students faced criminal prosecution for their in-school behavior at a relatively low rate. In the 2013–14 school year, this number spiked to 336 students in Washington, D.C.,¹¹⁸ or a little over 4 out of every 1,000.¹¹⁹ Compared with a national rate of just *under* 4 referrals per 1,000,¹²⁰ Washington, D.C. students faced criminal prosecution at a typical rate that year. In the 2015–16 school year, the number of students receiving referrals dropped to 184.¹²¹ This figure translates to a rate of just over 2 out of every 1,000 students.¹²² Nationally, about 4 out of every 1,000 students faced criminal prosecution for in-school misconduct.¹²³ So, for that term, Washington, D.C. students were referred slightly less often than students nationally. Taken together these data show Washington, D.C. students face criminal prosecution at an inconsistent rate but one that more or less tracks the nationwide average.

115. 2011–12 *State and National Estimations*, C.R. DATA COLLECTION, <https://ocrdata.ed.gov/estimations/2011-2012> (last visited Nov. 10, 2020) (linking to excel file with data on 2011–12 referrals of students to law enforcement).

116. This estimate was reached by comparing referrals to police in D.C. with total enrollment in D.C. *Id.* (linking to excel files with data on 2011–12 enrollment and referrals to law enforcement). A spreadsheet compiling this data is available on file with the author.

117. This estimate was reached by comparing national rates of referral to law enforcement with total national enrollment. *Id.* (linking to excel files with data on 2011–12 enrollment and referrals to law enforcement). A spreadsheet compiling this data is on file with the author.

118. 2013–14 *State and National Estimations*, C.R. DATA COLLECTION, <https://ocrdata.ed.gov/estimations/2013-2014> (last visited Nov. 10, 2020) (linking to excel file with data on 2013–14 referrals to law enforcement).

119. This estimate was reached by comparing referrals to police in D.C. with total enrollment in D.C. *Id.* (linking to excel files with data on 2013–14 enrollment and referrals to law enforcement). A spreadsheet compiling this data is available on file with the author.

120. This estimate was reached by comparing national rates of referral to law enforcement with total national enrollment. *Id.* (linking to excel files with data on 2013–14 enrollment and referrals to law enforcement). A spreadsheet compiling this data is on file with the author.

121. 2015–16 *State and National Estimations*, C.R. DATA COLLECTION, <https://ocrdata.ed.gov/estimations/2015-2016> (last visited Nov. 10, 2020) (linking to excel file with data on 2015–16 referrals to law enforcement).

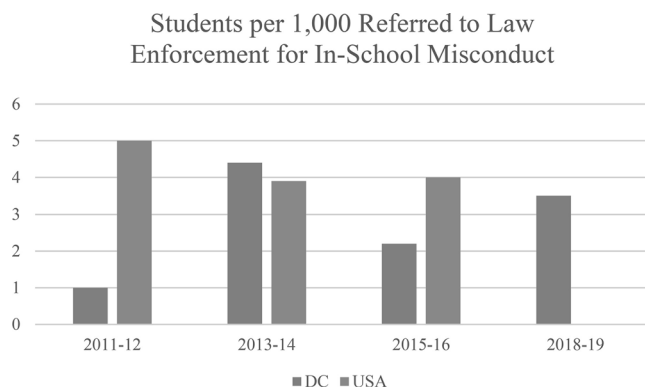
122. This estimate was reached by comparing referrals to police in D.C. with total enrollment in D.C. *Id.* (linking to excel files with data on 2015–16 enrollment and referrals to law enforcement). A spreadsheet compiling this data is available on file with the author.

123. This estimate was reached by comparing national rates of referral to law enforcement with total national enrollment. *Id.* (linking to excel files with data on 2015–16 enrollment and referrals to law enforcement). A spreadsheet compiling this data is on file with the author.

3. Criminalizing Student Misconduct in 2018–19

While the national Civil Rights Data Collection does not include information from 2018–19, Washington, D.C. officials internally track this data.¹²⁴ That year, a total of 338 students were referred to law enforcement for in-school misbehavior.¹²⁵ This figure translates to about 3.5 out of every 1,000 students, a rate close to national levels from previous years.

Figure 1. The number of students per 1,000 who are referred to law enforcement for in-school misconduct, both nationally and in Washington, D.C. National data was not yet available for 2018–19 at the time of writing.



4. Disparate Impact

These numbers become particularly troubling when the data is disaggregated by race. Over the past decade, the conduct of Washington, D.C.’s Black students has been disproportionately criminalized—and to an extraordinary degree. In the 2011–12 school year, Black students comprised just under 76% of Washington’s public-school students¹²⁶ but received about 95% of all referrals to law enforcement.¹²⁷ In the 2013–14 school year, Black students were just under 73% of the

124. This data was not published at the time of writing, and the author obtained it by emailing the Director of Accountability for the Washington, D.C. Office of the State Superintendent of Education.

125. E-mail from Donna Johnson, Dir., Off. Accountability, D.C. Off. of the State Superintendent of Educ., to Author (Nov. 25, 2020, 2:13 PM EST) (on file with author) [hereinafter E-mail from Donna Johnson to Author].

126. All public schools in D.C. enrolled a combined 72,972 total students in 2011–12. Of these students, 55,444, or just under 76%, were Black. *2011–12 State and National Estimations*, C.R. DATA COLLECTION, <https://ocrdata.ed.gov/estimations/2011-2012> (last visited Nov. 10, 2020) (linking to excel file with data on 2011–12 enrollment). A spreadsheet compiling this information is available on file with the author.

127. All public-school students in D.C. experienced 79 total referrals to law enforcement in 2011–12. Black students experienced 75, or just under 95% of these referrals. *Id.* (linking to excel file with data on 2011–12 referrals to law enforcement).

student population¹²⁸ but experienced over 91% of all referrals.¹²⁹ And in 2015–16, Black students were a little more than 70% of all Washington, D.C. public school students¹³⁰ but received 94% of all referrals.¹³¹ That year, not a single white student was referred, so *only* students of color faced criminal consequences for their conduct. Most recently, in 2018–19, Black students represented 67% of the public-school population,¹³² but experienced 92% of all arrests and referrals to law enforcement.¹³³

Although Washington, D.C. students face criminal prosecution for in-school misbehavior at a rate fairly typical of children nationwide, these criminal consequences fall disproportionately—and almost exclusively—on the shoulders of Black students.

C. *Exclusionary Discipline in Washington, D.C.*

Notwithstanding the prevalence of school police and criminal referrals, Washington, D.C. has made remarkable progress in limiting exclusionary discipline. Legislators have passed several reforms to reduce suspensions and expulsions throughout the city, and the measures seem to be working. Rates of suspension have declined from tremendously high levels just a decade ago to significantly lower rates in 2018–19. Expulsion has remained low throughout those years. But, reflecting national trends, schools in Washington, D.C. suspended Black students more often than their peers from other racial groups.

1. Legislative Background and Reform Efforts

The Council of the District of Columbia has instituted several reforms over the past decade to reduce educators' reliance on exclusionary discipline. The Gun-Free Schools Act of 1994 still requires all public schools in Washington, D.C. to

128. All public schools in D.C. enrolled 76,149 total students in 2013–14. Of these students, 55,490, or just under 73% were Black. *2013–14 State and National Estimations*, C.R. DATA COLLECTION, <https://ocrdata.ed.gov/estimations/2013-2014> (last visited Nov. 10, 2020) (linking to excel file with data on 2013–14 enrollment). A spreadsheet compiling this information is available on file with the author.

129. D.C. students experienced 336 referrals to law enforcement in 2013–14. Black students experienced 307, or a little over 91% of these referrals. *Id.* (linking to excel file with data on 2013–14 referrals to law enforcement).

130. All public schools in D.C. enrolled 82,338 total students in 2015–16. Of these students, 58,140, or just over 70% were Black. *2015–16 State and National Estimations*, C.R. DATA COLLECTION, <https://ocrdata.ed.gov/estimations/2015-2016> (last visited Nov. 10, 2020) (linking to excel file with data on 2015–16 enrollment). A spreadsheet compiling this information is available on file with the author.

131. D.C. students experienced 184 referrals to law enforcement in 2015–16. Black students experienced 174, or around 94% of these referrals. *Id.* (linking to excel file with data on 2015–16 referrals to law enforcement).

132. Chelsea Coffin, *Update: Diversity in D.C.'s Public Schools 2018-19*, D.C. POL'Y CTR. (July 30, 2020), <https://www.dcpolicycenter.org/publications/diversity-in-schools-update/>.

133. This calculation was provided in email format by D.C. government officials. *See* Email from Donna Johnson to Author, *supra* note 125.

expel any student who brings a weapon to campus.¹³⁴ Beyond this federal requirement, though, Washington, D.C. policymakers have dramatically curtailed the circumstances under which educators may suspend or expel students.

In 2013, the Council passed the Attendance Accountability Amendment, which required the Washington, D.C. Office of the State Superintendent of Education to create a report recommending best practices for schools to eliminate suspensions.¹³⁵ This initiative responded to particularly high rates of suspension and expulsion in Washington, D.C. schools, as well as the emerging academic consensus on the negative impact of exclusionary discipline.¹³⁶

In 2015, the Pre-K Student Discipline Amendment Act prohibited the suspension or expulsion of pre-kindergarten students from D.C. public schools.¹³⁷ The Act also established the requirement that schools report all disciplinary data, including exclusionary punishments, to the city’s Superintendent of Education.¹³⁸ These school disclosures form the basis of comprehensive discipline reports that the Superintendent publishes each year.¹³⁹ Researchers have found transparency efforts of this sort may help reduce suspensions and expulsions in Washington, D.C.¹⁴⁰

Most recently, the Student Fair Access to School Amendment Act of 2018 established limits on schools’ discretion to suspend or expel pupils. The law prohibits punitive exclusion from kindergarten through eighth grade unless a student has

134. D.C. CODE ANN. § 38-232 (West 2021) (codifying the terms of the Gun-Free Schools Act into Washington, D.C. law).

135. D.C. CODE ANN. § 38-236.08 (West 2021) (requiring a report on eliminating exclusionary discipline); see also D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., REDUCING OUT-OF-SCHOOL SUSPENSIONS AND EXPULSIONS IN DISTRICT OF COLUMBIA PUBLIC AND PUBLIC CHARTER SCHOOLS 3 (2013).

136. D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., REDUCING OUT-OF-SCHOOL SUSPENSIONS AND EXPULSIONS IN DISTRICT OF COLUMBIA PUBLIC AND PUBLIC CHARTER SCHOOLS 7 (2013); see also Emma Brown, *In D.C. Public Schools, Advocacy Group Finds High Rates of Suspension*, WASH. POST (June 20, 2013), <https://perma.cc/W4VW-ENCE>; ALEX PEERMAN & EDUARDO FERRER, DISTRICT DISCIPLINE: THE OVERUSE OF SCHOOL SUSPENSION AND EXPULSION IN THE DISTRICT OF COLUMBIA 1, https://www.njjn.org/uploads/digital-library/DC_District-Discipline-Overuse-of-School-Suspension-and-Expulsion-in-DC_DCLY_2013.pdf (2013).

137. D.C. CODE ANN. § 38-273.03 (West 2022); see also Dionne Johnson Calhoun, *Committee on Education Passes Grosso’s Bill Banning Pre-K Suspension and Expulsions*, DAVID GROSSO FOR D.C. COUNCIL AT-LARGE (Feb. 25, 2015), <http://www.davidgrosso.org/grosso-analysis/2015/2/25/committee-on-education-passes-prek-bill>.

138. D.C. CODE ANN. § 38-236.09 (West 2021) (establishing reporting requirements for exclusionary discipline).

139. See, e.g., D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., STATE OF DISCIPLINE: 2018–19 SCHOOL YEAR (n.d.) [hereinafter STATE OF DISCIPLINE 2018–19].

140. See BETHENY GROSS, SIVAN TUCHMAN & SARAH YATSKO, CTR. ON REINVENTING PUB. EDUC., GRAPPLING WITH DISCIPLINE IN AUTONOMOUS SCHOOLS: NEW APPROACHES FROM D.C. AND NEW ORLEANS 1, 9 (2016) (finding that Washington, D.C.’s “equity reports,” a precursor to the present disciplinary disclosures, prompted discussions on school policy and reductions in suspensions and expulsions followed in Washington, D.C. charter schools). *But cf.* Perry Stein, *Suspension and Expulsion Rates at D.C. Schools Continue to Drop, Report Finds*, WASH. POST (June 16, 2016), <https://perma.cc/QZ52-3FJJ> (“[I]t is impossible to conclusively determine whether [suspension] declines are related to increased transparency or other factors.”).

caused or attempted to cause serious harm to another.¹⁴¹ It also prevents suspension or expulsion of high school students for several minor disciplinary infractions, including dress code violations and willful defiance.¹⁴² The 2018 law scheduled these reforms to take place over the ensuing three school years.¹⁴³

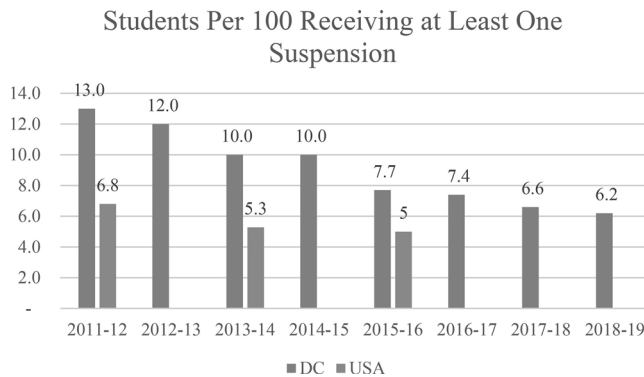
Washington, D.C. policymakers have thus instituted several reforms meant to reduce exclusionary discipline through statutory disclosure requirements and limitations.

2. Recent Trends

Suspensions¹⁴⁴ in Washington, D.C. schools dropped from troubling heights in the 2011–12 school year to relatively typical levels in more recent years. And expulsions have remained low. In light of the reforms described above, rates will likely continue to drop.

a. Suspensions in Recent Years

Figure 2. Number of students per 100—in D.C. and, where available, nationally—who received at least one suspension from SY 2011–2012 through SY 2018–2019.



The reform effort of the past decade seems to be paying off. Suspensions at Washington, D.C. public schools—including public charter schools—have steadily declined from troubling heights in school year 2011–12 to much more moderate levels in the 2018–19 term. In the 2011–12 school year, an independent report found that public schools in Washington, D.C. suspended 13% of their total K–12

141. D.C. CODE ANN. § 38-236.04(a) (West 2021) (codifying the Student Fair Access to School Amendment Act).

142. *Id.*

143. *Id.*

144. For the purposes of this Note, “suspensions” includes only out-of-school suspensions and not any variety of in-school suspension.

student population.¹⁴⁵ This rate *more than doubled* the 6.4% of students nationwide who received at least one suspension in that school year.¹⁴⁶ In the 2013–14 school year, this number shrank to 12%, compared with a national rate of 5.3%.¹⁴⁷ By the 2015–16 school year, about 8.9% of the city’s students received at least one suspension.¹⁴⁸ Though down considerably from previous heights, this rate still exceeded the national average of around 5.1% of all students receiving a suspension that year.¹⁴⁹ By 2017–18, 6.6.% of Washington, D.C. students were suspended, continuing the downward trend.¹⁵⁰

b. Expulsions in Recent Years

Expulsions have remained low for several years in Washington, D.C. In 2015–16, ninety-nine students were expelled from public schools in Washington, D.C.¹⁵¹ In 2016–17, this number was 106,¹⁵² and in 2017–18, seventy-eight.¹⁵³

c. Exclusionary Discipline in 2018–19

In 2018–19, suspensions continued to drop, and expulsions remained low. That year, Washington, D.C. schools suspended about 6% of all students.¹⁵⁴ While national data is not yet available for that term, the Washington, D.C. suspension rate in 2018–19 still exceeds the national rates from three years prior. Eighty-two students were expelled from Washington, D.C. schools that year.¹⁵⁵ Expulsions

145. PEERMAN & FERRER, *supra* note 136, at 1.

146. This information comes from original analysis of the Department of Education’s Civil Rights Data Collection on out-of-school suspensions. *2011–12 State and National Estimations*, C.R. DATA COLLECTION, <https://ocrdata.ed.gov/estimations/2011-2012> (last visited Nov. 10, 2020) (linking to excel files with data on 2011–12 enrollment and one or more out of school suspensions). A spreadsheet compiling this information is on file with the author.

147. This information comes from original analysis of the Department of Education’s Civil Rights Data Collection on out-of-school suspensions. *See 2013–14 State and National Estimations*, C.R. DATA COLLECTION, <https://ocrdata.ed.gov/estimations/2013-2014> (last visited Nov. 10, 2020) (linking to excel files with data on 2013–14 enrollment and one or more out of school suspensions). A spreadsheet compiling this information is on file with the author.

148. D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., *STATE OF DISCIPLINE: 2015–16 SCHOOL YEAR 10* (n.d.) [hereinafter *STATE OF DISCIPLINE 2015-16*].

149. This information comes from an original analysis of the U.S. Department of Education’s 2015–16 Civil Rights Data Collection. *2015–16 State and National Estimations*, C.R. DATA COLLECTION, <https://ocrdata.ed.gov/estimations/2015-2016> (last visited Nov. 10, 2020) (linking to excel files with data on 2015–16 enrollment and one or more out of school suspensions). A copy of the spreadsheet analyzing this information is on file with the author.

150. D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., *STATE OF DISCIPLINE: 2017–18 SCHOOL YEAR 20* (n.d.) [hereinafter *STATE OF DISCIPLINE 2017-18*].

151. *STATE OF DISCIPLINE 2015–16*, *supra* note 148, at 14.

152. D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., *STATE OF DISCIPLINE: 2016–17 SCHOOL YEAR 12* (2017) [hereinafter *STATE OF DISCIPLINE 2016-17*].

153. *STATE OF DISCIPLINE 2017–18*, *supra* note 150, at 42.

154. *STATE OF DISCIPLINE 2018–19*, *supra* note 139, at 9.

155. *Id.* at 33.

have thus fluctuated slightly over recent terms but remain generally low. Notably, the reforms instituted in the 2018 Student Fair Access to School Amendment Act had not yet fully taken effect by 2018–19, so it is likely that these rates will continue to drop as students continue to return to campus.

3. Disparate Impact

Despite this marked progress, exclusionary discipline in Washington, D.C. mirrors the nationwide trend in that it disproportionately affects the city's Black students. This disparity is best demonstrated by the unequal distribution of suspensions in Washington, D.C.¹⁵⁶ In 2015–16, Black students comprised less than 70% of the public-school population but received 92% of suspensions.¹⁵⁷ This means Black students were 6.8 times more likely to be suspended than white students.¹⁵⁸ The disproportionality was similar in 2016–17. That year, Black students comprised 67% of the student population but again received 92% of suspensions.¹⁵⁹ In 2017–18, disparities again held at similar rates. That year, Black students were around 66% of the student population but received 90% of suspensions.¹⁶⁰ This figure means Black students were about five times more likely to be suspended than white students in that term.¹⁶¹ This trend held true in 2018–19. That year, Black students again comprised about 67% of students and received almost 90% of all suspensions.¹⁶² These figures show that, despite improvement in the rates at which *all* students are suspended, Washington, D.C. schools have made little progress in the degree to which suspensions disproportionately affect Black students.

III. PROPOSALS

Washington, D.C. policymakers should ensure the city's students do not face criminal consequences for misbehavior. To ameliorate the impact and disparities of the school-to-prison pipeline, Washington, D.C. policymakers must eliminate school policing, end the criminalization of student conduct, and, if necessary, further curtail educators' discretion to impose exclusionary discipline. The following recommendations provide a roadmap for doing so.

156. While expulsions are also unequally distributed, the sample size of suspensions in Washington is larger and shows disparities better than data on expulsions.

157. STATE OF DISCIPLINE 2015–16, *supra* note 148, at 10, 23. This 92% figure was calculated by adding up the total number of suspensions for Black students on page 23 (6,783) and dividing it by the total number of suspensions on page 10 (7,324).

158. *Id.* at 23.

159. STATE OF DISCIPLINE 2016–17, *supra* note 152, at 30.

160. STATE OF DISCIPLINE 2017–18, *supra* note 150, at 28.

161. *Id.*

162. STATE OF DISCIPLINE 2018–19, *supra* note 139, at 17.

A. *Responsibly Eliminate School Policing*

Policymakers must responsibly eliminate school policing in the Washington, D.C.¹⁶³ While the 2022 budget indicates that officials intend to phase out campus police, they must not replace sworn officers with a functional equivalent. Likewise, local schools should initiate pilot programs for non-law enforcement intervention in student crises.

1. Do Not Replace Police with a Functional Equivalent

In removing police, policymakers should not replace sworn police officers with materially similar officials. The experience of Minneapolis, Minnesota provides a cautionary example. In summer 2020, the local board of education voted to end the relationship between the Minneapolis Police Department and the city’s public schools.¹⁶⁴ However, it soon hired eleven new “public safety support specialists.”¹⁶⁵ More than half of the finalists for the new position had backgrounds in law enforcement.¹⁶⁶ Officials thus replaced school police with new employees who—as former law enforcement—will have similar attitudes, use similar strategies, and may have a similar impact as would sworn officers. So even though the board did technically remove police from schools, local students will likely benefit little from the change. Washington, D.C. must learn from the experience of Minneapolis. In removing police from public schools, policymakers must not replace them with a functional equivalent.

2. Pilot Interventions that Do Not Require Law Enforcement

Washington, D.C. should divert resources currently dedicated to policing public school students and invest them in alternative interventions. Here again, experiences from Minnesota may prove instructive. District 287, a school district serving high-needs students outside of Minneapolis,¹⁶⁷ replaced police officers with “student safety coaches” in 2017.¹⁶⁸ These professionals deploy training in youth

163. The recommendations in this section build upon those set out by Eduardo Ferrer, a Georgetown Professor and a founder and Executive Director of DC Lawyers for Youth, in his recent testimony before the Washington, D.C. City Council. See *School Security in District of Columbia Public Schools (DCPS)*, *supra* note 108, (statement of Eduardo Ferrer calling for reform of school safety measures that do not involve staffing police in public schools).

164. Alicia Lee, *Minneapolis Schools and Parks Cut Ties with Police Over George Floyd’s Death*, CNN (June 4, 2020), <https://www.cnn.com/2020/06/03/us/minneapolis-schools-police-george-floyd-trnd/index.html>.

165. *Minneapolis Schools Quietly Hiring Security Officers After Eliminating SROs*, SEC. MAG. (July 21, 2020), <https://www.securitymagazine.com/articles/92878-minneapolis-schools-quietly-hiring-security-guard-after-eliminating-sros>.

166. Mark Keierleber, *After Ending Police Contract, Minneapolis Schools Consider Former Cops for Revamped School Safety Role—and Activists Fear a ‘Dangerous’ National Trend*, 74 (Aug. 13, 2020), <https://perma.cc/X8E9-Q8GM>.

167. See *About Us*, INTERMEDIATE DIST. 287, <https://www.district287.org/about-us-2/> (last visited Mar. 5, 2022).

168. WILDER RSCH, *ISD 287’S STUDENT SAFETY COACHES 1* (2020).

conflict resolution to deescalate student incidents and avoid police intervention.¹⁶⁹ Early results seem promising: more than half of the district staff report feeling at least as safe as they did before the removal of police, and nearly three quarters of staff report that the safety coaches effectively deescalate conflicts.¹⁷⁰ A program like the one in District 287 may provide a means to intervene in student crises without involving police. Accordingly, Washington, D.C. schools should explore similar possibilities and implement pilot programs of this sort.

B. Limit the Criminalization of Student Conduct

District policymakers must work to decriminalize student conduct. To do so, they should improve transparency and publish annual reports that detail local schools' reliance on criminal consequences. They should also limit student arrests and referrals to only the most serious incidents.

1. Improve Transparency

Washington, D.C. can improve transparency by publishing a detailed report on student arrests each year. The D.C. School Report Card—a citywide report on a variety of metrics related to local public schools—reports the number of annual school related arrests across all local public schools.¹⁷¹ But this information provides only a snapshot of the criminalization of student behavior in a given year. It does not create records that can be compared over time, and it does not provide data on offenses for which students experience criminal consequences. Washington, D.C. should thus publish a comprehensive annual report that includes these offenses as well as the number of students who are arrested for each. And, to address significant racial disparities in arrests, the data should also include racial demographics. The U.S. Department of Education Civil Rights Data Collection requires that Washington, D.C. monitor this information, so policymakers have access to it.¹⁷² Legally mandated reports in neighboring Maryland may provide Washington, D.C. lawmakers with a useful framework for disclosing more thorough information.¹⁷³

Publishing a report of this sort can not only improve transparency, but also help reduce the criminalization of Washington, D.C. students. The 2015 transparency measures related to exclusionary discipline may have reduced schools' imposition of these sorts of punishments,¹⁷⁴ and a similar effort could reduce school reliance

169. *See id.* at 4.

170. *Id.* at 8, 10.

171. *See School Safety and Discipline*, D.C. SCHOOL REPORT CARD (2020), <https://dcschoolreportcard.org/state/99999-0000/school-safety-discipline>.

172. *See* U.S. DEP'T OF EDUC., OFF. OF C.R. 2017–18 CIVIL RIGHTS DATA COLLECTION: GENERAL OVERVIEW, CHANGES, AND LIST OF DATA ELEMENTS 1 (2018) (explaining the Civil Rights Data Collection “is a valuable resource for . . . policymakers and researchers”).

173. MD. CODE REGS. 13A.08.01.12 (2021).

174. *See* GROSS, TUCHMAN & YATSKO, *supra* note 140, at 1–2.

on arrest and referral to law enforcement. For example, Washington, D.C. reports showed which schools were engaging in the most suspensions, and this information enabled advocates and stakeholders to pressure the leaders of those schools to reduce their reliance on the practice.¹⁷⁵ Transparency regarding school arrests could enable similar advocacy. Furthermore, information about the offenses for which students are being arrested would enable advocates to tailor their efforts to those behaviors most likely to be criminalized.

2. Limit Arrests to Only the Most Serious Offenses

In addition to improving transparency, policymakers must also limit the circumstances under which students may be arrested at school or referred to law enforcement for in-school misconduct. In instituting this reform, policymakers need look no further than Councilmember David Grosso’s limitation on exclusionary discipline in the 2018 Fair Access to School Amendment Act.¹⁷⁶ That law limited the circumstances under which schools may impose exclusionary discipline to only the most serious incidents.¹⁷⁷ Without similar action regarding student arrests, however, this reform creates the strange situation where some students may conceivably be *arrested* for conduct for which they may not be *suspended*. Accordingly, Washington, D.C. policymakers should extend to arrests the limitations that the Student Fair Access to School Amendment imposes upon exclusion. In just the way Washington, D.C. middle school students may only be suspended for harming or attempting to harm others, educators should only be able to refer middle and high school students to law enforcement for causing harm to others or for attempting to do so. This policy would leave schools with the option to impose administrative consequences on children who engage in less serious behaviors and reserve arrest for only the most harmful conduct.

C. Limit Exclusionary Discipline

Policymakers should build upon progress in combatting exclusionary discipline by evaluating the impact of recent reforms. If these changes do not sufficiently reduce educators’ reliance on suspensions and expulsions—and perhaps even if they do—policymakers should further limit the circumstances under which educators may subject students to exclusionary discipline.

1. Evaluate the Impact of 2018 Student Fair Access to School Amendment

Washington, D.C. policymakers must evaluate the degree to which the 2018 law reduces suspension and expulsion for Washington students. The 2018 Student Fair

175. *Id.* at 8–9.

176. See D.C. CODE ANN. § 38-236.04 (West 2021) (codifying part of the Student Fair Access to School Amendment Act).

177. *Id.*

Access to School Amendment had not completely taken effect by the 2018–19 school year. For that reason, the impact of the reform remains unclear. If suspensions remain common for some offenses, or if racial disparities persist in the imposition of exclusionary discipline, policymakers may need to enact more expansive reforms. If suspensions drop precipitously, however, and remain low as students return to in-person classes, no further reform may be necessary.

2. Prohibit Exclusionary Discipline Except Where Federally Mandated

In the event that the Student Fair Access to School reform does not lead to significant declines in suspensions and expulsion—and perhaps even if it does—Washington, D.C. should prohibit exclusionary discipline except where mandated by federal law. Specifically, policymakers should prohibit suspensions and expulsions, unless a student violates the terms of the federal Gun-Free Schools Act by bringing a weapon to school. While this reform would limit educators’ ability to impose a category of punishment on students, schools would remain free to impose other internal consequences. And proven resources discussed below can proactively address the sort of behaviors that currently lead to exclusionary discipline. This reform would thus ensure that Washington, D.C. students remain in school and do not experience the negative impacts of suspension and expulsion.

D. Invest in Proven Resources

Policymakers and educators must also invest in resources proven to improve school culture and prevent serious incidents. In light of the disastrous impact of arrest and incarceration on children, reducing reliance on the practices discussed above would benefit students even absent other policy changes. But additional programming can help educators to avoid serious incidents and repair harm without the threat of criminal consequences. Specifically, Washington, D.C. should dedicate additional resources to mental health services for students and expand training in School-Wide Positive Behavioral Interventions and Supports, trauma-informed care, and restorative justice. All of these practices already exist to some extent in Washington, D.C. and policymakers need only build upon existing progress to ensure student safety.¹⁷⁸

1. Student Mental Health

Washington, D.C. policymakers must invest in students’ mental health. In 2018–19, at least twelve public schools in Washington, D.C. experienced gaps in social work and school psychologist staffing.¹⁷⁹ These gaps mean that, reflecting national trends, many schools in Washington, D.C. employed security guards and had police officers patrolling their halls but had no permanent school psychologist,

178. See *infra* notes 183, 188, 193, 196–198 and accompanying text.

179. D.C.P.S. OVERSIGHT RESPONSES 2019, *supra* note 98, at 37–38.

social worker, or counselor.¹⁸⁰ Schools that employ mental health providers see, among other benefits, lower rates of serious disciplinary incidents.¹⁸¹ Policymakers should address this gap by investing the necessary resources to ensure that Washington, D.C. students have adequate access to mental health professionals at school.

2. Positive Behavioral Interventions and Supports

Washington, D.C. should also expand its training in School-Wide Positive Behavioral Interventions and Supports, which is a research-based educational practice that establishes three tiers of support to ensure that students receive individualized attention and appropriate behavioral intervention.¹⁸² Similar behavioral supports programs have been empirically demonstrated to broadly improve student conduct.¹⁸³ In 2018–19, however, Washington, D.C. trained just seventy-three educators in this proven method.¹⁸⁴ For reference, 6,796 teachers worked in the city’s public schools that year.¹⁸⁵ Expanding training and commitment to Positive Behavioral Interventions and Supports can help to ensure that city students attend schools with positive and productive school cultures.

3. Trauma-Informed Care

Washington, D.C. should also expand its training in trauma-informed care. More than 25% of Washington, D.C. students have experienced at least one event that causes trauma,¹⁸⁶ and this figure exceeds national averages by about 1%.¹⁸⁷ Young people who have experienced trauma are substantially more likely to engage in disruptive behaviors of the sort that might prompt police intervention

180. See generally, AMIR WHITAKER, SYLVIA TORRES-GUILLEN, MICHELLE MORTON, HAROLD JORDAN, STEPHANIE COYLE, ANGELA MANN & WEI-LING SUN, COPS AND NO COUNSELORS: HOW THE LACK OF SCHOOL MENTAL HEALTH STAFF IS HARMING STUDENTS 4 (2019) https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf (providing an overview of the national phenomenon by which many schools are patrolled by police officers, but do not have permanent mental health staff).

181. *Id.*

182. See *Tiered Framework*, POSITIVE BEHAV. INTERVENTIONS & SUPPORTS, <https://www.pbis.org/pbis/tiered-framework> (last visited Nov. 6, 2020).

183. See Boccanfuso & Kuhfeld, *supra* note 48, at 4–5 (citing the Child Trends’ LINKS Database for descriptions of these programs. See CHILD TRENDS, *Links Syntheses* (last visited Mar. 13, 2022), <http://www.childtrends.org/Links>).

184. D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., RESPONSES TO FISCAL YEAR 2018 PERFORMANCE OVERSIGHT QUESTIONS 96 (2019), [hereinafter D.C.P.S. OVERSIGHT RESPONSES 2018] https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/Responses%20to%20OSSE%20FY18%20Performance%20Oversight%20Questions.pdf.

185. D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., D.C. TEACHER WORKFORCE REPORT 10 (2019), <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/DC%20Educator%20Workforce%20Report%2010.2019.pdf>.

186. Vanessa Sacks & David Murphey, *The Prevalence of Adverse Childhood Experiences, Nationally, By State, and By Race or Ethnicity*, CHILD TRENDS (Feb. 12, 2018), <https://www.childtrends.org/publications/prevalence-adverse-childhood-experiences-nationally-state-race-ethnicity>.

187. *Id.*

under current policies.¹⁸⁸ Preventing this kind of behavior without involving law enforcement thus requires that educators be trained in caring for students who have experienced trauma. However, Washington, D.C. has conducted relatively little training of this sort. For example, in 2017–18, the city trained just 130 educators in trauma-informed care.¹⁸⁹ To ensure that schools can prevent major disruptions, the city should expand this training to more educators throughout Washington, D.C.

4. Restorative Justice

Washington, D.C. should also expand its investment in restorative justice. In the school setting, restorative practices seek to build community among students and educators, prevent conflict, and address wrongdoing through relationships rather than punitive consequences.¹⁹⁰ This approach has been demonstrated to improve school climates and prevent serious incidents without requiring educators to threaten students with exclusionary discipline, criminal consequences, or police violence.¹⁹¹

In 2017–18, Washington, D.C. dedicated more than \$450,000 to implementing restorative practices at city schools.¹⁹² By 2018–19, more than twenty public schools had begun to implement restorative practices.¹⁹³ Thirteen schools participated in Restorative D.C., an intensive program designed to reorient individual schools' disciplinary policies toward restorative justice over the course of three to five years.¹⁹⁴ Additionally, D.C. Public Schools employed two restorative practices specialists to help implement the programming.¹⁹⁵ Washington, D.C. policymakers should build upon this progress by increasing funding to these programs, hiring additional professionals, and increasing the number of schools that implement restorative practices.

CONCLUSION

The school-to-prison pipeline funnels too many students from the classroom into the criminal justice system. School policing, the criminalization of student conduct, and exclusionary discipline all contribute to this phenomenon. In 2018–

188. See, e.g., NAT'L CTR. FOR MENTAL HEALTH AND JUV. JUST., *TRAUMA AMONG YOUTH IN THE JUVENILE JUSTICE SYSTEM 2* (2016), <https://perma.cc/5BV4-X9U2>.

189. D.C.P.S. OVERSIGHT RESPONSES 2018, *supra* note 184, at 97.

190. See, e.g., CHERYL ANDERSON ET AL., *RESTORATIVE PRACTICES: FOSTERING HEALTHY RELATIONSHIPS & PROMOTING POSITIVE DISCIPLINE IN SCHOOLS 2* (2014), <http://schottfoundation.org/sites/default/files/restorative-practices-guide.pdf>.

191. See, e.g., TREVOR FRONIUS, SEAN DARLING-HAMMOND, HANNAH PERSSON, SARAH GUCKENBURG, NANCY HURLEY & ANTHONY PETROSINO, WESTED JUST. & PREVENTION RSCH. CTR., *RESTORATIVE JUSTICE IN U.S. SCHOOLS: AN UPDATED RESEARCH REVIEW 10* (2019), <https://www.wested.org/resources/restorative-justice-in-u-s-schools-an-updated-research-review/>.

192. D.C.P.S. OVERSIGHT RESPONSES 2018, *supra* note 184, at 103.

193. *Id.* at 99–100.

194. *Id.* at 98–99.

195. D.C.P.S. OVERSIGHT RESPONSES 2019, *supra* note 98, at 8.

19—the last full term before the COVID-19 pandemic necessitated a shift to online learning—each of these practices existed to some degree in Washington, D.C. Police patrolled schools attended by a majority of the city’s students, several hundred students were referred to law enforcement, and more than 6% of students were suspended. But this need not be the case.

If local officials commit to the responsible elimination of school policing, limit the degree to which students face criminal consequences for school conduct, and further limit exclusionary punishments, they can reduce the degree to which school discipline leads to incarceration in Washington, D.C. Indeed, the city’s policy-makers have the opportunity to ensure that, as students continue to return to campus, they do not face the school-to-prison pipeline.