

# STUDENTS, POLICE, AND THE SCHOOL-TO-PRISON PIPELINE

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## ABSTRACT

*Since the terrible shootings at Sandy Hook Elementary School in Newtown, Connecticut, lawmakers and school officials continue to deliberate over new laws and policies to keep students safe, including putting more police officers in schools. Yet these decisionmakers have not given enough attention to the potential negative consequences that such laws and policies may have, such as creating a pathway from school to prison for many students. Traditionally, only educators, not law enforcement, handled certain lower-level offenses that students committed, such as fighting or making threats without using a weapon. Drawing on recent restricted data from the US Department of Education, this Article presents an original empirical analysis revealing that 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 these lower-level offenses. This trend holds true even after controlling for: (1) state statutes that require schools to report certain incidents to law enforcement; (2) general levels of criminal activity and disorder that occur at schools; (3) neighborhood crime; and (4) other demographic variables. The consequences of involving students in the*

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*criminal justice system are severe, especially for students of color, and may negatively affect the trajectory of students' lives. Therefore, lawmakers and school officials should consider alternative methods to create safer learning environments.*

#### TABLE OF CONTENTS

INTRODUCTION.....	921
I. THE RISE OF THE SCHOOL-TO-PRISON PIPELINE .....	929
A. <i>Zero Tolerance Laws and Policies</i> .....	932
B. <i>Federal and State Statutory Reporting Requirements</i> .....	934
C. <i>Students' Limited Constitutional Protections at School</i> .....	936
D. <i>High-Stakes Testing Laws</i> .....	940
E. <i>Academic Underachievement and the Mindset of Educators</i> ..	941
II. LAW ENFORCEMENT OFFICERS IN SCHOOLS .....	945
III. THE IMPACT OF THESE LAWS, POLICIES, AND PRACTICES ON STUDENTS.....	952
IV. THE EMPIRICAL STUDY.....	958
A. <i>The Data</i> .....	959
B. <i>Dependent Variables</i> .....	960
C. <i>Independent Variables</i> .....	961
D. <i>Models and Empirical Methodology</i> .....	966
E. <i>Results of the Empirical Analysis</i> .....	967
F. <i>Limitations of the Empirical Study</i> .....	974
V. DISCUSSION AND RECOMMENDATIONS.....	975
A. <i>Discussion of Empirical Findings</i> .....	975
B. <i>Recommendations</i> .....	978
CONCLUSION .....	983
APPENDIX.....	985

*Although the phrase “school-to-prison pipeline” has become “part of the national lexicon,” it has yet to enter the lexicon of our courts. . . . It is no doubt correct that early and positive intervention by family and educators will best realign [a student’s] errant behavior and most likely lead to a productive life. That should be the educational goal of our school system in dealing with [students]. It should be a societal goal.*<sup>1</sup>

#### INTRODUCTION

On September 18, 2007, Pleajhai Mervin, a sixteen-year-old student, dropped some birthday cake on the school cafeteria floor.<sup>2</sup> This seemingly small incident escalated quickly when Pleajhai and a security officer stationed at the high school became involved in a scuffle after Pleajhai failed to clean up the cake to the officer’s satisfaction.<sup>3</sup> Another fourteen-year-old student who was recording the incident also became involved in the scuffle when that student refused to hand over his camera to the officer.<sup>4</sup> Then the fourteen-year-old student’s older sister became involved in the scuffle when she tried to intervene and help her brother.<sup>5</sup> The police arrested all three students and booked them on suspicion of battery.<sup>6</sup>

In October of 2015, a teacher called a police officer into the classroom to handle a student who was using a cell phone against school rules.<sup>7</sup> Other students in the classroom captured what transpired next by video.<sup>8</sup> After the student refused to leave the classroom, the police officer violently grabbed the student by the neck, flipped the student and her desk to the floor, forcibly dragged her across the classroom, and then arrested her.<sup>9</sup>

1. *Hawker v. Sandy City Corp.*, 774 F.3d 1243, 1246 (10th Cir. 2014) (Lucero, J., concurring) (quoting Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 981 (2009)).

2. Ann M. Simmons, *High School Scuffle Exposes a Racial Rift*, L.A. TIMES (Oct. 11, 2007), <http://articles.latimes.com/2007/oct/11/local/me-palmdale11>.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Emma Brown, *Police in Schools: Keeping Kids Safe, or Arresting Them for No Good Reason?*, WASH. POST (Nov. 8, 2015), [https://www.washingtonpost.com/local/education/police-in-schools-keeping-kids-safe-or-arresting-them-for-no-good-reason/2015/11/08/937ddfd0-816c-11e5-9afb-0c971f713d0c\\_story.html](https://www.washingtonpost.com/local/education/police-in-schools-keeping-kids-safe-or-arresting-them-for-no-good-reason/2015/11/08/937ddfd0-816c-11e5-9afb-0c971f713d0c_story.html).

8. *See id.*

9. *See* Valerie Bauerlein & Zusha Elinson, *Role of School Police Officers Questioned*, WALL ST. J. (Oct. 28, 2015, 8:22 PM), <http://www.wsj.com/articles/role-of-school-police-officers-questioned->

Involving law enforcement in disciplinary issues that educators once handled on their own is becoming an increasingly common feature of our public school system.<sup>10</sup> The anecdotal evidence of police officers mishandling student disciplinary problems abounds. For example, police officers stationed at schools have arrested students for texting, passing gas in class, violating the school dress code, stealing two dollars from a classmate, bringing a cell phone to class, arriving late to school, or telling classmates waiting in the school lunch line that he would “get them” if they ate all of the potatoes.<sup>11</sup> To be clear, these mishandlings are not limited only to high school and middle school students. In 2005, police arrested a five-year-old girl after she threw a temper tantrum when her teacher ended a mathematical counting exercise involving jelly beans.<sup>12</sup> Then in 2007, police arrested six-year-old Desre’e Watson for throwing a temper tantrum in an elementary school.<sup>13</sup> The police had to place the handcuffs around Desre’e’s biceps as they escorted her to the police station because her wrists were too small.<sup>14</sup>

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1446076813; Josh Sanburn, *Do Cops in Schools Do More Harm Than Good?*, TIME (Oct. 29, 2015), <http://time.com/4093517/south-carolina-school-police-ben-fields/>.

10. See *Hawker v. Sandy City Corp.*, 774 F.3d 1243, 1245 (10th Cir. 2014) (Lucero, J., concurring); CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 37–38 (2015) [hereinafter FERGUSON INVESTIGATION] (finding that the Ferguson, Missouri, Police Department treated “routine discipline issues as criminal matters”); see also Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, 34 J. CRIM. JUST. 591, 591 (2006).

11. See SHAKTI BELWAY, S. POVERTY LAW CTR., ACCESS DENIED: NEW ORLEANS STUDENTS AND PARENTS IDENTIFY BARRIERS TO PUBLIC EDUCATION (2010) (describing various incidents where police mishandled student disciplinary issues); FERGUSON INVESTIGATION, *supra* note 10, at 37–38 (describing incidents where police mishandled student disciplinary issues); Nancy A. Heitzeg, *Criminalizing Education: Zero Tolerance Policies, Police in the Hallways, and the School to Prison Pipeline*, in FROM EDUCATION TO INCARCERATION: DISMANTLING THE SCHOOL-TO-PRISON PIPELINE 11, 21–22 (Anthony J. Nocella II et al. eds., 2014) (describing various incidents where students were punished, and even arrested, for minor offenses); ELORA MUKHERJEE, N.Y. CIVIL LIBERTIES UNION, CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS 6, 14 (2007), available at [http://www.nyclu.org/pdfs/criminalizing\\_the\\_classroom\\_report.pdf](http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf) (describing the arrests of students resulting from bringing cell phones to school and being late to class); Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST. 280, 281 (2009) (describing arrests for trivial offenses); Sharif Durhams, *Tosa East Student Arrested, Fined for Repeated Texting*, MILWAUKEE J. SENTINEL (Feb. 17, 2009), <http://www.jsonline.com/news/milwaukee/39711222.html>; *Student Arrested for ‘Passing Gas’ at Fla. School*, NBCNEWS.COM (Nov. 24, 2008, 9:47 PM), [http://www.nbcnews.com/id/27898395/ns/us\\_news-weird\\_news/t/student-arrested-passing-gas-fla-school/](http://www.nbcnews.com/id/27898395/ns/us_news-weird_news/t/student-arrested-passing-gas-fla-school/), archived at <http://perma.cc/C59M-QCMY>.

12. See Thomas C. Tobin, *Video Shows Police Handcuffing 5-Year-Old*, TAMPA BAY TIMES (Apr. 22, 2005), [http://www.sptimes.com/2005/04/22/Southpinellas/Video\\_shows\\_police\\_ha.shtml](http://www.sptimes.com/2005/04/22/Southpinellas/Video_shows_police_ha.shtml), archived at <http://perma.cc/87RY-ZK9J>.

13. Bob Herbert, *6-Year-Olds Under Arrest*, N.Y. TIMES (Apr. 9, 2007), [http://www.nytimes.com/2007/04/09/opinion/09herbert.html?\\_r=0](http://www.nytimes.com/2007/04/09/opinion/09herbert.html?_r=0).

14. See *id.*

Students' increased involvement with the justice system is part of a growing concern that many refer to as the "school-to-prison pipeline."<sup>15</sup> The term "school-to-prison pipeline" ("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.<sup>16</sup> Although some may believe that arresting or incarcerating students for violating school rules may "scare them straight," involving youth in the justice system normally does not achieve the desired reformative effect.<sup>17</sup> Rather, the negative consequences that often occur instead are quite severe.<sup>18</sup> Empirical studies demonstrate that

15. See, e.g., Christi Parsons, *Obama Wants to Stop 'School-to-Prison Pipeline' for Minorities*, L.A. TIMES (Feb. 11, 2014, 3:00 AM), <http://www.latimes.com/nation/politics/politicsnow/la-pn-obama-stop-school-prison-pipeline-20140210-story.html> (discussing President Obama's "plans to launch an initiative aimed at improving the lives of young black and Latino men" by stopping the school-to-prison pipeline); Press Release, Dick Durbin, U.S. Senator, Durbin Holds Hearing on Ending the School-to-Prison Pipeline (Dec. 12, 2012), *archived at* <http://perma.cc/CB6V-3TXH> (explaining Senator Durbin's position in favor of "reforms to better discipline our students without forcing them out of the classroom and into a courtroom"); *Video Highlights: ABA Seeks Solutions for School-to-Prison Pipeline Problem*, ABA (Feb. 11, 2014, 3:15 PM), [http://www.americanbar.org/news/abanews/aba-news-archives/2014/02/video\\_highlightsab.html](http://www.americanbar.org/news/abanews/aba-news-archives/2014/02/video_highlightsab.html) (featuring judges, educators, activists, and lawyers discussing the school-to-prison pipeline at an American Bar Association town hall forum).

16. See *Hawker v. Sandy City Corp.*, 774 F.3d 1243, 1245 (10th Cir. 2014) (Lucero, J., concurring) (quoting Jason P. Nance, *School Surveillance and the Fourth Amendment*, 2014 WIS. L. REV. 79, 83); U.S. DEP'T OF JUSTICE & U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER ON THE NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE 4 (2014), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf> [hereinafter DEAR COLLEAGUE LETTER]. Conditions increasing the probability that a student will be arrested are broad and might include depriving students of needed resources to enhance their educational opportunities. See CATHERINE Y. KIM ET AL., THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM 1 (2010); see also Jason P. Nance, *Dismantling the School-to-Prison Pipeline: Tools for Change*, 48 ARIZ. ST. L.J. (forthcoming 2016), *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2671447](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2671447) [hereinafter Nance, *Dismantling the School-to-Prison Pipeline*].

17. See generally JAMES O. FINCKENAUER & PATRICIA W. GAVIN, SCARED STRAIGHT: THE PANACEA PHENOMENON REVISITED (1999); JAMES O. FINCKENAUER, SCARED STRAIGHT! AND THE PANACEA PHENOMENON (1982) (debunking the myth that imposing severe consequences can by itself deter criminal behavior); see also ANTHONY PETROSINO ET AL., THE CAMPBELL COLLABORATION, FORMAL SYSTEM PROCESSING OF JUVENILES: EFFECTS ON DELINQUENCY 6 (2010) (suggesting that incarcerating a youth does not effectively deter criminal behavior; rather, it increases future involvement in the justice system); Anne M. Hobbs et al., *Assessing Youth Early in the Juvenile Justice System*, 3 J. JUV. JUST. 80, 81 (2013) ("[O]fficial processing of a juvenile law violation may be the least effective means of rehabilitating juvenile offenders.").

18. See DON BEZRUKI ET AL., WIS. LEGISLATIVE AUDIT BUREAU, REP. NO. 99-13, SECURE JUVENILE DETENTION: AN EVALUATION 4 (1999) (determining that detaining youth does not reduce the likelihood of recidivism); BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 4 (2006) (showing that incarcerating youth can lead to increased future involvement in the justice system).

arresting a student substantially reduces the odds that the student will graduate from high school, especially if that student appears in court.<sup>19</sup> It also decreases the odds that a student will succeed academically and have future stable employment opportunities.<sup>20</sup> Worse, it increases the likelihood of that student's future involvement in the criminal justice system.<sup>21</sup> The consequences associated with incarceration are even more severe.<sup>22</sup> Empirical research shows that incarcerating youth reinforces violent attitudes and behaviors;<sup>23</sup> limits future educational, housing, employment, and military opportunities;<sup>24</sup> deteriorates their mental health;<sup>25</sup> and increases the likelihood of their future involvement in the justice system.<sup>26</sup>

Furthermore, these negative trends do not impact all racial groups equally. Abundant empirical evidence demonstrates that students of color are disproportionately represented throughout every stage of the Pipeline. For example, school administrators and teachers discipline minority students more often and more severely than white students for committing

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19. See ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 12 (2005), available at [http://b.3cdn.net/advancement/5351180e24cb166d02\\_mlbrqgxlh.pdf](http://b.3cdn.net/advancement/5351180e24cb166d02_mlbrqgxlh.pdf) [hereinafter EDUCATION ON LOCKDOWN]; KIM ET AL., *supra* note 16, at 113; Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462, 473, 478–79 (2006).

20. See KIM ET AL., *supra* note 16, at 113.

21. *Id.*

22. Notably, there are calls to reform the juvenile justice system to respond better to the needs of youth and help them to avoid future involvement in the justice system. See generally A NEW JUVENILE JUSTICE SYSTEM: TOTAL REFORM FOR A BROKEN SYSTEM (Nancy E. Dowd ed., 2015) [hereinafter TOTAL REFORM FOR A BROKEN SYSTEM].

23. Mark J. Van Ryzin & Thomas J. Dishion, *From Antisocial Behavior to Violence: A Model for the Amplifying Role of Coercive Joining in Adolescent Friendships*, 54 J. CHILD PSYCHOL. & PSYCHIATRY 661, 661 (2013) (finding that coercive friendships at age 16–17 “predicted early-adulthood violent behavior”); Hobbs et al., *supra* note 17, at 81.

24. See EDUCATION ON LOCKDOWN, *supra* note 19, at 12; FLA. STATE CONFERENCE NAACP ET AL., ARRESTING DEVELOPMENT: ADDRESSING THE SCHOOL DISCIPLINE CRISIS IN FLORIDA 17 (2006), available at [http://b.3cdn.net/advancement/e36d17097615e7c612\\_bbm6vub0w.pdf](http://b.3cdn.net/advancement/e36d17097615e7c612_bbm6vub0w.pdf) [hereinafter ARRESTING DEVELOPMENT]; HOLMAN & ZIEDENBERG, *supra* note 18; Hobbs et al., *supra* note 17, at 81.

25. HOLMAN & ZIEDENBERG, *supra* note 18, at 8; Christopher B. Forrest et al., *The Health Profile of Incarcerated Male Youths*, 105 PEDIATRICS 286, 288–89 (2000) (finding that incarcerated males suffered from significant mental health concerns); Javad H. Kashani et al., *Depression Among Incarcerated Delinquents*, 3 PSYCHIATRY RES. 185, 189–90 (1980) (demonstrating that depression increased among incarcerated youth).

26. See BEZRUKI ET AL., *supra* note 18, at 4; HOLMAN & ZIEDENBERG, *supra* note 18, at 4; Brent B. Benda & Connie L. Tollett, *A Study of Recidivism of Serious and Persistent Offenders Among Adolescents*, 27 J. CRIM. JUST. 111, 119–20 (1999) (demonstrating that prior incarceration was a stronger predictor of recidivism than being neglected or abused by parents, gang membership, being with peers at the time the offense was committed, or carrying a weapon).

similar offenses,<sup>27</sup> and children of color have higher arrest and conviction rates when they become involved with law enforcement and the justice system.<sup>28</sup>

These appalling trends certainly have not gone unnoticed, and there have been several calls for reform. For example, in March of 2012, prominent education and judicial leaders from around the country gathered at a conference to discuss ending the Pipeline.<sup>29</sup> That summit sparked several other gatherings.<sup>30</sup> The US Department of Education's Office for Civil Rights ("OCR") and the US Department of Justice have conducted several compliance reviews to ensure that schools do not discriminate on the basis of race by disciplining minorities more frequently or harshly than similarly-situated white students.<sup>31</sup> In addition, in December of 2012, the

27. See, e.g., Theresa Glennon, *Looking for Air: Excavating Destructive Educational and Racial Policies to Build Successful School Communities*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 107, 110–11 (Nancy E. Dowd ed., 2011) [hereinafter JUSTICE FOR KIDS] (citing studies that demonstrate that minority students are disciplined disproportionately); Russell J. Skiba et al., *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y.L. SCH. L. REV. 1071, 1086–89 (2010) (describing the empirical evidence of racial disproportionality of school discipline).

28. See JAMES BELL & LAURA JOHN RIDOLFI, W. HAYWOOD BURNS INST., ADORATION OF THE QUESTION: REFLECTIONS ON THE FAILURE TO REDUCE RACIAL & ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM 8 (2008) ("Two-thirds of all youth in public detention facilities today are youth of color—though they represent only 39 percent of the overall youth population—who are still treated more harshly even when charged with the same offense as White youth."); AMANDA PETTERUTI, JUSTICE POLICY INST., EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS 21 (2011), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest\\_fullreport.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf) [hereinafter EDUCATION UNDER ARREST] (citing data); Nancy E. Dowd, *What Men?: The Essentialist Error of the "End of Men,"* 93 B.U. L. REV. 1205, 1222–23 (2013) (observing that disproportionate minority confinement "is present throughout the system, reflected in disparate and harsher treatment, as well as disproportionate and unnecessary entry and penetration into the juvenile justice system," and "is not due to differential offending"); Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 293–94 (2014) (citing empirical evidence of higher conviction rates for minorities for similar offenses); Mark Soler et al., *Juvenile Justice: Lessons for a New Era*, 16 GEO. J. ON POVERTY L. & POL'Y 483, 531–32 (2009) (observing that African-American youth were "nine times as likely to be incarcerated" as white youth charged for the same offense when both had no prior admissions).

29. See N.Y. State Permanent Judicial Comm'n on Justice for Children, *School-Justice Partnership: Keeping Kids in School & Out of Court*, NYCOURTS.GOV, archived at <https://perma.cc/NQ56-L4NC> (last updated Jan. 28, 2015).

30. See, e.g., *id.*; *Keeping Kids in School and Out of Court Summit*, CAL. COURTS, <http://www.courts.ca.gov/23902.htm> (last visited Jan. 5, 2016).

31. See *Recent Resolutions*, OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/index.html#title6rev> (last visited Jan. 5, 2016), archived at <http://perma.cc/LY8A-V3VE> (listing numerous compliance reviews with school districts); Press Release, Dep't of Justice, Office of Public Affairs, Justice Department Files Consent Decree to Prevent and Address Racial Discrimination in Student Discipline in Meridian, Miss. (Mar. 22, 2013), archived at <http://perma.cc/N6UD-RSVJ> (reporting that the Justice Department entered into a consent decree with the Meridian Public School District to prevent and address racial discrimination in disciplinary actions against students). The OCR also recently issued two influential

Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights held a hearing to discuss ending the Pipeline for the first time in our nation's history.<sup>32</sup>

Nevertheless, only two days after that historic US congressional hearing, a tragic event took place that has since served as a catalyst for new laws and practices that may exacerbate these negative trends. Specifically, on December 14, 2012, Adam Lanza brutally massacred twenty children and six educators at Sandy Hook Elementary School in Newtown, Connecticut, provoking deep feelings of sadness, anger, and fear.<sup>33</sup> In response to this tragedy, many Americans demanded that lawmakers and school officials intensify school security measures and increase the presence of law enforcement officers in our nation's schools.<sup>34</sup> While some criticized those demands,<sup>35</sup> the federal government and several state legislatures passed laws that provided more money to hire law enforcement officers and install greater security measures in schools.<sup>36</sup> Lawmakers enacted such laws without adequately researching

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Dear Colleague Letters that relate to the Pipeline. The first letter addresses nondiscriminatory administration of school discipline. See DEAR COLLEAGUE LETTER, *supra* note 16. The second letter addresses the problem of unequal access to educational resources. See OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER: RESOURCE COMPARABILITY (2014), archived at <http://perma.cc/QFF9-UHLQ>.

32. See *Ending the School-to-Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012), available at <https://www.gpo.gov/fdsys/pkg/CHRG-112shrg86166/pdf/CHRG-112shrg86166.pdf>; Susan Ferriss, 'School to Prison Pipeline' Hit on Capitol Hill, CTR. FOR PUB. INTEGRITY (May 19, 2014, 12:19 PM), <http://www.publicintegrity.org/2012/12/13/11921/school-prison-pipeline-hit-capitol-hill>.

33. See, e.g., Tom Raum & Jennifer Agiesta, *Poll: Americans Angrier About Sandy Hook than 9/11 Attacks*, CNSNEWS.COM (Jan. 16, 2013, 8:32 PM), <http://www.cnsnews.com/news/article/poll-americans-angrier-about-sandy-hook-shooting-911-attacks>, archived at <http://perma.cc/D27Y-VU25> (reporting the anger Americans felt over the Newtown shootings); Jeanette Rundquist, *Surprise Security Drills Coming to N.J. Schools*, NJ.COM (Jan. 16, 2013, 9:07 PM), [http://www.nj.com/news/index.ssf/2013/01/surprise\\_school\\_security\\_drills.html](http://www.nj.com/news/index.ssf/2013/01/surprise_school_security_drills.html), archived at <http://perma.cc/D3PQ-YP9T> (internal quotation marks omitted) ("The tragedy in Connecticut was the school community's 9/11. This has touched the very soul of the country, no less the school community . . .").

34. See, e.g., *Remarks from the NRA Press Conference on Sandy Hook Shooting, Delivered on Dec. 21, 2012 (Transcript)*, WASH. POST (Dec. 21, 2012), [https://www.washingtonpost.com/politics/remarks-from-the-nra-press-conference-on-sandy-hook-school-shooting-delivered-on-dec-21-2012-transcript/2012/12/21/bd1841fe-4b88-11e2-a6a6-aabac85e8036\\_story.html](https://www.washingtonpost.com/politics/remarks-from-the-nra-press-conference-on-sandy-hook-school-shooting-delivered-on-dec-21-2012-transcript/2012/12/21/bd1841fe-4b88-11e2-a6a6-aabac85e8036_story.html), archived at <http://perma.cc/CS4C-MPGL> (calling for all schools to be staffed with armed guards).

35. See, e.g., Aaron Kupchik et al., *The Aftermath of Newtown: More of the Same*, 55 BRIT. J. CRIMINOLOGY 1115 (2015) (describing criticisms launched at the NRA's suggestion to staff every school with an armed guard); Quinn, *NRA Plan to Avoid Mass-Shootings Is 'Stupid, Asinine'*, CBS NEW YORK (Dec. 22, 2012, 1:22 PM), <http://newyork.cbslocal.com/2012/12/22/quinn-nra-plan-to-avoid-mass-shootings-is-stupid-asinine/>, archived at <http://perma.cc/8Y3C-J3B2>.

36. See *infra* Part III.



whether these expensive measures actually would improve school safety.<sup>37</sup> And more importantly, they did not give adequate attention to the potential negative consequences of using these strict measures, including whether these measures would put more students on a pathway from school to prison.

This Article illuminates this important discussion in at least two ways. First, drawing on a large, national, restricted-access dataset recently released by the US Department of Education, this Article presents an original empirical analysis of sensitive data relating to conditions under which schools refer students to law enforcement for various offenses that occur on school grounds. The empirical analysis reveals that, even after controlling for (1) state statutes that require schools to report certain incidents to law enforcement, (2) general levels of criminal activity and disorder that occur at the school, (3) neighborhood crime, and (4) other demographic variables, a police officer's regular presence at a school is predictive of greater odds that school officials refer students to law enforcement for various offenses, including seemingly minor offenses.<sup>38</sup> This finding has serious implications as lawmakers and school officials continue to deliberate over whether to use their limited resources to hire more law enforcement officers to patrol school grounds.

Second, this Article urges lawmakers and school officials to use their resources to adopt alternative measures to promote school safety instead of resorting to measures that rely on coercion, punishment, and fear. This is especially important when such measures tend to push students out of school and into the juvenile justice system, which can have devastating, long-lasting consequences on the lives of students.<sup>39</sup> A growing body of research suggests that programs promoting a strong sense of community and collective responsibility enhance school safety much more effectively than police officers and other strict security measures without degrading the learning environment.<sup>40</sup> And while these alternative measures may not prevent a determined, deranged individual from harming members of the school community, the rarity of such an event cannot justify the enormous amount of resources needed to protect students at all times while they are

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37. See NATHAN JAMES & GAIL MCCALLION, CONG. RESEARCH SERV., R43126, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS 10–11 (2013), archived at <http://perma.cc/5BJX-M43Z>; see also Kupchik et al., *supra* note 35 (“Of the research that exists, there is no clear evidence that the presence of armed guards or SROs can effectively prevent school violence.”).

38. See *infra* Part IV.

39. See *infra* Part III.

40. See *infra* Part V.

at school. Indeed, in the wake of highly-publicized acts of school violence, the public often forgets that schools remain among the safest places for children.<sup>41</sup>

This Article proceeds in five Parts. Parts I through III provide the contextual background for the empirical analysis. Part I describes the laws, policies, and trends that have contributed to the creation of a pathway from school to prison for many students. Part II focuses specifically on the growing use of law enforcement to handle disciplinary problems that school officials traditionally handled internally in years past. It further describes the recent escalation of police presence in schools, despite the movement towards reform, in the wake of the Newtown shootings. Part III discusses the detrimental impact that the laws, policies, and practices described in Parts I and II have on students. Part IV presents an empirical analysis examining the relationship between a police officer's regular presence at a school and the odds that school officials refer students to law enforcement for committing various offenses. Part V evaluates the concerns presented in the empirical findings and proposes alternative measures to address those concerns. Specifically, it urges lawmakers and school officials to adopt other evidence-based methods that will enhance school safety without degrading the learning environment. It also recommends that, if lawmakers and school officials do rely on police officers to protect students, police officers and school officials receive more training regarding how to appropriately discipline students and, additionally, enter into memoranda of understanding to avoid involving students with law enforcement for lower-level offenses.

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41. See Arne Duncan, *Resources for Schools to Prepare for and Recover from Crisis*, HOMEROOM: THE OFFICIAL BLOG OF THE U.S. DEP'T OF EDUC. (Dec. 17, 2012), <http://blog.ed.gov/2012/12/resources-for-schools-to-prepare-for-and-recover-from-crisis/>, archived at <http://perma.cc/22KV-YXYQ> ("Schools are among the safest places for children and adolescents in our country, and, in fact, crime in schools has been trending downward for more than a decade."); see also BARBARA FEDDERS ET AL., LEGAL AID OF N.C., *SCHOOL SAFETY IN NORTH CAROLINA: REALITIES, RECOMMENDATIONS & RESOURCES* 4 (2013), available at [http://www.issuelab.org/resource/school\\_safety\\_in\\_north\\_carolina\\_realities\\_recommendations\\_and\\_resources](http://www.issuelab.org/resource/school_safety_in_north_carolina_realities_recommendations_and_resources) (footnote omitted) ("School violence that results in death is extremely rare. Young people are much more likely to be harmed in the home or on the street than they are in schools."); Randall R. Beger, *The "Worst of Both Worlds": School Security and the Disappearing Fourth Amendment Rights of Students*, 28 CRIM. JUST. REV. 336, 338 (2003) ("Contrary to popular belief, schools remain among the safest places for children.").

## I. THE RISE OF THE SCHOOL-TO-PRISON PIPELINE

Over the last three decades, there has been a distinct shift among many lawmakers, school officials, and teachers regarding how to discipline children for violations of school rules. While at one time it was common for educators to send students involved in a fight to the principal's office for assessment and discipline, in too many schools today it is just as common to refer those students to law enforcement for arrest and prosecution.<sup>42</sup> Several scholars have referred to this shift as the "criminalization of school discipline."<sup>43</sup>

The reasons behind the criminalization of school discipline are complex.<sup>44</sup> Several scholars have observed that the criminalization of school discipline has emerged parallel to and in connection with the criminalization of social problems generally in the United States.<sup>45</sup> For lawmakers, declaring a "war on drugs" and "getting tough on crime" proved to be politically popular positions in response to the unstable economic and social conditions that plagued urban environments.<sup>46</sup> During

42. See, e.g., ARRESTING DEVELOPMENT, *supra* note 24, at 6 (observing that in the state of Florida during the 2004–2005 school year, "there were 26,990 school-related referrals to the Florida Department of Juvenile Justice," and 76 percent of those referrals were for misdemeanor offenses like disorderly conduct, trespassing, and fighting without a weapon); EDUCATION UNDER ARREST, *supra* note 28, at 15 (stating that during the 2007–08 school year in Birmingham, Alabama, 96 percent of students referred to juvenile court were referred for misdemeanors that included disorderly conduct and fighting without a weapon); FED. ADVISORY COMM. ON JUVENILE JUSTICE, ANNUAL REPORT 2010 10 (2010); Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 410 (2013) ("Whereas schoolteachers, principals, and school counselors once handled school-based incidents such as fighting, disorderly conduct, and destruction of property in school, school officials now rely on local police or in-house SROs to handle even the most minor of school infractions.").

43. See Kathleen Nolan & Jean Anyon, *Learning to Do Time: Willis's Model of Cultural Reproduction in an Era of Postindustrialism, Globalization, and Mass Incarceration*, in LEARNING TO LABOR IN NEW TIMES 133, 136 (Nadine Dolby et al. eds., 2004); Henry A. Giroux, *Racial Injustice and Disposable Youth in the Age of Zero Tolerance*, 16 QUALITATIVE STUD. IN EDUC. 553, 557 (2003); Paul J. Hirschfield, *Preparing for Prison?: The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 88 (2008); Theriot, *supra* note 11, at 280; Kerrin C. Wolf, *Arrest Decision Making by School Resource Officers*, 12 YOUTH VIOLENCE & JUV. JUST. 137, 138 (2014).

44. See Derek W. Black, *The Constitutional Limit of Zero Tolerance in Schools*, 99 MINN. L. REV. 823, 837 (2015) (observing the complexity of the motivations and theories behind harsh discipline policies).

45. See, e.g., Donna M. Bishop & Barry C. Feld, *Juvenile Justice in the Get Tough Era*, in ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 2766, 2770 (Gerben Bruinsma & Davis Weisburd eds., 2014); KATHLEEN NOLAN, POLICE IN THE HALLWAYS: DISCIPLINE IN AN URBAN HIGH SCHOOL 22–24 (2011); Giroux, *supra* note 43, at 557–58; Hirschfield, *supra* note 43; Nolan & Anyon, *supra* note 43.

46. See Hirschfield, *supra* note 43, at 89–90; Nolan & Anyon, *supra* note 43, at 138; see also Bishop & Feld, *supra* note 45, at 2770; William J. Stuntz, *Unequal Justice*, 121 HARV. L. REV. 1969,

the last three decades, legislative bodies throughout the country passed harsh laws such as mandatory minimum prison sentences laws,<sup>47</sup> habitual offender laws (“three strikes” laws),<sup>48</sup> and truth-in-sentencing laws.<sup>49</sup> These policies resulted in a dramatic increase of the prison population and time served in prison, especially among urban minorities,<sup>50</sup> while also providing an economic stimulus in certain communities.<sup>51</sup> When violent crime rates for juveniles increased from the mid-1980s to 1994,

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2010 (2008) (explaining that politicians supported punitive policies governing crime because the opposing parties had done so and “because changing course seemed politically risky”).

47. *See, e.g.*, Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (codified as amended in scattered sections of 18 & 28 U.S.C.); N.Y. PENAL LAW §§ 220.00–.65, 221.00–.55 (McKinney 1973) (describing the Rockefeller Drug Laws that mandated harsh minimum sentences for controlled substances). The Rockefeller Drug Laws spawned similar legislation in many other states. Nolan & Anyon, *supra* note 43, at 138.

48. *See, e.g.*, CAL. PENAL CODE § 667 (2012). According to Joanna Shepherd, “[d]uring the 1990s, 26 states and the federal government enacted three-strikes legislation, with similar bills introduced in a number of other states.” Joanna M. Shepherd, *Fear of the First Strike: The Full Deterrent Effect of California’s Two- and Three-Strikes Legislation*, 31 J. LEGAL STUD. 159, 159–60 (2002).

49. In the 1980s and 1990s the majority of states enacted laws that required persons convicted of crimes to serve not less than 85 percent of their prison sentences. *See* PAULA M. DITTON & DORIS JAMES WILSON, U.S. DEP’T OF JUSTICE, SPECIAL REPORT: TRUTH IN SENTENCING IN STATE PRISONS 3 (1999), available at <http://bjs.gov/content/pub/pdf/tssp.pdf>.

50. *See* NOLAN, *supra* note 45, at 24; Nolan & Anyon, *supra* note 43, at 138. The national prison population quadrupled from 1980 to 2000 (from 500,000 to 2 million). BRUCE WESTERN ET AL., JUSTICE POLICY INST., EDUCATION & INCARCERATION 4 (2003), available at [http://www.justicepolicy.org/images/upload/03-08\\_REP\\_EducationIncarceration\\_AC-BB.pdf](http://www.justicepolicy.org/images/upload/03-08_REP_EducationIncarceration_AC-BB.pdf); *see also* John J. Donohue III & Steven D. Levitt, *The Impact of Race on Policing and Arrests*, 44 J.L. & ECON. 367, 367 (2001) (“African Americans, who comprise 12 percent of the U.S. population, account for 47 percent of felony convictions and 54 percent of prison admissions. Studies suggest that one-third of African-American males aged 20–29 are under the supervision of the criminal justice system on any given day.”); Tracey Meares, *The Legitimacy of Police Among Young African-American Men*, 92 MARQ. L. REV. 651, 655 (2009) (“A black male high school dropout born between 1965 and 1969 had nearly a 60% chance of going to prison by the end of the last decade.”). It is important to note, however, that state prison populations have fallen in recent years. *See, e.g.*, Reid Wilson, *State Prison Populations Down to Lowest Point in a Decade*, WASH. POST (Dec. 31, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/12/31/state-prison-populations-down-to-lowest-point-in-a-decade/>.

51. For example, many white rural communities benefitted from an economic stimulus in the form of building prisons, hiring prison guards, and hiring additional law enforcement officers. *See* Nolan & Anyon, *supra* note 43, at 138; Hirschfield, *supra* note 43, at 89. The Violent Crime Control and Law Enforcement Act of 1994 (“Crime Control Act”) provided funding for one hundred thousand new police officers and \$9.7 billion in funding for prisons. *See* U.S. DEP’T OF JUSTICE, FACT SHEET: VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994 (1994), available at <https://www.ncjrs.gov/txtfiles/billfs.txt>. The prison industry has become a significant industry in many states. The prison market is estimated to be worth \$37.8 billion a year and employs more than 413,000 people. Giroux, *supra* note 43, at 558–59. Since the Crime Control Act was passed, many states, including California and New York, have spent more on prison construction than on higher education and have hired more prison guards than teachers. *See id.* at 558. Urban communities have also experienced economic benefits from these policies. For example, the campaign of arrest and imprisonment enabled urban developers to strategically redevelop downtown areas designed as “safe zones.” *See* Hirschfield, *supra* note 43, at 89.

particularly among minority youth in the inner cities, elected officials felt political pressure to respond in the same fashion that they responded to the increase in adult crime.<sup>52</sup> Moreover, although juvenile crime rates have steadily declined since 1994,<sup>53</sup> a series of high-profile school shootings further propelled lawmakers to respond in this manner.<sup>54</sup> Consequently, lawmakers passed a series of harsh laws designed to deter juvenile crime on the streets and in schools.<sup>55</sup> Indeed, focusing on ways to remove dangerous and disruptive students from school was a less expensive and more politically feasible alternative to hiring more teachers, counselors, and mental health professionals or implementing programs to help troubled students succeed in school.<sup>56</sup> At the same time, many school officials, also facing pressure to respond to high-profile incidents of school

52. See BARRY C. FELD, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* 189–90 (1999) (explaining that as youth crime rates increased, especially among urban African-Americans, public fear of social disorder also increased, leading to a denouncement of coddling youth criminals); Giroux, *supra* note 43, at 561 (observing that the zero tolerance policies in schools were modeled on minimum sentencing and “three strikes and you’re out” laws); Hirschfield, *supra* note 43, at 89–90. As Donna Bishop and Barry Feld describe, these violent incidents received an extraordinary amount of media attention, resulting in a “moral panic,” in which “the media, politicians, and the public reinforce each other in an escalating alarmist response that exaggerates the magnitude of the threat and produces urgent calls to ‘do something.’” Bishop & Feld, *supra* note 45, at 2768; see also 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.”).

53. See JEFFREY A. BUTTS, RESEARCH & EVALUATION CTR., *VIOLENT YOUTH CRIME PLUMMETS TO A 30-YEAR LOW* (2012), available at <http://johnjayresearch.org/rec/files/2012/11/databit201211.pdf>; JACOB KANG-BROWN ET AL., *VERA INST. OF JUST., A GENERATION LATER: WHAT WE’VE LEARNED ABOUT ZERO TOLERANCE IN SCHOOLS 2* (2013), available at <http://www.vera.org/sites/default/files/resources/downloads/zero-tolerance-in-schools-policy-brief.pdf>.

54. See Torin Monahan & Rodolfo D. Torres, *Introduction*, in *SCHOOLS UNDER SURVEILLANCE: CULTURES OF CONTROL IN PUBLIC EDUCATION* 2–3 (Torin Monahan & Rodolfo D. Torres eds., 2009) [hereinafter *SCHOOLS UNDER SURVEILLANCE*] (“[T]he threat of ‘another Columbine’ (or Virginia Tech, and so on) haunts the social imaginary, leading parents, policy makers, and others to the sober conclusion that any security measure is worth whatever trade-offs are involved in order to ensure safety.”); Elizabeth S. Scott, *Miller v. Alabama and the (Past and) Future of Juvenile Crime Regulation*, 31 *LAW & INEQ.* 535, 541 (2013) (observing that although serious acts of school violence are rare events, after the Columbine shootings “legislatures across the country rushed to pass strict zero tolerance laws, making it a crime to threaten violence in school”).

55. See *infra* Parts I–II; see also PATRICIA TORBET ET AL., U.S. DEP’T OF JUSTICE, *STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME* xi (1996) (documenting states’ legislative and executive action that shifted towards the goal of punishing criminal behavior rather than rehabilitating the offenders in response to increases in juvenile crime). For example, several states passed laws that facilitated transferring more juvenile defendants to criminal courts to be tried as adults. Bishop & Feld, *supra* note 45, at 2768. For an analysis of the evolution of these laws, see generally Barry C. Feld & Donna M. Bishop, *Transfer of Juveniles to Criminal Court*, in *THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE* 801, 801–42 (Barry C. Feld & Donna M. Bishop eds., 2012), and Scott, *supra* note 52, at 92–94.

56. See Hirschfield, *supra* note 43, at 90.

violence, adopted a similar punitive mindset, embracing strict, heavy-handed disciplinary methods to maintain order and control in their buildings.<sup>57</sup> The end result is a series of laws, policies, and practices that have pushed more students out of school and into the justice system.

This Part will discuss the laws, policies, practices, and trends that have converged over approximately the last three decades, resulting in the creation of a pathway from school to prison for too many students. Some of these laws, policies, practices, and trends stem directly from the “tough on crime,” punitive mindset described above. Others are less related to that mindset, but still contribute to the Pipeline in other ways.

#### A. Zero Tolerance Laws and Policies

Perhaps no other “tough on crime” law or policy affecting students has received more attention than zero tolerance laws and policies.<sup>58</sup> As a condition for receiving federal funds, the Gun-Free Schools Act of 1994 requires states to pass laws that compel schools to expel students for at least one year for bringing a firearm on school grounds.<sup>59</sup> The Gun-Free Schools Act signaled a validation by the federal government of the

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57. See Kevin P. Brady et al., *School-Police Partnership Effectiveness in Urban Schools: An Analysis of New York City's Impact Schools Initiative*, 39 EDUC. & URB. SOC'Y 455, 456 (2007) (“An increasing fear of school violence coupled with the public’s misperceptions of the actual degree of violence in our nation’s schools has caused school officials, especially those located in urban areas, to implement more punitive-based school discipline policies and practices for responding to and preventing student crime and violence.”); Hirschfield, *supra* note 43, at 91; see also ATLANTA PUB. SCHS., 2014-15 STUDENT HANDBOOK 18–20 (2014), available at [http://www.atlantapublicschools.us/cms/lib/GA01000924/Centricity/Domain/94/2014-15%20APS%20Student%20Handbook\\_\\_web.pdf](http://www.atlantapublicschools.us/cms/lib/GA01000924/Centricity/Domain/94/2014-15%20APS%20Student%20Handbook__web.pdf) (citing offenses that require suspension or expulsion); HOUS. INDEP. SCH. DIST., 2013-2014 CODE OF STUDENT CONDUCT 14 (2013), available at [http://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/30485/2013-2014\\_Code\\_of\\_Student\\_Conduct.pdf](http://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/30485/2013-2014_Code_of_Student_Conduct.pdf); MIAMI-DADE CNTY. PUB. SCHS., CODE OF STUDENT CONDUCT—SECONDARY 57–73 (2014), available at [http://ehandbooks.dadeschools.net/policies/90/CSC\\_sec\\_14-15.pdf](http://ehandbooks.dadeschools.net/policies/90/CSC_sec_14-15.pdf). Of course, the reasons why numerous school officials have embraced strict disciplinary methods extend well beyond responding to high-profile incidents of school violence or enhancing their credibility among parents and the general public. These reasons are discussed in more detail in Part I.E.

58. See, e.g., ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE (2010), available at [http://b3cdn.net/advancement/d05cb2181a4545db07\\_r2im6caqe.pdf](http://b3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf) [hereinafter TEST, PUNISH, AND PUSH OUT]; Am. Psychological Ass’n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOLOGIST 852 (2008) [hereinafter *Are Zero Tolerance Policies Effective in the Schools?*]; KANG-BROWN ET AL., *supra* note 53; Black, *supra* note 44.

59. See 20 U.S.C. § 7151(b)(1) (2014). This law is softened somewhat by permitting superintendents to modify the expulsion requirement on a case-by-case basis. See *id.*; see also *Federal Law on Guns in Schools*, LAW CTR. TO PREVENT GUN VIOLENCE, <http://smartgunlaws.org/federal-law-on-guns-in-schools/> (last visited Jan. 6, 2016).

concept of “zero tolerance” in school disciplinary practices.<sup>60</sup> Borrowed from an approach to drug enforcement,<sup>61</sup> zero tolerance “mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the gravity of behavior, mitigating circumstances, or situational context.”<sup>62</sup>

Many states and schools have adopted laws and policies modeled after the Gun-Free Schools Act by creating strict rules that impose predetermined consequences for certain acts, such as suspension or expulsion, irrespective of the surrounding circumstances.<sup>63</sup> These laws and policies have extended well beyond bringing a firearm to school.<sup>64</sup> States and localities have applied zero tolerance to a multitude of offenses, including possession of drugs, alcohol, or tobacco; fighting; dress-code violations; truancy; and tardiness.<sup>65</sup> Scholars and youth advocacy groups have strongly criticized zero tolerance policies, arguing that they are both

60. See Udi Ofer, *Criminalizing the Classroom: The Rise of Aggressive Policing and Zero Tolerance Discipline in New York City Public Schools*, 56 N.Y.L. SCH. L. REV. 1373, 1376 (2011/12).

61. See Russell J. Skiba & M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, in HANDBOOK OF CLASSROOM MANAGEMENT: RESEARCH, PRACTICE, AND CONTEMPORARY ISSUES 1063, 1063 (Carolyn M. Evertson & Carol S. Weinstein eds., 2006) (citation omitted) (“Zero tolerance emerged from national drug policy of the 1990s and mandates severe punishments, typically out-of-school suspension and expulsion, for both serious and relatively minor infractions.”).

62. *Are Zero Tolerance Policies Effective in the Schools?*, *supra* note 58, at 852; see also KIM ET AL., *supra* note 16, at 80.

63. See Deborah Gordon Klehr, *Addressing the Unintended Consequences of No Child Left Behind and Zero Tolerance: Better Strategies for Safe Schools and Successful Students*, 16 GEO. J. ON POVERTY L. & POL’Y 585, 589 (2009).

64. See Michael P. Krezmien et al., *Juvenile Court Referrals and the Public Schools: Nature and Extent of the Practice in Five States*, 26 J. CONTEMP. CRIM. JUST. 273, 274 (2010) (explaining that zero tolerance policies have extended to minor disciplinary infractions). This has happened despite the fact that the Gun-Free Schools Act “does not require that states or schools implement wide-ranging zero-tolerance policies or rely on exclusionary discipline for any other types of student misconduct [outside of bringing a firearm to school].” U.S. DEP’T OF EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE 15 (2014), available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf> [hereinafter GUIDING PRINCIPLES].

65. See KIM ET AL., *supra* note 16, at 80. Professor Barry Feld explains that zero tolerance policies are similar in nature to “broken windows” theories, which hypothesize that failure to respond to minor infractions will lead to more serious infractions. Barry C. Feld, T.L.O. and Redding’s *Unanswered (Misanswered) Fourth Amendment Questions: Few Rights and Fewer Remedies*, 80 MISS. L.J. 847, 886–87 (2011); Tom R. Tyler et al., *The Consequences of Being an Object of Suspicion: Potential Pitfalls of Proactive Police Contact*, 12 J. EMPIRICAL LEGAL STUD. 602, 607–08 (2015) (arguing that zero tolerance policies are based on the premises of the “broken windows” theory, but also are more expansive because they draw more individuals into the criminal justice system by prosecuting them for minor lifestyle crimes, not just for behaviors that are commonly viewed as socially unacceptable); see also Ofer, *supra* note 60, at 1378.

ineffective and counterproductive.<sup>66</sup> Not only is there no evidence that zero tolerance policies have made schools safer,<sup>67</sup> these policies have also pushed more students out of schools and into the juvenile justice system.<sup>68</sup>

### *B. Federal and State Statutory Reporting Requirements*

Other “tough on crime” laws that have contributed to putting more students on a pathway to prison include federal and state statutes that mandate reporting certain school misconduct to law enforcement.<sup>69</sup> Pursuant to the Gun-Free Schools Act, the federal government obligates all local education agencies (i.e., school districts) that receive federal funds under the Elementary and Secondary Education Act to have “a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school.”<sup>70</sup> Thus, as virtually every public school district receives federal funds under the Elementary and Secondary Education Act, virtually every school district is required to have a policy in place that compels school officials to refer students who bring weapons to school to law enforcement.<sup>71</sup>

Furthermore, many state legislatures have enacted statutes mandating that school officials refer students to law enforcement for various offenses that occur at school that do not involve a weapon. For example, an original

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66. See, e.g., *Are Zero Tolerance Policies Effective in the Schools?*, *supra* note 58, at 857 (finding that the overwhelming research available on zero tolerance contradicts the assumptions on which those policies are based); Black, *supra* note 44, at 837–41 (arguing that zero tolerance policies have not achieved their intended purpose). In January 2014, the US Department of Education’s Office of Civil Rights issued a resource guide for improving school climate and discipline, suggesting that schools employ a tiered approach to discipline and reminding schools that the federal Gun-Free Schools Act does not require schools to rely on zero tolerance policies for offenses except those involving firearms. GUIDING PRINCIPLES, *supra* note 64, at 15.

67. See ADVANCEMENT PROJECT, HARVARD UNIV., OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE 17 (2000), available at <http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf> [hereinafter OPPORTUNITIES SUSPENDED] (stating that after four years of implementation, schools that used zero tolerance policies were less safe than those that did not use them); ARRESTING DEVELOPMENT, *supra* note 24, at 10; *Are Zero Tolerance Policies Effective in the Schools?*, *supra* note 58, at 857 (finding that “zero tolerance policies have not provided evidence that such approaches can guarantee safe and productive school climates”); Krezmien et al., *supra* note 64, at 274.

68. See KIM ET AL., *supra* note 16, at 78.

69. One might classify these mandatory reporting laws also as “zero tolerance” policies because they require school officials to report certain activities that occur on school property to law enforcement authorities regardless of the surrounding circumstances.

70. 20 U.S.C. § 7151(h)(1) (2014).

71. See, e.g., FLA. STAT. § 1006.07(g) (2014) (mandating that any student who brings a firearm or weapon to any school function will be referred to the juvenile justice system).



search of all fifty states' statutes reveals that twenty-six states require school officials to refer students to law enforcement for incidents relating to controlled substances,<sup>72</sup> fifteen states require referral for offenses involving alcohol,<sup>73</sup> eight states mandate referral for theft,<sup>74</sup> nine states for vandalism of school property,<sup>75</sup> and eleven states for robbery without using a weapon.<sup>76</sup> Some states have statutes that provide a specific list of offenses that school officials must report to law enforcement.<sup>77</sup> Other states have generalized reporting statutes. For example, Alabama requires school officials to report any "violent disruptive incidents occurring on school property during school hours or during school activities conducted on or off school property after school hours."<sup>78</sup> Illinois requires school officials to report "each alleged incident of intimidation" of which "he or

72. See ALA. CODE § 16-1-24.1 (2014); ALASKA STAT. § 14.33.130(b)(2) (2014); CAL. EDUC. CODE § 48902(b) (2014); CONN. GEN. STAT. § 10-221 (2015); DEL. CODE ANN. tit. 14, § 4112(c) (2015); FLA. STAT. § 1006.09 (2015); GA. CODE ANN. § 20-2-1184 (2015); HAW. REV. STAT. § 302A-1002(1) (2015); IDAHO CODE § 33-210(1) (2015); 105 ILL. COMP. STAT. 127/2-2 (2015); IND. CODE § 20-33-9-6 (2015); KAN. STAT. ANN. § 72-89b03(b) (2014); KY. REV. STAT. ANN. § 158.154 (2015); LA. REV. STAT. ANN. § 17:416.3 (2014); MD. CODE REGS. 13A.08.01.08 (2014); MICH. COMP. LAWS § 380.1308 (2015); MISS. CODE ANN. § 37-11-29(1), (6) (2015); MO. REV. STAT. § 160.261.2(10) (2015); NEB. REV. STAT. §§ 79-267(6), 79-293 (2015); N.C. GEN. STAT. § 115C-288 (2014); N.J. ADMIN. CODE § 6A:16-6.3(a) (2015); N.Y. EDUC. LAW § 2801 (McKinney 2012); OKLA. STAT. tit. 70, § 24-132 (2015); 24 PA. CONS. STAT. § 13-1303-A (2011); TEX. EDUC. CODE ANN. § 37.015(a) (West 2015); VA. CODE ANN. § 22.1-279.3:1 (2015); MICH. DEP'T OF EDUC., SCHOOL SAFETY RESPONSE GUIDE 21 (1999), available at [http://www.michigan.gov/documents/schsfy\\_8356\\_7.pdf](http://www.michigan.gov/documents/schsfy_8356_7.pdf).

73. See ALA. CODE § 16-1-24.1; ALASKA STAT. § 14.33.130(b)(2); CAL. EDUC. CODE § 48902(b); CONN. GEN. STAT. § 10-221; FLA. STAT. § 1006.09; HAW. REV. STAT. § 302A-1002(1); IDAHO CODE § 33-210(1); KAN. STAT. ANN. § 72-89b03(b); MD. CODE REGS. 13A.08.01.08; MICH. COMP. LAWS § 380.1308; NEB. REV. STAT. §§ 79-267(6), 79-293; N.J. ADMIN. CODE § 6A:16-6.4 (2015); N.Y. EDUC. LAW § 2801; 24 PA. CONS. STAT. ANN. § 13-1303-A; VA. CODE ANN. § 22.1-279.3:1; MICH. DEP'T OF EDUC., *supra* note 72, at 24.

74. See ALASKA STAT. § 14.33.130(b)(2); GA. CODE ANN. § 20-2-1184; HAW. REV. STAT. § 302A-1002(1)(B); KAN. STAT. ANN. § 72-89b03(b); MICH. COMP. LAWS § 380.1308; NEB. REV. STAT. §§ 79-267(2), 79-293; N.H. REV. STAT. ANN. § 193-D:4-I(a) (2015); N.Y. EDUC. LAW § 2801; MICH. DEP'T OF EDUC., *supra* note 72, at 18. I define theft as the unlawful taking of personal property without using force, such as violence or the threat of violence.

75. See ALASKA STAT. § 14.33.130(b)(2); GA. CODE ANN. § 20-2-1184; HAW. REV. STAT. § 302A-1002(1)(B); KAN. STAT. ANN. § 72-89b03(b); KY. REV. STAT. ANN. § 158.154; MICH. COMP. LAWS § 380.1308; NEB. REV. STAT. §§ 79-267(2), 79-293; N.H. REV. STAT. ANN. § 193-D:4-I(a); N.Y. EDUC. LAW § 2801; MICH. DEP'T OF EDUC., *supra* note 72, at 23.

76. See ALASKA STAT. § 14.33.130(b)(2); DEL. CODE ANN. tit. 14, § 4112(a)-(b); GA. CODE ANN. § 20-2-1184; HAW. REV. STAT. § 302A-1002(1)(B); 105 ILL. COMP. STAT. 5/34-84a.1 (2015); KAN. STAT. ANN. § 72-89b03(b); MICH. COMP. LAWS § 380.1308; NEB. REV. STAT. §§ 79-267, 79-293; N.H. REV. STAT. ANN. § 193-D:4; N.Y. EDUC. LAW § 2801; S.C. CODE ANN. § 59-24-60 (2014); MICH. DEP'T OF EDUC., *supra* note 72, at 14. I define robbery without a weapon as taking property by force or threat of force.

77. See, e.g., GA. CODE ANN. § 20-2-1184; HAW. REV. STAT. § 302A-1002; MISS. CODE ANN. § 37-11-29; MO. REV. STAT. § 160.261; NEB. REV. STAT. § 79-267; TEX. EDUC. CODE ANN. § 37.015; VA. CODE ANN. § 22.1-279.3:1.

78. ALA. CODE § 16-1-24(b) (2014).

she has knowledge.”<sup>79</sup> To induce compliance, several states impose criminal liability or other punitive actions on school officials who fail to report certain offenses to law enforcement.<sup>80</sup> Several states also grant school officials or other school employees immunity from lawsuits when reporting offenses to law enforcement in good faith.<sup>81</sup> It is important to note that many local school districts have their own reporting policies, even though there may be no statutory obligation to report certain offenses to law enforcement.<sup>82</sup>

### C. Students’ Limited Constitutional Protections at School

Despite the Supreme Court’s pronouncement that students do not “shed their constitutional rights . . . at the schoolhouse gate,”<sup>83</sup> students’ constitutional protections with respect to investigation, detainment, interrogation, and punishment at school are quite limited.<sup>84</sup> For example,

79. 105 ILL. COMP. STAT. 5/34-84a.1. Acts of intimidation include inflicting harm on another person; threatening another person; physically restraining a person; and exposing another person to hatred, contempt, or ridicule. *See* 720 ILL. COMP. STAT. 5/12-6 (2015).

80. *See* ALA. CODE § 16-1-24(e) (2014) (stating that school officials will be guilty of a Class C misdemeanor); ARK. CODE ANN. § 6-17-113(d) (2015) (stating that school officials will be guilty of a Class C misdemeanor); DEL. CODE ANN. tit. 14, § 4112(e) (levying fines on school employees for failing to report); GA. CODE ANN. § 20-2-1184(d) (stating that school officials will be guilty of a misdemeanor for failing to report); HAW. REV. STAT. § 302A-1002(3) (failing to report may result in probation, suspension, demotion, or termination of school officials); 105 ILL. COMP. STAT. 5/10-27.1A(b) (2015) (stating that knowingly failing to report the first time is a petty offense, and a subsequent offense is a Class C misdemeanor); KAN. STAT. ANN. § 72-89b04 (2014) (stating that failing to report is a class B misdemeanor); MISS. CODE ANN. § 37-11-29(3) (stating that failing to report results in a misdemeanor); MO. REV. STAT. § 167.117(5) (2015); N.H. REV. STAT. ANN. § 193-D:6 (2015) (stating that any person failing to report “shall be guilty of a violation”); S.C. CODE ANN. § 59-63-335 (2014) (failing to report results in liability of attorney’s fees and costs for an action to compel the school official to report); TEX. PENAL CODE ANN. § 38.171 (West 2015) (stating that failing to report results in a Class A misdemeanor).

81. *See* ALASKA STAT. § 14.33.140 (2014); CAL. EDUC. CODE §§ 48902(d), 49334 (West 2014); DEL. CODE ANN. tit. 14, § 4112(f); GA. CODE ANN. § 20-2-1184(c); HAW. REV. STAT. § 302A-1003 (2015); 105 ILL. COMP. STAT. 5/10-27.1A(b); KAN. STAT. ANN. § 72-89b03(h); MICH. COMP. LAWS § 380.1313(2) (2015); MISS. CODE ANN. § 37-11-29(5); MO. REV. STAT. § 167.117(4); NEB. REV. STAT. § 79-293(2); OKLA. STAT. tit. 70, § 24-132.A (2015); OR. REV. STAT. § 339.315(b) (2015); TEX. EDUC. CODE ANN. § 37.015(f); UTAH CODE ANN. § 53A-11-1101(2) (West 2015).

82. *See, e.g.*, HOUS. INDEP. SCH. DIST., *supra* note 57, at 14 (maintaining that the principal must notify the police when she has reasonable grounds to believe that a student has committed a criminal offense at school); MIAMI-DADE CNTY. PUB. SCHS., *supra* note 57, at 57 (stating that certain behavior, “must, by Board Rule, be reported to appropriate police authorities and to the Miami-Dade Schools Police”).

83. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

84. *See* Catherine Y. Kim, *Policing School Discipline*, 77 BROOK. L. REV. 861, 861 (2012) (observing that “courts routinely defer to school officials in cases involving the investigation and punishment of youth”); *see also* Barbara Bennett Woodhouse, *The Constitutionalization of Children’s Rights: Incorporating Emerging Human Rights into Constitutional Doctrine*, 2 U. PA. J. CONST. L. 1

over the last few decades, courts have weakened students' Fourth Amendment rights in schools in order to support school officials' efforts to promote safety and discipline within schools.<sup>85</sup> Before conducting a search, school officials do not need to obtain a warrant or show probable cause.<sup>86</sup> In addition, school officials need not have an individualized suspicion that a student violated a school rule before conducting a search.<sup>87</sup> This movement in the law has emboldened school officials to rely on intense surveillance methods to maintain order and control. Courts permit school officials to use metal detectors,<sup>88</sup> search through students' lockers,<sup>89</sup> monitor students with surveillance cameras,<sup>90</sup> and conduct

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(1999) (discussing generally the lack of constitutional protections for children in comparison to other countries).

85. See Jason P. Nance, *Random, Suspicionless Searches of Students' Belongings: A Legal, Empirical, and Normative Analysis*, 84 U. COLO. L. REV. 367 (2013) [hereinafter Nance, *Random, Suspicionless Searches*]; Jason P. Nance, *Students, Security, and Race*, 63 EMORY L.J. 1, 7–13 (2013) [hereinafter Nance, *Students, Security, and Race*]; James E. Ryan, *The Supreme Court and Public Schools*, 86 VA. L. REV. 1335, 1415 (2000) (stating that “the Court’s decisions regarding student searches rest on the value-laden view that maintaining discipline is necessary to preserve the educational process of schools”). Nevertheless, it is important to recognize that while the Court has been criticized for attenuating students’ Fourth Amendment rights in schools, it squarely held in *New Jersey v. T.L.O.* that students do indeed have those rights. 469 U.S. 325, 332–33 (1985). Prior to *T.L.O.*, several lower courts had recognized the *in loco parentis* doctrine, holding that the Fourth Amendment did not apply to school searches because school administrators acted in the place of parents during school hours. See Nance, *Random, Suspicionless Searches*, *supra*, at 377 n.38.

86. See *T.L.O.*, 469 U.S. at 340–42 (holding that school officials do not need to obtain a warrant, and their level of suspicion does not need to meet the probable cause standard before searching a student); see also Bernard E. Harcourt & Tracey L. Meares, *Randomization and the Fourth Amendment*, 78 U. CHI. L. REV. 809, 834 (2011) (describing generally the Court’s shift toward the acceptance of suspicionless search programs in schools and other contexts); Christopher Slobogin, *The World Without A Fourth Amendment*, 39 UCLA L. REV. 1, 25 (1991) (internal quotation marks omitted) (describing *T.L.O.*’s interpretation of the Fourth Amendment, which states that searches in the school context are “special needs” situations that “make the warrant and probable-cause requirement impracticable”). Interestingly, there is a recent line of cases where courts have not justified school officials’ searches of information stored on students’ cell phones. See, e.g., *G.C. v. Owensboro Pub. Schs.*, 711 F.3d 623 (6th Cir. 2013); *Gallimore v. Henrico Cnty. Sch. Bd.*, 38 F. Supp. 3d 721 (E.D. Va. 2014); cf. *Riley v. California*, 134 S. Ct. 2473 (2014) (holding that the police must obtain a search warrant before searching through digital information stored on a cell phone of someone who has been arrested).

87. *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 838 (2002) (holding that individualized suspicion was not required to perform random drug tests on students participating in extracurricular activities); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 665–66 (1995) (holding that individualized suspicion was not required to perform random drug tests on student athletes).

88. See, e.g., *Hough v. Shakopee Pub. Schs.*, 608 F. Supp. 2d 1087, 1106 (D. Minn. 2009); *In re Latasha W.*, 70 Cal. Rptr. 2d 886, 886–87 (Ct. App. 1998); *State v. J.A.*, 679 So. 2d 316, 319–20 (Fla. Dist. Ct. App. 1996); *In re F.B.*, 726 A.2d 361, 366 (Pa. 1999).

89. See, e.g., *State v. Jones*, 666 N.W.2d 142, 150 (Iowa 2003); *In re Patrick Y.*, 746 A.2d 405, 414–15 (Md. 2000); *In re Isiah B.*, 500 N.W.2d 637, 641 (Wis. 1993). However, there is a substantial disagreement among courts regarding whether students possess an expectation of privacy in their

random drug testing on students.<sup>91</sup> In fact, many schools throughout the country routinely rely on these strict measures to monitor students.<sup>92</sup> Furthermore, many courts have denied such criminal procedural protections to a student even when a law enforcement officer participates in a search at school.<sup>93</sup> Likewise, courts consistently hold that a school official may question a student without providing *Miranda* warnings, regardless of the possibility that the school official might later refer that student to law enforcement for wrongdoing.<sup>94</sup> Some courts have even held that it is unnecessary to provide *Miranda* warnings when a police officer is

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lockers. See KIM ET AL., *supra* note 16, at 116; Feld, *supra* note 65, at 933–37; Nance, *Random, Suspicionless Searches*, *supra* note 85, at 411–12. In addition, there is no compelling basis to conclude that students should lose their expectation of privacy in their personal belongings simply because students place them in their lockers. See Nance, *Random, Suspicionless Searches*, *supra* note 85, at 411–12.

90. See, e.g., *United States v. Taketa*, 923 F.2d 665, 677 (9th Cir. 1991) (“Videotaping of suspects in public places, such as banks, does not violate the [F]ourth [A]mendment . . .”). However, courts do not permit surreptitious video surveillance in certain locations, such as student lockers rooms or bathrooms. See *Brannum v. Overton Cnty. Sch. Bd.*, 516 F.3d 489, 499–500 (6th Cir. 2008) (holding that surreptitious video surveillance of a student locker room violates the Fourth Amendment).

91. See *Earls*, 536 U.S. at 838 (upholding a school district’s random drug testing program on students participating in extracurricular activities); *Acton*, 515 U.S. at 665–66 (upholding a school district’s random drug testing program on student athletes). See Nance, *Random, Suspicionless Searches*, *supra* note 85, at 380–87, 391–94, for an extended analysis of these cases.

92. *JAMES & MCCALLION*, *supra* note 37, at 23; Nance, *Random, Suspicionless Searches*, *supra* note 85, at 409–10; Nance, *Students, Security, and Race*, *supra* note 85, at 12–13.

93. In *New Jersey v. T.L.O.*, 469 U.S. 325, 341 n.7 (1985), the US Supreme Court stated that it was not deciding “the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies.” As a result, lower courts have reached divergent conclusions on this complex issue. See KIM ET AL., *supra* note 16, at 120–22 (discussing cases); Josh Kagan, *Reappraising T.L.O.’s “Special Needs” Doctrine in an Era of School-Law Enforcement Entanglement*, 33 J.L. & EDUC. 291, 316–20 (2004) (discussing cases); Michael Pinard, *From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*, 45 ARIZ. L. REV. 1067, 1080–90 (2003) (discussing cases and concluding that “courts only require the more stringent probable cause standard in fairly narrow circumstances”); Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 982–86 (2009/10) (discussing the disparate court holdings when analyzing student searches involving law enforcement officers); Kim, *supra* note 84, at 866 n.20 (discussing cases).

94. See, e.g., *S.E. v. Grant Cnty. Bd. of Educ.*, 544 F.3d 633, 640–41 (6th Cir. 2008) (holding that the school official was not required to provide *Miranda* warnings during his investigation); *K.A. v. Abington Heights Sch. Dist.*, 28 F. Supp. 3d 356, 366 (M.D. Pa. 2014) (dismissing the student’s Fifth Amendment claim because only school officials were present during the investigation); *C.S. v. Couch*, 843 F. Supp. 2d 894, 917–20 (N.D. Ind. 2011) (holding that the school officials were not required to provide *Miranda* warnings); *Boynton v. Casey*, 543 F. Supp. 995, 997 (D. Me. 1982) (holding that a school official was not required to provide *Miranda* warnings during an interrogation); see also BARRY C. FELD, *CASES AND MATERIALS ON JUVENILE JUSTICE ADMINISTRATION* 336–38 (4th ed. 2013); KIM ET AL., *supra* note 16, at 118; Paul Holland, *Schooling Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 LOY. L. REV. 39, 59 n.90 (2006); Kim, *supra* note 84, at 861.

with the school official during that interview.<sup>95</sup> Thus, school officials and, in many instances, police officers stationed in schools working with school officials, can provide evidence to prosecutors that they obtained under circumstances that would render such evidence inadmissible if seized from an adult or from a juvenile outside of the school context.<sup>96</sup> These methods, especially when coupled with the zero tolerance policies, end up pushing more students out of school or directly into the juvenile justice system.<sup>97</sup>

Moreover, courts have not provided students with strong procedural protections under the Due Process Clause of the Fourteenth Amendment for disciplinary matters. While the Supreme Court held in *Goss v. Lopez* that students do have a legitimate property interest to a public education provided under a state constitution, the Court also concluded that students were entitled only to minimal protections for short-term suspensions of ten days or less.<sup>98</sup> But perhaps more significantly, although students theoretically are entitled to more robust procedural protections before receiving long-term suspensions or expulsions,<sup>99</sup> scholars agree and school officials admit that these disciplinary proceedings typically are not

95. See, e.g., *State v. J.T.D.*, 851 So.2d 793, 797 (Fla. Dist. Ct. App. 2003) (holding that *Miranda* warnings were not required during questioning by a school official in the presence of a law enforcement officer); *People v. Pankhurst*, 848 N.E.2d 628, 633–34 (Ill. App. Ct. 2006) (holding that the student was not entitled to *Miranda* warnings because, even though an officer was present, the school official did not receive any advice from the officer regarding how to conduct the investigation); *In re Tateana R.*, 883 N.Y.S.2d 476, 477–78 (App. Div. 2009) (holding that the mere presence of a school resource officer during the investigation of a student did not entitle a student to *Miranda* warnings); *J.D. v. Commonwealth*, 591 S.E.2d 721, 724–26 (Va. Ct. App. 2004) (holding that the student was not entitled to *Miranda* warnings in the presence of a law enforcement officer because the school official did not receive any advice from the officer regarding how to conduct the investigation); *State v. Schloegel*, 769 N.W.2d 130, 133–34 (Wis. Ct. App. 2009) (holding that *Miranda* warnings were not required during questioning by a school official in the presence of a law enforcement officer). Nevertheless, if a police officer stationed at the school (or police officer not stationed at the school) interrogates the student, *Miranda* warnings may be required. See *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011) (holding that the court must take into consideration the student’s age when determining whether a student was in custody for *Miranda* purposes when being questioned by a police officer at school); see also FELD, *supra* note 94, at 336–37 (discussing cases); KIM ET AL., *supra* note 16, at 120 (discussing cases).

96. See Kim, *supra* note 84, at 865–66; KIM ET AL., *supra* note 16, at 118–20.

97. See Feld, *supra* note 65, at 884–95 (arguing that the combination of SROs, students’ diminished constitutional rights, school accountability laws, and zero tolerance policies puts more students on a path from school to prison).

98. 419 U.S. 565, 574–75 (1975). With respect to short suspensions of ten days or less, the Court held that students are not entitled to secure counsel, cross examine witnesses, or call their own witnesses. Rather, they are entitled only to “some kind of notice” and “some kind of hearing,” which could consist of an “informal give-and-take” consisting of simply informing the student of the misconduct and providing the student with an opportunity to explain what happened. *Id.* at 579, 582, 584.

99. See *id.* at 584 (“Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.”).

deliberative, collaborative, or aimed at accuracy, justice, or helping the student.<sup>100</sup> Rather, due process too often is only a routine hoop through which a school must jump to produce a favored result.<sup>101</sup> Thus, as long as school officials follow the prescribed routine, schools' disciplinary decisions are presumed valid and courts will uphold them.<sup>102</sup>

#### *D. High-Stakes Testing Laws*

Federal and state accountability laws also have had the unintended consequence of contributing to the Pipeline by creating a perverse incentive to push more students out of school. Federal and state accountability laws obligate schools to regularly test students and may inflict consequences on schools that do not meet certain standards.<sup>103</sup> To avoid various sanctions, many scholars worry that school officials may sometimes push low-performing students out of their schools by suspending them, expelling them, or referring them to the juvenile justice system to avoid having their low scores count against them.<sup>104</sup>

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100. See Black, *supra* note 44, at 846.

101. See *id.*; see also RICHARD ARUM, JUDGING SCHOOL DISCIPLINE: THE CRISIS OF MORAL AUTHORITY 5–6 (2005); JUDITH KAFKA, THE HISTORY OF “ZERO TOLERANCE” IN AMERICAN PUBLIC SCHOOLS 6 (2011). Scholars have posited reasons for why the routine process very often only results in a sham. For example, the Court did not articulate what these more robust procedural protections might be or a standard to measure their adequacy. See generally Black, *supra* note 44, at 844–55 (describing the shortcomings of *Goss v. Lopez*). Other scholars maintain that the absence of guidance from the Court provides a fruitful area for lawyers to expand the procedural protections to which students should be entitled. See KIM ET AL., *supra* note 16, at 82–84 (providing guidance to advocates to expand protections to students subject to long-term suspensions and expulsions).

102. Black, *supra* note 44, at 859.

103. For instance, the now-defunct No Child Left Behind Act required schools receiving federal funds to administer various academic assessments to students at different stages during grades three through twelve, see *Testing: Frequently Asked Questions*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/nclb/accountability/ayp/testing-faq.html> (last visited Jan. 6, 2016), and imposed sanctions on schools whose students failed to meet certain standards. See Monahan & Torres, *supra* note 54, at 5. The newly-enacted Every Student Succeeds Act, Pub. L. 114-95 (2015), which replaced the No Child Left Behind Act, also requires states receiving federal funds to implement student academic assessments in their public schools, see *id.* § 1111(b)(2). However, one of the hallmarks of the Every Student Succeeds Act is that it prohibits the federal government from determining the weight of those assessments for accountability purposes. See *id.* § 1111(e)(1)(B)(iii); SENATE COMM. ON HEALTH, EDUC., LABOR, AND PENSIONS, THE EVERY CHILD ACHIEVES ACT OF 2015 1, available at [http://www.help.senate.gov/imo/media/The\\_Every\\_Child\\_Achieves\\_Act\\_of\\_2015--summary.pdf](http://www.help.senate.gov/imo/media/The_Every_Child_Achieves_Act_of_2015--summary.pdf).

104. See, e.g., FED. ADVISORY COMM. ON JUVENILE JUSTICE, *supra* note 42, at 10; NAACP LEGAL DEF. & EDUC. FUND, DISMANTLING THE SCHOOL-TO-PRISON PIPELINE 5 (2005); TEST, PUNISH, AND PUSH OUT, *supra* note 58, at 28–33 (discussing that NCLB puts pressure on schools to push out low-performing students); Linda Darling-Hammond, *Race, Inequality and Educational Accountability: The Irony of 'No Child Left Behind.'* 10 RACE, ETHNICITY & EDUC. 245, 252–55 (2007); James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 969–70 (2004); Kupchik et al., *supra* note 35; Klehr, *supra* note 63, at 602–03; Krezmien et al., *supra* note 64,

### *E. Academic Underachievement and the Mindset of Educators*

Two more intricately related factors that contribute to the Pipeline include student academic underachievement and how educators choose to handle disciplinary issues. While the connection between underachievement and student involvement in the justice system will not be fully explored in this Article, when students do not graduate from high school and obtain the skills to procure adequate employment, they are more likely to become involved in the justice system at some point in their lives.<sup>105</sup>

In addition, and more relevant to the disciplinary focus of this Article, student underachievement often leads to student misbehavior in the classroom. Empirical studies show that it is common for low-performing students to misbehave out of frustration or embarrassment when they are unable to learn the academic material and meet grade-level expectations.<sup>106</sup> As many educators well understand, when students begin to comprehend that the educational process is not working for them—that they will not be admitted to college, have access to a well-paying job, or enjoy a promising career—they have fewer incentives to obey school rules

at 274 (“The high-stakes assessments associated with the No Child Left Behind Act left little room in schools for student misbehavior.”); cf. Rachel F. Moran, *Sorting and Reforming: High-Stakes Testing in the Public Schools*, 34 AKRON L. REV. 107, 115 (2000) (arguing that in a high-stakes testing context, low-performing students are in danger of being pushed out of schools).

105. See CLIVE R. BELFIELD ET AL., *THE ECONOMIC VALUE OF OPPORTUNITY YOUTH 20* (2012); MELISSA SICKMUND & CHARLES PUZZANCHERA, NAT’L CTR. FOR JUVENILE JUSTICE, *JUVENILE OFFENDERS AND VICTIMS: 2014 NATIONAL REPORT 14–15* (2014) (noting that in 2009, 40 percent of institutionalized persons had dropped out of high school, whereas only 8 percent of noninstitutionalized persons had dropped out of high school, and explaining that in 2006, almost one in ten male high school dropouts was institutionalized compared to less than one in thirty-three male high school graduates); ANDREW SUM ET AL., CTR. FOR LABOR MKT. STUD., *THE CONSEQUENCES OF DROPPING OUT OF HIGH SCHOOL: JOBLESSNESS AND JAILING FOR HIGH SCHOOL DROPOUTS AND THE HIGH COST FOR TAXPAYERS 7–11* (2009). It is important to emphasize that these studies show a strong association between dropping out of school and becoming incarcerated, but they do not demonstrate a causal relationship.

106. See MATTHEW P. STEINBERG ET AL., CONSORTIUM ON CHI. SCH. RESEARCH, UNIV. OF CHI. URBAN EDUC. INST., *STUDENT AND TEACHER SAFETY IN CHICAGO PUBLIC SCHOOLS: THE ROLES OF COMMUNITY CONTEXT AND SCHOOL SOCIAL ORGANIZATION 46* (2011), available at [http://ccsr.uchicago.edu/downloads/8499safety\\_in\\_cps.pdf](http://ccsr.uchicago.edu/downloads/8499safety_in_cps.pdf) (observing that low-performing students are less likely to be engaged in school and more likely to be frustrated and misbehave); Matthew P. Steinberg et al., *What Conditions Support Safety in Urban Schools?: The Influence of School Organizational Practices on Student and Teacher Reports of Safety in Chicago*, in *CLOSING THE SCHOOL DISCIPLINE GAP: EQUITABLE REMEDIES FOR EXCESSIVE EXCLUSION 118, 125* (Daniel J. Losen ed., 2015) [hereinafter *CLOSING THE SCHOOL DISCIPLINE GAP*] (maintaining that low-performing students are less likely to be engaged and more likely to act out).

and take school seriously.<sup>107</sup> And although federal and state laws require educators to suspend, expel, or refer a student to law enforcement for certain offenses, many educators choose to employ such harsh measures for more trivial matters, such as minor disturbances in the classroom.<sup>108</sup>

Of particular concern is that many school officials and teachers who work with minority students living in poor neighborhoods have a stronger tendency to adopt this harsh, punitive mindset when disciplining students.<sup>109</sup> The reasons for these attitudes are multi-layered and complex. There is troubling empirical evidence suggesting that some teachers and school officials believe that some students, particularly African-American males, are “bound for jail” and “unsalvageable.”<sup>110</sup> Teachers and school

107. PAUL WILLIS, *LEARNING TO LABOR: HOW WORKING CLASS KIDS GET WORKING CLASS JOBS* 72 (1977) (explaining that “teacher[s] authority becomes increasingly the random one of the prison guard, not the necessary one of the pedagogue,” when students think that the knowledge, skills, and credentials acquired in school are irrelevant); STEINBERG ET AL., *supra* note 106, at 27–31, 46 (finding that students’ academic skills are highly correlated with overall safety at a school); Pedro A. Noguera, *Schools, Prisons, and Social Implications of Punishment: Rethinking Disciplinary Practices*, 42 *THEORY INTO PRAC.* 341, 343 (2003); *see also* Nance, *School Surveillance and the Fourth Amendment*, *supra* note 16, at 100.

108. *See* ACTION FOR CHILDREN, FROM PUSH OUT TO LOCK UP: NORTH CAROLINA’S ACCELERATED SCHOOL-TO-PRISON PIPELINE 9 (2013), available at [http://www.ncchild.org/wp-content/uploads/2014/05/2013\\_STPP-FINAL.pdf](http://www.ncchild.org/wp-content/uploads/2014/05/2013_STPP-FINAL.pdf) [hereinafter FROM PUSH OUT TO LOCK UP] (“Students were most commonly referred to the juvenile justice system for low-level offenses . . . .”); AM. BAR ASS’N, JUVENILE JUSTICE COMM’N, ZERO TOLERANCE POLICIES: A REPORT 2 (2001), available at [http://www.americanbar.org/content/dam/aba/directories/policy/2001\\_my\\_103b.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/policy/2001_my_103b.authcheckdam.pdf); EDUCATION UNDER ARREST, *supra* note 28, at 15 (reporting that in 2007–2008, 96 percent of school-based referrals in Birmingham, Alabama, were for misdemeanors); ARRESTING DEVELOPMENT, *supra* note 24, at 6 (explaining that during the 2004–2005 school year in Florida, 76 percent of school-based referrals to law enforcement were for misdemeanor offenses such as disorderly conduct); *see also* TONY FABELO ET AL., COUNCIL OF STATE GOV’TS JUSTICE CTR. & PUB. POLICY RESEARCH INST., TEX. A&M UNIV., BREAKING SCHOOLS’ RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE JUSTICE INVOLVEMENT 37 (2011), available at [http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf) [hereinafter BREAKING SCHOOLS’ RULES] (reporting that 97.3 percent of suspensions and expulsions in Texas resulted from offenses that did not require suspension or expulsion under law); MARK A. GREENWALD, FLA. DEP’T OF JUVENILE JUSTICE, DELINQUENCY IN FLORIDA’S SCHOOLS: A SEVEN-YEAR STUDY (2004–05 THROUGH 2010–11) 8 (2011), available at [https://www.prisonlegalnews.org/media/publications/fl\\_dept\\_of\\_juvenile\\_justice\\_study\\_on\\_delinquency\\_in\\_fl\\_schools\\_2004-2011.pdf](https://www.prisonlegalnews.org/media/publications/fl_dept_of_juvenile_justice_study_on_delinquency_in_fl_schools_2004-2011.pdf) (observing that “disorderly conduct” was the second most common school-related delinquency referral in Florida schools from 2010 to 2011); S.C. DEP’T OF JUVENILE JUSTICE, 2012–2013 ANNUAL STATISTICAL REPORT 5 (2013), available at <http://www.state.sc.us/djj/pdfs/2012-13%20Annual%20Statistical%20Report.pdf> (stating that the third most frequent offense associated with referrals to family court in 2012–2013 was “disturbing schools”).

109. NAACP LEGAL DEF. & EDUC. FUND, *supra* note 104, at 5–6; Noguera, *supra* note 107, at 342.

110. *See* Michelle Fine et al., *Civics Lessons: The Color and Class of Betrayal*, 106 *TEACHERS C. REC.* 2193, 2204–05 (2004) (finding that students believed that their teachers considered them to be “animals,” “inmates,” or “killers”); Hirschfield, *supra* note 43, at 92 (“Owing to a dominant image of black males as criminals and prisoners, many school authorities view chronically disobedient black



officials also are influenced by unconscious bias towards minority students.<sup>111</sup> In addition, there is another powerful, systemic force at work: the failure of our nation to provide adequate resources for schools to properly educate the growing number of students with acute needs.<sup>112</sup>

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boys as ‘bound for jail’ and ‘unsalvageable.’”); Noguera, *supra* note 52, at 448 (observing that black students were less inclined than white students to believe that their teachers were concerned about and supported them).

111. While not a primary focus of this Article, the implicit bias of educators is a problem that our nation must address because of its contribution to the racial disproportionalities relating to school discipline. See Jamilia J. Blake et al., *Challenging Middle-Class Notions of Femininity: The Cause of Black Females’ Disproportionate Suspension Rates*, in CLOSING THE SCHOOL DISCIPLINE GAP, *supra* note 106, at 75, 76 (“Although a number of factors are believed to contribute to disproportionate disciplinary practices, racial/ethnic bias has been implicated most frequently . . . .”); Pamela Fenning & Jennifer Rose, *Overrepresentation of African American Students in Exclusionary Discipline: The Role of School Policy*, 42 URB. EDUC. 536, 537 (2007) (explaining that students of color are targeted by teachers out of fear and anxiety of losing control of the classroom); Kent McIntosh et al., *Education Not Incarceration: A Conceptual Model for Reducing Racial and Ethnic Disproportionality in School Discipline*, 5 J. APPLIED RES. ON CHILD. 1, 4, 6 (2014) (stating that conscious or unconscious bias is an important factor in the discipline gap); L. Song Richardson, *Police Efficiency and the Fourth Amendment*, 87 IND. L.J. 1143, 1146–47 (2012) (maintaining that individuals have nonconscious reactions to others that negatively influence their decisions and behaviors toward those individuals); cf. Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555, 1570 (2013) (“Despite our largely egalitarian attitudes and beliefs, social science research over the past decade has shown that a majority of Americans are implicitly biased against Blacks.”). It also contributes to racial disparities relating to academic achievement. See Clark McKown & Rhona S. Weinstein, *Teacher Expectations, Classroom Context, and the Achievement Gap*, 46 J. SCH. PSYCH. 235, 256 (2008) (demonstrating empirically that teachers with high prejudicial attitudes towards minority students experienced higher gaps in student achievement along racial lines than teachers with lower biases); Harriet R. Tenenbaum & Martin D. Ruck, *Are Teachers’ Expectations Different for Racial Minority Than for European American Students? A Meta-Analysis*, 99 J. EDUC. PSYCH. 253, 271 (2007) (observing that teachers have higher expectations for white students than for minority students, and that teacher expectancies may lead to differences in academic performances); Linda van den Bergh et al., *The Implicit Prejudiced Attitudes of Teachers: Relations to Teacher Expectations and the Ethnic Achievement Gap*, 47 AM. EDUC. RES. J. 497, 518 (2010) (observing empirically that teachers with negative attitudes towards ethnic minorities viewed those students as less intelligent and less capable of obtaining promising school career prospects, and student achievement differences between ethnic minority students and other students were larger in classrooms with prejudiced teachers than with teachers who held less prejudicial attitudes); see also CHERYL STAATS, KIRWAN INST. FOR THE STUDY OF RACE AND ETHNICITY, THE OHIO STATE UNIV., STATE OF THE SCIENCE: IMPLICIT BIAS REVIEW 2013 30–34 (2013). Elsewhere, I propose strategies for schools to address implicit racial biases when disciplining students that also may contribute to a broader strategy to address biases relating to academic achievement as well. See Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 16.

112. See LINDA DARLING-HAMMOND, *THE FLAT WORLD AND EDUCATION* 27–65 (2010) (maintaining that students with the greatest needs often learn in disadvantaged educational environments); GARY ORFIELD & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., *RACIAL TRANSFORMATION AND THE CHANGING NATURE OF SEGREGATION* 29–31 (2006), available at <http://files.eric.ed.gov/fulltext/ED500822.pdf> (describing the inequitable learning environments that minority students living in concentrated poverty often confront); Derek W. Black, *Middle-Income Peers as Educational Resources and the Constitutional Right to Equal Access*, 53 B.C. L. REV. 373, 404–09 (2012) (explaining that disadvantaged students often receive an inferior education); James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249 (1999) (discussing educational resource

Educators, particularly those who work in schools located in impoverished areas, serve large percentages of students who face language barriers; have health problems; are neglected; live in abusive, dysfunctional home environments; suffer from malnutrition; lack early learning opportunities; and have severe learning disabilities.<sup>113</sup> Indeed, the effects of poverty on children are devastating.<sup>114</sup> Several empirical studies demonstrate that growing up in poverty is significantly correlated with severe cognitive impairments and poor academic achievement.<sup>115</sup> Yet, educators working in these distressed environments more often have fewer resources to adequately teach their students.<sup>116</sup> Education scholar Pedro Noguera maintains that it is the acute needs of students and the inability of

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inequalities for disadvantaged students). Moreover, as many scholars have observed, legislators have diverted needed funds for education to the criminal justice system. *See, e.g.*, Garrett Albert Duncan, *Urban Pedagogies and the Ceiling of Adolescents of Color*, 27 SOC. JUST. 29, 33–34 (2000) (explaining that from 1993 to 1995, California decreased spending for primary and secondary schools by over 7 percent and for higher education institutions by just under 5 percent but increased its spending on corrections by over 43 percent); Giroux, *supra* note 43, at 559 (noting that operating budgets for public education institutions in New York between 1988 and 1998 dropped by 29 percent, while funding for prisons increased by 76 percent); Hirschfield, *supra* note 43, at 90 (observing that “the criminal justice boom diverted public funds that could have been directed at public education”).

113. Noguera, *supra* note 107, at 342; *see also* ORFIELD & LEE, *supra* note 112, at 29–30.

114. *See* Myron Orfield, *Land Use and Housing Policies to Reduce Concentrated Poverty and Racial Segregation*, 33 FORDHAM URB. L.J. 877, 881–84 (2006) (providing examples of the negative impacts poverty has on students’ educational development and their ultimate success as adults); Dowd, *supra* note 28, at 1211 (detailing the harmful effects of poverty on children, including cognitive impairment, malnutrition, and health problems).

115. *See, e.g.*, Martha J. Farah et al., *Childhood Poverty: Specific Associations with Neurocognitive Development*, 1110 BRAIN RES. 166, 166, 169 (2006) (finding that childhood poverty results in “disparities in working memory, cognitive control and especially in language and memory”); James E. Ryan, *Poverty as Disability and the Future of Special Education Law*, 101 GEO. L.J. 1455, 1478–91 (2013) (explaining that cognitive disparities correlate with socioeconomic status); Dowd, *supra* note 28, at 1211 (“Poverty impacts early development, which is critical to later functioning.”); *see also* Nance & Madsen, *supra* note 28, at 290–91. A recent study by Professor Patrick Sharkey went even further, explaining that children from families that lived in poor neighborhoods for two generations scored significantly lower on reading and language ability tests than children who lived in poor neighborhoods for only one generation even after accounting for other important factors. *See* PATRICK SHARKEY, STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY 129 (2013).

116. *See* DARLING-HAMMOND, *supra* note 112, at 27–65 (explaining that disadvantaged students often have unequal access to needed resources); Gary Orfield, *The Growth of Segregation: African Americans, Latinos, and Unequal Education*, in DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF *BROWN V. BOARD OF EDUCATION* 53, 67–69 (Gary Orfield & Susan E. Eaton eds., 1996) (observing that “disadvantaged students face more barriers and receive less reinforcement to succeed in school”); Osamudia R. James, *White Like Me: The Negative Impact of the Diversity Rationale on White Identity Formation*, 89 N.Y.U. L. REV. 425, 472 (2014) (maintaining that majority-minority schools often have limited access to adequate resources).

schools to meet those needs that cause students to become disruptive and sometimes dangerous at school.<sup>117</sup>

School officials and teachers are aware that students who struggle academically or have acute needs tend to be more disruptive at school.<sup>118</sup> And while there are many dedicated teachers facing these conditions who work tirelessly to divert as many students as possible from the criminal justice system, there are others who believe that they lack the resources to meet the needs of all their troubled, disruptive students and adopt an exclusionary ethos to preserve their limited resources for the students whom they believe have a better chance of success.<sup>119</sup> Accordingly, schools serving large numbers of struggling students often rely on extreme forms of discipline, punishment, and control.<sup>120</sup> Sociologist Paul Hirschfield sums up the issue as follows:

[As] [t]eachers are often bereft of not only sufficient resources but also a cogent narrative of opportunity that can help them gain voluntary compliance from students . . . it is understandable that teachers and administrators often perceive little choice but to summon repressive means to swiftly remove disruptive students from the classroom and the school. Criminal justice offers a useful template and accessible tools for this purpose.<sup>121</sup>

## II. LAW ENFORCEMENT OFFICERS IN SCHOOLS

A key, yet understudied, component of the Pipeline is the increased presence of law enforcement officers in schools. Law enforcement officers have interacted with and provided services to schools for decades.<sup>122</sup>

117. Noguera, *supra* note 107, at 342.

118. *Id.*; Nance, *School Surveillance and the Fourth Amendment*, *supra* note 16, at 101.

119. Nance, *School Surveillance and the Fourth Amendment*, *supra* note 16, at 101; *see also* NAACP LEGAL DEF. & EDUC. FUND, *supra* note 104, at 5 (“[T]he lack of sufficient resources in our schools also creates perverse incentives for school officials to remove children from school.”); Hirschfield, *supra* note 43, at 92 (observing that some educators rely on extreme methods of punishment and control because they believe that they “lack the resources to reverse the downward trajectories of the most troublesome students without compromising the quality of teaching and services aimed at more deserving or promising students”).

120. NAACP LEGAL DEF. & EDUC. FUND, *supra* note 104, at 5; *see also* Noguera, *supra* note 107, at 345 (observing that schools that serve large numbers of academically unsuccessful students often operate more like prisons than schools, using extreme forms of discipline, punishment, and control); Nance, *School Surveillance and the Fourth Amendment*, *supra* note 16, at 102.

121. Hirschfield, *supra* note 43, at 93 (citation omitted).

122. *See* Paul J. Hirschfield & Katarzyna Celinska, *Beyond Fear: Sociological Perspectives on the Criminalization of School Discipline*, 5 SOC. COMPASS 1, 1 (2011); JAMES & MCCALLION, *supra* note 37, at 2. These traditional services include visible patrols, criminal investigations, and responses to

However, the practice of having law enforcement officers, or school resource officers (“SROs”),<sup>123</sup> regularly present in schools on a large scale is a relatively new phenomenon and is part and parcel of the larger overall movement towards criminalizing school discipline.<sup>124</sup> In the late 1970s there were fewer than one hundred police officers in our public schools,<sup>125</sup> but this number grew significantly in the years that followed. According to the Bureau of Justice Statistics’ Law Enforcement Management and Administrative Statistics survey, in 1997 there were approximately 12,300 SROs employed by local law enforcement agencies nationwide.<sup>126</sup> In 2003, the number of full time SROs jumped to 19,900.<sup>127</sup> In 2007, the number of SROs dropped slightly to 19,088.<sup>128</sup> SRO programs vary from state to state, county to county, and even district to district.<sup>129</sup> In some states and counties, police agencies assign SROs to schools, either by request of school district officials or by the police agencies.<sup>130</sup> In a handful of states, school districts have the authority to create school district-run police departments.<sup>131</sup>

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calls for service. BARBARA RAYMOND, U.S. DEP’T OF JUSTICE, ASSIGNING POLICE OFFICERS TO SCHOOLS 1 (2010), archived at <http://perma.cc/8TL5-NGKK>.

123. According to the Community Oriented Policing Services (“COPS”) program and the Safe and Drug-Free Schools and Community Act, an SRO is a “career law enforcement officer, with sworn authority, deployed in community-oriented policing, and assigned by the employing police department or agency to work in collaboration with schools and community-based organizations.” 42 U.S.C. § 3796dd-8 (2014); see also 20 U.S.C. § 7161 (2014). SROs typically are sworn police officers employed by police departments and assigned to work in schools full-time, but in larger jurisdictions, such as Los Angeles or Houston, SROs might be employed by the school districts. See CATHERINE Y. KIM & I. INDIA GERONIMO, AM. CIVIL LIBERTIES UNION, POLICING IN SCHOOLS: DEVELOPING A GOVERNANCE DOCUMENT FOR SCHOOL RESOURCE OFFICERS IN K-12 SCHOOLS 5 (2009), archived at <https://perma.cc/27AG-W6HZ>.

124. See JAMES & MCCALLION, *supra* note 37, at 2; RAYMOND, *supra* note 122, at 1; Krezmien et al., *supra* note 64, at 275; Theriot, *supra* note 11, at 281.

125. See Brady et al., *supra* note 57, at 457; Hirschfield & Celinska, *supra* note 122, at 1.

126. JAMES & MCCALLION, *supra* note 37, at 19.

127. *Id.*; see also Theriot, *supra* note 11, at 281 (citation omitted) (“While it is difficult to know the exact number of school resource officers, it is estimated that there might be more than 20,000 law enforcement officers patrolling schools in the United States.”).

128. JAMES & MCCALLION, *supra* note 37, at 20. It is not clear exactly how many SROs are in schools today, but the National Center for Education Statistics estimates that there could be as many as 30,000. See LUCINDA GRAY ET AL., U.S. DEP’T OF EDUC., PUBLIC SCHOOL SAFETY AND DISCIPLINE: 2013–14 11 (2015).

129. See THE COUNCIL OF STATE GOV’TS, JUSTICE CTR., OFFICERS IN SCHOOLS: A SNAPSHOT OF LEGISLATIVE ACTION 1 (2014), archived at <https://perma.cc/T4JD-42BW> [hereinafter A SNAPSHOT OF LEGISLATIVE ACTION]; Brown, *supra* note 10, at 591.

130. See Brown, *supra* note 10, at 592; A SNAPSHOT OF LEGISLATIVE ACTION, *supra* note 129, at 1–2.

131. See Brown, *supra* note 10, at 592; A SNAPSHOT OF LEGISLATIVE ACTION, *supra* note 129, at 2; see also KIM & GERONIMO, *supra* note 123, at 5 (explaining that SROs are sworn police officers

SRO programs are expensive.<sup>132</sup> A rough estimate of the cost of employing 19,088 full-time SROs is almost \$619 million a year.<sup>133</sup> To put an SRO in every public school, as some recommend,<sup>134</sup> would cost approximately \$3.2 billion each year.<sup>135</sup> Despite this high cost, federal and state governments have encouraged the use of law enforcement and other strict security measures in schools by passing laws granting money for these purposes. For example, the US Department of Justice’s Community Oriented Policing Services (“COPS”) program and the Safe and Drug-Free Schools and Communities Act have provided millions of dollars for law enforcement, metal detectors, surveillance cameras, and other deterrent and security measures in schools.<sup>136</sup> Several states also have their own programs to fund these strict measures in schools, even prior to the Newtown shootings.<sup>137</sup> Powerful networks of criminal justice professionals often support and promote these federal and state funding initiatives.<sup>138</sup>

Although lawmakers, police departments, and school officials expanded SRO programs to enhance school safety in the wake of rising juvenile crime rates and high-profile school shootings,<sup>139</sup> they made these

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typically employed by police departments and assigned to work in schools full-time, but in larger jurisdictions, such as Los Angeles or Houston, SROs might be employed by the school districts).

132. JAMES & MCCALLION, *supra* note 37, at 20.

133. *See id.*

134. *See Remarks from the NRA Press Conference on Sandy Hook Shooting, supra* note 34.

135. *See* JAMES & MCCALLION, *supra* note 37, at 20. The average minimum salary for an entry-level police officer is \$32,412. *Id.*

136. *See* 20 U.S.C. § 7115(b)(2)(E)(ii), (vi) (2014) (authorizing funding for metal detectors, electronic locks, surveillance cameras, and SROs); OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, 2011 SECURE OUR SCHOOLS PROGRAM 1 (2011), *available at* <http://www.cops.usdoj.gov/pdf/2011AwardDocs/CSPP-SOS-CHP/SOSMethodology.pdf>; JAMES & MCCALLION, *supra* note 37, at 7–8.

137. *See, e.g.*, ALA. CODE § 41-15B-2.2 (2014); GA. CODE ANN. § 20-2-1185 (2015); 24 PA. CONS. STAT. § 13-1302-A (2011).

138. *See* Hirschfeld & Celinska, *supra* note 122, at 6. The school security market has become increasingly profitable for many private companies over the last two decades, and forecasters expect that market to continue expanding. *See* Lizbet Simmons, *Profiting from Punishment: Public Education and the School Security Market*, 41 SOC. JUST. 81, 88–92 (2015) (explaining that school security market sales increased from \$328 million in 1996 to \$3 billion in 2013 and are expected to reach \$5 billion by 2017).

139. *See* JAMES & MCCALLION, *supra* note 37, at 5; Brown, *supra* note 10, at 591; Theriot, *supra* note 11, at 280. In 2002, the US Department of Justice sponsored a survey of school principals nationwide to ascertain the reasons why schools had established SRO programs. *See* LAWRENCE F. TRAVIS III & JULIE KIERNAN COON, CTR. FOR CRIMINAL JUSTICE RESEARCH, UNIV. OF CINCINNATI, THE ROLE OF LAW ENFORCEMENT IN PUBLIC SCHOOL SAFETY: A NATIONAL SURVEY (2005), *archived at* <https://perma.cc/MSH6-8XS2>. The responses were mixed. Principals indicated that “[n]ational media attention about school violence” (24.5%) and “[d]isorder problems (e.g., rowdiness, vandalism)” (17.5%) were the reasons behind establishing the program. *Id.* at 84–85. Interestingly, the

decisions without thoroughly evaluating the effectiveness of SRO programs.<sup>140</sup> In fact, very few studies have reliably evaluated whether SRO programs actually enhance school safety.<sup>141</sup> According to a recent Congressional Research Service Report:

The body of research on the effectiveness of SRO programs is noticeably limited, both in terms of the number of studies published and the methodological rigor of the studies conducted. 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 SRO programs deter school shootings, one of the key reasons for renewed congressional interest in these programs.<sup>142</sup>

In addition, lawmakers and school officials expanded SRO programs despite the potentially harmful effects that SROs may have on the educational setting.<sup>143</sup> For example, strict security measures in and of themselves can harm the educational climate by alienating students and

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most common response was “[o]ther,” which included reasons such as receiving a grant, “part of community policing,” “part of a drug awareness program,” “to improve school safety,” and “to build relationships with students.” *Id.* Only 3.7% of respondents indicated that the level of violence in the school was the reason for establishing an SRO program. *Id.*

140. See JAMES & MCCALLION, *supra* note 37, at 9; Brown, *supra* note 10, at 592 (observing that despite the enormous expense associated with SRO programs, it is not clear whether SROs enhance student safety); Theriot, *supra* note 11, at 280.

141. See JAMES & MCCALLION, *supra* note 37, at 9; Theriot, *supra* note 11, at 280.

142. JAMES & MCCALLION, *supra* note 37, at 10–11; see also Theriot, *supra* note 11, at 280 (citations omitted) (“Empirical evaluations of these various security strategies are limited, have varying levels of methodological rigor, and often report conflicting findings.”). Another summary of the research on the effectiveness of SRO programs states:

Studies of SRO effectiveness that have measured actual safety outcomes have mixed results. Some show an improvement in safety and a reduction in crime; others show no change. Typically, studies that report positive results from SRO programs rely on participants’ perceptions of the effectiveness of the program rather than on objective evidence. Other studies fail to isolate incidents of crime and violence, so it is impossible to know whether the positive results stem from the presence of SROs or are the result of other factors.

RAYMOND, *supra* note 122, at 8.

143. See Brown, *supra* note 10, at 592 (lamenting that such little attention has been devoted to measuring the impact SROs have on the school environment); Theriot, *supra* note 11, at 281 (observing that the research on SROs rarely discusses criminalization of school discipline or provides data about arrests).

generating mistrust,<sup>144</sup> which, paradoxically, may lead to even more disorder and violence.<sup>145</sup>

Furthermore, putting more SROs in schools may involve more students in the criminal justice system, even for low-level violations of school behavioral codes.<sup>146</sup> Indeed, perhaps the most significant challenge of having SROs in schools is that while SROs may be in schools primarily to enhance school safety, many SROs also become involved in student disciplinary matters that educators traditionally have handled and should continue to handle.<sup>147</sup> It is easy to see how this happens. Most SROs spend their time each day patrolling buildings and grounds, investigating complaints, minimizing disruptions, and maintaining order.<sup>148</sup> When SROs

144. See *Ending the School-to-Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 1–4 (2012) (testimony of Edward Ward, Volunteer, Blocks Together, Dignity in Schools Campaign), archived at <http://perma.cc/CJ2D-FLN2> (describing his school environment as “very tense,” “antagonizing,” and “dishearten[ing],” where “the halls were full with school security officers whose only purpose seemed to be to serve students with detentions or suspensions”); Paul Hirschfield, *School Surveillance in America: Disparate and Unequal*, in *SCHOOLS UNDER SURVEILLANCE*, *supra* note 54, at 38, 46 (observing that strict security measures are “a frequent cause of disunity or discord within the school community”); Beger, *supra* note 41, at 340 (concluding that “aggressive security measures produce alienation and mistrust among students”); cf. Tom R. Tyler & Lindsay E. Rankin, *Legal Socialization and Delinquency*, in *THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE*, *supra* note 55, at 353, 361 (observing that “surveillance systems have deleterious effects on the social climate of groups because their use implies distrust, which decreases people’s ability to feel positively about themselves, their groups, and the system itself”).

145. See Clifford H. Edwards, *Student Violence and the Moral Dimensions of Education*, 38 *PSYCHOL. IN THE SCHS.* 249, 250 (2001) (stating that “intrusive strategies are likely to undermine the trust needed to build cooperative school communities capable of really preventing violence”); Matthew J. Mayer & Peter E. Leone, *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools*, 22 *EDUC. & TREATMENT OF CHILD.* 333, 350, 352 (1999) (finding that student disorder and student victimization were higher in schools using strict security measures); Pedro A. Noguera, *Preventing and Producing Violence: A Critical Analysis of Responses to School Violence*, 65 *HARV. EDUC. REV.* 189, 190–91 (1995) (observing that the “get tough” approach undermines school safety because coercive measures create mistrust and resistance among students); Matthew P. Steinberg et al., *supra* note 106, at 127–29 (finding that students and teachers reported lower levels of perceived safety in schools that had higher suspension rates, even after controlling for community and contextual variables).

146. See *infra* Parts III–IV; see also *FERGUSON INVESTIGATION*, *supra* note 10, at 37–38 (finding that the Ferguson, Missouri, Police Department treated “routine discipline issues as criminal matters”).

147. See Brown, *supra* note 10, at 591; *FERGUSON INVESTIGATION*, *supra* note 10, at 37–38.

148. See *JAMES & MCCALLION*, *supra* note 37, at 2; Theriot, *supra* note 11, at 281. According to the COPS program, an SRO’s duties include the following:

- (A) to address crime and disorder problems, gangs, and drug activities affecting or occurring in or around an elementary or secondary school; (B) to develop or expand crime prevention efforts for students; (C) to educate likely school-age victims in crime prevention and safety; (D) to develop or expand community justice initiatives for students; (E) to train students in conflict resolution, restorative justice, and crime awareness; (F) to assist in the identification of physical changes in the environment that may reduce crime in or around the school; and

observe students being disruptive and disorderly, they intervene because they view this as one of their duties, even when those duties overlap with the traditional duties of school officials.<sup>149</sup> Furthermore, SROs apparently have the legal authority to intervene in almost all student disciplinary matters. For example, most states have criminal laws that prohibit assault, disorderly conduct, larceny, and disturbing the peace,<sup>150</sup> and several states have passed statutes that explicitly criminalize the disruption of school activities<sup>151</sup> or talking back to teachers.<sup>152</sup> Accordingly, if a student is involved in a scuffle with another student, talks back to a teacher, yells at another student, steals another student's pencil, or exhibits other types of poor behavior, SROs have legal authority to arrest that student, even a six-year old student who is throwing a temper tantrum.<sup>153</sup> Thus, in many schools, SROs have become the "new authoritative agents" of discipline.<sup>154</sup>

The problems with SROs handling student disciplinary issues are multifaceted. Whereas teachers and school officials have advanced academic credentials, receive training in child psychology, discipline, pedagogy, and educational theory, and are accountable to local school

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(G) to assist in developing school policy that addresses crime and to recommend procedural changes.

42 U.S.C. § 3796dd-8(4) (2014).

149. Interestingly, the SRO handbook developed by COPS provides an example of an SRO who "once had to threaten to arrest a principal for interfering with a police officer in the performance of his duty when the administrator was physically barring [the SRO] from arresting a student," reminding SROs that they have the power to arrest students over the objections of school officials. OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, A GUIDE TO DEVELOPING, MAINTAINING, AND SUCCEEDING WITH YOUR SCHOOL RESOURCE OFFICER PROGRAM 51 (2005), *available at* <http://perma.cc/235W-UCTT>.

150. *See, e.g.*, CAL. PENAL CODE § 241 (West 2014) (prohibiting assault); FLA. STAT. § 877.03 (2015) (prohibiting acts that breach the peace and disorderly conduct); N.Y. PENAL LAW § 155.05 (McKinney 2015) (prohibiting larceny); VA. CODE ANN. § 18.2-415 (2015) (prohibiting disorderly conduct).

151. *See* ARIZ. REV. STAT. ANN. § 13-2911 (2015); CAL. PENAL CODE § 415.5 (West 2014); FLA. STAT. § 871.01 (2015); MASS. GEN. LAWS ch. 272, § 40 (2015); NEV. REV. STAT. ANN. § 392.910 (West 2015); S.C. CODE ANN. § 16-17-420 (2014); S.D. CODIFIED LAWS § 13-32-6 (2015); TEX. EDUC. CODE ANN. § 37.123 (West 2015); WASH. REV. CODE § 28A.635.030 (2015); W. VA. CODE § 61-6-14 (2015).

152. *See* ARIZ. REV. STAT. ANN. § 15-507 (2015); ARK. CODE ANN. § 6-17-106(a) (2015); IDAHO CODE ANN. § 18-916 (2015); MONT. CODE ANN. § 20-4-303 (2015); N.D. CENT. CODE § 15.1-06-16 (2015).

153. *See* Herbert, *supra* note 13 (reporting the arrest of a six-year-old student for throwing a temper tantrum at school).

154. Brown, *supra* note 10, at 591.



boards,<sup>155</sup> SROs are trained in law enforcement, have little or no training in developmental psychology or pedagogy, and are not accountable to school boards.<sup>156</sup> Thus, an SRO's decision to arrest a student may be based on criteria that are wholly distinct from and even anathema to the best interests of the student or the school as a whole.<sup>157</sup> As noted above, the anecdotal evidence of SROs mishandling student discipline problems abounds.<sup>158</sup> In its investigation of the Ferguson, Missouri, Police Department, the US Department of Justice recently determined the following:

SROs' propensity for arresting students demonstrates a lack of understanding of the negative consequences associated with such arrests. In fact, SROs told us that they viewed increased arrests in the schools as a positive result of their work. This perspective suggests a failure of training (including training in mental health, counseling, and the development of the teenage brain); a lack of priority given to de-escalation and conflict resolution; and insufficient appreciation for the negative educational and long-term outcomes that can result from treating disciplinary concerns as crimes and using force on students.<sup>159</sup>

The negative effect of SROs and other laws, policies, and practices that contribute to the Pipeline certainly have not gone unnoticed by the public, and there were signs that changes could be underway.<sup>160</sup> However, the brutal Newtown shootings have caused lawmakers and school officials to enact a new set of laws and policies designed to protect students from intruders, but that may have the unintended consequence of involving

155. This does not imply that teachers and school officials do not need more training in these areas. In fact, as previously noted, too many school officials and teachers rely too heavily on overly punitive disciplinary methods. It is critical for school officials and teachers to become aware of and support using alternative methods to create safe, supportive learning environments. *See infra* Part V.B; *see also* Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 16.

156. Brown, *supra* note 10, at 591.

157. *Id.*; FERGUSON INVESTIGATION, *supra* note 10, at 38.

158. *See supra* notes 2–14 and accompanying text; *see also* BELWAY, *supra* note 11, at 4, 6; FERGUSON INVESTIGATION, *supra* note 10, at 37–38; AARON KUPCHIK, HOMEROOM SECURITY: SCHOOL DISCIPLINE IN AN AGE OF FEAR 94–95, 115 (2010) (describing an officer's demand for harsher punishment than what was originally imposed by the school official); Kaitlin Banner, *Breaking the School-to-Prison Pipeline: New Models for School Discipline and Community Accountable Schools*, in TOTAL REFORM FOR A BROKEN SYSTEM, *supra* note 22, at 301, 302–03 (describing other events of SROs mishandling student disciplinary issues).

159. FERGUSON INVESTIGATION, *supra* note 10, at 38.

160. *See supra* notes 29–32 and accompanying text; *see also* Kerrin C. Wolf, *Booking Students: An Analysis of School Arrests and Court Outcomes*, 9 NW. J.L. & SOC. POL'Y 58, 59 (2013).

more students in the justice system. For example, just over a month after the Newtown shootings, President Obama presented a plan to protect children that included providing \$150 million to school districts and law enforcement agencies to hire, among other individuals, SROs.<sup>161</sup> Since the Newtown shootings, the US Department of Justice's COPS Hiring Program has continued to provide monetary awards to school districts to hire SROs.<sup>162</sup> In addition, since the Newtown shootings, several states have enacted legislation designed to put more police officers in schools.<sup>163</sup> While the outcome of these new laws remains unclear, one can examine the data that are currently available to begin to understand the potential harm that these new laws may have on students.

### III. THE IMPACT OF THESE LAWS, POLICIES, AND PRACTICES ON STUDENTS

One cannot measure with precision the combined effect of all of these laws, policies, and practices on students. Nevertheless, there is objective evidence indicating their significant negative influence. For example, the number of students suspended or expelled in secondary schools nationwide increased from one in thirteen in 1972–1973 to one in nine in 2009–2010.<sup>164</sup> Many of these suspensions and expulsions resulted from

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161. THE WHITE HOUSE, NOW IS THE TIME: THE PRESIDENT'S PLAN TO PROTECT OUR CHILDREN AND OUR COMMUNITIES BY REDUCING GUN VIOLENCE 11 (2013), *archived at* <http://perma.cc/9HBA-5XFV>.

162. *See 2013 Grantee Award Package*, OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, <http://www.cops.usdoj.gov/print.asp?Item=2700> (last visited Jan. 7, 2016), *archived at* <http://perma.cc/8R24-4QS7>; *2014 Grantee Award Package*, OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, <http://www.cops.usdoj.gov/Default.asp?Item=2738> (last visited Jan. 7, 2016), *archived at* <http://perma.cc/NKS5-FZQ5>.

163. *See A SNAPSHOT OF LEGISLATIVE ACTION*, *supra* note 129, at 1–2. Other states are considering legislation that would put more law enforcement officers in schools. *See id.*; *see also* Nirvi Shah & Andrew Ujifusa, *School Safety Legislation Since Newtown*, EDUC. WEEK (Apr. 24, 2013), <http://www.edweek.org/ew/section/multimedia/school-safety-bills-since-newtown.html>, *archived at* <http://perma.cc/2DK2-RABG>.

164. KANG-BROWN ET AL., *supra* note 53, at 2. Between 1974 and 1997, the number of suspensions nationally increased from 1.7 million to 3.1 million. NAACP LEGAL DEF. & EDUC. FUND, *supra* note 104, at 3; *see also* Johanna Wald & Daniel J. Losen, *Defining and Redirecting a School-to-Prison Pipeline*, 2003 NEW DIRECTIONS FOR YOUTH DEV. 9, 10 (reporting that the number of suspensions has doubled nationwide since 1974). During the 2011–2012 school year, approximately 3.5 million students received an in-school suspension; 1.9 million students received a single out-of-school suspension; 1.55 million students received multiple out-of-school suspensions; and 130,000 students were expelled. *See* OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., CIVIL RIGHTS DATA COLLECTION, DATA SNAPSHOT: SCHOOL DISCIPLINE 2 (2014), *archived at* <http://perma.cc/KUU8-3ES5> [hereinafter DATA SNAPSHOT: SCHOOL DISCIPLINE].

only trivial infractions of school rules or offenses, not from offenses that endangered the physical well-being of other students.<sup>165</sup>

There is also evidence that school-based referrals to law enforcement have increased.<sup>166</sup> For example, in North Carolina, the number of school-based referrals increased by 10 percent from 2008 to 2013.<sup>167</sup> In an empirical study to compare referrals across multiple states,<sup>168</sup> researchers Michael Krezmien, Peter Leone, Mark Zablocki, and Craig Wells found that in four of the five states studied (Arizona, Hawaii, Missouri, and West Virginia), referrals from schools comprised a larger proportion of total referrals to the juvenile justice system in 2004 than in 1995.<sup>169</sup> That study also demonstrated that schools in Missouri, Hawaii, and Arizona referred greater proportions of their students in 2004 than in 1995.<sup>170</sup> The number of school-based arrests also increased in the Philadelphia Public School District (from 1,632 in 1999–2000 to 2,194 in 2002–2003);<sup>171</sup> Houston Independent School District (from 1,063 in 2001 to 4,002 in 2002);<sup>172</sup> Clayton County, Georgia (from 89 in the 1990s to 1,400 in 2004);<sup>173</sup> Miami-Dade County, Florida (a threefold increase from 1999 to 2001, and

165. See AM. BAR ASS'N, *supra* note 108, at 2 (explaining that students have been suspended or expelled for shooting a paperclip with a rubber band or bringing a manicure kit to school); FABELO ET AL., *supra* note 108, at 37 (reporting that 97.3 percent of suspensions and expulsions in Texas resulted from offenses that did not require suspension or expulsion under law); Daniel J. Losen, *Sound Discipline Policy for Successful Schools: How Redressing Racial Disparities Can Make a Positive Impact for All*, in *DISRUPTING THE SCHOOL-TO-PRISON PIPELINE* 45, 54–55 (Sofia Bahena et al. eds., 2012) (explaining that the vast majority of suspensions and expulsions are for minor offenses); *Are Zero Tolerance Policies Effective in the Schools?*, *supra* note 58, at 852 (explaining that a ten-year-old girl was expelled because her mother put a small knife in her lunchbox to cut up an apple, and another student was expelled for talking on a cell phone to his mother who was on deployment as a soldier to Iraq and with whom he had not spoken for thirty days).

166. Although precise national data are not available, see *EDUCATION ON LOCKDOWN*, *supra* note 19, at 15, the US Department of Education has provided national estimates for the total number of students referred to law enforcement and the total number of school-based arrests. See *DATA SNAPSHOT: SCHOOL DISCIPLINE*, *supra* note 164. According to those estimates, during the 2011–2012 school year, approximately 260,000 students were referred to law enforcement, and there were approximately 92,000 school-based arrests. *Id.* at 6.

167. *FROM PUSH OUT TO LOCK UP*, *supra* note 108, at 8–9.

168. See *EDUCATION UNDER ARREST*, *supra* note 28, at 13.

169. Krezmien et al., *supra* note 64, at 286.

170. *Id.* at 280. Schools from the states of South Carolina and West Virginia referred lower proportions of the students in 2004 than in 1995, but there was great variability in referral rates over that time period. See *id.* at 281.

171. See *EDUCATION ON LOCKDOWN*, *supra* note 19, at 15–16.

172. *Id.*

173. See *Clayton County, GA, ENDING THE SCHOOLHOUSE TO JAILHOUSE TRACK*, <http://safequalityschools.org/pages/clayton-county-ga> (last visited Jan. 11, 2016).

from 1,816 in 2001 to 2,566 in 2004);<sup>174</sup> and Lucas County, Ohio (from 1,237 in 2000 to 1,727 in 2002).<sup>175</sup> Similar to the increase of suspensions and expulsions, there is substantial evidence that the vast majority of these school-based referrals were for relatively minor offenses.<sup>176</sup>

The negative consequences associated with incarcerating a youth, which is where the school-to-prison pipeline may ultimately lead, should not be underestimated. Empirical evidence demonstrates that incarcerating juveniles limits their future educational, housing, employment, and military opportunities.<sup>177</sup> It also negatively affects a youth's mental health,<sup>178</sup> reinforces violent attitudes and behavior,<sup>179</sup> and increases the odds of future involvement in the justice system.<sup>180</sup> As the US Court of Appeals for the Tenth Circuit recently observed, “[t]he criminal punishment of young schoolchildren leaves permanent scars and unresolved anger, and its far-reaching impact on the abilities of these children to lead future prosperous and productive lives should be a matter of grave concern for us all.”<sup>181</sup>

Furthermore, the economic costs of incarcerating students are staggering. The national average expense for detaining one juvenile per year is \$148,767 (reaching as high as \$352,663 in the state of New York).<sup>182</sup> And beyond the millions of dollars that government entities spend to incarcerate youth, some estimate that the long-term costs to our society of detaining youth (which include lost future earnings, recidivism,

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174. Sara Rimer, *Unruly Students Facing Arrest, Not Detention*, N.Y. TIMES (Jan. 4, 2004), <http://www.nytimes.com/2004/01/04/us/unruly-students-facing-arrest-not-detention.html>; ARRESTING DEVELOPMENT, *supra* note 24, at 48.

175. Rimer, *supra* note 174.

176. *See, e.g.*, ARRESTING DEVELOPMENT, *supra* note 24, at 6 (explaining that during the 2004–2005 school year in Florida, 76 percent of school-based referrals to law enforcement were for misdemeanor offenses such as disorderly conduct); EDUCATION UNDER ARREST, *supra* note 28, at 15 (reporting that in 2007–2008, 96 percent of school-based referrals in Jefferson County, Alabama, were for misdemeanors); FROM PUSH OUT TO LOCK UP, *supra* note 108, at 9–10 (“Students were most commonly referred to the juvenile justice system for low-level offenses.”).

177. *See supra* note 24 and accompanying text.

178. *See supra* note 25 and accompanying text.

179. *See supra* note 23 and accompanying text.

180. *See supra* note 26 and accompanying text.

181. *Hawker v. Sandy City Corp.*, 774 F.3d 1243, 1244 (10th Cir. 2014) (Lucero, J., concurring); *see also* *N.C. v. Commonwealth*, 396 S.W.3d 852, 863 (Ky. 2013) (reasoning that the “shift away from traditional in-school discipline towards greater reliance on juvenile justice interventions, not just in drug cases, but also in common school misbehavior that ends up in the juvenile justice system . . . comes at a significant cost to state agencies and takes the student out of the normal education process . . .”).

182. *See* JUSTICE POLICY INST., *STICKER SHOCK: CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION* 11 (2014).

lost future tax revenue, and additional Medicare and Medicaid spending) range from \$7.9 billion to \$21.47 billion per year.<sup>183</sup>

But even if the student is not convicted and incarcerated, an arrest still carries severe consequences. Sometimes schools will refuse to readmit arrested students.<sup>184</sup> If arrested students are readmitted, they often face emotional trauma, embarrassment, and stigma in their schools and among their classmates and teachers.<sup>185</sup> They may also face increased monitoring from teachers, school officials, and SROs.<sup>186</sup> These conditions often lead to lower standardized test scores, a higher likelihood that the student will drop out of school, and increased interaction with the justice system.<sup>187</sup> Using data from the National Longitudinal Survey of Youth, criminologist Gary Sweeten found that, even after controlling for other relevant factors, a first-time arrest during high school almost doubles the odds that a student will drop out of school, and a court appearance associated with an arrest nearly quadruples those odds.<sup>188</sup> In another study involving inner-city students, most of whom lived in minority-dominated neighborhoods in Chicago, sociologist Paul Hirschfield found that those who were

183. *Id.* at 36.

184. EDUCATION ON LOCKDOWN, *supra* note 19, at 12.

185. *Id.*; Theriot, *supra* note 11, at 280–81. For example, a twelve-year-old African-American girl, Mikia Hutchings, was a quiet, focused, hard-working student who normally followed the rules. Tanzina Vega, *Disciplining of Girls Differs Among and Within Races*, N.Y. TIMES, Dec. 11, 2014, at A21. Mikia was caught writing the word “hi” on the gym bathroom wall with her friend. *Id.* After being suspended from school, a police officer visited Mikia’s home, accusing her of a trespassing misdemeanor and potentially a felony. *Id.* As part of an agreement to dismiss the suit after she could not pay the \$100 fine, Mikia spent her summer on probation subject to a 7 p.m. curfew and completed community service hours. *Id.* The other student, who is white, was let go after paying the \$100 fine. *Id.* According to Mikia’s grandmother, Mikia suffered from emotional distress after her dealings with the officer. *Id.* at A23. In another example, a seventeen-year-old African-American female student was expelled from high school after being accused of hitting a white male student with a book. *Id.* Criminal charges were filed against her. *Id.* Before the incident, she had been doing well academically and had been involved in extracurricular activities. *Id.* After the incident, feeling like she was treated unfairly, the student became suicidal and began cutting herself with soda can tops. *Id.*

186. Theriot, *supra* note 11, at 280–81. For example, when a middle school student from Chicago was arrested for walking past a fight that broke out, she claimed that this event changed her entire educational experience. See Banner, *supra* note 158, at 301, 302. That student observed: “Even though I had good grades, my teachers treated me differently after that. They saw me as someone who got into fights and got arrested. They didn’t want to let me graduate, eat lunch with my class, or go on our class trip even though I hadn’t done anything. It showed me that the world wasn’t fair.” *Id.* (internal quotation marks omitted).

187. See KIM ET AL., *supra* note 16, at 113, 128. Further, one must not forget the strain that increased arrests have on our justice system. Judges, prosecutors, and public defenders have complained that they are devoting scarce resources to handle school arrests that could be handled more effectively and efficiently by school officials. See *id.*; KIM & GERONIMO, *supra* note 123, at 10–11; Wolf, *supra* note 160, at 80.

188. Sweeten, *supra* note 19, at 473.

arrested in ninth or tenth grade were six to eight times more likely than students who were not arrested to drop out of high school.<sup>189</sup> These results held firm even after controlling for other demographic, behavioral, and academic variables.<sup>190</sup>

One also should not underestimate the negative impact of suspending or expelling a student. Excluding a student from school,<sup>191</sup> even for a short time period, disrupts that student's educational experience and provides that student with more time and opportunities to engage in harmful or illegal activities.<sup>192</sup> Ample studies demonstrate that a suspended student is less likely to advance to the next grade level or enroll in college and is more likely to drop out, commit a crime, get arrested, and become incarcerated as an adult.<sup>193</sup>

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189. Paul Hirschfield, *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*, 82 SOC. OF EDUC. 368, 368 (2009).

190. *Id.* at 382–85.

191. Ironically, empirical studies demonstrate that overly relying on these punitive measures often tends to cause more disciplinary problems in the long run for educators. *See supra* notes 144–45 and accompanying text. Scholars Matthew Steinberg, Elaine Allensworth, and David Johnson discovered that students and teachers reported lower levels of perceived safety in schools that had higher suspension rates, even after controlling for community and school contextual variables. Steinberg et al., *supra* note 106, at 118, 127–29. They explained that these findings, while not demonstrating a causal connection, suggested that overly relying on suspensions may aggravate safety problems, even in schools located in high-crime/high-poverty neighborhoods. *Id.* at 128–29.

192. *See Ending the School-to-Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 2–3 (2012) (statement of Laurel G. Bellows, President, Am. Bar Ass'n), archived at <http://perma.cc/N49C-Y7WN> (explaining how exclusion is an indirect route to involvement in the justice system); American Academy of Pediatrics Committee on School Health, *Policy Statement: Out-of-School Suspension and Expulsion*, 112 PEDIATRICS 1206, 1207 (2003) (explaining that when youth are not monitored by parents or trained professionals, they are much more likely to commit crimes).

193. *See* Robert Balfanz et al., *Sent Home and Put Off Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the 9th Grade*, in CLOSING THE SCHOOL DISCIPLINE GAP, *supra* note 106, at 17, 22–29 (conducting a longitudinal study of 181,897 Florida students and finding that, after controlling for student demographics and other indicators suggesting that a student is not on track to graduate, each suspension decreases the odds that a student will graduate by 20 percent); Tracey L. Shollenberger, *Racial Disparities in School Suspension and Subsequent Outcomes: Evidence from the National Longitudinal Survey of Youth*, in CLOSING THE SCHOOL DISCIPLINE GAP, *supra* note 106, at 31, 36 (finding empirically not only that exclusionary discipline negatively affected graduation rates generally, but also that its effect on minorities' graduation rates was particularly severe). As noted previously, students who do not obtain a high school diploma are more likely to become incarcerated as adults. *See supra* note 105 and accompanying text. Moreover, in a study tracking Texas students from seventh through twelfth grade, researchers discovered that exclusion from school nearly tripled a student's chances of being involved in the juvenile justice system within the subsequent year. BREAKING SCHOOLS' RULES, *supra* note 108, at 70.

Another serious ramification of these laws, practices, and policies is their disproportionate impact on minority students.<sup>194</sup> Using a variety of measures, racial disparities relating to suspensions, expulsions, referrals to law enforcement, and school-based arrests have been documented using national-, state-, and local-level data at all school levels across all settings.<sup>195</sup> For example, the US Department of Education's Office of Civil Rights Data Collection demonstrates that although African-American students represented only 16% of the total number of students during the 2011–12 school year, they represented 32% of students receiving an in-school suspension; 33% of students receiving one out-of-school suspension; 42% of students receiving more than one out-of-school suspension; and 34% of students who were expelled.<sup>196</sup> Also during this period, African-American students accounted for 27% of the students who were referred to law enforcement, and 31% of students who received a school-based arrest.<sup>197</sup> Just as appalling (or perhaps more so), while African-Americans accounted for 18% of the preschool student population, they represented 48% of the preschool children who received more than one out-of-school suspension.<sup>198</sup> These disparities are not explained by more frequent or more serious misbehavior by minority students.<sup>199</sup> According to the Office for Civil Rights, “in our investigations we have found cases where African-American students were disciplined more harshly and more frequently because of their race than similarly situated white students. In short, racial discrimination in school discipline is a real problem.”<sup>200</sup>

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194. See DEAR COLLEAGUE LETTER, *supra* note 16, at 3–4; KIM ET AL., *supra* note 16, at 80; *Are Zero Tolerance Policies Effective in the Schools?*, *supra* note 58, at 854–55.

195. Russell J. Skiba et al., *More Than a Metaphor: The Contribution of Exclusionary Discipline to a School-to-Prison Pipeline*, 47 EQUITY & EXCELLENCE IN EDUC. 546, 550 (2014).

196. DATA SNAPSHOT: SCHOOL DISCIPLINE, *supra* note 164, at 2; see also OPPORTUNITIES SUSPENDED, *supra* note 67, at 6 (showing that one out of every six black students enrolled in K–12 public schools has been suspended at least once, but only one out of twenty white students has been suspended).

197. DATA SNAPSHOT: SCHOOL DISCIPLINE, *supra* note 164, at 6; see also Wolf, *supra* note 43, at 25–26 (finding that African-American students in Delaware accounted for 67% of arrested students while comprising only 32% of the student body).

198. DATA SNAPSHOT: SCHOOL DISCIPLINE, *supra* note 164, at 1.

199. DEAR COLLEAGUE LETTER, *supra* note 16, at 4.

200. *Id.* Multiple empirical studies support the Department of Education's conclusion. See, e.g., DANIEL J. LOSEN, NAT'L EDUC. POLICY CTR., DISCIPLINE POLICIES, SUCCESSFUL SCHOOLS, AND RACIAL JUSTICE 6–7 (2011); Catherine P. Bradshaw et al., *Multilevel Exploration of Factors Contributing to the Overrepresentation of Black Students in Office Disciplinary Referrals*, 102 J. EDUC. PSYCHOL. 508, 508 (2010) (discovering that after controlling for teacher ratings of students' behavior problems, African-American students were more likely than white students to be referred to the office for disciplinary reasons); Sean Kelly, *A Crisis of Authority in Predominantly Black*

## IV. THE EMPIRICAL STUDY

As in the past, many lawmakers, police departments, and school officials currently seek to put more SROs in schools despite the fact that research on the effectiveness of SRO programs is extremely limited.<sup>201</sup> But more importantly, these decisionmakers have not given enough attention to the potential negative consequences of bolstering SRO programs, including their potential to put more students on a pathway from school to prison.<sup>202</sup> This Article's empirical study measured the relationship between a police officer's regular presence at a school and the odds that

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*Schools?*, 112 TCHRS. C. REC. 1247, 1261–62 (2010) (examining data from teacher surveys and finding that when controlling for factors such as low achievement and poverty, African-American students were no more disruptive than other students); Anna C. McFadden et al., *A Study of Race and Gender Bias in the Punishment of Handicapped School Children*, 24 URB. REV. 239, 246–47 (1992) (finding that African-American male disabled students were punished more severely than other students for the same offenses); Michael Rocque & Raymond Paternoster, *Understanding the Antecedents of the "School-to-Jail" Link: The Relationship Between Race and School Discipline*, 101 J. CRIM. L. & CRIMINOLOGY 633, 653–54 (2011) (documenting that African-American students are more likely than white students to be disciplined even after taking into account other salient factors such as grades, attitudes, gender, special education or language programs, and their conduct in school); Russell J. Skiba et al., *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCHOL. REV. 85, 95–101 (2011) (examining a national sample and finding significant school discipline disparities for minorities); Russell J. Skiba et al., *Where Should We Intervene? Contributions of Behavior, Student, and School Characteristics to Out-of-School Suspension*, in CLOSING THE SCHOOL DISCIPLINE GAP, *supra* note 106, at 132–34 (finding that race was a strong predictor of out-of-school suspensions).

201. See JAMES & MCCALLION, *supra* note 37, at 9.

202. However, the limited research that has been conducted is telling. For example, researcher Matthew Theriot studied a school district in the southeastern United States that assigned full-time SROs to schools residing within the city limits, but not without. See Theriot, *supra* note 11, at 282. Theriot found that schools with SROs were more likely to arrest students for lower-level offenses such as disorderly conduct than schools without SROs, but not for more serious crimes. *Id.* at 284–85. Theriot concedes, however, that his findings may not be generalizable because they are based on a limited sample in only one school district. *Id.* at 286. A study conducted by researchers Chongmin Na and Denise Gottfredson contained findings consistent with Theriot's study. Na and Gottfredson analyzed national data from the 2006–07 School Survey on Crime and Safety and found that schools with SROs reported higher percentages of non-serious offenses to law enforcement than schools that did not have SROs. See Chongmin Na & Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 640 (2013). Researchers Mario S. Torres, Jr. and Jacqueline A. Stefkovich analyzed data from the 1999–2000 School Survey on Crime and Safety and found that schools that "regularly use[d] law enforcement" reported student offenses to the police at higher rates than those schools that did not. See Mario S. Torres Jr. & Jacqueline A. Stefkovich, *Demographics and Police Involvement: Implications for Student Civil Liberties and Just Leadership*, 45 EDUC. ADMIN. Q. 450, 461–63 (2009). In a very recent study, criminologist Emily G. Owens discovered that police jurisdictions that received federal grants to hire more SROs in schools learned about more crimes taking place in schools, and those law enforcement agencies were more likely to arrest students who commit crimes in schools. See Emily G. Owens, *Testing the School-to-Prison Pipeline* 18–30 (Univ. of Pa. Dep't of Criminology, Working Paper No. 2015-5.1, 2015), available at <https://crim.sas.upenn.edu/working-papers/police>.



school officials refer students to law enforcement for various offenses, including seemingly minor offenses. It differs from prior studies in at least two important ways. First, it analyzed restricted data from the 2009–2010 School Survey on Crime and Safety (“SSOCS”), the most recent, complete SSOCS dataset available on this topic. Second, it controlled for other important variables that prior studies did not, such as (1) state statutes that require schools to report certain incidents to law enforcement, and (2) general levels of criminal activity and disorder that occurred in schools during that school year, while still controlling for other important demographic variables and school characteristics.<sup>203</sup>

#### A. *The Data*

The data for the empirical analysis came from the School Survey on Crime and Safety for the 2009–2010 school year (“2009–2010 SSOCS”) published by the US Department of Education’s National Center for Education Statistics (“NCES”).<sup>204</sup> The dataset is the restricted-access version, meaning that it contains sensitive, detailed information on school crime, such as the number of violent incidents that occurred on school grounds and the number of incidents that schools reported to law enforcement.<sup>205</sup>

NCES used the 2007–2008 school year Common Core of Data Public Elementary/Secondary School Universe File (“CCD”),<sup>206</sup> which is the

203. The Na and Gottfredson study, however, did account for general levels of criminal activity, but it did not account for school disorder or reporting statutes. It also relied on an older data set. *See* Na & Gottfredson, *supra* note 202, at 639.

204. *See* NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., SCHOOL SURVEY ON CRIME AND SAFETY: PRINCIPAL QUESTIONNAIRE, 2009–10 SCHOOL YEAR (2010), available at [http://nces.ed.gov/surveys/ssocs/pdf/SSOCS\\_2010\\_Questionnaire.pdf](http://nces.ed.gov/surveys/ssocs/pdf/SSOCS_2010_Questionnaire.pdf) [hereinafter 2009–2010 SSOCS QUESTIONNAIRE].

205. *See Statistical Standards Program: Getting Started*, NAT’L CTR. FOR EDUC. STATISTICS, [http://nces.ed.gov/statprog/instruct\\_gettingstarted.asp](http://nces.ed.gov/statprog/instruct_gettingstarted.asp) (last visited Jan. 8, 2016). The restricted-use data “have a higher level of detail in the data compared to public-use data files.” *Id.* The restricted-use datasets are not available to the general public. However, datasets that contain less sensitive data can be downloaded at [http://nces.ed.gov/surveys/ssocs/data\\_products.asp](http://nces.ed.gov/surveys/ssocs/data_products.asp).

206. The Common Core of Data “is an NCES annual census system that collects fiscal and nonfiscal data on all public schools, public school districts, and state education agencies in the United States.” NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., 2009–2010 SCHOOL SURVEY ON CRIME AND SAFETY (SSOCS); RESTRICTED-USE DATA FILE USER MANUAL 8 (2011) [hereinafter 2009–2010 RESTRICTED-USE MANUAL] (on file with author); *see also* Helen M. Marks & Jason P. Nance, *Contexts of Accountability Under Systemic Reform: Implications for Principal Influence on Instruction and Supervision*, 43 EDUC. ADMIN. Q. 3, 10–11 (2007) (describing the Common Core of Data). The CCD includes regular schools, charter schools, and schools that have magnet programs in the United States. It excludes schools in the US outlying areas, such as American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the US Virgin Islands, and Puerto Rico, as well as

most complete list of public schools available, as a sampling frame<sup>207</sup> to select schools to participate in the study.<sup>208</sup> After subdividing the sample frame to ensure that subgroups of interest would be adequately represented,<sup>209</sup> NCES randomly selected 3,480 schools to participate in the study.<sup>210</sup> Of these public schools, 2,650 submitted usable questionnaires, which is a return rate of 76%.<sup>211</sup> NCES collected the data from February 24, 2010, to June 11, 2010.<sup>212</sup>

### B. *Dependent Variables*

The 2009–2010 SSOCS restricted-use dataset provides a unique opportunity to analyze on a national scale the relationship between a police officer’s weekly presence at school and the odds that school officials refer students to law enforcement for various offenses. The 2009–2010 SSOCS asked principals to record the total number of incidents that occurred at their school<sup>213</sup> during the 2009–2010 school year and the total number of incidents reported to law enforcement for the following offenses:

- robbery (“taking things by force”) with a weapon;

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overseas Department of Defense schools, newly closed schools, home schools, Bureau of Indiana Education schools, nonregular schools, ungraded schools, and schools with a high grade of kindergarten or lower. 2009–2010 RESTRICTED-USE MANUAL, *supra* note 206, at 8.

207. A “sampling frame” is a list of units that could be selected for study. *See* RICHARD L. SCHEAFFER ET AL., *ELEMENTARY SURVEY SAMPLING* 9 (7th ed. 2011).

208. *See* 2009–2010 RESTRICTED-USE MANUAL, *supra* note 206, at 8.

209. *See id.* at 9. The sample was stratified by instructional level (e.g., elementary school, middle school, high school), locale (e.g., rural, suburb, urban), enrollment size, and region (e.g., Northeast, Midwest, South, and West). In addition, the sample frame was stratified by percent of combined student population as Black/African American, Hispanic/Latino, Asian, Native Hawaiian/other Pacific Islander, or American Indian/Alaska Native. *Id.*

210. *Id.* at 10. NCES guidelines for using restricted data require that raw numbers be rounded to the nearest ten. NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T. OF EDUC., *RESTRICTED-USE DATA PROCEDURES MANUAL 20* (2011), available at <http://nces.ed.gov/pubs96/96860rev.pdf> [hereinafter *RESTRICTED-USE DATA PROCEDURES MANUAL*].

211. 2009–2010 RESTRICTED-USE MANUAL, *supra* note 206, at 1, 9–13. A response rate of 76 percent is excellent and reduces bias in the data. EARL BABBIE, *THE PRACTICE OF SOCIAL RESEARCH* 256 (9th ed. 2001).

212. 2009–2010 RESTRICTED-USE MANUAL, *supra* note 206, at 1.

213. The 2009–2010 SSOCS asked principals to include all incidents that occurred at school, regardless of whether students or non-students were involved. *See* 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 204, at 11. Thus, it is possible that some of the incidents recorded related to non-students. However, while more precise questions are needed to identify exactly how many students were involved, it seems highly likely that the vast majority of cases recorded involved students.

- robbery (“taking things by force”) without a weapon;
- physical attack or fight with a weapon;
- physical attack or fight without a weapon;
- threats of physical attack with a weapon;
- threats of physical attack without a weapon;
- theft/larceny (“taking things worth over \$10 without personal confrontation”);
- possession of a firearm or explosive device;
- possession of a knife or sharp object;
- distribution, possession, or use of illegal drugs;
- distribution, possession, or use of alcohol; and
- vandalism.<sup>214</sup>

I constructed models to predict the odds that school officials refer students to law enforcement for committing each of the above offenses.<sup>215</sup>

### C. Independent Variables

The 2009–2010 SSOCS asked principals to report whether sworn law enforcement officers were present at their schools at least once a week.<sup>216</sup>

214. *Id.*

215. Instead of calculating the proportion of the offenses referred to law enforcement for each school for each particular offense, if the school reported more than one incident for a particular offense, I included each incident as a new variable. By doing it this way no data are lost. See Karen Grace-Martin, *Proportions as Dependent Variable in Regression—Which Type of Model?*, THE ANALYSIS FACTOR, <http://www.theanalysisfactor.com/proportions-as-dependent-variable-in-regression-which-type-of-model/> (last visited Jan. 8, 2016). Furthermore, running a regression analysis in which the dependent variable is a proportion creates model fit problems because the relationship is not linear, but sigmoidal. See *id.*; see also Francisco Cribari-Neto & Achim Zeileis, *Beta Regression in R*, 34 J. STAT. SOFTWARE 1, 1–2 (2010), available at <http://cran.r-project.org/web/packages/betareg/vignettes/betareg.pdf>. Treating the proportion as a binary response and running a logistic regression addresses this problem if a researcher has data for the total number of trials and successes. See Grace-Martin, *supra*. Nevertheless, I note that when I calculated the proportion of offenses referred to law enforcement for each school and included those measures as my dependent variables (for each category of offenses), the regression analyses did not produce results that differed significantly from those I present in Table 2.

216. 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 204, at 8. Specifically, the 2009–2010 SSOCS asked principals to report separately the number of “School Resource Officers,” which includes “all career law enforcement officers with arrest authority, who have specialized training and

This was the independent variable of primary interest for this study.<sup>217</sup>

The 2009–2010 SSOCS also contained a number of other variables, many of which could influence the odds that schools refer students to law enforcement for committing certain offenses. These variables served as control variables. For example, the general level of crime that exists at a school may influence the odds that school officials refer students to law enforcement for committing an offense.<sup>218</sup> If students engage in many illegal activities, school officials might be more inclined to refer more students to law enforcement to stabilize the environment.<sup>219</sup> Further, because the odds of referral may change in accordance with the types of offenses that occur at school,<sup>220</sup> I divided the offenses into two categories: “weapon/sex offenses” (rape; sexual battery; robbery with a weapon; physical attack with a weapon; threat of physical attack with a weapon; possession of a firearm or explosive device; and possession of a knife or sharp object), and “non-weapon/non-sex offenses” (physical attack without a weapon; threats of physical attack without a weapon; theft; drug possession; alcohol possession; vandalism; and robbery without a weapon). I categorized the offenses in this manner because our current legislative landscape indicates a strong proclivity to refer juveniles to the justice system for committing sexual crimes and using or bringing

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are assigned to work in collaboration with school organizations,” and the number of “[s]worn law enforcement officers who are not School Resource Officers.” *Id.* I included in my empirical study only schools that indicated that they have either a part-time or full-time school resource officer or sworn law enforcement officer present at their school at least once a week.

217. While additional information regarding how much time the SROs spent at the schools would have been useful for this study, unfortunately the 2009–2010 SSOCS did not contain such information. *See id.* at 8.

218. *See* Kelly Welch & Allison Ann Payne, *Racial Threat and Punitive School Discipline*, 57 SOC. PROBS. 25, 27 (2010) (citation omitted) (“One factor presumed to be closely associated with school punitiveness and disciplinary practice is the level of school crime and disorder.”); *see also* TRAVIS & COON, *supra* note 139, at 20; Aaron Kupchik & Geoff K. Ward, *Race, Poverty, and Exclusionary School Security: An Empirical Analysis of U.S. Elementary, Middle, and High Schools*, 12 YOUTH VIOLENCE & JUV. JUST. 332 (2014); Nance, *Students, Security, and Race*, *supra* note 85, at 33.

219. *See* Welch & Payne, *supra* note 218, at 27.

220. For example, consistent with the “broken windows” theory, school officials may take a harder line against less severe offenses in an effort to deter more serious offenses. *See* Feld, *supra* note 65, at 886–87; *see also generally* James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, THE ATLANTIC MONTHLY, Mar. 1982, <https://www.theatlantic.com/past/docs/politics/crime/windows.htm> (theorizing that broken windows, if not fixed, lead to more crime because they transmit a message of societal indifference to disorder); Tyler et al., *supra* note 65, at 606–08 (explaining the “broken windows” theory).

weapons on school grounds.<sup>221</sup> I transformed these variables into rates per 100 students to account for variations in school size.<sup>222</sup>

The general level of school disorder also may influence the odds of referring students to law enforcement.<sup>223</sup> To control for school disorder, I created an index based on several questions in the 2009–2010 SSOCS. Principals were asked to rate on a scale of 1 to 5 the frequency of various student disciplinary problems such as racial tensions, bullying, sexual harassment of other students, harassment of other students based on sexual orientation, disorder in the classroom, verbal abuse of teachers, acts of disrespect other than verbal abuse, gang activities, and cult or extremist group activities.<sup>224</sup> I recoded the scale so that higher values indicated greater frequency and then computed the mean value of the principals' responses.

I also took into account the principals' perceptions of the level of crime near their schools.<sup>225</sup> The 2009–2010 SSOCS asked principals to rate the level of crime in the geographic area of their schools on a scale of 1 to 3 (high, moderate, or low).<sup>226</sup> I recoded the principals' responses so that a higher number indicated a higher level of crime.

In addition, I included student demographics that are consistent with student marginalization,<sup>227</sup> such as the school's student minority population<sup>228</sup> and student poverty level.<sup>229</sup> I also included the percentage

221. Of course, there are other rational ways to categorize these offenses. I limited my categories to two for purposes of simplicity. It is important to note, however, that when I tested my models using different categorizations of offenses, those different categorizations did not affect the overall results of my empirical study.

222. For example, if the variable were a "1" for crimes using a weapon, that would imply that the school reported 1 incident for every 100 students during the school year.

223. See TRAVIS & COON, *supra* note 139, at 20; Kupchik & Ward, *supra* note 218; Nance, *Students, Security, and Race*, *supra* note 85, at 33; Welch & Payne, *supra* note 218, at 27.

224. 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 204, at 13.

225. See TRAVIS & COON, *supra* note 139, at 20 (observing that school crime is more common in schools located in crime-prone neighborhoods).

226. 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 204, at 17.

227. See DAVID CANTOR & MAREENA MCKINLEY WRIGHT, U.S. DEP'T OF EDUC., SCHOOL CRIME PATTERNS: A NATIONAL PROFILE OF U.S. PUBLIC HIGH SCHOOLS USING RATES OF CRIME REPORTED TO POLICE 8 (2002), available at <https://www2.ed.gov/offices/OUS/PES/studies-school-violence/school-crime-pattern.pdf> (finding that large high schools located in urban areas serving a high percentage of minority students tend to experience more school crime); TRAVIS & COON, *supra* note 139, at 20 (observing that crime is more common in schools that serve students from disadvantaged backgrounds); see also Kupchik & Ward, *supra* note 218; Nance, *Students, Security, and Race*, *supra* note 85, at 32–33.

228. NCES provided each school's percentage of the school's student population that consisted of African-Americans, Hispanics, Asian/Pacific Islanders, and American Indian/Alaska Native students. See SIMONE ROBERS ET AL., NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC. & BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, INDICATORS OF SCHOOL CRIME AND SAFETY: 2011, at v

of students enrolled in special education, the percentage of students with limited English proficiency, and the percentage of students who scored in the bottom 15 percent on a state assessment exam.<sup>230</sup> All of these percentages were reported by the school principals.<sup>231</sup>

Further, I included other school characteristics as control variables, such as building level (elementary, middle, high, or combined),<sup>232</sup> school urbanicity (urban, suburban, town, or rural),<sup>233</sup> whether the school was non-traditional (charter school or magnet school),<sup>234</sup> student population size,<sup>235</sup> and the school's average daily attendance rate.<sup>236</sup>

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(2012), available at <http://nces.ed.gov/pubs2012/2012002rev.pdf>. Racial data for the 2009–2010 SSOCS came from the 2007–2008 CCD school data file. See 2009–2010 RESTRICTED-USE MANUAL, *supra* note 206, at 29. Although there was a two-year difference, it is unlikely that a school would undergo a major shift in student demographics over a two-year period.

229. To measure student poverty levels, I used the percentage of students eligible for free or reduced-price lunch, which is a commonly used proxy. See, e.g., Michael Heise, *Litigated Learning, Law's Limits, and Urban School Reform Challenges*, 85 N.C. L. REV. 1419, 1441 (2007) (using student eligibility for free and reduced-price lunch as a proxy for student poverty); *Federal School Nutrition Programs*, NEW AM. FOUND., <http://febp.newamerica.net/background-analysis/federal-school-nutrition-programs> (last updated June 5, 2015) (“Researchers often use free or reduced-price lunch (FRPL) enrollment figures as a proxy for poverty at the school level, because Census poverty data (which is used at the state and district level) is not available disaggregated below the school district level and is not collected annually.”). Principals were asked to report the percentage of their current students eligible for free or reduced-price lunch. 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 204, at 16.

230. See Kupchik & Ward, *supra* note 218; Nance, *Students, Security, and Race*, *supra* note 85, at 33.

231. See 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 204, at 16.

232. See CANTOR & WRIGHT, *supra* note 227, at 8 (finding that the schools that tended to have the most violence included large high schools located in urban areas). NCES categorized a school as an elementary school, middle school, high school, or combined school. See 2009–2010 RESTRICTED-USE MANUAL, *supra* note 206, at 28. These variables were dummy-coded, with the reference group being high school. Elementary schools are “schools in which the lowest grade is not higher than 3 and the highest grade is not higher than grade 8.” NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., CRIME, VIOLENCE, DISCIPLINE, AND SAFETY IN U.S. PUBLIC SCHOOLS: FINDINGS FROM THE SCHOOL SURVEY ON CRIME AND SAFETY: 2009–10 7 (2011), available at <http://nces.ed.gov/pubs2011/2011320.pdf>. Middle schools are “schools in which the lowest grade is not lower than grade 4 and the highest grade is not higher than grade 9.” *Id.* High schools are “schools in which the lowest grade is not lower than grade 9 and the highest grade is not higher than grade 12.” *Id.* Combined schools include “other combinations of grades, including K–12 schools.” *Id.*

233. See CANTOR & WRIGHT, *supra* note 227, at 8. NCES categorized schools as being located in a city, suburb, town, or rural area. See 2009–2010 RESTRICTED-USE MANUAL, *supra* note 206, at 47. These variables were dummy-coded, with “urban” as the reference group.

234. See 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 204, at 17. I categorized these variables into two groups: traditional schools and non-traditional schools.

235. See CANTOR & WRIGHT, *supra* note 227, at 8. Principals were asked to report their school's total enrollment. 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 204, at 16.

236. Principals were asked to report the school's average daily attendance as the percentage of students present at school. 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 204, at 17.

Finally, I controlled for whether a school official was statutorily required to report an incident to law enforcement. To do this, I located the statutes and regulations in each of the fifty states that mandated that certain incidents that occurred on school grounds be reported to the police during the 2009–2010 school year.<sup>237</sup> If the statute or regulation clearly and unambiguously required that the incident be reported to law enforcement, I coded that variable as a “1.”<sup>238</sup> If the state did not have a statutory reporting requirement or that requirement was unclear or ambiguous, I coded that variable as a “0.”<sup>239</sup>

Because several of the continuous independent variables were positively skewed and may be unduly influenced by outliers, I used the natural logarithm of each of the continuous variables.<sup>240</sup> I report the means, standard deviations, and ranges for each of the independent variables in Table 1 below.

TABLE 1: DESCRIPTIVE STATISTICS

	Mean	Std. Dev.	Range
SRO	.55	.50	0–1
Elementary	.26	.44	0–1
Middle	.34	.47	0–1
High	.36	.48	0–1
Combined	.04	.20	0–1
Urban	.27	.44	0–1
Suburban	.33	.47	0–1
Town	.15	.35	0–1
Rural	.25	.44	0–1
Non-traditional	.08	.28	0–1
Minority % (ln)	3.20	1.13	0–4.62
Poverty % (ln)	3.61	.85	0–4.62

237. See *supra* Part I.B. I note that I could not take into account whether a school district had a specific policy to report incidents to the police, as this information was not available to me. Future research might be targeted in this area.

238. For example, Nebraska requires school administrators to report to law enforcement acts of property damage, stealing, and unlawful possession of drugs or alcohol. NEB. REV. STAT. §§ 79-267, 79-293 (2015).

239. For example, Illinois requires principals to report all incidents of “intimidation” to law enforcement. 105 ILL. COMP. STAT. 5/34-84a.1 (2015). Because it is not clear that all threats without a weapon would constitute “intimidation” under the statute, I coded Illinois as a “0” under that category. See Part I.B for a complete list of state reporting requirements for each of the various offenses.

240. See Kupchik & Ward, *supra* note 218. I added 1 to each variable before taking its natural logarithm in order to maintain my 0 values. (The natural logarithm of 0 is undefined, while the natural logarithm of 1 is 0.). See *id.*

	Mean	Std. Dev.	Range
Special Ed. % (ln)	2.49	.59	0–4.62
ESL % (ln)	1.49	1.25	0–4.62
Low Test Score % (ln)	2.17	.99	0–4.62
Student Pop. (ln)	6.50	.73	2.08–8.38
Attendance % (ln)	4.54	.21	1.10–4.62
Disorder	1.89	.50	1–4.73
Weapon/Sex Offenses (ln)	.19	.28	0–2.43
Non-Weapon/Non-Sex Offenses (ln)	1.35	.79	0–4.16
Neighborhood Crime	1.31	.58	1–3
Rob. (no weap.) Rep. Req.	.21	.41	0–1
Theft Rep. Req.	.15	.36	0–1
Drug Rep. Req.	.70	.46	0–1
Alcohol Rep. Req.	.40	.49	0–1
Vandalism Rep. Req.	.17	.38	0–1

#### D. Models and Empirical Methodology

I modeled the propensity of school officials to refer students to law enforcement for various offenses as a function of whether a police officer is present at the school at least once a week and the control variables. I list the basic form of the models and descriptions of each variable in the Appendix.

I estimated all models using survey regression methods that account for observations' survey sampling probabilities. Accordingly, the empirical results provide population-level estimates. Because the dependent variables were indicator variables, I employed logistic regression to fit the models. Logit coefficients are not easy to interpret. To facilitate their interpretation, I transformed the raw logit coefficients into exponentiated coefficients ( $\text{Exp}(B)$ ), or odds ratios.<sup>241</sup>

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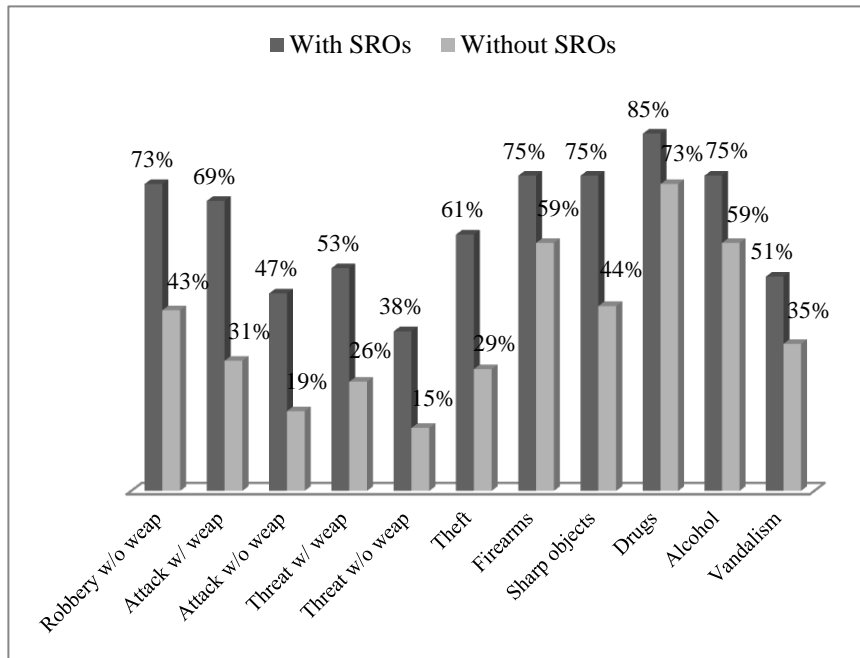
241. The exponentiated coefficient, or " $\text{Exp}(B)$ ," estimates the change in odds of a school referring a student to law enforcement for the offenses listed for each one-unit increase in an independent variable, or, if the variable is categorical, for the alternative category. See Raymond E. Wright, *Logistic Regression*, in *READING AND UNDERSTANDING MULTIVARIATE STATISTICS* 217, 223 (Laurence G. Grimm & Paul R. Yarnold eds., 1995) ("The odds ratio estimates the change in the odds of membership in the target group for a one-unit increase in the predictor."). For example, if, hypothetically, the odds ratio for the independent variable "SRO" were 2, then the odds of a student being referred for a certain offense would be twice greater for schools having SROs than for schools not having SROs.



*E. Results of the Empirical Analysis*

Figure 1 compares the percentage of incidents referred to law enforcement at schools having regular contact with SROs against that percentage at schools that do not have regular contact with SROs for various types of offenses.<sup>242</sup>

FIGURE 1: PERCENTAGES OF OFFENSES REFERRED TO LAW ENFORCEMENT



242. As explained in Part IV.C, I define regular contact with an SRO as having an SRO or sworn law enforcement officer present at the school at least once a week.

Without taking into account the control variables listed above, there are clear, visible differences in the rates of referral for each of the listed offenses,<sup>243</sup> suggesting that an SRO's weekly presence increases the number of students who will be involved in the justice system. Perhaps most glaring is that the rate of referral for lower-level offenses, such as fighting without using a weapon or making a threat without using a weapon, increases more than twofold when a school has regular contact with an SRO.

Table 2 displays the results of the logistic regression model predicting the odds of referring students to law enforcement for each of the various offenses when controlling for other factors.<sup>244</sup> It displays the exponentiated coefficient estimates, or the change in odds for each one-unit increase in an independent variable, and whether the effects of the independent variables are statistically significant.

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243. Using chi-square tests, I determined that there were significant differences between the referral rates for each above offense. The p-value was less than .001 for all of these tests except for possession of firearms, which had a p-value of less than .05. I also note that I did not include robbery with a weapon because schools referred all of those offenses to law enforcement independent of whether schools had regular contact with SROs.

244. The variation inflation factors ("VIF"), a common statistic to detect multicollinearity, indicated that multicollinearity was not an issue for the models.

TABLE 2: LOGISTIC REGRESSION MODEL PREDICTING ODDS OF REFERRING STUDENTS TO LAW ENFORCEMENT FOR VARIOUS OFFENSES (EXP(B) REPORTED)<sup>245</sup>

	Rob. w/o weapon	Attack w/ weapon	Attack w/o weapon	Threat w/ weapon	Threat w/o weapon	Theft	Guns	Sharp Objects	Drugs	Alcohol	Vandalism
SRO	3.54***	2.56*	1.38***	1.98**	1.41***	1.83***	1.51	1.35**	1.89***	1.76***	1.53***
Building Level <sup>a</sup>											
Elem.	0.77	0.22**	0.35***	0.42*	0.35***	0.52***	0.78	0.46***	0.61	0.33*	1.05
Middle	1.50	1.02	0.52***	0.62	0.56***	0.81***	0.33*	0.81*	1.38***	1.26	0.75***
Combined	1.30	0.23	0.72***	1.18	1.05	1.97***	3.80	0.78	0.57***	1.10	0.56***
Urbanicity <sup>b</sup>											
Suburb.	2.05**	1.54	1.11***	1.42	1.01	1.00	1.64	1.22*	1.27***	1.02	1.27***
Town	1.21	3.39	1.27***	2.25*	1.05	1.63***	4.05*	1.32*	2.59***	1.10	1.58***
Rural	1.34	3.76*	1.07	1.82	1.13*	1.35***	2.60	1.22	1.09	2.15***	1.29**
Non-traditional	2.52**	0.70	0.78***	1.64	1.42***	1.01	1.74	0.99	1.59***	1.36*	1.30**
Minority % (ln)	0.55**	0.69	1.00	0.93	0.97	0.96	0.91	1.08	0.97	0.80***	0.96
Poverty % (ln)	1.47*	0.93	1.05*	0.87	1.01	1.08**	0.89	0.99	1.00	0.88	0.92*
Attendance % (ln)	1.59	0.07	2.94***	1.10	1.35	1.27	0.36	0.73	2.16***	1.19	1.15
Special Ed. % (ln)	0.86	2.70*	0.92***	1.06	0.98	0.94*	1.56	1.12	1.48***	1.20*	1.11*
LEP % (ln)	1.04	1.58**	0.97**	1.13	1.11***	1.03	0.82	1.10*	0.94*	1.07	1.01
Low Test Score % (ln)	1.07	1.60*	1.11***	0.99	0.98	0.99	1.23	1.07	1.05	1.18***	1.00
Student Pop. (ln)	0.92	3.69**	1.15***	0.92	1.05	1.19***	1.41	1.25**	1.09	1.47***	1.03
Disorder	0.99	0.87	1.03	1.51*	0.96	1.08*	2.27*	1.01	1.10	1.07	1.05
Neigh. Crime	1.21	3.88**	1.06**	1.42*	1.05	0.99	2.27**	1.25**	0.99	1.26**	1.12**
Weapon/Sex Offenses (ln)	1.62*	0.28***	1.33***	0.20***	0.94	1.02	0.90	0.86	1.29**	1.35*	1.35***
Non-Weapon/Non-Sex Offenses (ln)	0.72*	1.72*	0.80***	1.35	0.88***	0.84***	0.87	1.04	0.92	1.02	0.73***
Rep. Req.	1.39	n/a	n/a	n/a	n/a	1.13*	n/a	n/a	0.83**	0.84*	1.02

\* p<0.05, \*\* p<0.01, \*\*\* p<0.001

- a. High schools were the comparison group.
- b. Urban schools were the comparison group.

245. The sample sizes for each of the offenses are as follows: robbery without a weapon (n=840); attack with a weapon (n=430); attack without a weapon (n=35,960); threat with a weapon (n=980); threat without a weapon (n=19,490); theft (n=17,530); firearm possession (n=250); sharp object possession (n=3,740); drug possession (n=9,620); alcohol possession (n=3,410); and vandalism (n=8,940). In accordance with guidelines for presenting results from the restricted-use SSOCS database, raw sample numbers are rounded to the nearest ten. See RESTRICTED-USE DATA PROCEDURES MANUAL, *supra* note 210, at 20.

All of the models but one demonstrate that having regular contact with an SRO is predictive of greater odds that school officials refer students to law enforcement for committing various offenses. This is true even after controlling for other important factors that may influence a school's decision to refer a student to law enforcement, such as having a state statute that requires referral for committing a certain offense, general levels of criminal activity and disorder in the school, and the general level of crime in the neighborhood in which the school resides. This relationship is present for various serious offenses, such as attacks using a weapon and threats with a weapon. But of more concern, this relationship exists for lower-level offenses as well, such as fighting without a weapon, threats without a weapon, theft, and vandalism. In fact, the odds of referring a student to law enforcement for these lower-level offenses are between 1.38 and 1.83 times greater for schools that have regular contact with SROs than for schools that do not. For other non-weapon offenses, such as robbery without a weapon, drug offenses, and alcohol offenses, the odds of referral increase by 3.54, 1.89, and 1.76, respectively.

Although I included the other independent variables as control variables, the empirical analysis reveals other noteworthy relationships, some of which are expected, but others more interesting. For example, one interesting finding is that the number of weapon/sex offenses in a school generally is a strong positive predictor of greater odds of referring students to law enforcement for several types of offenses, including several lower-level offenses, except in two instances (attack with a weapon and threat with a weapon) where there were strong negative relationships.<sup>246</sup> While more study is needed to explore this trend, this may be evidence that many schools do indeed embrace the "broken windows" disciplinary model. The "broken windows" theory suggests that failure to respond to minor infractions will lead to more serious infractions, in the same way that a single broken window in an abandoned building will attract more vandalism in that building.<sup>247</sup> This empirical analysis shows that higher rates of serious crimes are related to increased odds of referrals to law enforcement for lower-level offenses, perhaps because some schools believe that they can regain control of their schools by responding to lower-level offenses with a heavy hand.

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246. An odds ratio less than 1 signals a negative relationship between the independent and dependent variables.

247. *See supra* note 220.

The strong negative relationships that exist between the rate of weapon/sex offenses and the odds of referral for attack with a weapon and threat with a weapon are also interesting. Because causality and temporal order cannot be detected from the data, one cannot say that higher referral rates to law enforcement caused the rate of those offenses to decline, or that higher rates of those offenses caused the referral rates to decline, or whether no causal relationship exists at all. More study is needed to further explore this trend. Nevertheless, while the reasons for these negative relationships are not clear, a possible explanation is that school officials cooperating with law enforcement are very strategic regarding which incidents or students they will refer to law enforcement, perhaps because school officials believe that not all of these incidents justify law enforcement involvement, they want to avoid the bad publicity that may come from referring high numbers of students to law enforcement for committing serious crimes, or because they believe that law enforcement will not cooperate with them if they refer too many students for processing.

Likewise, the rate of non-weapon/non-sex offenses a school experiences is also associated with reduced odds that school officials refer students to law enforcement for most offenses. Again, causal relationships and temporal order cannot be detected from this dataset. Nevertheless, similar to the explanation above, it is possible that many school officials who cooperate with law enforcement may realize that they cannot refer large numbers of students to law enforcement for lower-level offenses because law enforcement may not appreciate or be able to handle these high numbers, which could cause tension between these entities. Thus, again, perhaps school officials are being strategic regarding which incidents or students they refer to law enforcement for these lower-level violations.

Other control variables also proved to be related to the odds of referring students to law enforcement for committing certain offenses. For example, high schools are more likely than middle schools, elementary schools, or combined schools to refer students to law enforcement for committing many of the listed offenses. The one exception is that middle schools are more likely than high schools to refer students to law enforcement for drug offenses. In addition, schools located in suburbs, towns, and rural areas are generally more likely than schools located in urban areas to refer students to law enforcement for committing various offenses when controlling for all the other listed variables. This weakens

support for the theory that only urban schools invoke heavy-handed, justice-oriented measures to discipline children.<sup>248</sup> Further, the data suggest that non-traditional schools, such as charter schools and magnet schools, are more likely to refer students to law enforcement for certain violations, such as robbery without a weapon, threats without weapons, vandalism, drugs, and alcohol, but less likely to refer students for fighting without a weapon.

As expected, student population predicts increased odds of referring students to law enforcement for several types of offenses. This suggests that schools with large student populations may lack the resources to address disciplinary problems using pedagogically sound methods.<sup>249</sup> Large schools may not have adequate resources to hire additional support, such as teachers, counselors, school psychologists, and behavioral specialists, or to implement alternative programs described below.<sup>250</sup> Also as expected, neighborhood crime is a positive predictor. That is, school officials' perceptions of crime in the neighborhood in which the school resides is associated with greater odds of referring students to law enforcement for committing certain offenses. Likewise, for many types of offenses, school disorder predicts increased odds of referral to law enforcement.

Another positive predictor, albeit a weak one, is the percentage of students in the school with low test scores. Again, because causal relationships and temporal order cannot be detected from this dataset, one cannot discern whether referring more students to law enforcement had a negative impact on the learning environment, whether school officials referred students to law enforcement in an effort to push low-performing students out of school, or whether no causal relationship exists at all. Nevertheless, with respect to at least some types of offenses, the percentage of low-scoring test takers in the school relates positively (albeit weakly) to greater odds of referring students to law enforcement.

Other independent variables, including several student demographic variables, have mixed relationships. For example, the percentage of students qualifying for free or reduced-price lunch is positively related to the odds of referral for three non-weapon offenses (robbery without a

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248. These empirical findings are consistent with the observational findings of Professor Aaron Kupchik, who maintains that harsh disciplinary practices that were once used principally by schools serving primarily low-income minority students are now used in white middle-class schools as well. See Aaron Kupchik, *Things Are Tough All Over: Race, Ethnicity, Class and School Discipline*, 11 PUNISHMENT & SOC'Y 291, 291–92 (2009); see also KUPCHIK, *supra* note 158, at 161.

249. See *supra* Part I.E.

250. See *infra* Part V.

weapon, attack without a weapon, and theft), but negatively related to the odds of referral for vandalism. The results for the percentage of students enrolled in special education are also mixed. For instance, it is positively related to the odds of referral for attacks involving a weapon and for drug-related offenses, which may be legally permissible reasons for temporarily removing students from school who qualify for special services under the Individuals with Disabilities Education Act (“IDEA”).<sup>251</sup> But this variable is negatively related to the odds of referral for two lower-level offenses (attack without a weapon and theft), which is also consistent with the IDEA, because students who qualify under the IDEA receive special protections from removals for longer than ten days.<sup>252</sup>

Surprisingly, the percentage of minority students a school serves generally is insignificant with respect to all of the offenses except two, where it is a negative predictor (robbery without a weapon and alcohol offenses). While this may seem inconsistent with prior research indicating that students of color are affected disproportionately at every stage of the Pipeline, I emphasize that these data do not allow researchers to examine the race or ethnicity of the individual students who were actually referred to law enforcement. Accordingly, it is entirely possible that the students referred to law enforcement were disproportionately students of color. More research must be conducted in this area to detect this important relationship.

Finally, it is important to note that the reporting statutes are insignificant predictors of the odds of referring students to law enforcement for robbery without a weapon and vandalism, although they are weakly associated in a positive fashion with the odds of referring students for theft. Curiously, the reporting statutes are negative predictors of the odds of referring students for drug- and alcohol-related offenses. Overall, these trends suggest that the reporting statutes do not appear to be a driving force behind referrals to law enforcement, perhaps because they are not enforced or because school officials are unaware of them.<sup>253</sup>

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251. See 20 U.S.C. § 1415(k)(1)(G) (2014) (allowing school officials to remove students to an interim educational setting for up to forty-five days when a student brings a weapon or drugs to school).

252. See *id.* § 1415(j). Furthermore, because suspending special education students is often viewed as complex and rife with litigation, school officials may be hesitant to refer special education students for any offenses that do not involve weapons or drugs, even if removal would be for less than ten days.

253. It should be emphasized again that many school districts have reporting policies that may have a measurable effect on referral rates, but could not be taken into account in this study. Nevertheless, it is important to acknowledge that because these policies most likely are formed by

*F. Limitations of the Empirical Study*

A brief explanation of the limitations of this study is warranted. One limitation is that the data do not allow researchers to categorically conclude that having regular contact with SROs causes a school to refer a student to law enforcement for committing an offense. To better assess the impact of SROs on a school, one would need to collect observational data on referrals to law enforcement during a period when a school did not have regular contact with an SRO (the control period) and after that school had regular contact with an SRO (the treatment period).<sup>254</sup> Further, observing the incidents as they occur (or at least interviewing witnesses who observed them) rather than relying on written, generic descriptions of the offenses is important to determine if there were other contextual reasons that might explain why one student was referred to law enforcement but another was not for the same offense category. The findings of this empirical study should justify a significant investment of resources to conduct such a study in several schools in several different types of settings before our nation invests more funds in these costly SRO programs.

Another limitation of this study is that it is not clear exactly how the school official respondents interpreted the question asking them to record the total number of incidents “reported to police or other law enforcement.”<sup>255</sup> The survey question suggests that school officials should record the total number of students that the school officials themselves referred to law enforcement. But it also seems plausible that school officials included in that report the number of arrests that SROs made while on duty in the school. This is a section of the 2009–2010 SSOCS Questionnaire that the US Department of Education might consider redrafting to reduce ambiguity. It is also an area for further scholarly research. But this ambiguity does not weaken the importance of these findings—that having regular contact with an SRO is predictive of greater odds that students will be referred to law enforcement for committing offenses, even lower-level offenses. Nevertheless, in future studies, it is important to distinguish exactly how the student was referred to law enforcement so reformers have a better sense of where they can direct their resources to institute change.

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school boards or district officials, school officials have greater influence over changing these policies than state or federal reporting statutes.

254. See JAMES & MCCALLION, *supra* note 37, at 9.

255. See 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 204, at 11.



A third limitation of this study is that the data do not contain information regarding what happened to the students after they were referred to law enforcement. Most likely some students were arrested and convicted, some were arrested but not convicted, and many were released without an arrest. More study is needed in this area as well, because an arrest is more detrimental than a referral, and a conviction is far worse than an arrest or a referral. In addition, more research is needed to identify the types of offenses and the conditions under which a referral to law enforcement ultimately leads to an arrest and a conviction. Nevertheless, it is important to emphasize that whenever a student is referred to law enforcement, whatever the outcome is, it most likely changes that student's life for the worse. Even referrals can leave permanent scars and unresolved anger, disrupt the student's educational process by leading to suspension or expulsion, lead to embarrassment and stigma among classmates and teachers, incite distrust and negative views towards law enforcement, and tax public resources.<sup>256</sup>

Finally, as discussed above, a fourth limitation of this study is that the data do not allow researchers to examine the race or ethnicity of the individual students who were referred to law enforcement for the various offenses. Consistent with prior empirical research on student discipline and juvenile arrests generally,<sup>257</sup> if that data were available at the national level, it seems likely that the data would reveal racial disparities in the referral rates as well.

## V. DISCUSSION AND RECOMMENDATIONS

This Part discusses the serious concerns raised by the empirical findings. It also proposes several measures that lawmakers and school officials should implement to address the concerns raised in the empirical study.

### A. *Discussion of Empirical Findings*

Although causation cannot be determined, the results of this empirical study show that having regular contact with SROs is predictive of greater odds that school officials refer students to law enforcement for committing

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256. See *Hawker v. Sandy City Corp.*, 774 F.3d 1243, 1245–46 (10th Cir. 2014) (Lucero, J., concurring); *N.C. v. Commonwealth*, 396 S.W.3d 852, 863–64 (Ky. 2013); KIM & GERONIMO, *supra* note 123, at 10; see also *supra* Part III.

257. See *supra* notes 193–200 and accompanying text.

various offenses. But more disturbingly, these findings suggest that regular contact with SROs is related to increased odds of referring students to law enforcement for lower-level offenses that school administrators and teachers should address themselves using pedagogically sound disciplinary methods. The results hold true across many types of schools in many types of settings, even after controlling for variables such as state statutes mandating referral to law enforcement, general levels of criminal activity and disorder, neighborhood crime, and other demographic variables. Importantly, these findings are consistent with prior studies also suggesting that schools with SROs were more likely to report students to law enforcement for lower-level offenses than schools without SROs, although both of those studies relied on older datasets and employed different models.<sup>258</sup>

The reasons why schools that have regular contact with SROs are more likely to refer students to law enforcement are not clear from this dataset and require further study. Nevertheless, it seems to be a logical outcome. When school officials and SROs develop working relationships with one another, it is reasonable to assume that SROs encourage school officials to refer students to law enforcement for offenses that in the past the school officials handled internally. Along those same lines, perhaps when SROs have a consistent presence at the school, some teachers and school officials summon police officers already patrolling the school hallways to handle a classroom disturbance out of convenience or because it becomes an expectation among school officials, teachers, and parents. In addition, once school officials and SROs establish regular patterns of communication, school officials might rely on SROs as legal consultants. That is, when a student commits an offense, it is possible that school officials seek advice from SROs regarding whether that offense should be reported to law enforcement for processing because they trust that SROs understand the law better than they do.<sup>259</sup> Further, some school officials might use SROs as cover when they seek to evade the responsibility of working with challenging students by turning those students over to law enforcement. When confronted by angry parents or other community members, school officials can respond that the SROs told them that they should refer a student to law enforcement for processing.

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258. See *supra* note 202 and accompanying text.

259. This pattern was observed by Professor Aaron Kupchik in his ethnographical study of four high schools. See KUPCHIK, *supra* note 158, at 95 (“The principals at the schools I studied each rely on their officer as a legal adviser of sorts.”).

Regardless of the reasons behind this relationship, these findings should raise serious concerns regarding our nation's SRO programs. These data support the conclusion that a school's regular contact with SROs leads school officials to redefine lower-level offenses as criminal justice issues rather than as social or psychological issues that they can address using more pedagogically sound disciplinary methods or employing mental health treatments.<sup>260</sup> In other words, SRO programs appear to facilitate a criminal justice orientation to how school officials respond to offenses that they once handled internally.<sup>261</sup>

A logical extension of these findings is that, as more funding becomes available to schools to hire more SROs through post-Newtown legislation, more students may be referred to law enforcement (either by way of school officials or the SROs themselves), and that more students may be arrested and, possibly, convicted. As described above, the consequences of involving students in the criminal justice system are severe and have lasting, negative impacts on the students themselves and society at large.<sup>262</sup> Indeed, what is so disturbing about these findings is that despite multiple empirical studies suggesting that more law enforcement in schools leads to more student involvement in the criminal justice system, lawmakers and school officials continue to propose the same solutions and rely on the same methods to enhance school safety in the wake of high-profile acts of school violence.

Some may argue that the safety of our children in schools is paramount, which is all the justification needed for funding SRO programs. The safety of children in schools is extremely important. No one can plausibly argue otherwise. However, one must also remember that the current research on the effectiveness of SRO programs in preventing violence is very limited.<sup>263</sup> In addition, SROs and other strict security measures simply do not and cannot prevent all acts of violence from occurring in schools. For example, in a Washington, DC, school that had metal detectors, a student was shot by another student inside the school, and a shooting also took place in a Red Lake, Minnesota, school with metal detectors, perimeter fencing, and guards.<sup>264</sup> The Columbine

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260. *See id.* at 115.

261. *See id.*

262. *See supra* Part III.

263. *See supra* Part II.

264. Sara Neufeld & Sumathi Reddy, *Violent Week Renews Metal Detector Debate*, BALT. SUN (Oct. 14, 2006), [http://articles.baltimoresun.com/2006-10-14/news/0610140131\\_1\\_metal-detectors-school-students-park-elementary-school](http://articles.baltimoresun.com/2006-10-14/news/0610140131_1_metal-detectors-school-students-park-elementary-school).

massacre also occurred in a school that used metal detectors and employed guards.<sup>265</sup> But far more importantly, even if SROs and other strict measures do deter some from bringing weapons to schools, these measures do not support long-term solutions to help students develop socially responsible behavior, understand collective responsibility, and resolve conflict peacefully.<sup>266</sup> Rather, reliance on these strict measures may exacerbate underlying tensions by creating adversity and mistrust within the school climate.<sup>267</sup> Furthermore, investing millions of dollars in SROs and other security equipment diverts scarce resources away from pedagogically sound methods to improve school safety that enhance the learning environment.<sup>268</sup> And while these alternative methods may not prevent a deranged individual from harming members of the school community, it should not be forgotten how rare these Newtown-like events are.<sup>269</sup> Schools still remain among the safest places for children generally.<sup>270</sup> As Professor Aaron Kupchik observes, “I find that the presence of police in schools is unlikely to prevent another school shooting, and that the potential for oppression of students—especially poor and racial/ethnic minority youth—is a more realistic and far more common threat.”<sup>271</sup>

### *B. Recommendations*

It is critical to recognize that there are better, more pedagogically sound methods to address school violence and help students maximize the educational opportunities available to them. For example, rather than spending exorbitant amounts of money hiring SROs and installing other strict security measures to promote school safety, we should use our resources to provide students with more mentoring programs; counselors; mental health services; programs that build a strong sense of community, character, collective responsibility, and trust; and programs that help students develop anger-management skills and teach students how to

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265. Amanda Terkel, *Columbine High School Had Armed Guard During Massacre in 1999*, HUFFINGTON POST (Dec. 23, 2012), [http://www.huffingtonpost.com/2012/12/21/columbine-armed-guards\\_n\\_2347096.html](http://www.huffingtonpost.com/2012/12/21/columbine-armed-guards_n_2347096.html); Marcus Wright, *Experts Say Intrusive Security at Public Schools Reproduces Social Inequality*, MICH. CITIZEN (Nov. 15, 2012), <http://michigancitizen.com/dps-aaa-tighten-security/>.

266. See Nance, *Students, Security, and Race*, *supra* note 85, at 24.

267. *Id.*; see also *supra* notes 144–45 and accompanying text.

268. See Nance, *Students, Security, and Race*, *supra* note 85, at 24.

269. Scott, *supra* note 54, at 541 (observing that serious acts of school violence are rare).

270. See *supra* note 41 and accompanying text.

271. KUPCHIK, *supra* note 158, at 82.

resolve conflict.<sup>272</sup> In fact, there are many alternative methods that enhance school safety more effectively than implementing measures that rely on coercion and fear.<sup>273</sup> Indeed, school safety experts and educators have long recognized that creating a safe environment depends largely on creating a positive school climate based on trust, respect, and open communication among members of the school community.<sup>274</sup>

Perhaps the most effective way to enhance school safety is to improve the quality and strength of educators' teaching and classroom-management skills.<sup>275</sup> When teachers have well-planned lessons, employ a varied instructional approach that includes hands-on learning activities to target different learning styles and student needs, establish clear behavioral expectations, and help students understand how the material is useful, teachers engage students and behavioral problems dissipate.<sup>276</sup> An educational experience such as this provides students with a sense of commitment, personal responsibility, and purpose.<sup>277</sup> Students want to be in the classroom and fully participate in the educational experience offered to them. They feel that the educational process will work for them if they commit themselves and establish positive relationships with other members of the school community.<sup>278</sup>

272. See Nance, *Random, Suspicionless Searches*, *supra* note 85, at 400–01; Nance, *Students, Security, and Race*, *supra* note 85, at 48–55.

273. See Nance, *Students, Security, and Race*, *supra* note 85, at 48–55; see also generally GUIDING PRINCIPLES, *supra* note 64. While I will introduce the alternative programs and strategies here, I provide much greater detail in a forthcoming article. See Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 16.

274. GUIDING PRINCIPLES, *supra* note 64, at 5 (maintaining that positive school climates can enhance school safety); see also ROBERT A. FEIN ET AL., U.S. SECRET SERV. & U.S. DEP'T OF EDUC., THREAT ASSESSMENT IN SCHOOLS: A GUIDE TO MANAGING THREATENING SITUATIONS AND TO CREATING SAFE SCHOOL CLIMATES 11 (2004) (“In educational settings that support climates of safety, adults and students respect each other. A safe school environment offers positive personal role models in its faculty. It provides a place for open discussion where diversity and differences are respected; communication between adults and students is encouraged and supported; and conflict is managed and mediated constructively.”).

275. See DANIEL J. LOSEN & JONATHAN GILLESPIE, CIVIL RIGHTS PROJECT, OPPORTUNITIES SUSPENDED: THE DISPARATE IMPACT OF DISCIPLINARY EXCLUSION FROM SCHOOL 32 (2012), available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-crr-research/losen-gillespie-opportunity-suspended-2012.pdf>; Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 16; see also MICHAEL ESKENAZI ET AL., NAT'L CTR. FOR SCHS. & CMTYS., FORDHAM UNIV., EQUITY OR EXCLUSION: THE DYNAMICS OF RESOURCES, DEMOGRAPHICS, AND BEHAVIOR IN THE NEW YORK CITY PUBLIC SCHOOLS 2 (2003) (observing that teacher qualifications have a strong positive effect on student behavior); Nance, *Students, Security, and Race*, *supra* note 85, at 53.

276. See LOSEN & GILLESPIE, *supra* note 275, at 36; FEDDERS ET AL., *supra* note 41, at 8; see also Nance, *Students, Security, and Race*, *supra* note 85, at 53.

277. See Nance, *Students, Security, and Race*, *supra* note 85, at 53.

278. See Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 16; Nance, *Students,*

In connection with improving teaching quality, another effective initiative to improve school safety and discipline is School-Wide Positive Behavioral Interventions and Supports (“SWPBIS”).<sup>279</sup> It is a data-driven initiative that provides educators and students with strategies to define, teach, model, and support appropriate behavior that helps create an optimal learning climate.<sup>280</sup> SWPBIS sets out a decision-making framework to help educators choose and implement evidence-based practices, develop a set of behavior interventions and supports, use data to address school issues, and create environments to prevent behavioral problems from developing.<sup>281</sup> This program has been successful in promoting school safety in many types of settings, including in schools within the juvenile justice system.<sup>282</sup> In fact, several studies empirically demonstrate substantial improvement in student behavior, school climate, and overall academic achievement when schools implement the SWPBIS program.<sup>283</sup>

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*Security, and Race*, *supra* note 85, at 53.

279. See Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 16; Nance, *Students, Security, and Race*, *supra* note 85, at 50–51.

280. See POSITIVE BEHAV. INTERVENTIONS & SUPPORTS, <http://www.pbis.org/> (last visited Jan. 9, 2016); FEDDERS ET AL., *supra* note 41, at 8 (recommending SWPBIS as a proven means to improve student safety); OPPORTUNITIES SUSPENDED, *supra* note 67, at 35 (recommending SWPBIS as a method for improving the learning environment); Catherine P. Bradshaw et al., *Altering School Climate Through School-Wide Positive Behavioral Interventions and Supports: Findings from a Group-Randomized Effectiveness Trial*, 10 PREVENTION SCI. 100, 100 (2009) (finding improved organizational health and safety in schools that implemented SWPBIS); Matthew J. Mayer & Peter E. Leone, *School Violence and Disruption Revisited: Equity and Safety in the School House*, FOCUS ON EXCEPTIONAL CHILD., Sept. 2007, at 13 (observing that SWPBIS can “transform[] the school environment to support overall student success, behaviorally, socially, and academically”); Nance, *Students, Security, and Race*, *supra* note 85, at 50–51.

281. See *PBIS Frequently Asked Questions*, POSITIVE BEHAV. INTERVENTIONS & SUPPORTS, <http://www.pbis.org/school/swpbis-for-beginners/pbis-faqs> (last visited Dec. 12, 2014); Nance, *Students, Security, and Race*, *supra* note 85, at 50–51.

282. Nance, *Students, Security, and Race*, *supra* note 85, at 50–51; see also David Domenici & James Forman Jr., *What it Takes to Transform a School Inside a Juvenile Justice Facility: The Story of the Maya Angelou Academy*, in JUSTICE FOR KIDS, *supra* note 27, at 283, 290 (successfully using a modified version of SWPBIS in a school inside a juvenile justice facility to improve student behavior).

283. See, e.g., Cynthia M. Anderson & Donald Kincaid, *Applying Behavior Analysis to School Violence and Discipline Problems: Schoolwide Positive Behavior Support*, 28 BEHAV. ANALYST 49, 57–58 (2005) (describing several empirical studies that demonstrate improvements in student behavior and school climate); James K. Luiselli et al., *Whole-School Positive Behaviour Support: Effects on Student Discipline Problems and Academic Performance*, 25 EDUC. PSYCHOL. 183 (2005) (empirically demonstrating improvements in student behavior and academic achievement after implementing SWPBIS).

Yet another effective practice for reducing school violence is restorative justice.<sup>284</sup> Restorative justice initiatives are dispute resolution-based tools that seek to reconcile offenders and victims.<sup>285</sup> It focuses on “repairing the harm, engaging victims, establishing accountability, developing a community, and preventing future actions.”<sup>286</sup> Schools can employ a variety of restorative practices ranging from on-the-spot responses to misbehavior to community conferencing involving parents, students, and teachers.<sup>287</sup> During conferences, victims share with offenders how they have been harmed, and offenders are given the opportunity to apologize and make amends.<sup>288</sup> This practice teaches students to share feelings, which can humanize the victims and transform the dynamics of the relationship to prevent further wrongdoing.<sup>289</sup> As with SWPBIS, schools that have implemented restorative justice practices have improved school safety and student discipline. For example, after the first year of implementation, West Philadelphia High School, once known as one of Philadelphia’s most dangerous schools, experienced a decrease in violent offenses by 52%.<sup>290</sup> After the second year of implementation, violence incidents decreased by an additional 40%.<sup>291</sup> Several other schools implementing restorative justice practices likewise have significantly improved student behavior.<sup>292</sup> SWPBIS and restorative justice initiatives are but a few of the many programs and initiatives available to school officials to enhance school safety while strengthening the learning climate.<sup>293</sup>

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284. See Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 16; Nance, *Students, Security, and Race*, *supra* note 85, at 51–53. Notably, schools can employ restorative justice initiatives in conjunction with other programs such as SWPBIS.

285. See UDI OFER ET AL., ANNENBERG INST. FOR SCH. REFORM, BROWN UNIV., N.Y. CIVIL LIBERTIES UNION & MAKE THE ROAD N.Y., SAFETY WITH DIGNITY: ALTERNATIVES TO THE OVER-POLICING OF SCHOOLS 18 (2009).

286. Thalia N.C. González & Benjamin Cairns, *Moving Beyond Exclusion: Integrating Restorative Practices and Impacting School Culture in Denver Public Schools*, in JUSTICE FOR KIDS, *supra* note 27, at 241.

287. GUIDING PRINCIPLES, *supra* note 64, at 10 n.25.

288. See *id.*; see also Nance, *Students, Security, and Race*, *supra* note 85, at 51–52.

289. Nance, *Students, Security, and Race*, *supra* note 85, at 52.

290. See INT’L INST. FOR RESTORATIVE PRACTICES, IMPROVING SCHOOL CLIMATE: FINDINGS FROM SCHOOLS IMPLEMENTING RESTORATIVE PRACTICES 7 (2009).

291. *Id.*

292. *Id.* at 9–31; see also González & Cairns, *supra* note 286, at 252–53 (describing the benefits of restorative justice).

293. See generally GUIDING PRINCIPLES, *supra* note 64; see also LOSEN & GILLESPIE, *supra* note 275, at 35–37; Nance, *Students, Security, and Race*, *supra* note 85, at 48–55; Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 16.

To be clear, I do not propose that school officials should never rely on SROs under any circumstances. While schools should not use SROs as a first-order response to address school crime and disorder, perhaps there are unusually dangerous environments where it would be appropriate to use them.<sup>294</sup> If school officials decide to rely on SROs to promote school safety, schools should adopt the following two recommendations to ameliorate the ill effects of SRO programs. First, as suggested by the US Department of Education and the US Department of Justice, lawmakers and high-level school officials should provide regular training to teachers, principals, and SROs regarding how to support positive behavior and engage students without using the justice system.<sup>295</sup> Included in this training should be an emphasis regarding equity and fairness for all students, particularly with respect to racial and ethnic minorities, students with disabilities, LGBTQ students, and other vulnerable student groups.<sup>296</sup>

Second, schools relying on SROs should consider crafting written agreements or memoranda of understanding (“MOUs”), ideally before establishing an SRO program, to ensure that SROs and school officials understand that SROs and other law enforcement should not become involved in routine discipline matters.<sup>297</sup> There may be philosophical differences between school officials and SROs that must be addressed before SROs begin working inside schools.<sup>298</sup> Thus, MOUs should clearly delineate all actors’ roles and responsibilities.<sup>299</sup> A report that evaluated

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294. See Hirschfield & Celinska, *supra* note 122, at 9 (acknowledging that failing to appropriately respond to dangerous and disruptive students may also have an adverse effect on fear, trust, and the school climate).

295. See Statement of Interest of the United States at 13–14, *S.R. v. Kenton Cnty.*, No. 2:15-CV-143 (E.D. Ky. Oct. 2, 2015), 2015 WL 9462973; GUIDING PRINCIPLES, *supra* note 64, at 7–8; FERGUSON INVESTIGATION, *supra* note 10, at 37–38; see also Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 16. In fact, to receive a grant from the US Department of Justice Office of Community Oriented Policing Service, schools must agree that “any officers deployed . . . under the COPS Hiring Program grant cannot be involved in the administrative discipline of students,” OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, 2015 COPS HIRING PROGRAM (CHP) APPLICATION GUIDE 27 (2015), available at [http://www.cops.usdoj.gov/pdf/2015AwardDocs/chp/CHP\\_AppGuide.pdf](http://www.cops.usdoj.gov/pdf/2015AwardDocs/chp/CHP_AppGuide.pdf), although it is unclear how much this provision is enforced.

296. See PETER FINN & JACK MCDEVITT, NATIONAL ASSESSMENT OF SCHOOL RESOURCE OFFICER PROGRAMS 44 (2005) (emphasis omitted) (recommending training for SROs and stating that “any delay in training can be a serious problem because SROs then have to learn their jobs by ‘sinking or swimming’”); GUIDING PRINCIPLES, *supra* note 64, at 8; see also Statement of Interest of the United States, *supra* note 295, at 14–15.

297. GUIDING PRINCIPLES, *supra* note 64, at 9–10; see also Statement of Interest of the United States, *supra* note 295, at 13–14; KIM & GERONIMO, *supra* note 123, at 12–13.

298. JAMES & MCCALLION, *supra* note 37, at 11.

299. *Id.*; see also FERGUSON INVESTIGATION, *supra* note 10, at 37 (criticizing the MOU between the Ferguson Police Department and the Ferguson school district because the agreement “does not



nineteen SRO programs stated that “[w]hen SRO programs fail to define the SROs’ roles and responsibilities in detail before—or even after—the officers take up their posts in the schools, problems are often rampant—and often last for months and even years.”<sup>300</sup> The US Department of Education, the American Civil Liberties Union, the Congressional Research Service, the National Association for School Resource Officers, the US Department of Justice, and several states all support the use of MOUs if schools use SROs.<sup>301</sup>

### CONCLUSION

The terrible shootings at Sandy Hook Elementary School have caused our nation to deeply consider violence, student safety, SROs, and other security measures in schools. A natural response to these shootings is to bolster school security by assigning more police officers to schools to protect students. However, this strategy may be short-sighted and deeply misguided. It is an expensive and unproven tactic, and the rarity of Newtown-like events alone suggests that our nation should use our limited resources to aid students in other ways, especially when we acknowledge that it is impossible to protect students at all times and in all places. But the empirical research set forth here provides further justification for reconsidering the decision of many to invest in more SRO programs. 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 that school officials and teachers should handle themselves. These findings hold true even after controlling for state statutes that require schools to report certain incidents

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clearly define the SROs’ role or limit SRO involvement in cases of routine discipline or classroom management”).

300. PETER FINN ET AL., COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS 2 (2005).

301. See IND. CODE § 20-26-18.2-2 (2015); MD. CODE ANN., EDUC. § 26-102 (West 2015); TEX. EDUC. CODE ANN. § 37.0021 (West 2015); GUIDING PRINCIPLES, *supra* note 64, at 9–10; JAMES & MCCALLION, *supra* note 37, at 11–12; KIM & GERONIMO, *supra* note 123, at 12–13; RAYMOND, *supra* note 122, at 30 (“An operating protocol or memorandum of understanding is a critical element of an effective school-police partnership.”); Thureau & Wald, *supra* note 93, at 991 (“[T]he National Association of School Resource Officers (‘NASRO’) strongly recommends the use of MOUs.”). Pennsylvania has several fairly thorough regulations in regard to memoranda of understanding between police departments and schools. See 22 PA. CODE § 10.1 (2012) (setting forth the state’s intent to “maintain a cooperative relationship between school entities and local police departments”); *id.* § 10.2 (defining “memorandum of understanding”); *id.* § 10.11 (requiring each school administrator to “execute and update, on a biennial basis, a memorandum of understanding with each local police department having jurisdiction over school property of the school entity”); *id.* app. A (providing a model memorandum of understanding).

to law enforcement, general levels of criminal activity and disorder, neighborhood crime, and other demographic variables.

When one considers the devastating impact the justice system can have on youth, it is easy to see that changes are necessary.<sup>302</sup> It is imperative for all of us to understand that there are better ways to discipline students, address school violence, and meet students' needs. As the US Court of Appeals for the Tenth Circuit recently observed:

[T]housands of [students] . . . thrust into the criminal justice system deserve better. . . . It [is] too easy for educators to shed their significant and important role in [the disciplinary] process and delegate it to the police and courts. . . . A more enlightened approach to . . . school discipline by educators, police, and courts will enhance productive lives and help break the school-to-prison chain.<sup>303</sup>

Indeed, the existence of safe, successful schools in challenging environments demonstrates that it is possible,<sup>304</sup> and we owe it to our youth to give educators the resources they need to make it a reality in every community.

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302. This also underscores the need for a complete overhaul of the juvenile justice system generally, so that the system is more responsive to the needs of youth, helps them become productive citizens, and avoids setting them on a path that leads to future involvement in the justice system. *See generally* TOTAL REFORM FOR A BROKEN SYSTEM, *supra* note 22.

303. *Hawker v. Sandy City Corp.*, 774 F.3d 1243, 1246 (10th Cir. 2014) (Lucero, J., concurring).

304. *See* Nance, *Students, Security, and Race*, *supra* note 85, at 54–55.

## APPENDIX

The basic model for the empirical analysis is of the following form:

$$\text{Referral}_i = \alpha + \beta_1 * \text{SRO}_i + \text{Controls} + \varepsilon$$

where:

- $\text{Referral}_i$  = an indicator variable equal to 1 if school officials reported an offense to law enforcement and 0 otherwise.<sup>305</sup>
- $\text{SRO}_i$  = an indicator variable equal to 1 if the principal indicated that a resource officer or sworn law enforcement officer was present at the school at least once a week and 0 otherwise.
- Control variables are as follows:
  - $\text{Elementary}_i$  = a dummy variable equal to 1 for elementary schools and 0 otherwise.<sup>306</sup>
  - $\text{Middle}_i$  = a dummy variable equal to 1 for middle schools and 0 otherwise.<sup>307</sup>
  - $\text{Combined}_i$  = a dummy variable equal to 1 for combined schools and 0 otherwise.<sup>308</sup>
  - $\text{Suburban}_i$  = a dummy variable equal to 1 for schools located in a suburban area and 0 otherwise.<sup>309</sup>
  - $\text{Town}_i$  = a dummy variable equal to 1 for schools located in towns and 0 otherwise.<sup>310</sup>
  - $\text{Rural}_i$  = a dummy variable equal to 1 for rural schools and 0 otherwise.<sup>311</sup>

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305. I conducted the analysis for each of the following offenses: robbery without a weapon, attack with a weapon, attack without a weapon, threat with a weapon, threat without a weapon, theft, firearm possession, knife possession, drug possession, alcohol possession, and vandalism.

306. The reference group is high schools.

307. The reference group is high schools.

308. The reference group is high schools.

309. The reference group is urban schools.

310. The reference group is urban schools.

- $\text{Nontraditional}_i$  = a dummy variable equal to 1 for charter or magnet schools and 0 otherwise.
- $\text{Minority}(\ln)_i$  = the natural log of the proportion of students in the school consisting of African-Americans, Hispanics, Asian/Pacific Islanders, and American Indian/Alaska Native students.
- $\text{Poverty}(\ln)_i$  = the natural log of the proportion of students in the school eligible for free or reduced-priced lunch.
- $\text{Special Ed.}(\ln)_i$  = the natural log of the proportion of students in the school enrolled in special education.
- $\text{LEP}(\ln)_i$  = the natural log of the proportion of students in the school who had limited English proficiency.
- $\text{Low Test Score}(\ln)_i$  = the natural log of the proportion of students in the school who scored below the 15th percentile on standardized tests.
- $\text{Student Pop.}(\ln)_i$  = the natural log of the school's total student enrollment.
- $\text{Attendance}(\ln)_i$  = the natural log of the school's average proportion of students attending school daily.
- $\text{Disorder}_i$  = an index from 1 to 5 that reflected the frequency of occurrences relating to school disorder.
- $\text{Weapon/Sex Offenses}(\ln)_i$  = the natural log of the rate per 100 students of weapon and sex offenses that occurred in the school.<sup>312</sup>

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311. The reference group is urban schools.

312. "Weapon/Sex Offenses" included rape, sexual battery, robbery with a weapon, physical attack with a weapon, threats of physical attack with a weapon, possession of a firearm or explosive device, and possession of a knife or sharp object.

- Non-Weapon/Non-Sex Offenses( $\ln$ )<sub>*i*</sub> = the natural log of the rate per 100 students of non-weapon and non-sex offenses that occurred in the school.<sup>313</sup>
- Neighborhood Crime<sub>*i*</sub> = the principal's perception of crime problems near the school on a scale of 1 to 3.
- Rep. Req.<sub>*i*</sub> = a dummy variable equal to 1 if the state in which the school was located had an unambiguous reporting statute for the offense and 0 otherwise.<sup>314</sup>

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313. "Non-Weapon/Non-Sex Offenses" included robbery without a weapon; physical attack without a weapon; threats of physical attack without a weapon; theft; distribution, possession, or use of illegal drugs or alcohol; and vandalism.

314. I applied this variable to the following offenses: robbery without a weapon, theft, drugs, alcohol, and vandalism. I did not apply it to offenses involving weapons because all schools were required to have a reporting policy for any offenses involving weapons. *See* 20 U.S.C. § 7151 (2009). I also did not apply it to "physical attack or fight without a weapon" or "threat of physical attack without a weapon" because no state statute clearly mandated a school to refer students to law enforcement for committing these offenses.