

THE SCHOOL-TO-PRISON PIPELINE

Preventing Mass Incarceration

Honorable Tracie A. Todd
Jefferson County Circuit Judge Criminal Division

Honorable Latasha McCrary
Northern District Assistant Federal Public Defender

LEARNING OBJECTIVES

- Factors contributing to students of color suspended and expelled at higher rates
- Identifying ways for lawyers to help dismantle the school to prison pipeline
- Identifying ways for lawyers to advocate for youth in criminal court





WHO IS IN THE PIPELINE?

- Students more likely than others to be in the school-to-prison pipeline:
 - Limited enrichment from birth – age 5
 - Continued poor academic achievement
 - Low-income, single-parent household
 - No or limited family history of post-secondary education

SCHOOL-TO-PRISON PIPELINE

MINOR INFRACTIONS

BREAKING DOWN THE SCHOOL TO PRISON PIPELINE



THE SYSTEM



PRISON FUNDING
HAS INCREASED
530% MORE
THAN
EDUCATION FUNDING
(OVER THE PAST 20 YEARS)



EDUCATION POLICY
HAS ON BROAD
ZERO TOLERANCE
TEACH TO THE TEST
NO CHILD LEFT
BEHIND

POLICIES ENABLE THE
CRIMINALIZATION
OF LOW PERFORMING
STUDENTS



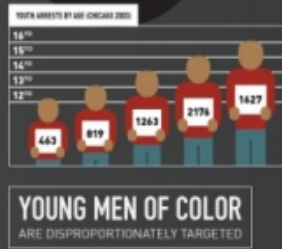
////// 69% DECREASE

IN VIOLENT CRIME

IN SCHOOLS ////

STUDENTS ARE
ARRESTED FOR
NON-VIOLENT OFFENCES
AND MINOR INFRACTIONS

THE YOUTH



66% diagnosed with emotional or trauma disorders



45% have learning disabilities or need special education



70% are serving time for non-violent offenses



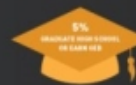
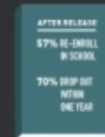
70% diagnosed with drug dependencies



26% have tried or considered committing suicide

STRUGGLING YOUTH
DESERVE
SUPPORT
NOT IMPRISONMENT

THE CYCLE

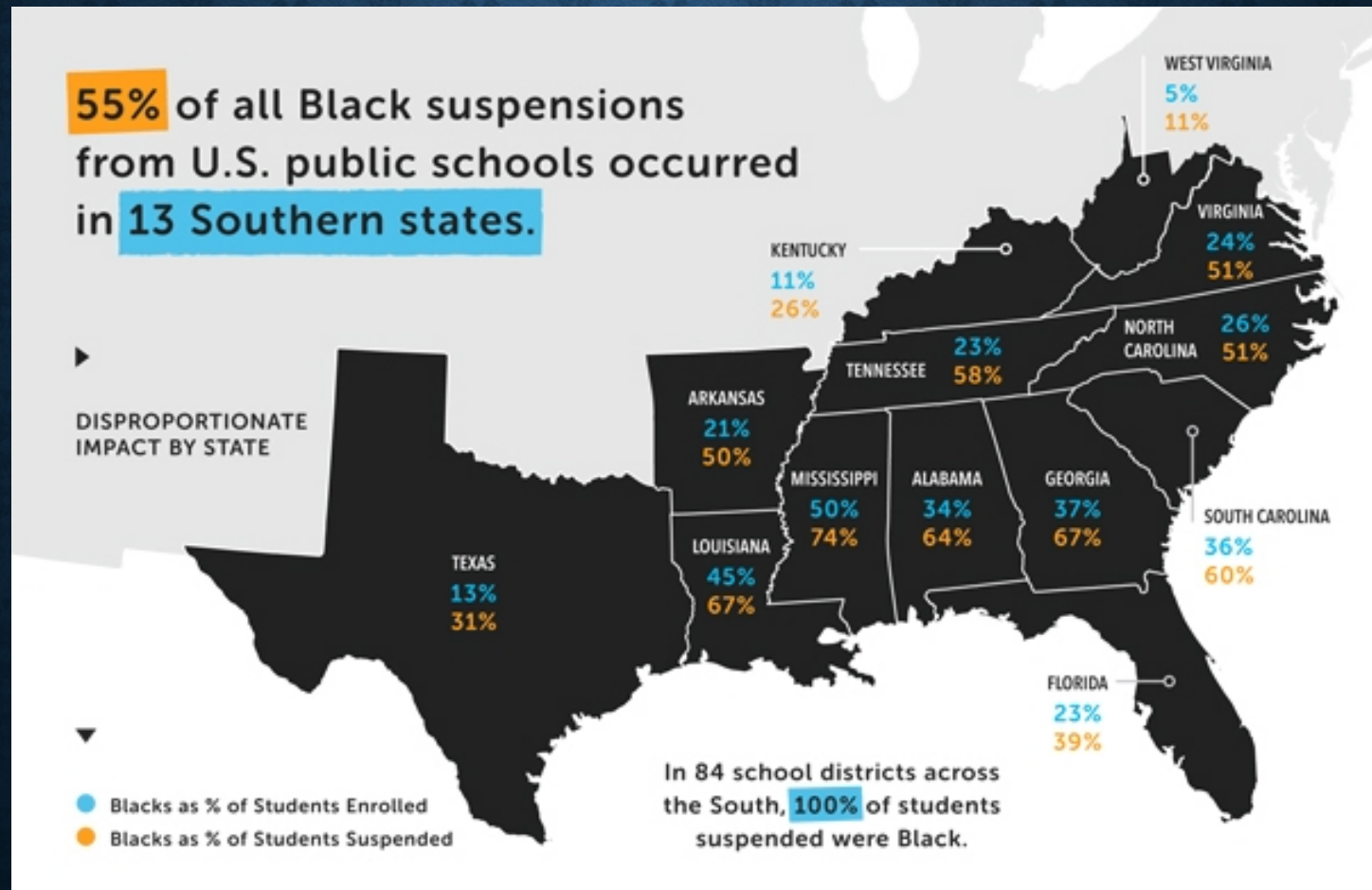


**THE CRIMINALIZATION AND
INCARCERATION OF YOUTH
DIMINISHES OPPORTUNITIES,
DISRUPTS COMMUNITIES, AND
PERPETUATES A CYCLE OF
RACIAL AND ECONOMIC
INJUSTICE**

CONTRIBUTING FACTORS

- Funding
- Poverty
- Resegregation of Schools
- High-Stakes Testing
- Prison-Like School Environments
- Zero-Tolerance Policies
- Increased Rates of Suspension and Expulsion
- Lack of Counselors and Mental-Health Services
- Other Pressures and Uncertainty

DISPROPORTIONATELY DISCIPLINED



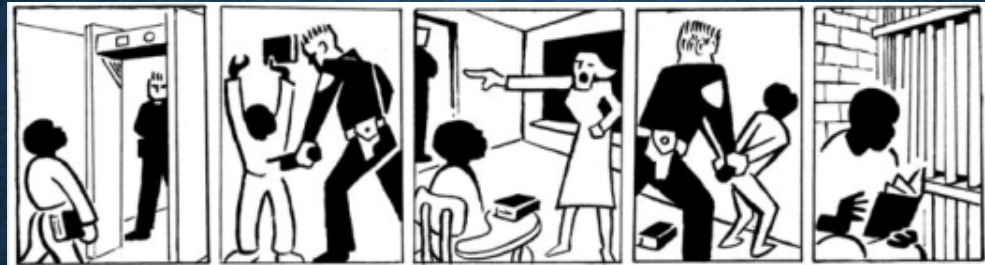
BASED ON 2015 REPORT BY EDWARD J. SMITH AND SHAUN R. HARPER

STATISTICS

~746,200 STUDENTS IN ALABAMA

- 2015-2016 School year
 - 61,753 children suspended
 - 112 Pre-K children suspended
 - 248,000 short-term suspensions
 - 1,423 long-term suspensions
 - 1,849 children expelled
 - 16% of all black children suspended v. 4.7% of white children
- Black children 3.5 times as likely to be expelled
- National average = 1.9

HOW DO STUDENTS MOVE THROUGH THE PIPELINE?



- As an affected student misses more school and feels the sting of rejection and “unfairness,” misbehavior gets worse, not better
- Student may begin skipping school to avoid negative interactions and embarrassment of poor academic achievement
- Student begins engaging in unlawful community behavior, such as vandalism, theft, etc.
- Student may connect with gangs or other excluded students
- Student gets arrested and ultimately incarcerated

FIRST ALERT UMBRELLA FORECAST

NEXT FIVE DAYS

FIRST ALERT
WEATHER

30%



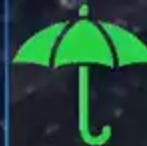
MON

30%



TUE

0%



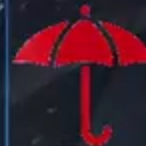
WED

60%



THU

50%



FRI

POLICING IN SCHOOLS

- School resource officers (SROs) are law enforcement officers permanently assigned to work in schools
- 75% of all schools have SROs.



SCHOOL RESOURCE OFFICERS



- Steady increase in the number of SROs in schools
- Can create an atmosphere of hostility and control rather than safety and support
- More SROs result in more school-related behaviors becoming juvenile and criminal offenses

SCHOOL-BASED ARRESTS IN ALABAMA

- 3,157 children were arrested or referred to law enforcement
- Black children referred to law enforcement 3.5 times more
- National average = 2.3

DISABILITY DISPARITIES ARRESTS



- At least one in three juveniles arrested has a disability
- Students with disabilities are three times more likely to be arrested before leaving high school than the general population.*
- *Source: The Hechinger Report, Oct. 26, 2014
- “ Pipeline to Prison: Special Education Too Often Leads to Jail for Thousands of American Children”
- Students with emotional disabilities tend to be more impulsive, less able to problem-solve, and less able to manage emotions, resulting in aggressive or other disorderly behaviors

EVIDENCE ABOUT SCHOOL SUSPENSIONS

- For individuals students, school suspension is linked to:
 - Poor academic achievement, both short term & long term
 - Lasting disconnection between suspended student and school
 - Increased truancy and future misbehavior
 - Increased risk of later incarceration
- Difficult to find evidence that suspension reduces misbehavior; higher rates of suspension *do not correlate* with safer, more orderly schools



REVERSING THE PIPELINE

- Commitment to Change
- Prevention
- Intervention
- Alternatives



ABA ADVOCATING FOR LEGISLATIVE AND POLICY CHANGE

- (a) adopt policies, legislation and initiatives designed to eliminate the school to prison pipeline whereby students of color, students with disabilities, LGBTQ (lesbian, gay, bisexual, transgender, questioning, or queer) students, homeless students, and other marginalized youth constituencies are disproportionately impacted
- (b) adopt laws and policies supporting legal representation for students at point of exclusion from school, including suspension and expulsion;
- (c) support ongoing implicit bias training for teachers, administrators, school resource officers, police, juvenile judges, prosecutors, and lawyers and others involved with students;

ABA ADVOCATING FOR LEGISLATIVE AND POLICY CHANGE

- (d) require data reporting relating to school discipline, including distinctions between educator discipline and law enforcement discipline to the Office of Civil Rights;
- (e) support legislation that eliminates the use of suspensions, expulsions, and referrals to law enforcement for lower-level offenses; and
- FURTHER RESOLVED, That the American Bar Association urges state and local prosecutors' offices, and national and state prosecutors associations to develop screening and charging policies and statements of best practices for school referred cases to juvenile courts.

CHANGE LOCAL POLICIES

- School boards can limit the authority of principals and the superintendent to impose suspensions in certain circumstances
 - No suspension from elementary school
 - No suspension on first offense
 - No suspension until certain interventions are tried
 - No suspension for longer than 30 days
 - No suspension for certain offenses (i.e., disrespect, disobedience)
 - No court referrals for most school offenses



WHAT CAN LAWYERS DO

To Dismantle the School to Prison Pipeline?

ADVOCATE FOR INTERVENTION



- Student support teams
- Mentoring & counseling
- Social work services
- Substance abuse intervention
- Personal Education Plans
- Effective IEPs for students with disabilities

ADVOCATE FOR ALTERNATIVES

- Mediation
- Restorative justice
- Restitution
- Community service
- Effective alternative schools
- Effective in-school
alternative learning centers



WHAT CAN LAWYERS DO?

- Join efforts by National and Local Organizations
- Engage community organizations
- Look at and follow the money carefully
- Identify and share strategies to take advantage of the new federal funding
- Figure out what it will take to change the law in your city, state, or region
- Make recommendations for change and be specific
- Spread successful models throughout the country
- Work with a social worker and service providers for effective solutions
- Support teachers
- Diversity, implicit bias and anti-oppression trainings

WHAT CAN LAWYERS DO?

- Take a case, criminal or civil, major or minor. Consider taking a suspension or expulsion case, and look at Titles IV and VI
- Make OCR and Family Educational Rights and Privacy Act (FERPA) complaints
- Donate to a group working to end the school-to-prison pipeline
- Train others to take cases or do community workshops
- Teach and mentor young people
- Volunteer at your local school
- Develop and focus on alternatives, like restorative justice
- Keep fighting against new ways of criminalizing behavior
- Engage parents

HOW CAN LAWYERS ADVOCATE FOR YOUTH IN CRIMINAL COURT?

ADVOCACY TECHNIQUES

- BEWARE OF YOUR LANGUAGE!
 - Your clients are “kids” or “child(ren)” NOT “Mr./Ms.” or “the defendant.”
 - Offense v. Crime
 - Juvenile or adolescent behavior
 - “Lacked proper judgment”
 - “Did not appreciate the consequences/severity of his/her actions”

ADVOCACY TECHNIQUES

- UNDERSTAND THAT THE LAW RECOGNIZES DIFFERENCES BETWEEN CHILDREN AND ADULTS.

Children are developmentally different from adults and warrant distinct treatment under the U.S. Constitution

The U.S. Supreme Court has identified 3 development distinctions between youth and adults: lack of maturity, susceptibility to outside influences, and capacity for change.

- Roper v. Simmons- unconstitutional to impose death penalty on children convicted as juveniles
- Graham v. Florida- unconstitutional to impose life without parole on children for non-homicide offenses
- Miller v. Alabama- unconstitutional to impose mandatory life without parole on children for homicide offenses

**“DEVELOPMENTS IN PSYCHOLOGY
AND BRAIN SCIENCE CONTINUE
TO SHOW FUNDAMENTAL
DIFFERENCES BETWEEN
JUVENILE AND ADULT MINDS”**

Graham v. Florida

**“CHILDREN HAVE A LACK OF
MATURITY AND AN
UNDERDEVELOPED SENSE OF
RESPONSIBILITY, LEADING TO
RECKLESSNESS, IMPULSIVITY,
AND HEEDLESS RISK TAKING.”**

Montgomery v. Louisiana

**“CHILDREN ARE MORE VULNERABLE
TO NEGATIVE INFLUENCES AND
OUTSIDE PRESSURES, INCLUDING
FROM THEIR FAMILY AND PEERS,
THEY HAVE LIMITED CONTROL OVER
THEIR OWN ENVIRONMENT AND LACK
THE ABILITY TO EXTRICATE
THEMSELVES FROM HORRIFIC,
CRIME-PRODUCING SETTINGS.”**

Miller v. Alabama

“A CHILD’S CHARACTER IS NOT AS WELL FORMED AS AN ADULT’S; HIS TRAITS ARE LESS FIXED AND HIS ACTIONS LESS LIKELY TO BE EVIDENCE OF IRRETRIEVABLE DEPRAVITY...A GREATER POSSIBILITY EXISTS THAT MINOR’S CHARACTER DEFICIENCIES WILL BE REFORMED.”

Roper v. Simmons, Graham v. Florida

ADVOCACY TECHNIQUES

- YOUTHFUL OFFENDER STATUS
- MOTIONS TO SUPPRESS
 - J.D.B. v. North Carolina – A child's age must be taken into account for purposes of the Miranda custody test.
- RAISE CONSTITUTIONAL CHALLENGES TO STATE LAW
 - Lack of Due Process - Kent v. United States, Matthews v. Eldridge (the decision to transfer youth from juvenile to adult court is “critically important.”; children have a significant interest in remaining in the juvenile court system)
 - Challenge in Tuscaloosa County

ADVOCACY TECHNIQUES

- MITIGATION AT SENTENCING
- APPEAL LENGTHY SENTENCES
 - U.S. v. Grant (3rd Cir.) “de facto life sentence”
 - Alabama case – Lakeith Smith appeal

ADVOCACY TECHNIQUES

SOLICIT HELP FROM EXPERTS

- Campaign for Youth Justice, www.campaignforyouthjustice.org
 - Mission is to end the practice of prosecuting, sentencing and incarcerating youth in the adult criminal justice system
 - Resource for tools and information on the harms of trying children as adults
 - Provide technical assistance
- Juvenile Law Center, www.jlc.org
 - Mission is to advocate for the rights, dignity, equity and opportunity for youth in the child welfare and justice systems
 - Appellate advocacy, amicus briefs, professional training and education, and strategic communications



QUESTIONS?