Keeping Kids In School and Out of Court

Presented by Hon. Jay D. Blitzman,
First Justice,
Massachusetts Juvenile Court, Middlesex Division
“There can be no keener revelation of a society's soul than the way in which it treats its children.”

-Nelson Mandela
The Cradle-to-Prison Pipeline...

“runs through economically depressed and failing schools.”

“Arrested Futures”

- Students who are arrested at school are 3x more likely to drop out than those who are not
  - Kids with cognitive or emotional issues are 8x more likely to be arrested in schools
- Students who don’t graduate high school are 8x more likely to be arrested than peers who do
  - The cost of housing, feeding and caring for prison inmates is nearly 3x that of educating public school students
- Students of color and students with disabilities are disproportionately subjected to school-based arrests
  - 1/3 of all juveniles behind bars are students with disabilities

Juvenile Arrest Rate Trends

- The juvenile arrest rate for all offenses reached its highest level in the last two decades in 1996.
- It then declined 43% by 2010.
- Juvenile Crime Index lowest in three decades. Overwhelming majority of youth in court for non-violent offenses;
- OJJDP Statistical Briefing Book, Juvenile Court Cases, 2011

Source: www.ojjdp.gov
School Safety

- According to a study conducted in 2010, schools are the safest they have been in twenty years.

- The rate of self-reported incidents of violence or theft in schools per 1,000 students decreased 69% from 155 in 1993 to a rate of 47 in 2008.

Consequences of School Exclusion

- School exclusion through suspension and expulsion is associated with a decrease in academic achievement, and an increased risk of negative or antisocial behavior over time.

- Suspension and expulsion have also been found to be associated with higher rates of truancy over time, and an increased risk for failure to graduate or school dropout.

- Students who are suspended or expelled face an increased risk of contact with the juvenile justice system.

Source: “Documenting Disparities for LGBT Students: Expanding the Collection and Reporting of Data on Sexual Orientation and Gender Identity,” The Equity Project at Indiana University (March 2016).
Nationwide Increase in the Number of School Suspensions

Throughout the United States in 2000, there were over 3 million school suspensions and over 97,000 expulsions.

Nationally, the number of secondary school students suspended or expelled during a school year increased by 40% between 1972-1973 and 2009-2010.

Los Angeles Unified School District (LAUSD)

Of 9,000 arrests and tickets issued to students in the 2011-2012 school year, 93% involved black or Latino children.
Chapter 222: 2013-2014 Data Collection of Massachusetts’s School’s Disciplinary Actions

- Massachusetts’s students missed a minimum of 208,605 days in the classroom due to disciplinary removal;

- 2/3 of out-of-school suspensions were for “non-violent, non-criminal, non-drug offenses;”

- Students of color, students with disabilities, and low-income students experienced a disproportionate share of disciplinary removals;

- Students of color were disciplined more harshly than white students for “non-violent, non-criminal, non-drug incidents; and

- 5% of schools accounted for almost half of the state’s suspensions and other punishments

Source: Matt Cregor, Priya Lane, and Joanna Taylor, Not Measuring Up: The State of School Discipline in Massachusetts, Lawyer’s Committee for Civil Rights and Econ. Justice 2015
Middlesex County School Year 2013-2014
Discipline and Suspension Data

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Students Disciplined</th>
<th># With in-school suspension</th>
<th># With out-of-school suspension</th>
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<td>447</td>
<td>165</td>
<td>1,632</td>
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</table>

Source: Massachusetts Department of Elementary and Secondary Education
Department of Education Statistics: 2009-2010 School Year

- African-American students were more than 3.5x more likely to be suspended or expelled as white students
- 20% of African-American males were suspended from school during the 2009-2010 school year
  - By comparison, 7% of white males, 9% of Hispanic males, and 3% of Asian-American males were removed from school for disciplinary offenses
- African-American students represent 24% of enrollment, but 35% of arrests
  - By comparison, white students accounted for 31% of enrollment, but 21% of arrests; Hispanic students accounted for 34% of enrollment, but 37% of arrests

The Disparate Treatment of Girls of Color

“In 2011-2012, black girls made up 61% of all girls disciplined in Boston schools, while comprising only 28% of district enrollment. White girls…made up only 5% of the girls disciplined.”

Educational Inequity for LGBT Students: Exclusionary Discipline

- In a nationwide study, LGBT youth were more than twice as likely as heterosexual students to report that they had been suspended from school.

- Adolescents reporting same-sex attraction were 1.4x more likely to be expelled from school than their heterosexual peers.

- More data collection is needed in order to understand the extent of the problem and generate solutions.

Source: “Documenting Disparities for LGBT Students: Expanding the Collection and Reporting of Data on Sexual Orientation and Gender Identity,” The Equity Project at Indiana University (March 2016).
Disrupting the School-to-Prison Pipeline

- Educational disparities across race and class, and the rapid channeling of students of color into our criminal justice system, is a complex and multifaceted problem.

- It calls for a broad-based systemic and interdisciplinary approach.

- Education policy must be evaluated in concert with housing policy and community infrastructure prioritizing racial and socioeconomic integration.
“Fundamental to successful system reform are collaborative and data-driven strategies to change the way adults in the juvenile justice system operate – that is, collaboratively utilizing data to conduct critical self-examination of polices and practices and how they impact youth of color.”


PARALLEL TRACKS NEVER MEET.
Systemic Applications

- Engaging In Collaborative Dialogue to Further Goals of Proportional Accountability in All Contexts
- Importance of Reflective Listening
- Strength-based models that support Positive Youth Development

- A Vision for the Juvenile Justice System, Lerner et al., Juvenile Justice: Advancing Research, Policy, and Practice, Wiley and Sons, Ch. 5); An asset v. deficit driven model
National Leadership:
School-Justice Partnerships

- “Keeping Kids in School and Out of Court”
- 2012 in New York City
  - Topics
    - Strength-based Approach
    - Racial and Educational Equality
    - School Environment and Discipline
  - Supported by the “Supportive School Discipline Initiative”
    - Collaborative project between the Departments of Education and Justice
      - Education Secretary Duncan and Attorney General Holder
      - MacArthur Foundation, Models for Change
Massachusetts Initiative for Youth

- Community Organized for Public Service (C.O.P.S.)
- Cambridge's Safety Net Collaborative
- MacArthur Foundation: Models for Change Initiative, for Crossover or Dually-Involved Youth
- Boston Public School's Code of Conduct
- UMass Lowell School of Criminology and Justice Studies – Data Collection
Systemic Collaboration in Lowell

- The National Juvenile and Family Court Judges
- School Pathways to Juvenile Justice – Technical Assistance Grant
- Middlesex County, MA selected as 1 of 16 national sites.
Systemic Collaboration in Lowell (cont’d.)

- Development of Strength-Based Alternative Models That Reduce Recidivism and Are Cost Effective
- Juvenile Court Restorative Justice Diversion
- Our Restorative Justice
- Memorandum of Understanding Between Lowell Schools and Police
Restorative Justice

- Diversionary RJ as change to scale Alternative Dispute Resolution
- Recommended alternative model – E.g. “Keeping Kids in School and Out of Court” New York City Summit, March 2012
- RJ features strength-based model of accountability, balanced with support that heals harm to community. Youth as part of solution.
  - Engage and empower youth – “Collaborative & Proactive Solutions” Problem Solving Model - Ross W. Greene, Ph.D.
Interdisciplinary Initiatives

- Broadening the orthodoxy/scope of discussion and examining issues in a larger context

- Strength-based discipline that addresses emotional health of children, reduces trauma, and builds community
  - Positive Behavioral Interventions and Support (“PBIS”)
  - Emotional Social Learning (“ESL”)

- Restorative Justice
  - Accountability with support that *enfranchises* youth, instead of *excluding* them
  - “Creative & Proactive Solutions II” Ross W. Greene, Ph.D.
Interdisciplinary Initiatives in Action: Juvenile Detention Alternatives Initiative

“JDAI”

Empirically best-evidence based public safety initiative of the Annie E. Casey Foundation

- Exploring alternatives to detention
  - Police Diversion: Avoids Stigmatization
    - *See The New Jim Crow*, Michelle Alexander
  - Mental Health Diversion & Changes in Conditions of Release
  - No expungement

Goals:

- Allocate limited public safety dollars appropriately by looking at detained youth
- Address issues related to, and ultimately reduce, Disproportionate Minority Contact (“DMC”)

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Interdisciplinary Initiatives in Action (cont'd.)

- Clayton County, GA School Offender Protocol
  - Decreased referral to juvenile justice system by establishing a disciplinary code and “cooperative agreement” among schools, justice community, and community
  - Supported by JDAI

- Lowell School-Court Meetings
  - Led directly to the creation of Juvenile Court Restorative Justice Diversion Program
  - Focus on collaboration and need to connect parallel tracks
  - Use and deployment of School Resource Officers (“SROs”)

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Interdisciplinary Initiatives in Action (cont'd.)

- Police Diversion

- Mental Health Training for law enforcement officers who respond to domestic violence reports

- Police may now be accompanied by mental health experts when responding to 911 calls

- Training for SROs- Juvenile Police Institute ("JPI"): Need for protocols regarding use and deployment of SROs
Public Education and Access to Justice

- Discussions of access to juvenile justice should include consideration of whether youth have meaningful access to public education
- Although juvenile arrest rates have been dropping, school referrals have increased
- During the 2009-2010 school year:
  - 96,000 students were arrested
  - 242,000 students were referred to law enforcement by school staff

School Referrals

- In MA, the number of detained/committed youth fell between 1998-2007;
- During that time period, minority youth continued to account for more than 20% of the population ages 10-16 and approximately 60% of those youth detained/committed.¹

School Referrals (cont’d).

- In 2005, 79% of the students enrolled in Holyoke, MA’s public schools were youth of colors, and approximately $\frac{1}{4}$ of all juvenile arrests were school based.\(^1\)

- In 2006, 82% of students enrolled in Springfield, MA’s public schools were youth of color:
  - 40% of all juvenile arrests were made by police officers assigned to patrol the city’s schools\(^2\)

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\(^1\) "Locking Up Our Children,” Robin L. Dahlberg, p. 17.
\(^2\) Id. at 6.
Post-Columbine: An Era of Apprehension, Unintended Consequences & the Myth of Neutrality in Policy and Policing

- Proliferation of zero-tolerance
- Disproportionate minority representation
  - Without proportionality, zero-tolerance equals intolerance
- Wide-scale deployment of law enforcement in schools
  - Number of police in school grows as the crime rate declines
- Educational Repercussions
  - “No Child Left Behind” mandates
  - Lack of access to adequate public education
School Resource Officers (SROs) in Schools

- There is no clear correlation between rates of theft or violence and SROs in schools.

“Zero Tolerance Task Force”
Report (August 2006)

- Report done by the American Psychological Association, which analyzed zero tolerance policies within schools.

- Zero tolerance policies are not as successful as once thought in creating safer environments to learn. These policies:
  - Can actually increase bad behavior and lead to higher drop out rates
  - Have not been successful at decreasing racial biases in disciplining students; and
  - Have created unintended consequences for students, families, and communities.

- Evidence points to a clear need for change to how zero tolerance policies are applied and toward the need for a set of alternative practices
Supportive and Structured Schools: Lower Rates of Victimization and Bullying

- Students and teachers who reported highly supportive and structured environments also had the lowest levels of victimization and bullying.

![Graph showing the relationship between school structure/support and victimization/bullying rates.](source_image)
Educational Inequity for LGBT Students: Bullying and Harassment

- LGBT youth more likely to report bullying and harassment in school from peers and even adults.
- Many LGBT students report a lack of institutional support when they report bullying.
- Bias-based bullying puts LGBT students at risk of compromised academic performance, missing school, and over-representation in the juvenile justice system.
- A hostile school environment for LGBT students also creates a high risk of homelessness, depression, substance abuse, and suicide.
Juvenile Justice and Racial and Ethnic Disparities

- “The trend in the US has been to criminalize the very nature of adolescence in the name of social welfare, with youth of color bearing the brunt of what is actually social control.”


- “While comprising 38% of the population eligible for detention, the over-representation of youth of color in secure confinement has increased to almost 70% over the past decade. These startling increases in disparities for youth of color occurred while arrest rates for serious and violent crimes declined by 45%.” Id.
Criminalization of Normative Adolescent Behavior and Racial Bias

- The Abolition of Adolescence (James Bell)
- Use of arrest to address behavior that would likely be handled by school staff if not for the presence of on-site officers
  - Increased arrests for non-violent offenses
    - E.g. disorderly conduct, disturbing lawful assembly, violating codes of conduct
  - Leads to increased dropout and arrest rates
    - 30.2% of young people will be arrested by age 23 - while African Americans represent only 24% of school enrollment, they account for 35% of arrests
    - Severe social and economic consequences
Criminalization and Racial Bias (cont’d.)

- Different punishments for the same conduct
  - Disciplinary data shows that African American and Latino Students receive harsher punishment for similar misbehavior than their white peers (Russ Skiba, Race is Not Neutral)

- “The Myth of Race Neutrality in Policy and Practice”
  - James Bell and Raquel Mariscal. Ch. 6: Race, Ethnicity, and Ancestry in Juvenile Justice, Juvenile-Advancing Research, Policy and Practice, p. 119 (2011)
“Unintended” Consequences of Current Practice

- Recriminalization of status offense conduct, that was decriminalized post- In re Gault and the Juvenile Justice and Delinquency Prevention Act (“JDDPA”) of 1974, in an era of dramatically declining arraignment rates.

- Recriminalization of status offense conduct via the Valid Court Order amending the JJDPA in 1980.

- Conditions of release at arraignment and technical probation violations for status offense conduct, e.g. attending school without incident when a truancy petition could be filed.
  - Commonwealth v. Weston W., 455 Mass. 24 (2009). (“[S]tatus offenses such as being abroad at night may not be “bootstrapped” into criminal delinquency.”)

- Black and ethnic minority youth make up a disproportionate number of adolescents disciplined in school, managed by the child welfare system, diagnosed with mental health problems and emotion disturbances, and disciplined by schools; these three institutions are increasingly putting these children in the juvenile system.

“Unintended” Consequences (cont’d.)

- “Unintended” consequences are a result of deep-seated and implicit racism

- Current orthodoxy focused on strength-based disciplinary schemes, use, and deployment of resource officers, and alternative school models are important, but limited

- Our nation's schools are as segregated as they were pre-Brown v. Board of Education

  - “Separate in public education is inherently unequal”

  - These patterns are reinforced by geographic segregation

  - Strayed far from original Brown v. BOE intent
“Re-Examining Juvenile Justice Incarceration”

- Placement in correctional facilities doesn’t lower the likelihood of juvenile reoffending and may increase it in some cases.
- High school drop out rates increased substantially after experiencing incarceration than their peers who have not.
- Need to re-examine juvenile incarceration that exacerbates systemic racial and ethnic disparities.

Source: The PEW Charitable Trusts, Re-Examining Juvenile Incarceration, April 2015
Figure 2

Longer Stays Do Not Yield Consistent Reductions in Juvenile Recidivism

Rearrest rates in 2 counties remained steady for offenders with longer placements

Note: Study evaluated serious adolescent offenders in Maricopa County, Arizona, and Philadelphia County, Pennsylvania.


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Figure 1
Most Ohio Youth Supervised in the Community Have Lower Recidivism Rates
Outcomes were better for all but the very high-risk juveniles

Notes: RECLAIM is a state initiative that encourages the supervision of youth offenders in the community. Recidivism is defined as a subsequent adjudication, conviction, or commitment to a state juvenile or adult facility within 2½ to 3½ years.


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Figure 3
Daily Costs at Secure Juvenile Facilities Exceed Those of Other Common Sanctions

In South Carolina, a secure bed costs more than 30 times intensive probation

<table>
<thead>
<tr>
<th></th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secure placement</td>
<td>$426</td>
</tr>
<tr>
<td>Intensive multi-agency group care</td>
<td>$180</td>
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<tr>
<td>Wilderness camp</td>
<td>$111</td>
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<tr>
<td>Therapeutic foster care</td>
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<td>Intermediate multi-agency group care</td>
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<tr>
<td>Intensive probation</td>
<td>$13</td>
</tr>
<tr>
<td>Regular probation</td>
<td>$6</td>
</tr>
</tbody>
</table>

Note: All cost figures are based on facility or program capacity and include personnel, operations, education, treatment, and some administrative costs. Figures are rounded to the nearest dollar. Wilderness camps provide youth with outdoor skills along with counseling and other support services.

Source: South Carolina Department of Juvenile Justice

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Intersection of Juvenile Justice, Child Welfare, and Public Safety

- Cross-Over or Dual Status Youth
- Children in State Intervention Cases
- Every time a child’s placement is changed or disrupted, the research shows that s/he loses at least 6 months of educational progress, which increases the risk of school failure and dropout
Dual-Status Youth

- 72% of youth committed to DYS between 2000 and 2012 had involvement with DCF either prior to or during their involvement with DCF.

- In a 2014 study of dually-involved youth, 39% of girls had more than six DCF placements, and 15% had 11 or more; among boys, 27% had six or more, and 10% had 11 or more.

- 58% of dual-status youth have experienced at least one home removal, including 77% of girls and 53% of boys.

- Compared to the overall DCF population, multi-system youth were disproportionately boys (82% vs. 50% of the DCF population) and black or Latino (60% vs. 39%).

Source: “Missed Opportunities: Preventing youth in the child welfare system from entering the juvenile justice system,” Citizens for Juvenile Justice, Sep. 2015
Dual-Status Youth (cont’d).

Source: “Missed Opportunities: Preventing youth in the child welfare system from entering the juvenile justice system,” Citizens for Juvenile Justice, Sep. 2015
Rates of Trauma for Youth in the Juvenile Justice System

- 34% of children in the United States have experienced at least one traumatic event.
- In comparison, 75 to 93% of youth entering the juvenile justice system annually in the US are estimated to have experienced some degree of trauma.

Employing a Public Heath and a Developmental Perspective

- Adverse Childhood Experiences (ACEs)
  - Childhood Maltreatment
    - Emotional abuse
    - Physical abuse
    - Sexual abuse
    - Emotional neglect
    - Physical neglect
  - Family Dysfunction
    - Mother DV victim
    - Substance abuse
    - Mental Illness/Suicide
    - Parent Separation/Divorce
    - Incarceration
Opportunities and Challenges

- Applying Science and Maturational Research
- Guarding Against Unintended Consequences of Current Policy and Practice
Use of Evidence-Based Practices and Data

- Policy in practice
- Jeffrey A. Butts and John K. Roman, Policy and Practice in Juvenile Justice: Advancing Research, Policy, and Practice (Eds. Sherman and Jacobs) Wiley and Son 2011; Ch. 24
- Principles of Positive Youth Development: A Vision for the American Justice System
  - Lerner et al. Juvenile Justice, Ch. 5
Employing a Developmental and Systemic Lens

- See e.g.

The Law and Psychology

- Lawyers have learned from psychologists
- APA report on zero tolerance policies
- US Supreme Court Jurisprudence
  - *Roper v. Simmons*: Abolishing juvenile death penalty
  - *Graham v. Florida*: Abolishing mandatory life without parole in non-capital cases
  - *Miller v. Alabama*: Abolishing mandatory life without parole in capital cases
  - *J.D.B. v. North Carolina*: Age is a factor in custodial interrogation

Source: MacArthur Adolescence Research Network and brain imaging studies
Children Are Not “Little Adults”

“[T]he essentials of due process may be a more therapeutic attitude so far as the juvenile is concerned.”

*In re Gault*, 387 U.S. 1, 25 (1967)

- The guiding psychological principles behind adolescent development should be applied in schools and in the courtroom
  - Sanctioning that is strength-based and proportionate, and geared towards positive youth development, while also building a sense of community
    - Incorporate accountability and emotional health
    - Engage and empower youth - “Collaborative & Proactive Solutions” Problem Solving Model - Ross. W. Greene, Ph.D.
    - “Positive Youth Development” (Richard Lerner, Jeff Butts)
    - Balance accountability with support
    - Protect public safety
Rehabilitation and Due Process

“[T]he essentials of due process may be a more therapeutic attitude so far as the juvenile is concerned.” *In re Gault*, 387 U.S. 1, 25 (1967).

- The guiding psychological principles behind adolescent development should be applied in schools, the community and in the courtroom
- Individualized assessments
- Research indicates that models which are strength-based, proportionate, and encourage positive youth development, best protect public safety
Recommendations

- Utilization of positive youth development at all stages
- Expansion of community based models of supervision
- Expanded use of diversion and restorative justice
  - *See* Re-examining Juvenile Incarceration, Executive summary of Cross-national comparison of youth justice
- Community-based, positive youth development, and restorative justice initiatives keep juveniles away from negative peer influence and begin to obstruct the school-to-prison pipeline
- Most juveniles will grow out of committing offenses, and the more they are enmeshed in the system, the harder it will be for them to grow out of it.