



**Pennsylvania Advisory Committee to the United States
Commission on Civil Rights**

**DISMANTLING THE SCHOOL-TO-PRISON PIPELINE:
ADDRESSING THE DISPARATE DISCIPLINE OF STUDENTS
OF COLOR, STUDENTS WITH DISABILITIES, AND LGBTQ
STUDENTS**

Statement of Harold Jordan, Senior Policy Advocate

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The American Civil Liberties Union of Pennsylvania has a long history of work on issues affecting students and their families. For almost two decades, we've published [*Know Your Rights: A Handbook for Public School Students in Pennsylvania*](#),ⁱ and we have provided legal services to students to ensure that they are treated fairly in accordance with the law.

Our work on school discipline issues is extensive. In 2008, we began to address problems stemming from the implementation of zero tolerance in Philadelphia schools. Eventually, we expanded our focus to address statewide issues. We examined statewide data as well as school discipline and policing practice in our 2012 and 2015 reports, [*Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools*](#).ⁱⁱ

In February 2019, we co-authored a national study, [*Cops and No Counselors: How the Lack of Mental Health Staff is Harming Students*](#).ⁱⁱⁱ This study was based on an analysis of nationwide data from the US Education Department's Civil Rights Data Collection (CRDC). A key finding of this report is that schools are under-resourced, and too many rely on police and the justice system for discipline.

Our dialogues with Pennsylvania education leaders are represented in our newest report, [*Police and Pennsylvania's Schools: What Education Leaders Need to Know*](#), October 2019.^{iv} The report highlights how education leaders can make informed decisions about school climate and the role of police.

In the past four years, our focus has switched from work on the traditional forms of exclusionary discipline in schools – such as out-of-school suspensions (OSS), expulsions, and placement in disciplinary programs – to focusing on the impact of school policing on students.

The Disparate and Punitive Impact of Exclusionary Practices: Pennsylvania Trends

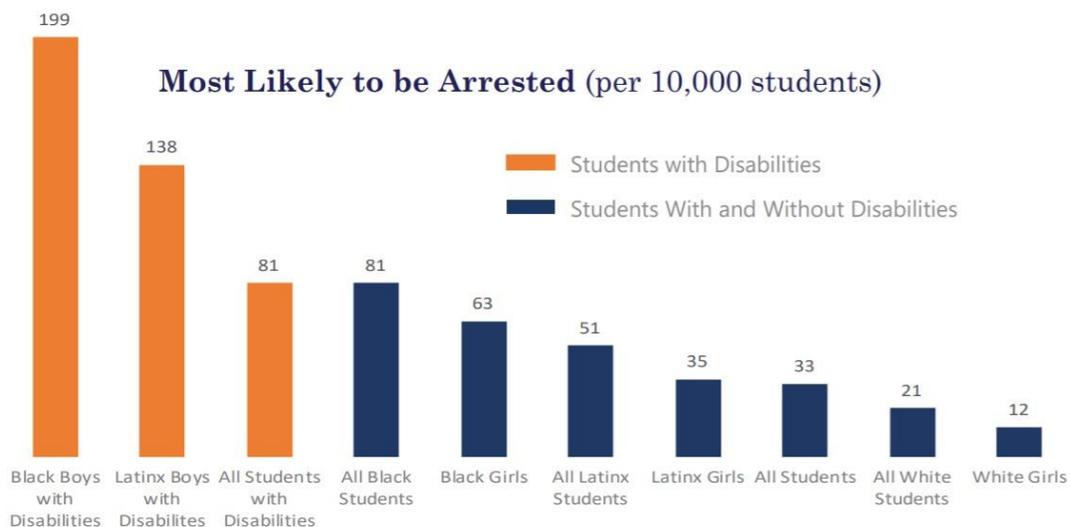
Exclusionary discipline takes many forms: suspensions, expulsions, removal to alternative programs, and involvement with the justice system. While most research studies focus on disparities in the use of out-of-school suspensions, the most widely used form of exclusionary discipline, all forms of discipline resulting in school removal must be examined if we are to understand the full impact on students.

The “school-to-prison pipeline,” as it is known, refers to both the direct and indirect pathways through which a young person becomes likely to have some form of justice system involvement. It is well known that students who are suspended or expelled are at high risk of system involvement. For example, a study of more than a million public school students in Texas found that suspension (especially repeated) or expulsion increased the likelihood of students becoming involved in the juvenile justice system *the very next year*.^v Also, they are more likely to be held back a grade or drop out than other students. In other words, exclusionary discipline can throw students’ lives off-track, educationally and job-wise, in addition to leading to contact with the justice system.

Patterns of punishment of students in Pennsylvania public schools are strikingly similar to overall national patterns, both in terms of out-of-school suspensions and arrests. (The partial exception is when Pennsylvania is compared to states where there are a substantial number of Native students.)

Key Pennsylvania Trends^{vi}

- The student who is most at risk of OSS and or arrest is a Black male student with a disability. For example, these students face arrest at a rate that is six times that of all students combined.
- Black students have the greatest likelihood of receiving out-of-school suspensions, as well as the greatest likelihood of being arrested out of any racial/ethnic group. For example, these students face arrest at four times the rate of white students.
- In 2015-16, Pennsylvania had the third highest student arrest rate in the country, a 24% increase over the previous two years.
- Students with disabilities, who make up 16.9% of PA public school students, receive OSS at twice the rate of other students, and they are arrested at 2.5 times the rate of all students combined (disabled and non-disabled combined).
- Black girls are five times more likely to be arrested in schools than white girls.
- Pennsylvania ranks second in the nation in the arrest rates for Latino students and Black students alike.



In 2016, the Commonwealth of Pennsylvania's Joint State Government Commission, released the results of a one year study of discipline policies in Pennsylvania's schools.^{vii} The Commission was tasked by the Pennsylvania House (2015 House Resolution 540)^{viii} to conduct the study. Consistent with our findings, the Commission found that Pennsylvania's rates of out-of-school suspension and expulsion rates were higher than the national average and recommended that measures be taken to lower exclusionary discipline rates.

Issues for Today

Over the past decade, there have been significant efforts nationwide to address the overuse of exclusionary discipline, with mixed results. The US Education Department announced that OSS rates fell 20% between the 2011-12 and 2013-14 school years.^{ix} However, more recent data from the Department indicates that student arrests increased by 3% nationwide, and by a striking 24% in Pennsylvania, between the 2013-14 and 2015-16 school years.^x

A contributing factor in these continuing high rates of exclusionary discipline has been the existence of policies and practices that encourage the removal of a child from school under a broad range of circumstances. Often, school removal is permitted or encouraged under circumstances that pose no significant threat of injury.

A broad reliance on exclusionary discipline may be the lasting legacy of “zero tolerance” policies, even when the term “zero tolerance” is removed from formal school policies (such as codes of student conduct) and when school removal policies shift in the direction of permitting more discretion by administrators.

Indeed, Pennsylvania's Joint State Government Commission concluded that, “The problems arising from zero tolerance are largely attributable not to the language of the law, but to the application of the law from school district to school district... Similarly, the definition of offenses that can result in expulsion and out-of-school suspension vary widely from school district to school district and are frequently applied subjectively.”

In our experience, problems stem both from the language of written policies and how school and related justice system policies are applied to students.

A second major problem is that too many schools still use the justice system as the school disciplinarian. The harms of having schools use the justice system as disciplinarian are best illustrated by Pennsylvania's “kids for cash” scandal. Between 2003 and 2008 in Luzerne County, about 2,500 young people were removed from school, adjudicated delinquent for minor offenses, and detained in privately run facilities.^{xi}

Pennsylvania's Interbranch Commission on Juvenile Justice, which was set up by the state legislature to examine the lessons of this scandal and make recommendations to legislators about needed reforms, concluded in its 2010 report that: “[S]chool referrals made under zero-tolerance policies were integral to the overall scheme as they provided an easy removal of children from their homes and schools and a constant stream of children to be placed into detention. The commission believes that zero tolerance and allowing schools to use the justice system as [a]

school disciplinarian [are practices that have] no place in the educational process or in the juvenile court system.”^{xiii}

The reforms that have been made in the functioning of our juvenile justice system since “kids for cash” are being undermined by an increasing role and presence of police in schools. In fact, this enhanced use of police in schools might explain why arrest rates continue to be high in many school districts.^{xiii} This is a problem both in schools where police are stationed on campus and where outside police are frequently called to school.

As mentioned earlier, students affected by exclusionary discipline lose a positive connection to school. They may drop out of school, or develop a negative relationships with adults in schools. Those involved in the justice system stand the added risk of experiencing long-term consequences, by having a record which endangers future job and educational opportunities.

Even the most minor involvement with the justice system, as when students are issued “summary citations” (like tickets for disorderly conduct, alcohol violations, or vaping) by police in schools, typically without being arrested, can have a lasting impact. Students receiving such citations *are placed in the adult justice system*, despite their age, where they have fewer protections.

Summary citations are adult criminal offenses, regardless of age, even though a minor cannot be jailed for a summary offense.^{xiv} (Unpaid fines, however, can result in a warrant.) Unlike juvenile adjudications, summary convictions must be disclosed by young people if they are asked on a job or college application. One investigation found that some 370 citations were issued by police in schools in Lancaster County (central Pennsylvania) over an 18-month period.^{xv} While statewide data about the issuance of summary citations in schools is not available, we have observed a strong pattern of these citations being issued disproportionately to Black and Latino students in several Pennsylvania school districts.

Recommendations

The ACLU of Pennsylvania offers the following recommendations:

- Redouble existing efforts to minimize the use of exclusionary discipline and law enforcement intervention and move toward a system of evidence- or research-based alternatives. (We join in this recommendation from PA’s Joint State Government Commission study).
- Clarify Pennsylvania’s reporting requirements for schools’ obligation to report incidents to police, removing routine school disciplinary matters and typical day-to-day conflicts from the purview of officers. Existing state law prescribes that only specific major incidents be immediately reported; however, the Model MOU for agreements between districts and law enforcement approved by the Pennsylvania School Board also lists incidents where police notification is discretionary. Administrators are confused and feel pressured to bring the police into a broad range of school incidents. (The PA Joint State Government Commission also made this recommendation.)
- Analyze and address patterns of racial, disability and gender disparities in Pennsylvania school discipline.

- Make concerted efforts to reduce unnecessary student arrests.
- Ensure that student arrest data is accurate. At present, there are major inconsistencies between what is reported to various public agencies.^{xvi}
- Reduce or eliminate the use of summary citations as a form of punishment.

ⁱ Know Your Rights: A Handbook for Public School Students in Pennsylvania, American Civil Liberties Union of Pennsylvania, June 2017,

https://www.aclupa.org/sites/default/files/field_documents/students_rights_handbook_2017_update.pdf

ⁱⁱ Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools, American Civil Liberties Union of Pennsylvania, February 2015, https://docs.wixstatic.com/ugd/10497b_56b2ce93961c47eda1db0fb6b3b3b58.pdf

ⁱⁱⁱ Cops and No Counselors: How the Lack of Mental Health Staff is Harming Students, American Civil Liberties Union, 2019, <https://www.aclu.org/report/cops-and-no-counselors>

^{iv} Police and Pennsylvania's Schools: What Education Leaders Need to Know, American Civil Liberties Union of Pennsylvania, October 2019, https://static.wixstatic.com/ugd/10497b_f700375a057746599a798d38eee59e54.pdf

^v Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement, Council of State Governments Justice Center and the Public Policy Research Institute at Texas A&M University, July 2011, http://knowledgecenter.csg.org/kc/system/files/Breaking_School_Rules.pdf

^{vi} Supporting Pennsylvania Students: The Choice, American Civil Liberties Union, 2019. Figures are based on an analysis of the US Education Department's Civil Rights Data Collection (CRDC) for 2013 and 2015.

<https://ocrdata.ed.gov/> Cops and No Counselors: How the Lack of Mental Health Staff is Harming Students, American Civil Liberties Union, 2019, <https://www.aclu.org/report/cops-and-no-counselors>.

Note that CRDC arrest data differs from Pennsylvania Department of Education (PDE) data, reported at <https://www.safeschools.pa.gov/>. We have reason to believe that some districts underreported arrests to PDE during that period. Therefore, calculations were made based on federal CRDC data.

^{vii} Joint State Government Commission Report to the Pennsylvania Legislature on Zero Tolerance School Discipline Policies, Joint State Government Commission, October 2016.

<http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2016-10-27%20Final%20REPORT%20for%20WEBSITE%20updated%2011.16.16%20%20WB.pdf>

^{viii} 2015 Pennsylvania House Resolution 540,

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2015&sInd=0&body=H&type=R&bn=540>

^{ix} Report: The Continuing Need To Rethink Discipline, Executive Office of the President, December 2016, https://b85526ce-455b-4f39-a9d3-f2a6f94e2002.filesusr.com/ugd/10497b_33697354d191463f88d8c4134bf94e8d.pdf

^x Cops and No Counselors: How the Lack of Mental Health Staff is Harming Students, American Civil Liberties Union, 2019, <https://www.aclu.org/report/cops-and-no-counselors>

^{xi} Luzerne "Kids for Cash" Scandal, Juvenile Law Center, <https://jlc.org/luzerne-kids-cash-scandal>

^{xii} Pennsylvania's Interbranch Commission on Juvenile Justice, pp.58-59, May 2010,

<http://www.pacourts.us/assets/files/setting-2032/file-730.pdf?cb=4beb87>

^{xiii} Which Pa. schools reported the most arrests in 2018-19?, Penn-Live, November 8, 2019,

https://www.pennlive.com/news/2019/11/is-your-pa-school-on-the-list-of-most-arrests-in-2018-19-highlights-from-the-report.html?utm_medium=social&utm_source=facebook&utm_campaign=pennlive_sf

^{xiv} Students and the Justice System: Collateral Consequences, American Civil Liberties Union of Pennsylvania, July 2019, https://drive.google.com/file/d/1U_rBQ0d96-9MupB_VczuSldofoctIYEi/view

^{xv} Student citations at Lancaster County public schools can have lasting consequences, Lancaster News, April 8, 2019, https://lancasteronline.com/news/local/student-citations-at-lancaster-county-public-schools-can-have-lasting/article_3345895c-57e1-11e9-a0dd-bfde9921829a.html

^{xvi} Note that federal CRDC arrest data differs from that released by the Pennsylvania Department of Education (PDE), reported at <https://www.safeschools.pa.gov/>. We have reason to believe that some districts have underreported arrests to PDE. So we tend to rely on the federal CRDC data. In several jurisdictions, arrest numbers reported to federal and state education agencies do not match the data that comes from the juvenile court system.