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ARTICLE

THE TANGLED WEB OF MASS INCARCERATION: ADDRESSING THE SCHOOL-TO-PRISON PIPELINE THROUGH A RESTORATIVE JUSTICE APPROACH

ARTIKA R. TYNER*

INTRODUCTION

A referral from the classroom to the courtroom has become an expansive and pervasive entry point into the “tangled web of mass incarceration.”¹ This referral may be initiated as the result of disruption in the classroom, response to a zero-tolerance policy, or a disciplinary infraction.² It is a phenomenon known as the “school-to-prison pipeline.”³ The NAACP

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In addition, Dr. Tyner served on the American Bar Association Joint Task Force in Reversing the School-to-Prison Pipeline. She has published articles and lectured on the topic of the school-to-prison pipeline.

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1. Melenie Soucheray, *Advocates Explore Link Between Mass Incarceration, Intergenerational Poverty*, THE CATH. SPIRIT (Feb. 3, 2017), <https://thecatholicspirit.com/news/local-news/advocates-explore-link-mass-incarceration-intergenerational-poverty>.

2. Donna Y. Ford et al., *Too Much, Too Little, but Never Too Late*, in UNDERSTANDING, DISMANTLING, AND DISRUPTING THE PRISON-TO-SCHOOL PIPELINE 21, 26–28 (Kenneth J. Fasching-Varner et al. eds., 2017).

3. See NANCY A. HEITZEG, *THE SCHOOL-TO-PRISON PIPELINE: EDUCATION, DISCIPLINE, AND RACIALIZED DOUBLE STANDARDS* (2016).

Legal Defense Fund has described this pipeline as “funneling of students out of school and into the streets and the juvenile correction system . . . depriving children and youth of meaningful opportunities for education, future employment, and participation in our democracy.”⁴ The emergence of the school-to-prison pipeline has been impacted by trends in school disciplinary practices and zero-tolerance policies. In addition, schools have become reliant on interventions from law enforcement when “[m]any under-resourced schools become pipeline gateways by placing increased reliance on police rather than teachers and administrators to maintain discipline.”⁵

The culmination of these two forces has created a complex set of challenges with a far-reaching deleterious impact on the future of today’s youth.⁶ Incarceration as a child can increase the likelihood of future incarceration as an adult.⁷ These data points beg the question of whether there are alternative prevention measures and strategic interventions which can address some of the behavioral and disciplinary challenges of students without jeopardizing their futures. Restorative justice can serve as an instrumental tool for the type of engagement and community-building required to necessitate the dismantling of the school-to-prison pipeline and creation of new pipelines for success for all children. It has been characterized as: “a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.”⁸ This process can aid in advancing the foundational tenet of the juvenile justice system—rehabilitation. Students will partake in a learning experience rooted in personal accountability and informed by the need for community engagement.

The integration of restorative principles into the school system can aid in dismantling this pipeline and creating new pipelines to restorative communities where youth can thrive and unveil their limitless potential. Part I of this article explores the emergence of the school-to-prison pipeline, which includes an analysis of the pipeline’s disproportionate impact on the lives of students of color, students with disabilities, and students with special needs.⁹ Part II introduces the basic principles of restorative justice cou-

4. *Case: School to Prison Pipeline*, NAACP LEGAL DEFENSE FUND (Feb. 16, 2018), <https://www.naacpldf.org/case-issue/school-prison-pipeline>.

5. *Locating the School-to-Prison Pipeline*, AM. C.L. UNION, <https://www.aclu.org/node/29079%C2%A0> (last visited Oct. 6, 2020) (emphasis removed).

6. A day in the life of American children accounts for: “2,467 high school students drop out,” “18,221 public school students are suspended,” and “3,477 children are arrested.” MARIAN WRIGHT EDELMAN, *THE SEA IS SO WIDE AND MY BOAT IS SO SMALL: CHARTING A COURSE FOR THE NEXT GENERATION* 28–29 (2008).

7. Anna Aizer & Joseph Doyle, *What Is the Long-Term Impact of Incarcerating Juveniles?*, VOXEU (July 16, 2013), <https://voxeu.org/article/what-long-term-impact-incarcerating-juveniles>.

8. Tony F. Marshall, *The Evolution of Restorative Justice in Britain*, EUR. J. ON CRIM. POL’Y & RSCH., vol. 4.4, Dec. 1996, at 21, 37.

9. “Disproportionality refers to the difference between a group’s representation in the population at large and its over or under representation in specific areas.” SARAH E. REDFIELD & JASON

pled with an exploration of peace communities and restorative circles. Part III offers recommendations for change by incorporating restorative practices into school disciplinary practices.

I. SCHOOL-TO-PRISON PIPELINE

My personal mantra is: “we see a problem, we create a solution.”¹⁰ It is something I teach my law students and it has inspired and led to the growth and development of the award-winning civil rights clinic, The Community Justice Project.¹¹ In 2009, a problem brought to my attention was the impact of the school-to-prison pipeline on the lives of children, especially children of color and children with disabilities. As a civil rights attorney, I started to receive phone calls from parents, community organizers, and educators about students being referred out of school into the juvenile justice system due to school disciplinary issues and zero-tolerance policies. At this time, about a quarter of the cases being referred into the juvenile justice system were from the local school districts.¹² My initial hypothesis was that school violence may be increasing. The data showed this was not the case; there was actually a decline. Violence has decreased in public

P. NANCE, THE AMERICAN BAR ASSOCIATION JOINT TASK FORCE ON REVERSING THE SCHOOL-TO-PRISON PIPELINE PRELIMINARY REPORT 16 (2018).

10. Future lawyers are uniquely positioned to use their legal training to make a difference in the world. History shows us that lawyers have been at the forefront of social change. One key example is the leadership legacy of Charles Hamilton Houston, who laid the groundwork for the legal case *Brown v. Board of Education*. Our center is dedicated to advancing our university’s social justice mission by training and equipping the next generation of social engineers.

Artika R. Tyner Explains How Minorities’ Lives Are Impacted by the Legal System, ROLLING OUT (Jan. 20, 2020), <https://rollingout.com/2020/01/20/artika-r-tyner-explains-how-minorities-lives-are-impacted-by-the-legal-system>; see also GENNA RAE McNEIL, GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS (1983) (chronicling the life and teaching pedagogy of Charles Hamilton Houston).

11. This problem-solving framework laid the foundation for the founding of the Community Justice Project, an award-winning civil rights clinic at the University of St. Thomas School of Law. The Community Justice Project (CJP)

focuses on bridge building with community stakeholders and problem solving in distressed communities. Students will gain valuable advocacy, legal research and writing, litigation and outreach skills. Students in the practice group will be agents of change to ensure that justice is obtained for underserved members of the community. For example, students conducted research related to community policing models and problem-solving techniques. [The CJP] will take a comprehensive look at improving the lives of the African American community in the Twin Cities. The CJP has engaged in intensive research into practical solutions to longstanding challenges such as racial disparities in the criminal justice system, police brutality, and racial disparities in the educational and juvenile justice systems for at-risk youth.

Community Justice Project, UNIVERSITY OF ST. THOMAS, <https://www.stthomas.edu/ipc/clinic/communityjusticeproject> (last visited Sept. 26, 2020); see also Nekima Levy-Pounds & Artika Tyner, *The Principles of Ubuntu: Using the Legal Clinical Model to Train Agents of Social Change*, INT’L J. CLINICAL LEGAL EDUC., Dec. 2008, at 7.

12. Our team reviewed data from the Minnesota Department of Education. See MINN. DEP’T OF EDUC., <https://education.mn.gov/MDE> (last visited Oct. 9, 2020).

schools since 1990.¹³ Many people wanted me to believe that children of color were committing crimes and engaging in misbehavior at a higher rate than their white counterparts. This hypothesis was also proven to be false when national data showed that “there is no evidence that black students engage in higher rates of misbehavior [than] other students. Yet minority kids are suspended more often, for less-serious and more-subjective behaviors, and with more-serious consequences.”¹⁴ Notably, former Education Secretary, Arne Duncan, acknowledged that “the sad fact is that minority students across America face much harsher discipline than nonminorities, even within the same school.”¹⁵ Despite the negative perception associated with the school disciplinary practices, patterns of discrimination were looming in the shadows. Legal analysis of how school disciplinary practices disparately impact students of color establishes the prima facie case for racial discrimination. The analysis begins with exploring the question: “has the discipline policy resulted in an adverse impact on students of a particular race as compared with students of other races?”¹⁶

The emergence of the school-to-prison pipeline presented itself with fierce urgency and we needed to craft practical solutions in an expeditious manner. Children were being criminalized for adolescent behavior. “A pipeline runs in a single direction, and once entered into the mouth, destiny sweeps everything before it to the bottom; a pipeline offers no exits, no deviations or departures, no way out—unless it fractures.”¹⁷ Our team of Certified Student Attorneys witnessed the challenges firsthand during our court watching and visits to juvenile facilities and schools. The students also were following the media coverage of the phenomenon. Therefore, they sought to eradicate this pipeline. Countless instances were featured in the media with youth being referred out of the schoolhouse to the jailhouse. In the past, many of these instances were resolved with the support of the

13. Scott Neuman, *Violence in Schools: How Big a Problem Is It?*, NAT’L. PUB. RADIO (Mar. 16, 2012, 1:25 PM), <https://www.npr.org/2012/03/16/148758783/violence-in-schools-how-big-a-problem-is-it>.

14. *Editorial: An Alarming Trend in School Discipline*, STAR TRIB. (Dec. 5, 2011, 6:10 AM), <https://www.startribune.com/editorial-an-alarming-trend-in-school-discipline/134938518>.

15. Sally Holland, *U.S. Report Finds Inequalities in Courses and Discipline for Minority Students*, CNN (Mar. 6, 2012, 8:11 PM), <https://www.cnn.com/2012/03/06/us/u-s-report-finds-in-equalities-in-courses-and-discipline-for-minority-students>.

16. *Joint “Dear Colleague” Letter*, U.S. DEP’T OF EDUC. (Jan. 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>. The letter has a three-part inquiry that explores:

- (1) Has the discipline policy resulted in an adverse impact on students of a particular race as compared with students of other races? . . .
- (2) Is the discipline policy necessary to meet an important educational goal? . . .
- (3) Are there comparably effective alternative policies or practices that would meet the school’s stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group, or is the school’s proffered justification a pretext for discrimination?

Id.

17. William Ayers, *Foreword* to ANTHONY J. NOCELLA II ET AL., FROM EDUCATION TO INCARCERATION: DISMANTLING THE SCHOOL-TO-PRISON PIPELINE xi, xii (2014).

school's administration, families, and social work; the focus was not a policing matter. We watched the news coverage when a six-year-old Black girl was handcuffed, arrested, and taken out of the school for a temper tantrum;¹⁸ while an eleven-year-old boy was charged with a felony (felony attempted assault and misdemeanor criminal possession of a weapon) for allegedly attacking his classmate with a pencil in math class; and while a twelve-year-old girl was arrested and handcuffed after doodling on her desk with an erasable marker.¹⁹ Dr. Tunette Powell was featured in news outlets across the nation. She shared about her two sons, four-years-old and six-years-old, being suspended eight times, between them, from preschool in just one year.²⁰ This led to emergence of the term "preschool-to-prison pipeline" based upon the data that African-American children are more than three times as likely to be suspended or expelled from preschool.²¹ Further, African-American children represent only eighteen percent of preschoolers; however, they represent forty-two percent of preschool suspensions.²²

In order to acquire a deeper understanding of the complexity of the pipeline and develop a nuanced and sustainable approach for systemic change, I started to research and critically examine the issue of mass incarceration. Michelle Alexander's book, *The New Jim Crow*, served as a strong analytical basis for this analysis by providing a candid and comprehensive historical overview of this social phenomenon.²³ In 1972, fewer than 350,000 people were incarcerated nationwide.²⁴ Today, the U.S. has the highest rate of incarceration in the world with over two million people in-

18. UrbanWarfareChannel, *Cops Arrest 6 Year Old Girl for Throwing a Temper Tantrum at School*, YouTube (Sep. 16, 2012), <https://www.youtube.com/watch?v=XFYuzIbzlhg> (FOX 5 News broadcast).

19. Martha Neil, *Boy, 11, Charged with Felony over Alleged Pencil Attack in Math Class*, ABA J. (Feb. 10, 2010, 1:17 AM), https://www.abajournal.com/news/article/boy_11_charged_with_felony_in_alleged_pencil_attack_on_classmate_over_math.

20. Tunette Powell, *My Son Has Been Suspended Five Times. He's 3.*, WASH. POST (July 24, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/07/24/my-son-has-been-suspended-five-times-hes-3>.

21. U.S. DEP'T OF EDUC. OFF. FOR CIV. RTS., CIVIL RIGHTS DATA COLLECTION: DATA SNAPSHOT (SCHOOL DISCIPLINE) 1 (2014).

22. MARYAM ADAMU & LAUREN HOGAN, POINT OF ENTRY: THE PRESCHOOL-TO-PRISON PIPELINE 1 (2015).

23. MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2012).

24. See NAT'L RSCH. COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 33 (Jeremy Travis et al. eds., 2014).

carcerated.²⁵ The U.S. represents five percent of the world population but twenty-five percent of the world's prisoners.²⁶

In 2012, the U.S. prison and jail incarceration rate was the highest in the world at 707 per 100,000, significantly exceeding incarceration rates in Western Europe. From Germany (77 per 100,000) to the United Kingdom (148 per 100,000), incarceration rates were nearly an order of magnitude lower than in the United States.²⁷

Mass incarceration also has an impact on the United States' economic viability by placing a strain on state and federal budgets and limiting funds spent on key economic growth drivers, such as higher education and public education. The average cost of incarceration is over \$33,000 per offender, and in some states, this cost rises to over \$60,000.²⁸ Most of the \$75 billion that was spent on corrections in 2008 was spent on incarceration,²⁹ while \$6 billion is spent per year on youth corrections.³⁰ In contrast, higher education continues to see a decline in state and federal funding (by \$9 billion).³¹ At the state level, spending on prison outpaced the investment in higher education by six times.³² "States spend on the average nearly three times as much per prisoner as per public school pupil."³³ These data points reflect the increase of funding for corrections and the need for additional resources spent to support education from K–12 to college.

The social, political, and economic challenges associated with mass incarceration are overwhelmingly intensified at the intersections of race and poverty. Noting the keen observation of public intellectual and American

25. "Incarceration ostensibly has four main goals: retribution, incapacitation, deterrence and rehabilitation. U.S. prisons pass the first two with flying colors, but they fail abysmally on deterrence and rehabilitation." Liane Jackson, *Behind Bars in Scandinavia, and What We Can Learn*, ABA J. (Feb. 1, 2020, 1:25 AM), <https://www.abajournal.com/magazine/article/behind-bars-in-scandinavia-and-what-we-can-learn>.

26. Michelle Ye Hee Lee, *Yes, U.S. Locks People up at a Higher Rate Than Any Other Country*, WASH. POST (July 7, 2015, 2:00 AM), <https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country>.

27. Jeremy Travis & Bruce Western, *Poverty, Violence, and Black Incarceration*, in *POLICING THE BLACK MAN: ARREST, PROSECUTION, AND IMPRISONMENT* 294, 301 (Angela J. Davis ed., 2017).

28. *Prison Spending in 2015*, VERA INST. OF JUST., <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending> [<https://perma.cc/B3QQ-FWTT>] (last visited Apr. 1, 2020).

29. JOHN SCHMITT ET AL., *THE HIGH BUDGETARY COST OF INCARCERATION* 2 (2010).

30. CARA H. DRINAN, *THE WAR ON KIDS: HOW AMERICAN JUVENILE JUSTICE LOST ITS WAY* 146 (2018).

31. *Id.*

32. VINCENT SCHIRALDI & JASON ZIEDENBERG, *CELLBLOCKS OR CLASSROOMS?: THE FUNDING OF HIGHER EDUCATION AND CORRECTIONS AND ITS IMPACT ON AFRICAN AMERICAN MEN* 4–8 (2002).

33. CHILD.'S DEF. FUND, *AMERICA'S CRADLE TO PRISON PIPELINE* 81 (2007).

philosopher, Dr. Cornel West, “race matters.”³⁴ This is evidenced by the trends in incarceration where, as of 2015, African-Americans and Hispanics made up approximately thirty-two percent of the U.S. population, yet they comprised fifty-six percent of all incarcerated people.³⁵ “If African Americans and Hispanics were incarcerated at the same rates as whites, prison and jail populations would decline by almost 40%.”³⁶ This is evidence of marginalization along the trajectory of the color line and reinforced by taxonomic structures still yet today nearly 120 years later since Dr. W. E. B. Du Bois’ prophetic message on racial inequities. In 1903, W. E. B. Du Bois wrote that “[t]he problem of the twentieth century is the problem of the color-line,—the relation of the darker to the lighter races of men in Asia and Africa, in America and the islands of the sea.”³⁷ “The question as to how far differences of race . . . will hereafter be made the basis of denying to over half the world the right of sharing to utmost ability the opportunities and privileges of modern civilization.”³⁸ Michelle Alexander draws a parallel historical analysis of the past (Jim Crow) impacting the present (New Jim Crow). Jim Crow operationalized a racial caste system characterized by African-Americans being “locked into an inferior position by law and custom.”³⁹ Through the Exception Clause of the Thirteenth Amendment, convict leasing was operationalized by allowing for indentured servitude of criminals.⁴⁰ Today, the U.S. imprisons a larger percentage of its Black population than South Africa during the peak of Apartheid.⁴¹ It is projected that one in three African-American males will be under the control of the criminal justice system during their lifetime.⁴²

The juvenile justice system has evolved into a key entry point in this “tangled web of mass incarceration.”⁴³ Typically, students enter into the juvenile justice system through an interaction with a police officer in the community or a referral from school. There are two main contributing fac-

34. CORNEL WEST, *RACE MATTERS* (1993).

35. *Criminal Justice Fact Sheet*, NAACP, <https://www.naacp.org/criminal-justice-fact-sheet> (last visited Sept. 26, 2020).

36. *Id.*

37. W. E. B. DU BOIS, *THE SOULS OF BLACK FOLK* 10 (1903) (ebook).

38. W. E. B. Du Bois, *To the Nations of the World* (July 25, 1900).

39. ALEXANDER, *supra* note 23, at 15.

40. U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”).

41. ALEXANDER, *supra* note 23, at 8.

42. The Sentencing Project, *Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance Regarding Racial Disparities in the United States Criminal Justice System* 9 (2018).

43. Soucheray, *supra* note 1; Elizabeth S. Bernert et al., *Incarcerated Youths’ Perspectives on Protective Factors and Risk Factors for Juvenile Offending: A Qualitative Analysis*, 105 AM. J. PUB. HEALTH 1365, 1365 (2015) (“Juvenile offending predicts a higher likelihood of chronic adult offending, as well as adverse adult outcomes such as poor health, substance use, and increased mortality.”).

tors that have led to the expansion of the school-to-prison pipeline. First, school disciplinary practices have evolved into a punitive structure of retribution. Nationally, a public school student is suspended every second and a half.⁴⁴ This equates to “3.3 million children [being] suspended or expelled from school each year, approximately double the rate of the 1970s.”⁴⁵ One study found that “95 percent of out-of-school suspensions were for nonviolent, minor disruptions such as tardiness or disrespect.”⁴⁶ The majority of such conduct fits in the category of disruptive conduct or insubordination. Truancy is another key factor that impacts disparities in school discipline rates. Previous studies have shown that even a single suspension can dramatically increase the odds of that student later dropping out.⁴⁷ A simple math equation emerges: missed days in the classroom plus missed learning opportunity equals a decreased likelihood of a student’s ability to successfully complete high school and enter the pipeline to higher education.

Second, the impact of zero-tolerance policies can also serve as a gateway into the school-to-prison pipeline.⁴⁸ Zero-tolerance policies were intended to create a positive and safe learning environment while protecting students against the negative impact of drugs, weapons, and violence at schools.⁴⁹ Schools are increasingly reliant on zero tolerance as a tool to curb misbehaviors and disciplinary challenges. However, researchers, elected officials, and scholars have raised questions about the severity of the punishment and consequences associated with these policies, disparate treatment of children of color, effectiveness of this punitive practice, and

44. CHILD.’S DEF. FUND, *DISMANTLING THE CRADLE TO PRISON PIPELINE: PREVENTING PUSHOUTS IN MISSISSIPPI SCHOOLS* 5 (2013).

45. ANTI-DEFAMATION LEAGUE, *WHAT IS THE SCHOOL-TO-PRISON PIPELINE?* 1 (2015). “Nationally, 3.3 million of our nation’s students are suspended from school every year—enough students to fill every seat in all of the NFL stadiums combined.” Derrick Johnson & Denise Womack, *Opinion: Why the U.S. Must Dismantle the School-to-Prison Pipeline*, THE ATLANTIC (Jan. 22, 2013), <https://www.theatlantic.com/politics/archive/2013/01/opinion-why-the-us-must-dismantle-the-school-to-prison-pipeline/429876>.

46. Johan E. Uvin, *Restoring the Promise of Education for Youth in the Juvenile Justice System*, U.S. DEP’T OF EDUC. OFF. OF CAREER, TECH., AND ADULT EDUC. (Feb. 12, 2015, 10:45 AM), <https://sites.ed.gov/octae/2015/02/12/restoring-the-promise-of-education-for-youth-in-the-juvenile-justice-system>.

47. “[A] single ninth-grade suspension doubles the risk that a student will drop out of high school.” Kristen Loschert, *The Suspension Effect: Exclusionary Discipline Practices Increase High School Dropout Rates and Cost the Nation Billions in Lost Tax Revenue, According to the Center for Civil Rights Remedies*, ALL. FOR EXCELLENT EDUC. (June 28, 2016), <https://all4ed.org/articles/the-suspension-effect>.

48. “Two factors in particular are considered to be the primary incubators for the pipeline effect: ‘zero-tolerance’ laws that mandate suspension or expulsion, and the presence of law enforcement on school premises.” Amantha May, *Ending the School-to-Prison Pipeline Takes Restorative Justice*, THE MARCUS HARRIS FOUND. (July 9, 2018), <https://marcusharrisfoundation.org/blog/ending-the-school-to-prison-pipeline-takes-restorative-justice>.

49. YOUTH UNITED FOR CHANGE & ADVANCEMENT PROJECT, *ZERO TOLERANCE IN PHILADELPHIA: DENYING EDUCATIONAL OPPORTUNITIES AND CREATING A PATHWAY TO PRISON* 4 (2011).

educational obtainment due to missed class instruction.⁵⁰ Violence has decreased by thirty percent in public schools since 1990.⁵¹ Hence, in some instances the enforcement of zero-tolerance policies can be far-reaching and therefore increase the likelihood of student interaction with law enforcement and future incarceration.

The school-to-prison pipeline is a civil rights issue which limits equal access to educational obtainment for the poor, students of color, and students with disabilities.⁵² Education is of paramount importance not only for individual students but also for the collective and the betterment of society. Education is the bedrock of a productive citizenry and vibrant economy. Chief Justice Earl Warren clearly articulated this vision for the future when he wrote:

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.⁵³

Children of color, students with disabilities, and students with special needs are disproportionately impacted by punitive school disciplinary practices.⁵⁴ For instance, African-American students are three and a half times

50. Stephanie Francis Ward, *Schools Start to Rethink Zero Tolerance Policies*, ABA J. (Aug. 1, 2014, 10:30 AM), https://www.abajournal.com/magazine/article/schools_start_to_rethink_zero_tolerance_policies; David L. Hudson, Jr., *Legislators Take Aim at Zero Tolerance School Policies*, ABA J. (Dec. 1, 2017, 1:30 AM), https://www.abajournal.com/magazine/article/legislators_zero_tolerance_school_policies; See NOCELLA II ET AL., *supra* note 17.

51. School violence in the U.S. reached a peak in 1993, according to the National Center for Education Statistics. That year, there were 42 homicides by students in total, as well as 13 ‘serious violent crimes’—rape, sexual assault, robbery and aggravated assault—per 1,000 students at primary and secondary schools. By 2010, the latest figures available, those numbers had decreased to two homicides and four violent crimes per 1,000 students.

Neuman, *supra* note 13.

52. Heitzeg explains as follows:

The school-to-prison pipeline has finally been recognized as a civil rights issue. Students of color, the poor, and students with disabilities—and especially those at the intersections of these statuses—are being denied the right to an education via differential labeling, suspension, expulsion, and arrest at school. In addition to the denial of education, they are being denied the right to a childhood and a meaningful adulthood too, as minor youthful misbehavior is criminalized and their futures now entangled with a pervasive and punitive legal system.

HEITZEG, *supra* note 3, at 120;

“Education is the civil rights [issue] of our generation,” said Secretary of Education Arne Duncan, in a telephone briefing with reporters on Monday. “The undeniable truth is that the everyday education experience for too many students of color violates the principle of equity at the heart of the American promise.”

Tamar Lewin, *Black Students Face More Discipline, Data Suggests*, N.Y. TIMES (Mar. 6, 2012), <https://www.nytimes.com/2012/03/06/education/black-students-face-more-harsh-discipline-data-shows.html>.

53. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

54. Susan McCarter, *The School-to-Prison Pipeline: A Primer for Social Workers*, 62 SOC. WORK 53, 56 (2017).

more likely than their white peers to be suspended, expelled, or arrested for the same kind of conduct at school.⁵⁵ “Black students represent 16% of the student population, but 32-42% of students suspended or expelled. In comparison, white students also represent a similar range of between 31-40% of students suspended or expelled, but they are 51% of the student population.”⁵⁶ Although often overlooked in this discussion, young women of color also face insurmountable barriers, roadblocks, and impasses. American Indian and Native-Alaskan girls were suspended at higher rates than white boys or girls.⁵⁷ Black girls face racial disparities in the school related arrest rate. “Just sixteen percent of female students, Black girls make up more than one-third of all girls with a school related arrest.”⁵⁸ Similarly, students with disabilities are suspended, expelled, and referred to the juvenile justice system at a higher rate than their peers. “Students with a disability are also twice as likely (12.8 percent) to be suspended as those without a disability (6.9 percent).”⁵⁹ When coupled with racial disparities, the challenges associated with the school-to-prison pipeline are even more profoundly detrimental.

Black students with disabilities are almost four times as likely to have multiple suspensions, and almost twice as likely to be expelled, as white students with disabilities. Native American students with disabilities were also disproportionately suspended and expelled, at 3.5 times and 3 times, respectively, the rate of white students with disabilities.⁶⁰

This is problematic because children who have unmet special education needs are more likely to be referred out of their mainstream schools and into the juvenile justice system. Incarcerated youth with disabilities represent between thirty percent and sixty percent, with some estimates even as high as eighty-five percent, of the population in secure detention.⁶¹ Additionally, about nine percent of public school students have been identified as having disabilities that impact their ability to learn, but students with

55. U.S. DEP’T OF EDUC. OFF. FOR CIV. RTS., REVEALING NEW TRUTHS ABOUT OUR NATION’S SCHOOL 2 (2012).

56. U.S. DEP’T OF EDUC. OFF. FOR CIV. RTS., *supra* note 21, at 2.

57. Steven Hsieh, *14 Disturbing Stats About Racial Inequality in American Public Schools*, THE NATION (Mar. 21, 2014), <https://www.thenation.com/article/archive/14-disturbing-stats-about-racial-inequality-american-public-schools>.

58. See MONIQUE W. MORRIS, PUSHOUT: THE CRIMINALIZATION OF BLACK GIRLS IN SCHOOLS 3 (2016).

59. Anya Kamenetz, *Suspensions Are Down in U.S. Schools but Large Racial Gaps Remain*, NAT’L. PUB. RADIO (Dec. 17, 2018, 3:52 PM), <https://www.npr.org/2018/12/17/677508707/suspensions-are-down-in-u-s-schools-but-large-racial-gaps-remain>.

60. Lorelei Laird, *Students of Color with Disabilities Are Being Pushed into the School-to-Prison Pipeline, Study Finds*, ABA J. (July 24, 2019, 9:40 AM), <https://www.abajournal.com/web/article/report-finds-more-discipline-are-at-the-intersection-of-race-and-disability>.

61. *Supporting Youth with Disabilities in Juvenile Corrections*, U.S. DEP’T OF EDUC. OFF. OF SPECIAL EDUC. AND REHAB. SERV. BLOG (May 23, 2017), <https://sites.ed.gov/osers/2017/05/supporing-youth-with-disabilities-in-juvenile-corrections>.

learning disabilities are represented in detention at a rate of nearly four times higher.⁶² According to the American Civil Liberties Union, students are entering this pipeline with unmet learning needs when other more appropriate alternatives are available to support their learning and development.⁶³

The challenges associated with the emergence of the school-to-prison pipeline are far-reaching with lingering adverse effects on the lives of children who enter this pipeline. Marginalized student populations (students of color and students with disabilities) are at the greatest risk of entering into this pipeline. Re-imagining the future of school disciplinary practices begins with addressing disciplinary challenges in a more holistic manner that focuses on learning, growth, and development. This student-centered and community-focused approach can be fostered through the adoption of restorative justice principles.

II. RESTORATIVE JUSTICE

Restorative justice can serve as a vehicle for intervention and prevention measures, which is essential for dismantling the school-to-prison pipeline. Scholars and practitioners have explored ways to incorporate restorative justice values and principles into disciplinary practices, curricular/co-curricular experiences, and community engagement initiatives. This is premised on the notion that restorative justice is more than a response to mitigating crime or de-escalating conflicts, but instead is truly a way of life that fosters community healing and collective engagement.⁶⁴ It is a philosophy rooted in the transformative power of relationships.⁶⁵ Restorative justice is beyond a scholarly endeavor or lecture, it is deeply rooted in cultural heritage and community values.⁶⁶ The roots and origins can be found in

62. MARY M. QUINN ET AL., STUDENTS WITH DISABILITIES IN CORRECTIONAL FACILITIES, ERIC DIGEST 2 (2001).

63. See *School-to-Prison Pipeline*, AM. CIV. LIBERTY UNION, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline> (last visited Oct. 7, 2020).

64. Restorative justice is deeply rooted in cultural heritage and faith traditions. For instance, it is encapsulated in the phrase, “*tikkun olam*” which is: “a [J]ewish concept defined by acts of kindness performed to perfect or repair the world.” Jennifer Noparstak, *Tikkun Olam*, LEARNING TO GIVE, <https://www.learningtogive.org/resources/tikkun-olam> (last visited Sept. 26, 2020); It is reflected in the Judeo-Christian principles of justice and mercy: “He hath shewed thee, O man, what is good; and what doth the LORD require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?” *Micah* 6:8 (King James).

65. “A restorative lens seeks to prioritize relationships while healing the harm and addressing the root causes.” THOMAS NORMAN DEWOLF & JODIE GEDDES, *THE LITTLE BOOK OF RACIAL HEALING: COMING TO THE TABLE FOR TRUTH-TELLING, LIBERATION, AND TRANSFORMATION* 24 (2019).

66. [A]n ancient conviction shared by a great many Aboriginal peoples [is] a conviction that the best way to respond to the inevitable ups and downs of life, whether defined as ‘criminal’ or not, is not by punishing solitary offenders. The focus must be shifted instead towards the teaching and healing of all the parties involved, with an eye on the past to understand how things have come to be, and an eye on the future to design measures that show the greatest promise of making it healthier for all concerned.

communal and indigenous societies from centuries ago.⁶⁷ Examples include: the Palava Hut in Liberia,⁶⁸ where community members gather to solve conflicts; the Sierra Leonean adage focusing on reconciliation and reintegration, where they expressed the belief that “there is no bad bush to throw away a bad child;”⁶⁹ and the very essence of “ubuntu”⁷⁰ in South Africa, which reminds us that we have a shared humanity and common destiny. Archbishop Tutu characterized ubuntu as: “My humanity [being] inextricably bound up in yours. We belong in a bundle of life.”⁷¹

Restorative justice seeks to address the question of how to “make things right.” Making things right may focus on addressing a workplace conflict, resolving a family dispute, or overcoming a challenge in the community. For example, in the criminal context, the process of “making things right” includes: identifying the harm suffered by the victim, holding the offender accountable for the harm, and restoring interpersonal relationships within the community. It offers all key stakeholders an opportunity to repair the harm suffered as a result of the criminal offense and creates a social contract to build a harmonious community and strengthen the social fabric of the community.⁷² There are three foundational pillars of restorative justice: 1) harms and needs, 2) obligations, and 3) engagement.⁷³ Restorative justice draws upon principles of community-building, accountability, reconciliation, and peacemaking. Through the practical implementation of restorative practices, key stakeholders are drawn together to resolve a conflict collectively and address the future impact of the conflict.⁷⁴ Restorative justice processes may occur in a circle, victim offender mediation, or family

RUPERT ROSS, *RETURNING TO THE TEACHINGS: EXPLORING ABORIGINAL JUSTICE* 12 (1996).

67. It is often mischaracterized as a recent phenomenon created by Western scholars, administered by the Western courts, and monetized by practitioners of European descent. However, restorative justice finds its roots in pre-colonial African societies and indigenous populations in North America, New Zealand, and Australia. See DANIEL W. VAN NESS & KAREN HEETDERKS STRONG, *RESTORING JUSTICE: AN INTRODUCTION TO RESTORATIVE JUSTICE* (4th ed. 2010).

68. Justice Gladys K. Johnson, *Brief History: What is the Palava Hut?*, INDEP. NAT’L COMM’N ON HUM. RTS., <https://inchrliberia.com/index.php/incidents/projects/brief-history>.

69. Laura Stovel, *There’s No Bad Bush to Throw Away a Bad Child’: ‘Tradition’-Inspired Reintegration in Post-War Sierra Leone*. 46 THE J. OF MOD. AFR. STUD., 305–24 (2008).

70. A person with ubuntu is open and available to others, affirming of others, does not feel threatened that others are able and good, for he or she has a proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed.

Mission and Philosophy, DESMOND TUTU PEACE FOUND., <http://www.tutufoundationusa.org/desmond-tutu-peace-foundation>.

71. *Striving for Ubuntu*, DESMOND TUTU PEACE FOUND., (Oct. 6, 2015), <http://www.tutufoundationusa.org/2015/10/06/striving-for-ubuntu>.

72. “I have a dream that we won’t have to talk about ‘restorative justice’ because it will be understood that true justice is about restoration, and about transformation. I have a dream.” Dr. Howard Zehr.

73. HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 22–24 (2002).

74. “Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through cooperative processes that include all stakeholders.” *Tutorial: Introduction to Restorative Justice*, CTR. FOR JUST. & RECONCILIA-

group conferencing.⁷⁵ These processes are evaluated by utilizing a restorative continuum, ranging from fully restorative to pseudo or non-restorative, based on six key questions:

1. Does the model/process address harms, needs, and causes?
2. Is it adequately victim-oriented?
3. Are offenders encouraged to take responsibility?
4. Are relevant stakeholders involved?
5. Is there an opportunity for dialogue and participatory decision-making?
6. Is the model respectful to all parties?⁷⁶

Some schools have incorporated restorative justice practices, values, and principles into their daily practices.⁷⁷ This is a transformational shift where “a paradigm of prevention and early intervention must replace punishment as a first resort.”⁷⁸ A restorative continuum addresses the harm which emerged as a result of a student’s behavior while also embracing opportunities for individual growth. Negative behavior does not define the student as a deviant, outcast, or incorrigible but creates an invaluable opportunity to reflect, learn, and grow. Growth is evidenced by gaining vital life skills such as: reflective listening, empathy, conflict resolution, social interactions, communication, and self-regulation.⁷⁹ This growth is not only manifested in the lives of the victims and their offender(s), it can also strengthen the fabric of the school community by engaging other stakeholders like teachers, administrators, counselors, school resource officers, parents/guardians, the student body, and the broader community.

Schools that embrace a restorative discipline seek to change their school climate and disciplinary practices. Principles of restorative justice can serve as a basis for formulating a school’s identity, culture, and mission integration. One approach to implementing restorative justice principles is to build a restorative community by creating a culture of peace and community of nonviolence. This practice focuses on the notion that we are all neighbors, which is premised on the nonviolence ideology of Rev. Dr. Martin Luther King, Jr.: “[i]t really boils down to this: that all life is interrelated. We are all caught in an inescapable network of mutuality, tied into a

TION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice> (last visited Oct. 17, 2020).

75. *Three Core Restorative Justice Practices*, LIVING JUST. PRESS, http://www.livingjusticepress.org/?Type=B_BASIC&SEC=%7BFFEB7561-1006-44AD-AEFE-1A085196F8BD%7D (last visited Oct. 17, 2020).

76. *Data & Evaluation*, ILL. BALANCED & RESTORATIVE JUST. PROJECT, <http://ibarji.org/dataEvaluation.asp> (last visited Oct. 17, 2020).

77. “Restorative practices are used to address disciplinary and other matters in schools with students at every age level.” VAN NESS & STRONG, *supra* note 67, at 206.

78. EDELMAN, *supra* note 6, at 101.

79. *Balanced and Restorative Justice Practice: Competency Development*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/implementing/competency.html> (last visited Oct. 17, 2020).

single garment of destiny. Whatever affects one directly, affects all indirectly.”⁸⁰ In restorative communities, students also develop essential leadership and conflict management skills.⁸¹ Further, children learn key strategies for self-care, development, and conflict mitigation/resolution.⁸²

Restorative justice circles can serve as a tool to support early intervention and create an alternative to entering the juvenile justice system. There are different types of circles (talking, healing, listening, community-building) which can be used to reach a range of goals and objectives.⁸³ Schools use restorative justice circles to address school disciplinary issues. Through this process, participants address harm and obligations and develop a way to make things right.⁸⁴ They identify the harm that has occurred, discuss obligations to address the harm, and discover ways to restore the relationships between the victim, offender, and community. Circles foster a sense of community-building, which is premised on the need for human connection and rooted in the value of human dignity.⁸⁵ Other practices may include: peer mediation/jury, victim offender mediation, and community and family group conferencing.⁸⁶

Restorative justice provides a framework for addressing school disciplinary challenges while also transforming the school culture. It serves as an alternative to traditional juvenile justice by creating a learning opportunity for students to “make things right”/repair the harm resulting from an infraction while also developing conflict management skills and engaging in community-building. The next part of the article will explore how to incorporate principles of restorative justice into the school’s policies, procedures, and culture.

80. Martin Luther King Jr., *Remaining Awake Through a Great Revolution*, STAN. UNIV., THE MARTIN LUTHER KING RSCH. AND EDUC. INST., <https://kinginstitute.stanford.edu/king-papers/publications/knock-midnight-inspiration-great-sermons-reverend-martin-luther-king-jr-10> (last visited Oct. 10, 2020).

81. While interning at the Greenwich Mediation Center in London, I volunteered at an elementary school that had adopted restorative justice principles and served as a peace community. Every morning, the school day began with a talking circle where students discussed their challenges and goals, which therefore fostered a sense of community. Also, students developed conflict management skills which provided them with tools to resolve conflicts on their own in a constructive manner.

82. DRINAN, *supra* note 30, at 149.

83. *Circles*, EMBRACE RESTORATIVE JUST., <https://www.restorativeschoolstoolkit.org/practices/circles> (last visited Sept. 24, 2020).

84. “The Circle creates a sense that it is possible to meet the needs of everyone and to redress the ongoing causes of harm and suffering.” CAROLYN BOYES-WATSON, *PEACEMAKING CIRCLE & URBAN YOUTH: BRINGING JUSTICE HOME* 228 (2008).

85. LORRAINE STUTZMAN AMSTUTZ & JUDY H. MULLET, *THE LITTLE BOOK OF RESTORATIVE DISCIPLINE FOR SCHOOLS: TEACHING RESPONSIBILITY AND CARING CLIMATES* 52–59 (2005).

86. ADLER SCH. INST. ON PUB. SAFETY & SOC. JUST., *RESTORATIVE JUSTICE: A PRIMER AND EXPLORATION OF PRACTICE ACROSS TWO NORTH AMERICAN CITIES* (2012).

III. RECOMMENDATIONS FOR CHANGE

Communities around the world are developing narrowly tailored approaches for the integration of restorative justice into their school disciplinary practices. These approaches are community centric and culturally specific.⁸⁷ The foundation is the commitment to ensure the “survival and development of the child.”⁸⁸ However, the challenge is to not limit the availability of restorative justice practices to some children but all children, regardless of their race, income level, or ability. The emergence and expansion of the school-to-prison pipeline serves as evidence for the pressing need for a radical paradigm shift in school disciplinary practices. Now is the time to live up to the values outlined in the United Nations Convention on the Rights of the Child related to the right of a child to education and assurance of equal opportunity.⁸⁹ These values embody educating, protecting, and uplifting children as they transition from adolescence to adulthood. For far too long, “a jail or detention cell after a child or youth gets into trouble is the early universally guaranteed child policy in America.”⁹⁰ The following paragraphs will introduce several prevention and intervention strategies informed by the values of restorative justice and racial equity. These strategies transcend the notion of retributive justice and focus on the need for a holistic approach—one that is informed by restorative justice principles—to breaking the cyclical nature of incarceration by eradicating other structural determinants like poverty.⁹¹ Racial disparities in quality of life indicators (healthcare, educational obtainment, and environmental conditions) also serve as structural determinants.⁹² Further, this holistic approach encompasses both law (civil rights and human rights) and social policy due to the

87. “Restorative justice programs are best designed to fit the needs of an individual community, small or large population.” CAROL S. HARCARIK, *RESTORATIVE JUSTICE IS CHANGING THE WORLD: VICTIM EMPOWERMENT – TRUE STORIES RESOLVING INTERNATIONAL CONFLICT* 219 (2009).

88. *Convention on the Rights of the Child*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited Sept. 24, 2020).

89. *Id.*

90. CHILD.’S DEF. FUND, *supra* note 33, at 77.

91. De Beus and Rodriguez (2007) explored the relationship between completing a restorative justice program and future recidivism. Offenders in a restorative justice program are more likely to complete their program in comparison with the general population (control group). “However, it should be noted that outcomes were not as positive for individuals from high poverty areas, pointing for the need to address such structural determinants of incarceration.” Kimberly De Bues & Nancy Rodriguez, *Restorative Justice Practice: An Examination of Program Completion and Recidivism*, 35 J. OF CRIM. JUST., 337, 337–47 (2007).

92. *See Discrimination*, OFF. OF DISEASE PREVENTION AND HEALTH PROMOTION, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/discrimination> (last visited Sept. 24, 2020) (relating to health); G. LaVerne Williamson, *Education and Incarceration: An Examination of the Relationship Between Educational Achievement and Criminal Behavior*, 43 J. OF CORR. EDUC. (1992) (relating to education); Jennifer L. Doleac, *New Evidence That Lead Exposure Increases Crime*, BROOKINGS (June 1, 2017), <https://www.brookings.edu/blog/up-front/2017/06/01/new-evidence-that-lead-exposure-increases-crime> (relating to environment).

legal ramifications of the racial disparities' associated overrepresentation of youth of color, students with disabilities, and students with special needs entering the juvenile justice system through the school-to-prison pipeline.

A. *Prevention: Restorative Justice Disciplinary Practices*

Principles of restorative justice, such as “respect, honesty, humility, mutual care, accountability and trust,”⁹³ have influenced policy reform efforts which seek to improve school climate and mitigate school disciplinary infractions. In 2014, the Department of Education and the Department of Justice partnered to provide new tools for engaging in widescale, systems-change and jointly issued federal guidelines to provide schools with the necessary guidance for enhancing school climate and discipline practices.⁹⁴ The guidelines were categorized into three main themes: 1) create positive climates and focus on prevention, 2) develop clear, appropriate, and consistent expectations and consequences to address disruptive student behaviors, and 3) ensure fairness, equity, and continuous improvement. Restorative justice serves the thread that weaves these themes together. Each theme serves as an integral part of the tapestry of healthy, inclusive, productive, and engaging learning environments.

Restorative justice also can serve as the seed of justice, which can lead to a harvest of healing and restoration. The fertilizer is economic and community development. Once this seed takes root, our juvenile justice system and communities will be transformed. The Annie E. Casey Foundation is preparing the ground for this transformation by focusing on both prevention and intervention measures. With 43,000 youth who are presently in custody,⁹⁵ the Annie E. Casey Foundation seeks to address their needs in a holistic, restorative manner, while simultaneously eradicating entry points into the “tangled web of mass incarceration” for youth. This work is informed by eight principles to transform care which serves as a blueprint for ministering the needs of our youth, promoting public safety, and fostering community-building. These principles are:

1. Lead with values that promote well-being and equity. . . .
2. Maintain a healing and safe environment. . . .
3. Develop staff to excel in building positive and supportive relationships. . . .
4. Provide plentiful and purposeful programming. . . .

93. RESTORATIVE JUSTICE NETWORK, RESTORATIVE JUSTICE VALUES AND PROCESSES 1 (2003).

94. U.S. DEPT. OF EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE (2014).

95. ANNIE E. CASEY FOUND., EIGHT PRINCIPLES TO TRANSFORM CARE FOR YOUNG PEOPLE IN THE JUSTICE SYSTEM 1 (2019).

5. Ground service delivery, staff training and organizational culture in knowledge of adolescent development and strengths. . . .
6. Treat family members as essential partners in planning for young people's long-term success. . . .
7. Encourage community connections. . . .
8. Incorporate continuous quality improvement. . . .⁹⁶

The combination of restorative justice values and principles has been adopted by school districts across the nation. Two examples of this are Denver Public Schools and Oakland Public Schools. In Denver, the school code of conduct has shifted from punitive terms of detention, expulsion, and suspension to restorative terms like circles, family group conferencing vs. detention, expulsion, and suspension.⁹⁷ When a disciplinary issue arises, school staff are not just limited to suspension or expulsion as options. They are able to choose from three intervention options: administrative, restorative, and therapeutic.⁹⁸ The school district's policies support a positive school climate, equity in educational outcomes, and student achievement. The characteristics of discipline are:

- Being explicit, reasonable, and timely
- Having logical, fair, consistent, and age-appropriate consequences
- Including a variety of prevention and intervention measures
- Providing the opportunity for significant parent/guardian participation
- Responding to individual differences among students with insight and sensitivity
- Ensuring the opportunity for students to obtain an education.⁹⁹

In Oakland, Fania Davis, executive director of Restorative Justice for Oakland Youth (RJOY), is leading efforts to integrate restorative justice into school disciplinary practices. "RJOY works to interrupt tragic cycles of incarceration, violence, unsafe schools and communities, and wasted lives by promoting a cultural shift toward restorative responses to harm."¹⁰⁰ In a middle school pilot program, RJOY's restorative justice circles eliminated violence and expulsions; in addition, school suspensions were reduced by eighty-seven percent.¹⁰¹ At another RJOY school site, student suspensions

96. *Id.* at 1–2.

97. Lynette Parker, *Restorative Practices in New School Discipline Policy*, JUSTICIA RESTAURATIVA (Sept. 2008), <http://www.justiciarestaurativa.org/www.restorativejustice.org/editions/2008/september08/denverschools>.

98. *Id.*

99. *What We Are All About*, DENVER CTR. FOR 21ST CENTURY LEARNING, <https://dc21.dpsk12.org/about-our-school> (last visited Dec. 18, 2020).

100. *Restorative Justice for Oakland Youth*, DEVEX, <https://www.devex.com/organizations/restorative-justice-for-oakland-youth-rjoy-116404> (last visited Oct. 17, 2020).

101. Fania Davis, *Discipline with Dignity: Oakland Classrooms to Try Healing Instead of Punishment*, YES! (Feb. 20, 2014), <https://www.yesmagazine.org/issue/education-uprising/2014/02/20/where-dignity-is-part-of-the-school-day>.

decreased seventy-four percent after two years and within one year referrals for violence were reduced by seventy-seven percent.¹⁰²

Additionally, school districts in Wisconsin and Georgia have created alternative frameworks for addressing disciplinary issues through a restorative lens. Barron County, Wisconsin has integrated restorative justice practices into the six area school districts.¹⁰³ Initiatives include: conduct conferences or circles, learning communities program for students, community outreach, and parent engagement.¹⁰⁴ Since adopting restorative justice practices, DeKalb County School District in Georgia has reduced the rate of disciplinary action by forty-seven percent.¹⁰⁵ There is a need for school districts across the nation to address the exclusionary nature of school disciplinary actions and the disproportionate impact on students of color and students with disabilities. The U.S. Commission on Civil Rights issued a report that “calls on schools to reform exclusionary discipline and heavy law enforcement involvement—and asks the federal government to help.”¹⁰⁶

The school-to-prison pipeline is a nationwide crisis as students are referred from the classroom to the juvenile justice system. School resource officers are primarily relied upon to address disciplinary challenges. A recommendation for change is to engage in a process of reforming school disciplinary practices and procedures in partnership between the school district (administrators, teachers, elected officials) and stakeholders (students, parents, community members). Restorative justice models like those in Denver and Oakland can serve as a model for focusing on learning, growth, engagement, and transformation.

B. Prevention: Increase Literacy Rates

Research demonstrates a correlation between illiteracy and future incarceration. According to the National Adult Literacy Survey, literacy levels among prisoners are considerably lower than the level of the general population.¹⁰⁷ Studies have shown that between seventy to seventy-five percent of the adult prison population is illiterate.¹⁰⁸ This is not an adult problem. It is a challenge that is rooted in the K–12 education system where one in four students are not able to read.¹⁰⁹ Students not proficient in reading by

102. *Id.*

103. AMSTUTZ & MULLET, *supra* note 85, at 55.

104. *Id.*

105. Laird, *supra* note 60.

106. *Id.*

107. See NAT'L CTR. FOR EDUC. STAT., LITERACY BEYOND PRISON WALLS (Oct. 1994).

108. Michael Sainato, *US Prison System Plagued by High Illiteracy Rates: Inability to Read Traps Inmates in the Criminal Justice System*, OBSERVER (June 18, 2017, 6:00 AM), <https://observer.com/2017/07/prison-illiteracy-criminal-justice-reform>.

109. *Literacy Statistics*, BEGIN TO READ, <https://www.begintoread.com/research/literacystatistics.html> (last visited Oct. 17, 2020).

fourth grade are four times more likely to drop out of school.¹¹⁰ Early researchers illustrated the connection between illiteracy and future incarceration with the analogy of prisons creating beds (determining headcount) by the number of children who are unable to read by third grade.¹¹¹ According to the U.S. Department of Justice, research demonstrates the link between academic failure and delinquency; it is welded to reading failure.¹¹² Eighty-five percent of children in the juvenile justice system are not literate.¹¹³ A recommendation for change is the adoption of a comprehensive literacy initiative that would serve as an indispensable tool for closing a section of the school-to-prison pipeline. It will provide students with the tools for improving reading comprehension and academic achievement. Based upon research, this would increase the rate of high school graduation and reduce the number of predictive indicators of future incarceration.

C. *Prevention: Culturally Specific Practices*

A comprehensive approach to implementing restorative justice practices should also include narrowly tailored strategies to minister to specific needs of student demographic groups that are at greatest risk of entering the school-to-prison pipeline as evidenced through the associated data analysis. Former President Barack Obama developed a vision for eradicating the racial disparities associated with the education and justice systems through his initiative called “My Brother’s Keeper.”¹¹⁴ His efforts elevated national attention related to the challenges negatively impacting young men of color both inside and outside the classroom. The mission of the program was to create opportunities for boys and young men of color to improve their educational and life outcomes. Obama collaborated with key stakeholders in the philanthropic and business communities to invest at least \$200 million into exploring evidence-based practices for creating new pipelines to success over the next five years.¹¹⁵ The president’s message of hope has inspired young men to embrace their potential, uplift their communities, and support the betterment of society. A recommendation for change is to engage in ongoing data collection and analysis that aids in identifying populations that are impacted by the school-to-prison pipeline and the “tangled

110. *The Problem We Are Tackling*, READING PARTNERS, <https://readingpartners.org/the-literacy-challenge/the-problem-we-are-tackling> (last visited Oct. 17, 2020).

111. John Hudson, *An Urban Myth That Should Be True*, THE ATLANTIC (July 2, 2012), <https://www.theatlantic.com/business/archive/2012/07/an-urban-myth-that-should-be-true/259329>.

112. MICHAEL S. BRUNNER, REDUCED RECIDIVISM AND INCREASED EMPLOYMENT OPPORTUNITY THROUGH RESEARCH-BASED READING INSTRUCTION (1993).

113. Andre J. Webb, *Reading Aloud to Children and Its Impact on Literacy and Crime*, ABA (Apr. 28, 2014), <https://www.americanbar.org/groups/litigation/committees/access-justice/articles/2014/spring2014-0414-reading-aloud-children-impact-literacy-crime>.

114. *MBK Alliance*, OBAMA FOUNDATION, <https://www.obama.org/mbka> (last visited Oct. 17, 2020).

115. *Id.*

web of mass incarceration,” more broadly. Models like “My Brother’s Keeper” can then be replicated in local jurisdictions in order to address the specific needs of youth in a particular area. This may include a range of resources from providing youth job development support to mentorship programming. Narrowly tailored, community-centric, and culturally specific approaches are needed to provide key prevention and intervention measures.

D. Intervention: Youth Courts and JDAI

The youth court model engages youth in problem solving within their own community, promotes prosocial behavior, and fosters leadership development.¹¹⁶ It is an alternative to the traditional operations of the juvenile justice system, where youth (peer jurors) support their peer (offender) in addressing delinquent acts or other behavioral challenges. This type of diversion initiative places youth at the forefront of addressing challenges in their community while advancing the restorative justice goal of “making things right.” The four potential benefits of the youth court model are: 1) accountability (addressing the underlying harm), 2) timeliness (handled more expeditiously than the juvenile justice system), 3) cost savings (led by volunteers hence limited costs to community), and 4) community cohesion (respect for law).¹¹⁷ Youth court also promotes community-building and supports the local economy. This is evidenced by the outcomes of the Time Dollar Youth Diversion Program where it was shown that “community service gives youth an opportunity to bring valuable contributions to the community, feel better about themselves, and establish or rebuild broken relationships. Jurors are actually expanding the rule of law, getting their peers to think about what is fair and just.”¹¹⁸ Youth courts yield tremendous value in the community. In a single year, youth completed 1,734,771 hours of service in their respective communities, which has a value over \$11 million in restitution through community service.¹¹⁹ This transforms a negative situation (the initial infraction leading to contact with the juvenile justice system) into an enriching learning experience with positive outcomes. Youth are connected back to their communities through acts of service from volunteering at a local recreation center to helping to clean the neighborhood park.

116. See MARGARET FISHER, *YOUTH COURTS: YOUNG PEOPLE DELIVERING JUSTICE* (2002); see also TREVOR FRONIUS ET AL., *RESTORATIVE JUSTICE IN U.S. SCHOOLS: A RESEARCH REVIEW* (2016).

117. JEFFREY A. BUTTS & JANEEN BUCK, *TEEN COURTS: A FOCUS ON RESEARCH* 2–3 (2000).

118. CAROLYN DALLAS ET AL., *A FIVE YEAR LOOK AT PARTICIPATION IN THE TIME DOLLAR YOUTH DIVERSION PROGRAM PROGRESS REPORT: 2004–2008* 3.

119. HAMILTON FISH INST., *YOUTH COURTS: AN EMPIRICAL UPDATE AND ANALYSIS OF FUTURE ORGANIZATIONAL AND RESEARCH NEEDS* 20 (2008).

The Juvenile Detention Alternatives Initiative (JDAI) can provide key guidance on intervention measures due to its focus on offering community-based alternatives to detention. The mission of JDAI is to “improve public safety and long-term outcomes for juveniles by: reducing the number of juveniles in secure detention, eliminating the disproportionate representation of juveniles of color in secure detention, [and] achieving systematic reform of juvenile detention practices.”¹²⁰ For two decades, this evidence-based model has guided states and jurisdictions in the creation of alternatives to detention.¹²¹ These alternatives include evening reporting centers, community coaches, and holistic case management for youth who are entangled in the juvenile justice system; these alternatives have been operationalized in 110 local jurisdictions and twenty-seven states (as of 2009).¹²²

JDAI has yielded positive outcomes for youth by fostering positive behavioral interventions and supports while disrupting the cycle of incarceration. For instance, the implementation of JDAI in New Jersey has reduced the reliance on secure detention and addressed the disparate impact of secure detention on youth of color.¹²³ Following the JDAI model, the collaborative efforts led by Judge Steven Teske (Clayton County, Georgia) have reduced the number of school referrals to the juvenile justice system by seventy percent over a short seven-year period, while increasing graduation rates over twenty percentage points in seven years.¹²⁴ Judge Jimmie Edwards (St. Louis, Missouri) developed a school, Innovative Concept Academy, to advance the educational obtainment of children who have had contact with the juvenile justice system.¹²⁵ The school was founded with key community strategic partners: MERS-Goodwill, St. Louis Public Schools, and the St. Louis City court system. Since its inception in 2009, the school has served as a beacon of hope for many students to reach their academic, life, and career goals.¹²⁶ The school now has a college-enrichment and career-development program, and IAC student alumni are earning college degrees.¹²⁷ This is an example of a cross-sector and integrative ap-

120. *Juvenile Detention Alternatives Initiative (JDAI) & Deep End Reform*, RAMSEY COUNTY, <https://www.ramseycounty.us/your-government/projects-initiatives/juvenile-detention-alternatives-initiative-jdai-deep-end-reform> (last visited Sept. 24, 2020).

121. See RICHARD A. MENDEL, *TWO DECADES OF JDAI: A PROGRESS REPORT* (2009).

122. *Id.* at 2.

123. *Prevention and Early Intervention*, THE STATE OF N.J., DEPT. OF L. & PUB. SAFETY, https://www.nj.gov/oag/jjc/localized_programs_jdai.html (last visited Sept. 24, 2020).

124. Donna St. George, *Judge Steve Teske Seeks to Keep Kids with Minor Problems out of Court*, THE WASH. POST (Oct. 17, 2011), https://www.washingtonpost.com/lifestyle/style/judge-steve-teske-seeks-to-keep-kids-with-minor-problems-out-of-court/2011/09/21/gIQA1y8ZsL_story.html.

125. *Innovative Concept Academy*, ST. LOUIS PUB. SCHS., <https://www.slps.org/Page/15762> (last visited Sept. 24, 2020).

126. Vic Faust, *School That Takes in Delinquent Teens Develops College, Career Prep Program*, FOX 2 NOW (Jan. 10, 2018, 5:37 PM), <https://fox2now.com/news/school-that-takes-in-delinquent-teens-develops-college-career-prep-program>.

127. *Id.*

proach for addressing the needs of youth. JDAI has demonstrated the importance of drawing key stakeholders together to develop sustainable solutions and build restorative communities. A key recommendation is incorporating principles of JDAI into the juvenile corrections model to support comprehensive education reform and community building strategies.

CONCLUSION

The emergence of the school-to-prison pipeline is detrimental to the success of thousands of children across the United States. Entering the pipeline creates a gateway into the “tangled web of mass incarceration.”¹²⁸ Now more than ever, we need a vision for dismantling this pipeline in order to support student engagement, learning, and academic success. The sage advice of Sitting Bull offers a new pathway to the future: “Let us put our minds together and see what kind of life we can make for our children.”¹²⁹ This is a beckoning call to leadership for educators, school administrators, elected officials, parents, and community leaders.¹³⁰ Leaders are called upon to build new bridges, promote the common good, and uplift others.¹³¹ Restorative justice focuses on the interrelatedness of the human experience, offers hope for the future of our children, and can serve as an indispensable tool for achieving these goals and dismantling the school-to-prison pipeline. The future academic success of children is contingent upon thoughtful and deliberate action today. We can no longer afford to focus on punitive measures for school disciplinary practices (evidenced by an over-reliance on law enforcement in addressing these issues); instead restorative practices should be used to promote learning, support life skills development, foster positive behavior, and equip students with conflict management skills. This will aid our society in ending the trajectory of our youth being placed into the school-to-prison pipeline by creating a pathway for a new pipeline of success.

128. “This is America’s pipeline to prison — a trajectory that leads to marginalized lives, imprisonment and often premature death.” CHILD.’S DEF. FUND, *supra* note 33.

129. *Sitting Bull Quotes*, BRAINY QUOTE, https://www.brainyquote.com/quotes/sitting_bull_172388 (last visited Sept. 24, 2020).

130. A leader’s responsibility,

each individual’s humanity is ideally expressed through his or her relationship with others and theirs in turn through a recognition of the individual’s humanity. Ubuntu means that people are people through other people. It also acknowledges both the rights and responsibilities of every citizen in promoting individual and societal well-being.

REP. OF S. AFR. DEP’T OF WELFARE, WHITE PAPER FOR SOCIAL WELFARE 12 (1997).

131. ARTIKA R. TYNER, *THE LEADER’S JOURNEY: A GUIDE TO DISCOVERING THE LEADER WITHIN* 22 (2015).