

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

Jason P. Nance\*

## ABSTRACT

*Since the terrible shootings at Sandy Hook Elementary School in Newtown, Connecticut, lawmakers and school officials continue to deliberate over new laws to keep students safe, including putting more police officers in schools. Yet not enough attention has been given to the potential negative consequences that these new laws may have on students and the school-to-prison pipeline. In the past, certain lower-level, common offenses that occurred at school, such as fighting or threats without use of a weapon, traditionally were handled only by educators, not by police officers. Drawing on recent restricted data from the U.S. Department of Education, this Article presents an original empirical analysis revealing that a police officer's regular presence at a school significantly increases the odds that school officials will refer students to law enforcement for various offenses, including these lower-level offenses that should be addressed using more pedagogically-sound methods. This trend holds true even after controlling for (1) state statutes that require schools to report certain incidents to law enforcement; (2) general levels of criminal activity and disorder that occur at the school; (3) neighborhood crime; and (4) other demographic variables. The consequences of involving students in the criminal justice system are severe, especially for students of color, and may negatively affect the trajectory of students' lives. Therefore, lawmakers and school officials should consider alternative methods to create safer learning environments.*

---

\* Associate Professor of Law, University of Florida Levin College of Law. J.D., University of Pennsylvania Law School; Ph.D., M.A., Educational Administration, The Ohio State University. I would like to thank the following individuals for the helpful feedback and assistance they provided for this Article: Tamar Birkhead, Derek Black, Kevin Brown, June Carbone, Nancy Dowd, Jamison Fargo, Barry Feld, Robert Garda, Jr., Marsha Garrison, Michael Heise, Danielle Holley-Walker, Darren Hutchinson, E. Lea Johnston, Tom C.W. Lin, Sharon Rush, Chris Slobogin, D. Daniel Sokol, John Stinneford, Larry Winner, Robin Fretwell Wilson, Michael Allan Wolf, and Marcia Yablon-Zug. I also appreciate the helpful comments provided by faculty members during presentations of earlier versions of this work at the University of Georgia School of Law, the 2014 Law and Society Association Annual Meeting; the Central States Law Schools Association 2014 Scholarship Conference; the Southeastern Association of Law Schools 2014 Annual Conference; the 2015 Annual Meeting of the Association of American Law Schools, and the 2015 Harry Krause Emerging Scholars Workshop at the University of Illinois College of Law. I received excellent research assistance from Leah Henrich, Dustin Mauser-Claassen, Marla Spector, and John Van Hise. I am grateful for the summer research grant provided by the University of Florida Levin College of Law. Finally, I would like to thank the U.S. Department of Education for providing access to the restricted-use data for the 2009–2010 School Survey on Crime and Safety and for its permission to disseminate the results of this empirical analysis.

## TABLE OF CONTENTS

INTRODUCTION.....	2
I. THE RISE OF THE SCHOOL-TO-PRISON PIPELINE .....	8
A. <i>Zero Tolerance Laws and Policies</i> .....	11
B. <i>Federal and State Statutory Reporting Requirements</i> .....	13
C. <i>Students' Limited Constitutional Protections at School</i> .....	15
D. <i>High-Stakes Testing Laws</i> .....	17
E. <i>The Mindset of Educators</i> .....	18
II. LAW ENFORCEMENT OFFICERS IN SCHOOLS .....	21
III. THE IMPACT OF THESE LAWS, POLICIES, AND PRACTICES ON STUDENTS .....	27
IV. THE EMPIRICAL STUDY .....	31
A. <i>The Data</i> .....	32
B. <i>Dependent Variables</i> .....	33
C. <i>Independent Variables</i> .....	34
D. <i>Models and Empirical Methodology</i> .....	39
E. <i>Results of the Empirical Analysis</i> .....	40
F. <i>Limitations of the Empirical Study</i> .....	46
V. DISCUSSION AND RECOMMENDATIONS.....	47
A. <i>Discussion of Empirical Findings</i> .....	47
B. <i>Recommendations</i> .....	50
CONCLUSION .....	54
APPENDIX.....	55

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

## INTRODUCTION

On September 18, 2007, Pleajhai Mervin, a 16-year-old student, dropped some birthday cake on the school cafeteria floor.<sup>2</sup> This seemingly small incident escalated quickly when Pleajhai failed to clean up the cake to the satisfaction of a police officer stationed at a high school, became involved in a scuffle with the officer, and subsequently was arrested for this conduct.<sup>3</sup> A fourteen-year-old

<sup>1</sup> Hawker v. Sandy City Corp., \_\_ F.3d \_\_ (10th Cir. 2014) (Lucero, J., concurring).

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

<sup>3</sup> *Id.*

student recording the incident was also arrested when he failed to hand over the camera and became involved in the scuffle.<sup>4</sup> Both students were charged with battery.<sup>5</sup> Referring students to law enforcement for offenses that were once handled only by educators using pedagogically-sound measures is an increasingly common feature of our public school system.<sup>6</sup> The anecdotal evidence of police officers mishandling student disciplinary problems abound. For example, police officers stationed at schools have arrested students for texting, passing gas in class, violating the school dress code, stealing two dollars from a classmate, bringing a cell phone to class, arriving late to school, or telling classmates waiting in the school lunch line that he would “get them” if they ate all of the potatoes.<sup>7</sup> In 2007, the police even arrested six-year-old Desre’e Watson for throwing a temper tantrum in an elementary school in central Florida.<sup>8</sup> The police had to place the handcuffs around Desre’e’s biceps as the police escorted her to the police station because her wrists were too small.<sup>9</sup>

Students’ increased involvement with the justice system is part of a growing concern that many dub the “school-to-prison pipeline.”<sup>10</sup> The term “school-to-prison pipeline” (“Pipeline”) connotes the intersection of the K–12 public education system and law enforcement and the trend of referring students directly to law enforcement for

---

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See Hawker, \_\_ F.3d at \_\_; see also Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, 34 J. CRIM. JUST. 591, 591 (2006).

<sup>7</sup> See Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. OF CRIM. JUST. 280, 281 (2009) (describing arrests for trivial offenses); Sharif Durhams, *Tosa East Student Arrested, Fined After Repeated Texting*, MILWAUKEE J. SENTINEL, Feb. 18, 2009, at B8; NBC NEWS.COM, *Student Arrested for ‘Passing Gas’ at Fla. School* (Nov. 24, 2008), [http://www.nbcnews.com/id/27898395/ns/us\\_news-weird\\_news/t/student-arrested-passing-gas-fla-school/#.VFIEEPnF98E](http://www.nbcnews.com/id/27898395/ns/us_news-weird_news/t/student-arrested-passing-gas-fla-school/#.VFIEEPnF98E); AM. CIVIL LIBERTIES UNION, *CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS* 6, 14 (2007), available at [http://www.nyclu.org/pdfs/criminalizing\\_the\\_classroom\\_report.pdf](http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf) (describing the arrests of students resulting from bringing cell phones to school and being late to class).

<sup>8</sup> See Bob Herbert, *6-Year-Olds Under Arrest*, N.Y. TIMES, Apr. 9, 2007, at A17.

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., Christi Parsons, *Obama Wants to Stop ‘School-to-Prison Pipeline’ for Minorities*, L.A. TIMES (Feb. 11, 2014, 3:00 AM), <http://www.latimes.com/nation/politics/politicsnow/la-pn-obama-stop-school-prison-pipeline-20140210-story.html> (discussing President Obama’s “plans to launch an initiative aimed at improving the lives of young black and Latino men” by stopping the school-to-prison pipeline); *Durbin Holds Hearing on Ending the School-to-Prison Pipeline*, Dick Durbin, US Senator for Illinois (Dec. 12, 2012) <http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=7dcaee2b-b40e-4199-bf20-557b4b1bc650> (explaining Senator Durbin’s position in favor of “reforms to better discipline our students without forcing them out of the classroom and into a courtroom”).

committing offenses at school or creating conditions that increase the probability of students being arrested, such as suspending or expelling them.<sup>11</sup> Although some may believe that arresting students may “scare them straight,” on the contrary, an arrest usually does not achieve the desired reformatory effect, and the negative consequences that often occur instead are quite severe. Empirical studies demonstrate that arresting a student substantially reduces the odds that the student will graduate from high school, especially if that student appears in court.<sup>12</sup> It also lowers the student’s performance on standardized tests, decreases future employment opportunities, and increases the likelihood of future involvement in the criminal justice system.<sup>13</sup> Furthermore, the Pipeline does not impact all racial groups equally. Abundant empirical evidence demonstrates that students of color are affected disproportionately throughout every stage of the Pipeline. For example, minority students are disciplined more often and more severely than white students for committing similar offenses,<sup>14</sup> and have higher arrest and conviction rates when they are referred to the justice system.<sup>15</sup>

---

<sup>11</sup> See Hawker, \_\_ F.3d at \_\_ (quoting Jason P. Nance, *School Surveillance and the Fourth Amendment*, 2014 WIS. L. REV. 79, 83); U.S. DEP’T OF JUSTICE & U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER ON NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE OF SCHOOL DISCIPLINE 4 (Jan. 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf> [hereinafter DEAR COLLEAGUE LETTER].

<sup>12</sup> See CATHERINE Y. KIM, DANIEL J. LOSEN & DAMON T. HEWITT, THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM 113 (2010); Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462, 473, 478–79 (2006); ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 12 (2005) [hereinafter ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN], available at [http://b.3cdn.net/advancement/5351180e24cb166d02\\_mlbrqxlh.pdf](http://b.3cdn.net/advancement/5351180e24cb166d02_mlbrqxlh.pdf).

<sup>13</sup> See KIM, LOSEN, & HEWITT, *supra* note 12, at 113.

<sup>14</sup> See, e.g., Suzanne E. Eckes & Kevin Brown, *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y.L. SCH. L. REV. 1071, 1086–89 (2009/2010) (describing the empirical evidence of racial disproportionality of school discipline); Theresa Glennon, *Looking for Air: Excavating Destructive Educational and Racial Policies to Build Successful School Communities*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 107, 110–11 (Nancy E. Dowd ed., 2011) (citing studies that demonstrate that minority students are disciplined disproportionately).

<sup>15</sup> See Nancy E. Dowd, *What Men? The Essentialist Error of the “End of Men,”* 93 B.U. L. REV. 1205, 1222–23 (2013) (observing that that disproportionate minority confinement “is present throughout the juvenile justice system, reflected in disparate and harsher treatment, as well as disproportionate and unnecessary entry and penetration into the juvenile justice system,” and “is not due to differential offending”); Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 293–94 (2014) (citing empirical evidence of higher conviction rates for minorities for similar offenses).

The Pipeline's deleterious impact on the lives of students and our society has not gone unnoticed, and there have been several calls to action to change its negative trajectory. For example, in March 2012, prominent education and judicial leaders from around the country gathered at a conference to discuss ending the Pipeline.<sup>16</sup> That summit sparked several other gatherings.<sup>17</sup> In addition, the U.S. Department of Education's Office of Civil Rights (OCR) and the U.S. Department of Justice have conducted several compliance reviews and have filed actions to ensure that schools do not discriminate on the basis of race by disciplining minorities more frequently or harshly than similarly-situated white students.<sup>18</sup> Further, in December of 2012, the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights held a hearing to discuss ending the Pipeline for the first time in our nation's history.<sup>19</sup>

Nevertheless, only two days after that historic U.S. Congressional hearing, a tragic event took place that has since served as a catalyst for new laws and practices that may significantly exacerbate the Pipeline. Specifically, on December 14, 2012, Adam Lanza brutally massacred twenty children and six educators at Sandy Hook Elementary School in Newtown, Connecticut, provoking deep feelings of sadness, anger, and fear.<sup>20</sup> Similar to prior responses after high-profile incidents of

---

<sup>16</sup> See *National Leadership Summit on School-Justice Partnerships*, NEW YORK UNIFIED COURT SYSTEM, <https://www.nycourts.gov/ip/justiceforchildren/school-justice.shtml> (last visited Dec. 29, 2014).

<sup>17</sup> See, e.g., *Keeping Kids in School & Out of Court*, CALIFORNIA COURTS, Keeping Kids in School and Out of Court Summit, <http://www.courts.ca.gov/23902.htm> (last visited Aug. 7, 2014); NEW YORK STATE UNIFIED COURT SYSTEM, <https://www.nycourts.gov/ip/justiceforchildren/school-justice.shtml> (last visited Aug. 7, 2014).

<sup>18</sup> See U.S. Dep't of Educ. Office for Civil Rights, *Recent Resolutions*, <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/index.html#title6rev> (last visited Sept. 5, 2014) (listing numerous compliance reviews with school districts); U.S. Dep't of Justice, *Justice Department Files Consent Decree to Prevent and Address Racial Discrimination in Student Discipline in Meridian, Miss.* (Mar. 22, 2013), <http://www.justice.gov/opa/pr/justice-department-files-consent-decree-prevent-and-address-racial-discrimination-student> (reporting that the Justice Department entered into a consent decree with Meridian Public School District to prevent and address racial discrimination in disciplinary actions against students).

<sup>19</sup> See *Ending the School-to-Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. comm. On the Judiciary*, 112th Cong. (2012), available at <http://judiciary.senate.gov/meetings/location-change-ending-the-school-to-prison-pipeline>; Susan Ferriss, 'School to Prison Pipeline' Hit on Capitol Hill, CTR. FOR PUB. INTEGRITY (Jan. 24, 2013, 6:00 AM), <http://www.publicintegrity.org/2012/12/13/11921/school-prison-pipeline-hit-capitol-hill>.

<sup>20</sup> See, e.g., Tom Raum & Jennifer Agiesta, *Poll: Americans Angrier About Sandy Hook than 9/11 Attacks*, CNSNEWS (Jan. 16, 2013), <http://cnsnews.com/news/article/poll-americans-angrier-about-sandy-hook->

school violence, many Americans demanded that lawmakers and school officials intensify school security measures and increase the presence of law enforcement officers in our nation's schools.<sup>21</sup> While some criticized those demands,<sup>22</sup> the federal government and several state legislatures responded by introducing or passing laws that provide more money to hire law enforcement officers and install greater security measures in schools.<sup>23</sup> Such laws were introduced or passed without adequate research regarding whether these very expensive measures actually will improve school safety.<sup>24</sup> But perhaps more importantly, there has been too little empirical attention given to the potential negative consequences of using these strict measures, including their effects on fueling the Pipeline.

This Article illuminates this important discussion in at least two ways. First, drawing on a large, national, restricted-access dataset recently released by the U.S. Department of Education, this Article presents an original empirical analysis of sensitive data relating to conditions under which schools refer students to law enforcement for various offenses that occur on school grounds. The empirical analysis reveals that, even after controlling for (1) state statutes that require schools to report certain incidents to law enforcement, (2) general levels of criminal activity and disorder that occur at the school, (3) neighborhood crime, and (4) other demographic variables, a police officer's regular presence at a school significantly increases the odds that school officials will refer students to law enforcement for various offenses, including seemingly minor offenses.<sup>25</sup> This finding has serious implications as lawmakers and school officials continue to deliberate over whether to use their limited resources to hire more law enforcement officers to patrol school grounds.

Second, this Article urges lawmakers and school officials to use their resources to adopt alternative measures to promote school safety

---

shooting-911-attacks (reporting the anger Americans felt over the Newtown shootings).

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

<sup>22</sup> See, e.g., Thomas J. Mowen, John J. Brent, & Aaron Kupchik, *School Crime and Security*, in HANDBOOK ON MEASUREMENT ISSUES IN CRIMINOLOGY AND CRIMINAL JUSTICE 5–6 (Timothy S. Bynum & Beth M. Nuebner eds., forthcoming) (describing criticisms launched at the NRA's suggestion to staff every school with an armed guard).

<sup>23</sup> See *infra* Part II.

<sup>24</sup> NATHAN JAMES & GAIL MCCALLION, CONG. RESEARCH SERV., RL 7-5700, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS 10–11 (2013); see also Mowen, Brent, & Kupchik, *supra* note 22, at 9 (“Of the research that exists, there is no clear evidence that the presence of armed guards or SROs can effectively prevent school violence.”).

<sup>25</sup> See *infra* Part IV.

instead of resorting to measures that rely on coercion, punishment, and fear. This is especially important when such measures tend to push students out of school and into the juvenile justice system, which can have such devastating, long-lasting consequences on the lives of students.<sup>26</sup> A growing body of research suggests that programs that promote a strong sense of community and collective responsibility enhance school safety much more effectively than police officers and other strict security measures without degrading the learning environment.<sup>27</sup> And while these alternative measures may not prevent a determined, deranged individual from harming members of the school community, the rarity of these events cannot justify the enormous amount of resources that would be needed to protect students at all times and in all places while they are at school. Indeed, in the wake of highly-publicized acts of school violence, the public often forgets that schools remain among the safest places for children.<sup>28</sup>

This Article proceeds in five Parts. Parts I through III provide the contextual background for the empirical analysis. Part I describes the laws, policies, and practices that have contributed to the creation of a pathway from school to prison for many students. Part II focuses specifically on the growing use of law enforcement to handle disciplinary problems that school officials traditionally handled internally in years past, which has significantly aggravated the Pipeline. It further describes the recent escalation of police presence in schools, despite the movement towards reform, in the wake of the Newtown shootings. Part III discusses the detrimental impact of the Pipeline on youth. Part IV presents an original empirical analysis examining the relationship between a police officer's regular presence at a school and the odds that school officials will refer students to law enforcement for committing various offenses. Part V evaluates the concerns presented in the empirical findings and recommends measures to address those concerns. Specifically, it urges lawmakers and school officials to adopt alternative methods to enhance school safety without degrading the learning environment. It also recommends

---

<sup>26</sup> See *infra* Part III.

<sup>27</sup> See *infra* Part V.

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

that, if lawmakers and school officials do rely on police officers to protect students, police officers and school officials receive more training regarding how to appropriately discipline students and, additionally, enter into memorandums of understanding to avoid involving students with law enforcement for lower-level offenses.

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

Over the last three decades, there has been a distinct shift among many lawmakers and school officials regarding how to discipline children for violations of school rules. While at one time it was common to send students involved in a fight to the principal's office for assessment and discipline, in too many schools today it is just as common to refer those students to law enforcement for arrest and prosecution.<sup>29</sup> Several scholars have referred to this shift as the "criminalization of school discipline."<sup>30</sup>

The reasons behind the criminalization of school discipline are complex.<sup>31</sup> Several scholars have observed that the criminalization of school discipline has emerged parallel to and in connection with the criminalization of social problems generally in the United States.<sup>32</sup> For

---

<sup>29</sup> See, e.g., FED. ADVISORY COMM. ON JUV. JUST., ANNUAL REPORT 10 (2010); FLORIDA STATE CONFERENCE NAAPC, ADVANCEMENT PROJECT, & NAACP LEGAL DEFENSE AND EDUC. FUND, INC., ARRESTING DEVELOPMENT: ADDRESSING THE SCHOOL DISCIPLINE CRISIS IN FLORIDA 6 (2006) [hereinafter ARRESTING DEVELOPMENT], available at [http://b.3cdn.net/advancement/e36d17097615e7c612\\_bbm6vub0w.pdf](http://b.3cdn.net/advancement/e36d17097615e7c612_bbm6vub0w.pdf) (observing that in the state of Florida during the 2004–2005 school year, there were 26,990 school-related referrals to the Florida Department of Juvenile Justice, and seventy-six percent of those referrals were for misdemeanor offenses such as disorderly conduct, trespassing, and fighting without a weapon); JUSTICE POLICY INST., EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS 15 (2011) [hereinafter EDUCATION UNDER ARREST], available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest\\_fullreport.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf) (stating that during the 2007–08 school year in Jefferson County, Alabama, ninety-six percent of students referred to juvenile court were for misdemeanors that included disorderly conduct and fighting without a weapon).

<sup>30</sup> See Kathleen Nolan & Jean Anyon, *Learning to Do Time: Willis's Model of Cultural Reproduction in an Era of Postindustrialism, Globalization, and Mass Incarceration*, in LEARNING TO LABOR IN NEW TIMES 133, 136 (Nadine Dolby et al. eds., 2004); Henry Giroux, *Racial Injustice and Disposable Youth in the Age of Zero Tolerance*, 16 INT'L J. QUALITATIVE STUD. 553, 557–58 (2010); Paul J. Hirschfield, *Preparing for Prison? The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 88 (2008); Theriot, *supra* note 7, at 280; Kerrin C. Wolf, *Arrest Decision Making by School Resource Officers*, YOUTH VIOLENCE AND JUV. JUST. 1, 3 (2013).

<sup>31</sup> See Derek W. Black, *The Constitutional Limit of Zero Tolerance in Schools*, 99 MINN. L. REV. 823,837 (2015) (observing the complexity of the motivations and theories behind harsh discipline policies).

<sup>32</sup> See, e.g., Donna M. Bishop & Barry C. Feld, *Juvenile Justice in the Get Tough Era*, ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 2766, 2770 (Gerben Bruinsma & Davis Weisburd eds., 2014); KATHLEEN NOLAN, POLICE IN



lawmakers, declaring a “war on drugs” and “getting tough on crime” proved to be politically-popular positions in response to the unstable economic and social conditions that plagued urban environments.<sup>33</sup> During the last three decades, legislative bodies throughout the country passed harsh laws such as mandatory minimum prison sentences laws,<sup>34</sup> habitual offender laws (“three strikes” laws),<sup>35</sup> and truth in sentencing laws.<sup>36</sup> These policies resulted in a dramatic increase of the prison population and time served in prison, especially among urban minorities,<sup>37</sup> while also providing an economic stimulus in certain communities.<sup>38</sup> When violent crime rates for juveniles increased from

---

THE HALLWAYS: DISCIPLINE IN AN URBAN HIGH SCHOOL 22–24 (2011); Giroux, *supra* note 30, at 557–58; Hirschfield, *supra* note 30; Nolan & Anyon, *supra* note 30.

<sup>33</sup> See Hirschfield, *supra* note 30, at 89; Nolan & Anyon, *supra* note 30, at 138; see also Bishop & Feld, *supra* note 32, at 2770; William J. Stuntz, *Unequal Justice*, 121 HARV. L. REV. 1969, 1997–2010 (2008) (explaining that politicians supported punitive policies governing crime because the opposing parties had done so and “because changing course seemed politically risky”).

<sup>34</sup> See, e.g., The Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (codified as amended at 18 U.S.C. §§ 3551–59, 3561–66, 3571–74, 3581–86, & 28 U.S.C. §§ 991–98 (1988)); N.Y. PENAL LAW §§ 220.00–.65, 221.00–.55 (1973) (describing the Rockefeller Drug Laws that mandated harsh minimum sentences for controlled substances). The Rockefeller Drugs Laws spawned similar legislation in many other states. Nolan & Anyon, *supra* note 30, at 138.

<sup>35</sup> See, e.g., CAL. PENAL CODE § 667 (2012). According to Joanna Shepherd, “[d]uring the 1990s, 26 states and the federal government enacted three-strikes legislation, with similar bills introduced in a number of other states.” Joanna M. Shepherd, *Fear of the First Strike: The Full Deterrent Effect of California’s Two- and Three-Strikes Legislation*, 31 J. LEGAL STUD. 159, 159–60 (2002).

<sup>36</sup> In the 1980s and 1990s the majority of states enacted laws that required persons convicted of crimes to serve not less than eighty-five percent of their prison sentences. See PAULA M. DITTON & DORIS JAMES WILSON, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: TRUTH IN SENTENCING IN STATE PRISONS 3 (1999), available at <http://bjs.gov/content/pub/pdf/tssp.pdf>.

<sup>37</sup> See NOLAN, *supra* note 32, at 24; BRUCE WESTERN, VINCENT SCHIRALDI & JASON ZIEDENBERG, EDUCATION & INCARCERATION 4 (2003), available at [http://www.justicepolicy.org/images/upload/03-08\\_REP\\_EducationIncarceration\\_AC-BB.pdf](http://www.justicepolicy.org/images/upload/03-08_REP_EducationIncarceration_AC-BB.pdf). See also John J. Donohue III & Steven D. Levitt, *The Impact of Race on Policing and Arrests*, 44 J.L. & ECON. 367, 367 (2001) (“African Americans, who comprise 12 percent of the U.S. population, account for 47 percent of felony convictions and 54 percent of prison admissions. Studies suggest that one-third of African-American males aged 20–29 are under the supervision of the criminal justice system on any given day.”). It is important to note, however, that state prison populations have fallen in recent years. See, e.g., Reid Wilson, *State Prison Populations Down to Lowest Point in a Decade*, WASH. POST, Dec. 31, 2014, <http://www.washingtonpost.com/blogs/govbeat/wp/2014/12/31/state-prison-populations-down-to-lowest-point-in-a-decade/>.

<sup>38</sup> For example, many white rural communities benefitted from an economic stimulus in the form of building prisons, hiring prison guards, and hiring additional law enforcement officers. See Nolan & Anyon, *supra* note 30, at 138; Hirschfield, *supra* note 30, at 89. Urban communities also experienced economic benefits from these policies. For example, the campaign of arrest and

the mid-1980s to 1994, particularly among minority youth in the inner cities, elected officials felt political pressure to respond in a fashion similar to how they responded to the increase in adult crime.<sup>39</sup> In addition, although juvenile crime rates have steadily declined since 1994,<sup>40</sup> a series of recent, high-profile school shootings further propelled lawmakers to act.<sup>41</sup> Consequently, lawmakers passed a series of harsh laws against juveniles who committed offenses at school<sup>42</sup> and against juvenile offenders generally.<sup>43</sup> Indeed, focusing on ways to remove dangerous and disruptive students from school was a less expensive and more politically feasible alternative to hiring more teachers, counselors, and mental health professionals to help troubled students succeed in school.<sup>44</sup> Unfortunately, many school officials appear to have adopted the same punitive mindset as politicians when crafting disciplinary policies for their districts and schools.<sup>45</sup> Also facing pressure to respond to high-profile incidents of school violence,<sup>46</sup> many school officials have embraced strict, heavy-handed

---

imprisonment enabled urban developers to strategically redevelop downtown areas designed as “safe zones.” See Hirschfield, *supra* note 30, at 89.

<sup>39</sup> See Giroux, *supra* note 30, at 561 (observing that the zero tolerance policies in schools were modeled on minimum sentencing and “three strikes” laws); Hirschfield, *supra* note 30, at 89–90; Pedro A. Noguera, *The Trouble with Black Boys: The Role and Influence of Environmental and Cultural Factors on the Academic Performance of African American Males*, 38 URBAN EDUC. 431 (2003).

<sup>40</sup> See JEFFREY A. BUTTS, VIOLENT YOUTH CRIME PLUMMETS TO A 30-YEAR LOW (2012), available at <http://johnjayresearch.org/rec/files/2012/11/databit201211.pdf>; JACOB KANG-BROWN ET AL., VERA INST. OF JUST., A GENERATION LATER: WHAT WE’VE LEARNED ABOUT ZERO TOLERANCE IN SCHOOLS 2 (2013), available at <http://www.vera.org/sites/default/files/resources/downloads/zero-tolerance-in-schools-policy-brief.pdf>.

<sup>41</sup> See Elizabeth S. Scott, *Miller v. Alabama and the (Past and) Future of Juvenile Crime Regulation*, 31 L. & INEQUALITY 535, 541 (2013) (observing that although serious acts of school violence are rare events, after the Columbine shootings “legislatures across the country rushed to pass strict zero tolerance laws, making it a crime to threaten violence in school”).

<sup>42</sup> See *infra* Sections I.A–E.

<sup>43</sup> For example, laws were passed that facilitated transferring more juvenile defendants to criminal courts to be tried as adults. Bishop & Feld, *supra* note 32, at 1440–1442. For an analysis of the evolution of these laws, see generally Bishop & Feld, *supra* note 32 and Elizabeth S. Scott, *Children Are Different: Constitutional Values and Justice Policy*, 11 OHIO ST. J. OF CRIM. L. 71, 92–94 (2013).

<sup>44</sup> See Hirschfield, *supra* note 30, at 90.

<sup>45</sup> See, e.g., HOUS. IND. SCH. DIST., CODE OF STUDENT CONDUCT 14 (2013), available at [http://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/30485/2013-2014\\_Code\\_of\\_Student\\_Conduct.pdf](http://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/30485/2013-2014_Code_of_Student_Conduct.pdf); MIAMI-DADE COUNTY PUB. SCHS., CODE OF STUDENT CONDUCT—SECONDARY 57–73 (2014), available at [http://ehandbooks.dadeschools.net/policies/90/CSC\\_sec\\_14-15.pdf](http://ehandbooks.dadeschools.net/policies/90/CSC_sec_14-15.pdf).

<sup>46</sup> See Kevin P. Brady, Sharon Balmer & Deinya Phenix, *School-Police Partnership Effectiveness in Urban Schools*, 39 EDUC. & URBAN SOC. 455, 456 (2007) (“An increasing fear of school violence coupled with the public’s misperceptions of the actual degree of violence in our nation’s schools has caused

disciplinary methods to enhance their credibility among parents and the general public.<sup>47</sup> The end result is a series of laws, policies, and practices that involve more students in the justice system to their detriment.

This Part will discuss the laws, policies, and practices that have converged over approximately the last three decades, resulting in the creation of a pathway from school to prison for many students. Some of these laws, policies, and practices stem directly from the “tough on crime,” punitive mindset described above. Others are less related to that mindset, but still contribute to Pipeline by motivating school officials to remove low-performing students to avoid penalties under the high-stakes testing laws, or by reducing students’ constitutional protections, thereby facilitating students’ removal or arrest.

#### A. *Zero Tolerance Laws and Policies*

Perhaps no other “tough on crime” law or policy affecting students has received more attention than zero tolerance laws and policies.<sup>48</sup> As a condition for receiving federal funds, the Federal Gun-Free Schools Act of 1994 requires states to pass laws that compel schools to expel students for at least one year for bringing a firearm on school grounds.<sup>49</sup> The Gun-Free Schools Act signaled an important validation by the federal government of the concept of “zero tolerance” in school disciplinary practices.<sup>50</sup> Borrowed from an approach to drug enforcement,<sup>51</sup> zero tolerance “mandates the application of

---

school officials, especially those located in urban areas, to implement more punitive-based school discipline policies and practices for responding to and preventing student crime and violence.”).

<sup>47</sup> Hirschfield, *supra* note 30, at 91.

<sup>48</sup> See, e.g., Am. Psych. Ass’n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCH. 852 (2008) [hereinafter *Are Zero Tolerance Policies Effective in Schools?*]; ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE (2010) [hereinafter ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT], available at [http://b.3cdn.net/advancement/d05cb2181a4545db07\\_r2im6caqe.pdf](http://b.3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf); KANG-BROWN ET AL., *supra* note 40; Black, *supra* note 31.

<sup>49</sup> See 20 U.S.C. §7151(b)(1). This law is softened somewhat by permitting superintendents to modify the expulsion requirement on a case-by-case basis. See *id.*; see also *Federal Law on Guns in Schools*, LAW CENTER TO PREVENT GUN VIOLENCE, (May 21, 2012), <http://smartgunlaws.org/federal-law-on-guns-in-schools/> (last visited on Oct. 24, 2014).

<sup>50</sup> See Udi Ofer, *Criminalizing the Classroom: The Rise of Aggressive Policing and Zero Tolerance Discipline in New York City Public Schools*, 56 N.Y.L. SCH. L. REV. 1373, 1376 (2011/12).

<sup>51</sup> See Russell J. Skiba & M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, in HANDBOOK OF CLASSROOM MANAGEMENT: RESEARCH, PRACTICE, AND CONTEMPORARY ISSUES 1063, 1063 (2006) (“Zero tolerance emerged from national drug policy of the

predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the gravity of behavior, mitigating circumstances, or situational context.”<sup>52</sup>

Many states and schools have adopted laws and policies modeled after the Federal Gun-Free Schools Act by creating strict rules that impose predetermined consequences for certain acts, such as suspension or expulsion, irrespective of the surrounding circumstances.<sup>53</sup> These laws and policies have extended well beyond bringing a firearm to school.<sup>54</sup> States and localities have applied zero tolerance to a multitude of offenses, including possession of drugs, alcohol, or tobacco; fighting; dress-code violations; truancy; and tardiness.<sup>55</sup> Scholars and youth advocacy groups have strongly criticized zero tolerance policies, arguing that they are both ineffective and counterproductive.<sup>56</sup> Not only is there no evidence that zero tolerance policies have made schools safer,<sup>57</sup> these policies have pushed more students out of schools and have created conditions

---

1990s and manages severe punishments, typically out-of-school suspensions and expulsion, for both serious and relatively minor infractions.”).

<sup>52</sup> See *Are Zero Tolerance Policies Effective in Schools?*, *supra* note 48, at 852; see also KIM, LOSEN, & HEWITT, *supra* note 12, at 80.

<sup>53</sup> See Deborah Gordon Klehr, *Addressing the Unintended Consequences of No Child Left Behind and Zero Tolerance: Better Strategies for Safe Schools and Successful Students*, 16 GEO. J. ON POVERTY L. & POL’Y 585, 589 (2009).

<sup>54</sup> See Michael P. Krezmien et al., *Juvenile Court Referrals and the Public Schools: Nature and Extent of the Practice in Five States*, 26 J. CONTEMP. CRIM. JUST. 273, 274 (2010) (explaining that zero-tolerance policies have extended to minor disciplinary infractions).

<sup>55</sup> See KIM, LOSEN, & HEWITT, *supra* note 12, at 80. Professor Barry Feld explains that zero tolerance policies are similar in nature to “broken window” theories, which hypothesize that failure to respond to minor infractions will lead to more serious infractions. See Barry C. Feld, *T.L.O. and Redding’s Unanswered (Misanswered) Fourth Amendment Questions: Few Rights and Fewer Remedies*, 80 MISS. L.J. 847, 886–87 (2011); see also Ofer, *supra* note 50, at 1378.

<sup>56</sup> See, e.g., *Are Zero Tolerance Policies Effective in Schools?*, *supra* note 48, at 857 (finding that the overwhelming research available on zero tolerance contradict the assumptions on which those policies are based); Black, *supra* note 31, at 837–41 (arguing that zero tolerance policies have not achieved their intended purpose).

<sup>57</sup> See ADVANCEMENT PROJECT AND THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY, *OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE POLICIES 14 (2000)* [hereinafter *OPPORTUNITIES SUSPENDED*], available at <http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf> (stating that after four years of implementation, schools that used zero tolerance policies were less safe than those that did not use them); *Are Zero Tolerance Policies Effective in Schools?*, *supra* note 48, at 857 (finding that “zero tolerance policies have not provided evidence that such approaches can guarantee safe and productive school climates”); Krezmien et al., *supra* note 54, at 274.

whereby more students become involved in the juvenile justice system.<sup>58</sup>

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

Other “tough on crime” laws that have contributed to the Pipeline include federal and state statutes that mandate reporting certain school misconduct to law enforcement. Pursuant to the Gun-Free Schools Act, the federal government obligates all local education agencies (i.e., school districts) that receive federal funds under the Elementary and Secondary Education Act to have “a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school.”<sup>59</sup> Thus, as virtually every public school district receives federal funds under the Elementary and Secondary Education Act, virtually every school district is required to have a policy in place that compels school officials to refer students who brings weapons to school to law enforcement.<sup>60</sup>

Furthermore, many state legislatures have enacted statutes mandating that school officials refer students to law enforcement for various offenses that occur at school that do not involve a weapon.<sup>61</sup> For example, a search of all fifty states’ statutes reveals that twenty-seven states require school officials to refer students to law enforcement for incidents relating to controlled substances,<sup>62</sup> fifteen states require referral for incidents involving alcohol,<sup>63</sup> eight states

---

<sup>58</sup> See KIM, LOSEN, & HEWITT, *supra* note 12, at 78.

<sup>59</sup> 20 U.S.C. § 7151 (h)(1).

<sup>60</sup> See, e.g., Fla. Stat. § 1006.07 (2014) (mandating that any student who brings a firearm or weapon to any school function will be referred to the juvenile justice system).

<sup>61</sup> In fact, one might classify these mandatory reporting laws also as “zero tolerance” policies because they require school officials to report certain activities that occur on school property to law enforcement authorities regardless of the surrounding circumstances.

<sup>62</sup> See ALA. CODE § 16-1-24.1(2014); ALASKA STAT. §§ 14.33.130(b)(2), 11.81.900 (2014); CAL. EDUC. CODE § 48902(b) (West 2013); CONN. GEN. STAT. § 10-221 (2010); DEL. CODE ANN. tit. 14 § 4112(c) (2012); FLA. STAT. § 1006.09 (2013); GA. CODE ANN. § 20-2-1184 (West 2014); HAW. REV. STAT. § 302A-1002(1) (2014); IDAHO CODE § 33-210(1); 105 ILL. COMP. STAT. 127/2 § 2 (2005); IND. CODE § 20-33-9-6 (2005); IOWA CODE § 280.24 (1997); KAN. STAT. § 72-89b03(b) (2013); KY. REV. STAT. § 158.154 (1998); LA. REV. STAT. § 17:416.3 (1991); MICH. COMP. LAWS § 380.1308 (1999); MISS. CODE § 37-11-29(1), (6) (1997); MO. STAT. § 160.261(10) (2013); NEB. REV. STAT. §§ 79-293, 79-267(6) (2013); N.Y. EDUC. LAW § 2801 (McKinney 2012); N.C. GEN. STAT. § 115c-288 (West 2015); OKLA. STAT. tit. 70, § 24-132 (2001); 24 PA. CONS. STAT. § 13-1303-A (2011); TEX. EDUC. CODE ANN. § 37.015(a) (West 2014); VA. CODE ANN. § 22.1-279.3:1 (West 2014); MD. CODE REGS. 13A.08.01.08 (2014); N.J. ADMIN. CODE 6A:16-6.3(a) (2014); MICHIGAN DEP’T OF EDUC., MICHIGAN SCHOOL SAFETY RESPONSE GUIDE 21 (1999), *available at* [http://www.michigan.gov/documents/schsfty\\_8356\\_7.pdf](http://www.michigan.gov/documents/schsfty_8356_7.pdf).

<sup>63</sup> See ALA. CODE § 16-1-24.1 (2014); ALASKA STAT. §§ 14.33.130(b)(2), 11.81.900 (2014); CAL. EDUC. CODE § 48902(b) (West 2013); CONN. GEN. STAT.

mandate referral for theft,<sup>64</sup> eight states for vandalism of school property,<sup>65</sup> and eleven states for robbery without using a weapon.<sup>66</sup> Some states have statutes that provide a specific list of offenses that school officials must report to law enforcement.<sup>67</sup> Other states have generalized reporting statutes. For example, Alabama requires school officials to report any “violent disruptive incidents occurring on school property during school hours or during school activities conducted on or off school property after school hours.”<sup>68</sup> Illinois requires school officials to report “each incident of intimidation of which he or she has knowledge.”<sup>69</sup> To induce compliance, several states impose criminal liability or other punitive actions on school officials who fail to report certain offenses to law enforcement.<sup>70</sup> Several states also grant school

---

§ 10-221 (2010); FLA. STAT. § 1006.09 (2013); HAW. REV. STAT. § 302A-1002(1) (2014); IDAHO CODE § 33-210(1) (2014); 105 IOWA CODE § 280.24 (1997); KAN. STAT. § 72-89b03(b) (2013); MICH. COMP. LAWS § 380.1308 (1999); NEB. REV. STAT. §§ 79-293, 79-267(6) (2013); N.Y. EDUC. LAW § 2801 (McKinney 2012); 24 PA. CONS. STAT. § 13-1303-A (2011); VA. CODE ANN. § 22.1-279.3:1 (West 2014); MD. CODE REGS. 13A.08.01.08 (2014); MICHIGAN DEP’T OF EDUC., *supra* note 62, at 24.

<sup>64</sup> See ALASKA STAT. §§ 14.33.130(b)(2), 11.81.900 (2014); GA. CODE ANN. § 20-2-1184 (West 2014); HAW. REV. STAT. § 302A-1002(1)(B) (2014); KAN. STAT. § 72-89b03(b) (2013); MICH. COMP. LAWS § 380.1308 (1999); NEB. REV. STAT. §§ 79-293, 79-267(2) (2013); N.H. REV. STAT. § 193-D:4(a) (2014); N.Y. EDUC. LAW § 2801 (McKinney 2012); MICHIGAN DEP’T OF EDUC., *supra* note 62, at 18. I define theft as the unlawful taking of personal property without using force, such as violence or the threat of violence.

<sup>65</sup> See ALASKA STAT. §§ 14.33.130(b)(2), 11.81.900 (2014); GA. CODE ANN. § 20-2-1184 (West 2014); HAW. REV. STAT. § 302A-1002(1)(B) (2014); KAN. STAT. § 72-89b03(b) (2013); MICH. COMP. LAWS § 380.1308 (1999); NEB. REV. STAT. §§ 79-293, 79-267(2) (2013); N.H. REV. STAT. § 193-D:4(a) (2014); N.Y. EDUC. LAW § 2801 (McKinney 2012); MICHIGAN DEP’T OF EDUC., *supra* note 62, at 23.

<sup>66</sup> See ALASKA STAT. §§ 14.33.130(b)(2), 11.81.900 (2014); DEL. CODE ANN. tit. 14 § 4112(a) & (b) (2012); GA. CODE ANN. § 20-2-1184 (West 2014); HAW. REV. STAT. § 302A-1002(1)(B) (2014); 720 ILL. COMP. STAT. 5/12-6 (2014); KAN. STAT. § 72-89b03(b) (2013); MICH. COMP. LAWS § 380.1308 (1999); NEB. REV. STAT. §§ 79-293, 79-267 (2013); N.H. REV. STAT. § 193-D:4 (2014); N.Y. EDUC. LAW § 2801 (McKinney 2012); S.C. CODE ANN. § 59-24-60 (1994); MICHIGAN DEP’T OF EDUC., *supra* note 62, at 14. I define robbery without a weapon as taking property by force or threat of force.

<sup>67</sup> See, e.g., GA. CODE ANN. § 20-2-1184 (West 2014); HAW. REV. STAT. § 302A-1002 (2014); MISS. CODE § 37-11-29 (1996); MO. STAT. § 160.261 (2013); NEB. REV. STAT. § 79-293 (2013); TEX. EDUC. CODE § 37.015 (West 2003); VA. CODE ANN. § 22.1-279.3:1 (West 2014).

<sup>68</sup> ALA. CODE § 16-1-24(b) (2014).

<sup>69</sup> 105 ILL. COMP. STAT. 5/34-84a.1 (2014). Acts of intimidation include inflicting harm on another person, threatening another person, physically restraining a person, and exposing another person to hatred, contempt, or ridicule. See 720 ILL. COMP. STAT. 5/12-6 (2014).

<sup>70</sup> See ALA. CODE § 16-1-24(e) (2014); ARK. CODE § 6-17-113(d) (West 1999); DEL. CODE tit. 14, §4112(e) (2012); GA. CODE ANN. § 20-2-1184(d) (West 2014); HAW. REV. STAT. § 302A-1002(3) (2014); 105 ILL. COMP. STAT. 5/10-27.1A(b) (2011); KAN. STAT. § 72-89b04 (2013); MISS. CODE § 37-11-29(3)

officials or other school employees immunity from lawsuits when reporting offenses to law enforcement in good faith.<sup>71</sup> It is important to note that many local school districts have their own reporting policies, even though there may be no statutory obligation to report certain offenses to law enforcement.<sup>72</sup>

### C. *Students' Limited Constitutional Protections at School*

Despite the Supreme Court's ambitious pronouncement that students do not "shed their constitutional rights ... at the schoolhouse gate,"<sup>73</sup> students' constitutional protections with respect to investigation, detention, interrogation, and punishment at school are quite limited.<sup>74</sup> For example, over the last few decades, courts have weakened students' Fourth Amendment rights in schools in order to support school officials in their efforts to promote safety and discipline within schools.<sup>75</sup> This movement in the law has emboldened school officials to rely on intense surveillance methods to maintain control. Before conducting a search, school officials need not obtain a warrant, show probable cause, or have an individualized suspicion that a student violated a school rule.<sup>76</sup> Consequently, school officials may rely on a

---

(1996); MO. STAT. §167.117(5) (2013); N.H. REV. STAT. § 193-D:6 (2014); S.C. CODE ANN. § 59-63-335 (2014); TEX. PENAL CODE § 38.171 (West 2003).

<sup>71</sup> See ALASKA STAT. § 14.33.140 (2014); CAL. EDUC. CODE §§ 49334, 48902(d) (West 2013); DEL. CODE tit. 14, §4112(f) (2012); GA. CODE ANN. § 20-2-1184(c) (West 2014); HAW. REV. STAT. § 302A-1003 (2014); 105 ILL. COMP. STAT. 5/10-27.1A(b) (2013); KAN. STAT. § 72-89b03(h) (2013); MICH. COMP. LAWS § 380.1313(2) (1999); MISS. CODE § 37-11-29(5) (1996); MO. STAT. § 167.117(4) (2013); NEB. REV. STAT. § 79-293(2) (2013); OKLA. STAT. tit. 70, § 24-132(b) (2001); OR. REV. STAT. § 339.315(b) (2012); TEX. EDUC. CODE § 37.015(f) (West 2013); UTAH CODE § 53A-11-1101(2) (West 1994).

<sup>72</sup> See e.g., HOUS. IND. SCH. DIST., *supra* note 45, at 14 (maintaining that the principal must notify the police when she has reasonable grounds to believe that a student has committed a criminal offense at school); MIAMI-DADE COUNTY PUB. SCHS., *supra* note 45, at 57–73 (stating that certain behavior, "by Board Rule, be reported to appropriate police authorities and to the Miami-Dade Schools Police").

<sup>73</sup> *Tinker v. Des Moines Ind. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

<sup>74</sup> See Catherine Y. Kim, *Policing School Discipline*, 77 BROOK. L. REV. 861, 861 (2012) (observing that "courts routinely defer to school officials in cases involving investigation and punishment of youth").

<sup>75</sup> See Jason P. Nance, *Students, Security, and Race*, 63 EMORY L.J. 1, 7–13 (2013) [hereinafter *Students, Security, and Race*]; Jason P. Nance, *Random, Suspicionless Searches of Students' Belongings: A Legal, Empirical, and Normative Analysis*, 84 U. COLO. L. REV. 367, 367 (2013) [hereinafter *Nance, Random, Suspicionless Searches*]; James E. Ryan, *The Supreme Court and Public Schools*, 86 VA. L. REV. 1335, 1415 (2000) (stating that "the Court's decisions regarding student searches rest on the value-laden view that maintaining discipline is necessary to preserve the educational process of schools").

<sup>76</sup> See *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653–54 (1995); *New Jersey v. T.L.O.*, 469 U.S. 325, 340–41 (1985). Further, although outside of the scope of this article, the increased presence of law enforcement in schools has

host of suspicionless search practices in schools to uncover violations of school rules. For instance, school officials may use metal detectors,<sup>77</sup> search through students' lockers,<sup>78</sup> conduct random sweeps for contraband,<sup>79</sup> and install surveillance cameras in the hallways and public rooms throughout the school.<sup>80</sup> In fact, many schools throughout the country routinely rely on these strict measures to monitor students.<sup>81</sup> In addition, school officials may interrogate students without providing *Miranda* warnings, regardless of how serious the suspected offense might be or the possibility that the student might be referred to law enforcement for wrongdoing.<sup>82</sup> Some courts have even held that it is unnecessary to provide these constitutionally-based protections when a police officer participates in the investigation.<sup>83</sup>

---

complicated this analysis. See Michael Pinard, *From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*, 45 ARIZ. L. REV. 1067, 1070 (2003) (advocating that courts should apply the probable cause standard when school searches involve law enforcement officers or when school officials are required to turn evidence of criminal violations over to the police); Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 982–86 (2009/10) (discussing the disparate court holdings when analyzing student searches involving law enforcement officers).

<sup>77</sup> See, e.g., *Hough v. Shakopee Pub. Sch.*, 608 F. Supp. 2d 1087, 1104 (D. Minn. 2009); *In re F.B.*, 726 A.2d 361, 366 (Pa. 1999); *In re Latasha W.*, 70 Cal. Rptr. 2d 886, 886–87 (Ct. App. 1998); *State v. J.A.*, 679 So. 2d 316, 319–20 (Fla. Dist. Ct. App. 1996).

<sup>78</sup> See e.g., *State v. Jones*, 666 N.W.2d 142, 150 (Iowa 2003); *In re Isaiah B.*, 500 N.W.2d 637, 641 (1993); *In re Patrick Y.*, 746 A.2d 405, 414–15 (Md. 2000). However, there is a substantial disagreement among courts regarding whether students possess an expectation of privacy in their lockers. See KIM, LOSEN, & HEWITT, *supra* note 12, 115–17; Feld, *supra* note 55, at 933–37; Nance, *Random, Suspicionless Searches*, *supra* note 75, at 411–12 and accompanying notes.

<sup>79</sup> See Nance, *Students, Security, and Race*, *supra* note 75, at 12–13.

<sup>80</sup> See, e.g., *United States v. Taketa*, 923 F.2d 665, 677 (9th Cir. 1991) (“Videotaping of suspects in public places, such as banks, does not violate the [F]ourth [A]mendment . . .”). However, courts do not permit surreptitious video surveillance in certain locations such as student lockers rooms or bathrooms. See *Brannum v. Overton Cnty. Sch. Bd.*, 516 F.3d 489, 499 (6th Cir. 2008) (holding that surreptitious video surveillance of a student locker room violates the Fourth Amendment).

<sup>81</sup> JAMES & MCCALLION, *supra* note 24, at 23; Nance, *Students, Security, and Race*, *supra* note 75, at 12–13; Nance, *Random, Suspicionless Searches*, *supra* note 75, at 409.

<sup>82</sup> See, e.g., *Commonwealth v. Snyder*, 597 N.E.2d 1363, 1369 (Mass. 1992) (holding that a school official that is not acting on behalf of the police is not required to give *Miranda* warnings); *State v. Tinkham*, 719 A.2d 580, 583 (N.H. 1998) (concluding that a school official was not required to advise the student of his right to remain silent and his right to counsel prior to questioning). See also Kim, *supra* note 74, at 861; Paul Holland, *Schooling Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 LOY. L. REV. 39, 59 n.90 (2006).

<sup>83</sup> See, e.g., *State v. Schloegel*, 769 N.W.2d 130, 133–34 (Wis. Ct. App. 2009). *But see J.D.B. v. North Carolina*, 131 S. Ct. 2395 (2011) (holding that the



These methods, especially when coupled with the zero tolerance policies, end up pushing more students out of school or directly into the juvenile justice system.<sup>84</sup>

Likewise, the procedural protections for disciplinary matters afforded to students under the Due Process Clause of the Fourteenth Amendment are weak. In *Goss v. Lopez*,<sup>85</sup> the Supreme Court affirmed that students do have a legitimate property interest to a public education provided under a state constitution, and that interest could not be taken away without minimal procedures.<sup>86</sup> However, the Court also concluded that students were entitled only to minimal protections for short-term suspensions of ten days or less.<sup>87</sup> But perhaps more significantly, although students theoretically are entitled to more robust procedural protections before receiving long-term suspensions or expulsions,<sup>88</sup> scholars agree and school officials admit that these disciplinary proceedings typically are not deliberative, collaborative, or aimed at accuracy, justice, or helping the student; rather, due process is too often only a routine hoop through which a school must jump to produce a favored result.<sup>89</sup> Thus, as long as school officials follow the prescribed routine, schools' disciplinary decisions are presumed valid and courts will uphold them.<sup>90</sup>

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

Another category of laws affecting the Pipeline, albeit indirectly, is federal and state school accountability laws. These laws obligate schools to test students and may inflict severe consequences on schools

---

court must take into consideration the student's age when determining whether a student was in custody for *Miranda* purposes when being questioned by a police officer at school); *In re T.A.G.*, 663 S.2d 392, 396 (Ga. Ct. App. 2008). *See generally* Kim, *supra* note 74, at 865.

<sup>84</sup> *See* Feld, *supra* note 85, at 884–95 (discussing how the combination of SROs, students' diminished constitutional rights, school accountability laws, and zero tolerance policies contribute to the Pipeline).

<sup>85</sup> 419 U.S. 565 (1975)

<sup>86</sup> *Id.* at 574.

<sup>87</sup> *Id.* With respect to short suspensions of ten days or less, the Court held that students are not entitled to secure counsel, cross examine witnesses or call their own witnesses. Rather, they are entitled only to “some kind of notice and afforded some kind of hearing,” which could consist of an “informal give-and-take” consisting of simply informing the student of the misconduct and providing the student with an opportunity to explain what happened. *Id.* at 582, 584.

<sup>88</sup> *See id.* at 584 (“Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.”).

<sup>89</sup> *See* Black, *supra* note 31, at 846; *see also* RICHARD ARUM, JUDGING SCHOOL DISCIPLINE: THE CRISIS OF MORAL AUTHORITY 5 (2003); JUDITH KAFKA, THE HISTORY OF “ZERO TOLERANCE” IN AMERICAN PUBLIC SCHOOLS 6 (2011). Scholars have posited reasons for why the routine process very often only results in a sham. For example, the Court did not articulate what these more robust procedural protections might be or a standard to measure their adequacy. *See generally* Black, *supra* note 31, at 841–47 (describing the shortcoming of *Goss*).

<sup>90</sup> Black, *supra* note 31, at 859.

that do not meet certain standards. For instance, under the No Child Left Behind Act (NCLBA),<sup>91</sup> schools that receive federal funds must administer various tests to students at different stages during grades three through twelve.<sup>92</sup> The NCLBA requires schools to demonstrate improvement in student test scores across all student sub-groups to avoid receiving a negative label, being placed on probation, or eventually being taken over by the state.<sup>93</sup> To avoid such sanctions, many scholars worry that school officials push low-performing students out of their schools by suspending, expelling, or referring low-performing students to the juvenile justice system.<sup>94</sup> According to Professor James Ryan, “the temptation to exclude low-performing students, enhanced by the NCLBA, can hardly be denied: one less student performing below the proficiency level increases the overall percentage of students who have hit that benchmark.”<sup>95</sup>

### E. *The Mindset of Educators*

Another important contributing factor to the Pipeline is how educators choose to handle disciplinary issues. This is a salient component of the Pipeline because, although federal and state laws

---

<sup>91</sup> 20 U.S.C. § 6301 *et seq.*

<sup>92</sup> See *Testing: Frequently Asked Questions*, U.S. DEP’T OF EDUC., at <http://www2.ed.gov/nclb/accountability/ayp/testing-faq.html> (last visited on Oct. 28, 2014); see also Torin Monahan & Rodolfo D. Torres, *Introduction*, in *SCHOOLS UNDER SURVEILLANCE*, 1, 5 (Torin Monahan & Rodolfo D. Torres eds., 2010).

<sup>93</sup> Monahan & Torres, *supra* note 92, at 5. In fact, the U.S. Department of Education recently granted a waiver to nearly all of the states for failing to meet the standards under No Child Left Behind, which required one hundred percent of students to achieve proficiency in math and reading by 2014. See Sam Dillon, *Overriding a Key Education Law*, N.Y. TIMES, Aug. 8, 2011, at A12. The U.S. Department of Education waived requirements for states that accepted new requirements, which still included a testing and accountability program. *Id.*; see also Derek W. Black, *Federalizing Education by Waiver*, \_\_ VAND. L. REV. 1, 1 (forthcoming).

<sup>94</sup> See *e.g.*, ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT, *supra* note 48, at 28–33 (discussing that the NCLBA puts pressure on schools to push out low performing students); Mowen, Brent, & Kupchik, *supra* note 22, at 28; Linda Darling-Hammond, 10 RACE, ETHNICITY, & EDUC. 245, 252–255 (2007); Klehl, *supra* note 53, at 602–03; James E. Ryan, *The Perverse Incentives of The No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 969–70 (2004); Krezmien et al, *supra* note 54, at 274 (“The high-stakes assessments associated with No Child Left Behind Act left little room in schools for student misbehavior.”).

<sup>95</sup> Ryan, *supra* note 94, at 969. See also NAACP LEGAL DEFENSE & EDUC. FUND, DISMANTLING THE SCHOOL-TO-PRISON PIPELINE 5 (n.d.) (explaining that accountability laws encourage schools to exclude students from school whom school officials believe may bring down the school’s test scores); Darling-Hammond, *supra* note 94, at 252 (“Perhaps the most adverse, unintended consequence of NCLB’s accountability strategy is that it undermines safety nets for struggling students rather than expanding them. The accountability provisions of the Act actually create large incentives for schools that can to keep such students out and to hold back or push out students who are not doing well.”).

require educators to expel, suspend, or refer a student to law enforcement for certain offenses, many educators choose to employ such harsh measures for more trivial matters, such as minor disturbances in the classroom, even when not required to do so by state or federal law.<sup>96</sup>

Unfortunately, many educators have adopted a harsh, punitive mindset towards disciplining students for relatively minor infractions, especially minority students who live in poor, inner-city areas. The reasons for these attitudes are multi-layered and complex. Perhaps the punitive laws and policies promulgated by lawmakers have influenced educators' mindsets and attitudes to a certain degree. It also seems plausible that some teachers and school officials summon police officers already patrolling the school hallways to handle a classroom disturbance out of convenience. In addition, there is troubling empirical evidence suggesting that some teachers and school officials believe that some students, particularly African-American males, are "bound for jail" and "unsalvageable."<sup>97</sup> But there is another powerful, systemic, driving force at work as well: the failure of our nation to provide adequate resources for schools to properly educate the growing number of students with acute needs.<sup>98</sup>

Educators, particularly those who work in schools located in impoverished areas, serve large percentages of students who face language barriers, have health problems, are neglected, live in abusive,

---

<sup>96</sup> See FLA. DEP'T OF JUVENILE JUSTICE, OFFICE FOR PROGRAM ACCOUNTABILITY, *DELINQUENCY IN FLORIDA'S SCHOOLS: A SEVEN-YEAR STUDY 8* (2011), available at <http://www.djj.state.fl.us/docs/research2/2010-11-delinquency-in-schools-analysis.pdf?sfvrsn=0> (observing that "disorderly conduct" was the second most common school-related delinquency referral in Florida schools from 2005–2011); S.C. DEP'T OF JUVENILE JUSTICE, 2012–2013 ANNUAL STATISTICAL REPORT 5 (2013), available at <http://www.state.sc.us/djj/pdfs/2012-13%20Annual%20Statistical%20Report.pdf> (stating that the third most frequent offense associated with referrals to family court in 2012–2013 was "disturbing schools").

<sup>97</sup> See Michelle Fine et al, *Civics Lessons: The Color and Class of Betrayal*, 106 TEACHERS COLLEGE REC. 219 (2004) (finding that students believed that their teachers considered them to be "animals," "inmates," or "killers"); Hirschfield, *supra* note 30, at 92 ("Owing to a dominant image of black males as criminals and prisoners, many school authorities view chronically disobedient black boys as 'bound for jail' and 'unsalvageable.'"); Noguera, *supra* note 39, at 448 (observing that black students were less inclined than white students to believe that their teachers were concerned about and supported them).

<sup>98</sup> As many scholars have observed, legislators have diverted needed funds for education to the criminal justice system. See, e.g., Garrett Albert Duncan, *Urban Pedagogies and the Ceiling of Adolescents of Color*, 27 SOC. JUST. 29, 33–34 (2000) (explaining that from 1993 to 1995, California decreased spending for primary and secondary schools by over seven percent and for higher education institutions by just under five percent but increased its spending on corrections by over forty-three percent); Giroux, *supra* note 30, at 559 (noting that operating budgets for public education institutions in New York between 1988 and 1998 dropped by 29% while funding for prisons increased by 76%).

dysfunctional home environments, suffer from malnutrition, lack early learning opportunities, and have severe learning disabilities.<sup>99</sup> Indeed, the effects of poverty on children are devastating.<sup>100</sup> Several empirical studies demonstrate that growing up in poverty is significantly correlated with severe cognitive impairments and poor academic achievement.<sup>101</sup> Yet, educators working in these distressed environments more often have fewer resources to adequately teach their students.<sup>102</sup> Education scholar Pedro Noguera maintains that it is the acute needs of students and the inability of schools to meet those needs that cause students to become disruptive and sometimes dangerous at school.<sup>103</sup> Consistent with this observation, empirical studies confirm that it is common for low-performing students to misbehave out of frustration or embarrassment when they are unable to learn the concepts taught, are behind academically, and cannot meet grade-level expectations.<sup>104</sup> As many educators well understand, when students begin to comprehend that the educational process is not working for them—that they will not be admitted to college, have access to a good-paying job or a promising career—they have fewer incentives to obey school rules and take school seriously.<sup>105</sup>

---

<sup>99</sup> Pedro A. Noguera, *Schools, Prisons, and Social Implications of Punishment: Rethinking Disciplinary Practices*, 42 THEORY INTO PRAC. 341, 342 (2003); see also GARY ORFIELD & CHUNGMEI LEE, RACIAL TRANSFORMATION AND THE CHANGING NATURE OF SEGREGATION 29–30 (2006), available at <http://files.eric.ed.gov/fulltext/ED500822.pdf>.

<sup>100</sup> See Dowd, *supra* note 15, at 1217 (detailing the harmful effects of poverty on children, including cognitive impairment, malnutrition, and health problems).

<sup>101</sup> See, e.g., *id.* at 1210–16 (“Poverty impacts early development, which is central to later functioning.”); Martha J. Farah et al., *Childhood Poverty: Specific Associations with Neurocognitive Development*, 1110 BRAIN RESEARCH 166, 166, 169 (2006), available at [http://cogpsy.skku.ac.kr/cwb-data/data/newarticle/farah\\_2006.pdf](http://cogpsy.skku.ac.kr/cwb-data/data/newarticle/farah_2006.pdf) (finding that childhood poverty results in “disparities in working memory, cognitive control and especially in language and memory”).

<sup>102</sup> See LINDA DARLING-HAMMOND, THE FLAT WORLD AND EDUCATION 27–65 (2010) (explaining that disadvantaged students often have unequal access needed resources); Gary Orfield, *The Growth of Segregation: African-Americans, Latinos, and Unequal Education*, in DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF BROWN V. BOARD OF EDUCATION 53, 67–68 (1996) (observing that “disadvantaged students face more barriers and receive less reinforcement to succeed in school”).

<sup>103</sup> Noguera, *supra* note 99, at 342.

<sup>104</sup> See MATTHEW P. STEINBERG ET AL., STUDENT AND TEACHER SAFETY IN CHICAGO PUBLIC SCHOOLS: THE ROLES OF COMMUNITY CONTEXT AND SCHOOL SOCIAL ORGANIZATION 46 (2011), available at [http://csr.uchicago.edu/downloads/8499safety\\_in\\_cps.pdf](http://csr.uchicago.edu/downloads/8499safety_in_cps.pdf) (observing that low-performing students are less likely to be engaged in school and more likely to be frustrated and misbehave).

<sup>105</sup> *Id.*; see also *id.* at 27–31 (2011) (finding that students’ academic skills are highly correlated with overall safety at the school); PAUL WILLIS, LEARNING TO LABOR: HOW WORKING CLASS KIDS GET WORKING CLASS JOBS 72 (1977) (maintaining that “teachers’ authority becomes increasingly the random one of

School officials and teachers are aware that students who are on dead-end educational paths or have acute needs tend to be more disruptive at school.<sup>106</sup> And while there are many dedicated teachers facing these conditions who work tirelessly to divert as many students as possible from the criminal justice system, there are others who believe that they lack the resources to meet the needs of all their troubled, disruptive students and have adopted an exclusionary ethos to preserve their limited resources for the students who they believe have a better chance of success.<sup>107</sup> Accordingly, schools serving large numbers of academically unsuccessful students, many of whom attend inner-city schools and are low-income or minority students, often use extreme forms of discipline, punishment, and control, leading to more students being involved in the criminal justice system.<sup>108</sup> Sociologist Paul Hirschfield sums up the issue nicely:

“[As] teachers are often bereft of not only sufficient resources but also a cogent narrative of opportunity that can help them gain voluntary compliance from students ... it is understandable that teachers and administrators often perceive little choice but to summon repressive means to swiftly remove disruptive students from the classroom and the school. Criminal justice offers a useful template and accessible tools for this purpose.”<sup>109</sup>

## II. LAW ENFORCEMENT OFFICERS IN SCHOOLS

A key, yet understudied, component of the Pipeline is the increased presence of law enforcement officers in schools. Law enforcement officers have interacted with and provided services to schools for decades.<sup>110</sup> However, the practice of having law enforcement officers,

---

the prison guard, not the necessary one of the pedagogue” when students think that the knowledge, skills, and credentials acquired in school are irrelevant).

<sup>106</sup> Noguera, *supra* note 99, at 342.

<sup>107</sup> *Id.* at 342; *see also* NAACP LEGAL DEFENSE & EDUC. FUND, *supra* note 95, at 5 (“[T]he lack of sufficient resources in our schools also creates perverse incentives for school officials to remove children from school.”); Hirschfield, *supra* note 30, at 92 (observing that some educators rely on extreme methods of punishment and control because they believe that they “lack the resources to reverse the downward trajectories of the most troublesome students without compromising the quality of teaching and services aimed at more deserving or promising students).

<sup>108</sup> NAACP LEGAL DEFENSE & EDUC. FUND, *supra* note 95, at 5; Noguera, *supra* note 99, at 342.

<sup>109</sup> Hirschfield, *supra* note 30, at 93. *See also* Noguera, *supra* note 99, at 345 (observing that schools that serve large numbers of academically unsuccessful students often operate more like prisons than schools, using extreme forms of discipline, punishment, and control).

<sup>110</sup> *See* JAMES & MCCALLION, *supra* note 24, at 2; Paul J. Hirschfield & Katarzyna Celinska, *Beyond Fear: Sociological Perspectives on the Criminalization of School Discipline*, 5 SOC. COMPASS 1, 1 (2011). These

or school resource officers (SROs),<sup>111</sup> regularly present in schools on a large scale is a relatively new phenomenon and is part and parcel of the larger overall movement towards criminalizing school discipline.<sup>112</sup> In the late 1970s there were fewer than one hundred police officers in our public schools,<sup>113</sup> but this number grew significantly in the years that followed. According to the Bureau of Justice Statistics' Law Enforcement Management and Administrative Statistics survey, in 1997 there were approximately 12,300 SROs employed by local law enforcement agencies nationwide.<sup>114</sup> In 2003, the number of full time SROs jumped to a high of 19,900.<sup>115</sup> In 2007, the number of SROs dropped slightly to 19,088.<sup>116</sup> SRO programs vary from state to state, county to county, and even district to district.<sup>117</sup> In some states and counties, police agencies assign SROs to schools, either by request of school district officials or by the police agencies.<sup>118</sup> In a handful of states, school districts have the authority to create school district-run police departments.<sup>119</sup>

---

traditional services include visible patrols, criminal investigations, and responses to calls for service. BARBARA RAYMOND, U.S. DEP'T OF JUSTICE OFFICE OF CMTY. ORIENTED POLICING SERVS., ASSIGNING POLICE OFFICERS TO SCHOOLS 1 (2010), *available* *at* [http://www.popcenter.org/Responses/pdfs/school\\_police.pdf](http://www.popcenter.org/Responses/pdfs/school_police.pdf).

<sup>111</sup> According to the Community Oriented Policing Services (COPS) program and the Safe and Drug Free Schools and Community Act, an SRO is a "career enforcement officer, with sworn authority, deployed in community-oriented policing, and assigned by the employing police department or agency to work in schools and community-based organizations." 42 U.S.C. §3796dd-8 (2012); 20 U.S.C. §7161 (2012).

<sup>112</sup> See JAMES & MCCALLION, *supra* note 24, at 2; RAYMOND, *supra* note 110, at 1; Krezmien et al., *supra* note 54, at 275; Theriot, *supra* note 7, at 281.

<sup>113</sup> See Brady, Balmer, & Phenix, *supra* note 46, at 457; Hirschfield & Celinska, *supra* note 110, at 1.

<sup>114</sup> JAMES & MCCALLION, *supra* note 24, at 19.

<sup>115</sup> *Id.*; see also Theriot, *supra* note 7, at 281 ("While it is difficult to know the exact number of school resource officers, it is estimated that there might be more than 20,000 law enforcement officers patrolling schools in the United States.").

<sup>116</sup> JAMES & MCCALLION, *supra* note 24, at 5, fig. 1.

<sup>117</sup> See Brown, *supra* note 5, at 591; THE COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER, OFFICERS IN SCHOOLS: A SNAPSHOT OF LEGISLATIVE ACTION 1 (2014) [hereinafter A SNAPSHOT OF LEGISLATIVE ACTION], *available* at <http://csgjusticecenter.org/wp-content/uploads/2014/03/NCSL-School-Police-Brief.pdf>.

<sup>118</sup> See Brown, *supra* note 6, at 592; A SNAPSHOT OF LEGISLATIVE ACTION, *supra* note 117, at 1–2.

<sup>119</sup> See Brown, *supra* note 6, at 592; A SNAPSHOT OF LEGISLATIVE ACTION, *supra* note 117, at 2; see also CATHERINE Y. KIM & I. INDIA GERONIMO, ACLU, POLICING IN SCHOOLS: DEVELOPING A GOVERNANCE DOCUMENT FOR SCHOOL RESOURCE OFFICERS IN K–12 SCHOOLS 5 (2009), *available* at [https://www.aclu.org/files/pdfs/racialjustice/whitepaper\\_policinginschools.pdf](https://www.aclu.org/files/pdfs/racialjustice/whitepaper_policinginschools.pdf). (explaining that SROs are sworn police officers typically employed by the police department and assigned to work in schools full-time, but in larger

SRO programs are very expensive.<sup>120</sup> A rough estimate of the cost of employing 19,088 full time SROs is almost \$619 million a year.<sup>121</sup> To put an SRO in every public school, as some recommend,<sup>122</sup> would cost approximately \$3.2 billion each year.<sup>123</sup> Despite this high cost, federal and state governments have encouraged the use of law enforcement and other strict security measures in schools by passing laws granting money for these purposes. For example, the U.S. Department of Justice's Community Oriented Policing Services (COPS) program and the Safe and Drug-Free Schools and Communities Act have provided millions of dollars for law enforcement, metal detectors, surveillance cameras, and other deterrent and security measures in schools.<sup>124</sup> Several states also have their own programs to fund these strict measures in schools, even prior to the Newtown shootings.<sup>125</sup> These federal and state funding initiatives often are supported and promoted by powerful networks of criminal justice professionals.<sup>126</sup>

Although lawmakers, police departments, and school officials expanded SRO programs to enhance school safety in the wake of rising juvenile crime rates and high-profile school shootings,<sup>127</sup> they made these decisions without thoroughly evaluating the effectiveness of SRO programs.<sup>128</sup> In fact, very few studies have reliably evaluated whether SRO programs actually enhance school safety.<sup>129</sup> According to a recent Congressional Research Service Report,

The body of research on the effectiveness of SRO programs is noticeably limited, both in terms of the number of studies published and the methodological rigor of the studies conducted. The research that is

---

jurisdictions such as Los Angeles or Houston, SROs might be employed by the school districts).

<sup>120</sup> JAMES & MCCALLION, *supra* note 24, at 20.

<sup>121</sup> *Id.*

<sup>122</sup> *See supra* note 21.

<sup>123</sup> JAMES & MCCALLION, *supra* note 24, at 20. The average minimum salary for an entry-level police officer is \$32,412. *Id.*

<sup>124</sup> *See* 20 U.S.C. §§ 7115(b)(2)(E)(ii) & (vi) (2012) (authorizing funding for metal detectors, electronic locks, surveillance cameras, and SROs); JAMES & MCCALLION, *supra* note 24, at 7–8; U.S. DEP'T OF JUST., OFFICE OF CMTY. ORIENTED POLICING SERVS., *2011 Secure Our Schools Program 1*, <http://www.cops.usdoj.gov/pdf/2011AwardDocs/CSPP-SOS-CHP/SOSMethodology.pdf>.

<sup>125</sup> *See, e.g.,* ALA. CODE § 41-15B-2.2 (2012); GA. CODE ANN. § 20-2-1185 (West 2012); 24 PA. STAT. ANN. § 13-1302-A (West 2012).

<sup>126</sup> *See* Hirschfield & Celinska, *supra* note 110, at 6.

<sup>127</sup> *See* JAMES & MCCALLION, *supra* note 24, at 5; Brown, *supra* note 6, at 591; Theriot, *supra* note 7, at 280.

<sup>128</sup> *See* JAMES & MCCALLION, *supra* note 24, at 9; Brown, *supra* note 6, at 592 (observing that despite the enormous expense associated with SRO programs, it is not clear whether SROs enhance student safety); Theriot, *supra* note 7, at 280.

<sup>129</sup> *See* JAMES & MCCALLION, *supra* note 23, at 9; Theriot, *supra* note 7, at 280.

available draws conflicting conclusions about whether SRO programs are effective at reducing school violence. In addition, the research does not address whether SRO programs deter school shootings, one of the key reasons for renewed congressional interest in these programs.<sup>130</sup>

In addition, SRO programs were expanded despite the potentially harmful effects that SROs may have on the educational setting.<sup>131</sup> For example, strict security measures in and of themselves can harm the educational climate by alienating students and generating mistrust,<sup>132</sup> which, paradoxically, may lead to even more disorder and violence.<sup>133</sup>

Further, SROs may aggravate the Pipeline by involving more students in the criminal justice system, even for low-level violations of the school behavioral code.<sup>134</sup> Indeed, perhaps the most significant challenge of having SROs in schools is that while SROs may be in schools primarily to enhance school safety, many SROs also become involved in student disciplinary matters that educators traditionally have handled and should continue to handle.<sup>135</sup> It is easy to see how this happens. Most SROs spend their time each day patrolling buildings and grounds, investigating complaints, minimizing disruptions, and maintaining order.<sup>136</sup> When SROs observe students being disruptive

---

<sup>130</sup> JAMES & MCCALLION, *supra* note 24, at 10; Theriot, *supra* note 7, at 280 (“Empirical evaluations of these various security strategies are limited, have varying levels of methodological rigor, and often report conflicting findings.” (internal citations omitted)).

<sup>131</sup> See Brown, *supra* note 6, at 592 (lamenting that such little attention has been devoted to measuring the impact SROs have on the school environment); Theriot, *supra* note 7, at 281 (observing that the research on SROs rarely discusses criminalization of school discipline or provided data about arrests).

<sup>132</sup> See Paul Hirschfield, *School Surveillance in America*, in *SCHOOLS UNDER SURVEILLANCE: CULTURES OF CONTROL IN PUBLIC EDUCATION* 38, 46 (Torin Manahan & Rodolfo D. Torres eds., 2010) (observing that strict security measures are “a frequent cause of disunity or discord within the school community”); Beger, *supra* note 28, at 340 (concluding that “aggressive security measures produce alienation and mistrust among students”).

<sup>133</sup> See Clifford H. Edwards, *Student Violence and the Moral Dimensions of Education*, 38 *PSYCHOL. SCHS.* 249, 250 (2001) (stating that “intrusive strategies are likely to undermine the trust needed to build cooperative school communities capable of really preventing violence”); Pedro A. Noguera, *Preventing and Producing Violence: A Critical Analysis of Responses to School Violence*, 95 *HARV. EDUC. REV.* 189, 190–91 (1995) (observing that the “get tough” approach undermines school safety because coercive measures create mistrust and resistance among students); Matthew J. Mayer & Peter E. Leone, *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools*, 22 *EDUC. & TREATMENT CHILD.* 333, 350, 352 (1999) (finding that student disorder and student victimization were higher in schools using strict security measures).

<sup>134</sup> See *infra* Part IV.

<sup>135</sup> See Brown, *supra* note 6, at 591.

<sup>136</sup> See Theriot, *supra* note 7, at 281; JAMES & MCCALLION, *supra* note 24, at



and disorderly, they intervene because they view this as one of their duties, even when those duties overlap with the traditional duties of school officials.<sup>137</sup> Furthermore, SROs apparently have the legal authority to intervene in almost all student disciplinary matters. For example, most states have criminal laws that prohibit assault, disorderly conduct, larceny, and disturbing the peace,<sup>138</sup> and several states have passed statutes that explicitly criminalize the disruption of school activities<sup>139</sup> or talking back to teachers.<sup>140</sup> Accordingly, if a student is involved in a scuffle with another student, talks back to a teacher, yells at another student, steals another student's pencil, or exhibits other types of poor behavior, SROs have legal authority to arrest that student, even a six-year old student who is throwing a temper tantrum.<sup>141</sup> Arguably, then, among all of the factors that contribute to the Pipeline, SROs perhaps are the most significant because SROs essentially become the "new authoritative agents" of discipline in schools.<sup>142</sup>

The problems with SROs handling student disciplinary issues are multifaceted. Whereas teachers and school officials have advanced academic credentials, receive training in child psychology, discipline, pedagogy, educational theory and practice, and are accountable to local school boards, SROs are trained in law enforcement, have little or no training in developmental psychology or pedagogy, and are not accountable to the school board.<sup>143</sup> Thus, an SRO's decision to arrest a student may be based on criteria that are wholly distinct from and even

---

<sup>137</sup> Interestingly, the SRO handbook developed by COPS provides an example of an SRO who "once had to threaten to arrest a principal for interfering with a police officer in the performance of his duty when the administrator was physically barring [the SRO] from arresting a student," reminding SROs that they have the power to arrest students over the objections of school officials. U.S. DEP'T OF JUST, OFFICE OF CMTY. ORIENTED POLICING SERVS., A GUIDE TO DEVELOPING, MAINTAINING, AND SUCCEEDING WITH YOUR SCHOOL RESOURCE OFFICER PROGRAM 51 (n.d.), available at [http://www.cops.usdoj.gov/files/RIC/CDROMs/SchoolSafety/Law\\_Enforcement/AGuidetoDevelopingMaintainingSucceeding.pdf](http://www.cops.usdoj.gov/files/RIC/CDROMs/SchoolSafety/Law_Enforcement/AGuidetoDevelopingMaintainingSucceeding.pdf).

<sup>138</sup> See, e.g., CAL. PENAL CODE § 241 (West 2014) (prohibiting assault); FLA. STAT. § 877.03 (West 2014) (prohibiting acts that breach the peace and disorderly conduct); N.Y. PENAL § 155.05 (McKinney 2014) (prohibiting larceny); VA. CODE ANN. § 18.2-415 (West 2014) (prohibiting disorderly conduct).

<sup>139</sup> See ARIZ. REV. STAT. ANN. § 13-2911 (2014); CAL. PENAL CODE § 415.5 (2014); FLA. STAT. 871.01 (2014); MASS. GEN. LAWS ch. 272, § 40 (2014); NEV. REV. STAT. ANN. § 392.910 (2014); S.C. CODE ANN. § 16-17-420 (2014); S.D. CODIFIED LAWS § 13-32-6 (2014); TEX. EDUC. CODE ANN. § 37.123 (2014); WASH. REV. CODE ANN. § 28A.635-030 (2014); W. VA. CODE ANN. § 61-6-14 (2014).

<sup>140</sup> See ARIZ. REV. STAT. ANN. § 15-507 (2014); ARK. CODE ANN. § 6-17-106(a) (2014); IDAHO CODE ANN. § 18-916 (2014); MONT. CODE ANN. § 20-4-303 (2014); N.D. CENT. CODE § 15.1-06-16 (2014).

<sup>141</sup> See Herbert, *supra* note 8, at A17 (reporting the arrest of a six-year old student for throwing a temper tantrum at school).

<sup>142</sup> Brown, *supra* note 6, at 591.

<sup>143</sup> *Id.* at 592.

anathema to the best interests of the student or the school as a whole.<sup>144</sup> As noted above, the anecdotal evidence of SROs mishandling student discipline problems abound.<sup>145</sup>

The negative effect of SROs and other laws, policies, and practices that contribute to the Pipeline certainly have not gone unnoticed by the public, and there were signs that changes could be underway.<sup>146</sup> Nevertheless, the brutal Newtown shootings have caused lawmakers and school officials to deliberate over new laws and policies designed to protect students from intruders, but may worsen the Pipeline.<sup>147</sup> For example, just over a month after the Newtown shootings, President Obama unveiled a plan to protect children that included providing \$150 million to school districts and law enforcement agencies to hire, among other individuals, SROs.<sup>148</sup> Since the Newtown shootings, the U.S. Department of Justice's COPS Hiring Program has continued to provide monetary awards to school districts to hire SROs.<sup>149</sup> In addition, since the Newtown shootings, several states have enacted legislation to put more police officers in schools and provide funding for that purpose.<sup>150</sup> Further, several states currently are considering legislation that would put more law enforcement officers in schools.<sup>151</sup> While the outcome of these new laws remains unclear, one can examine the data that are currently available to begin to understand the potential harm that these new laws may have on students.

---

<sup>144</sup> *Id.* Of course, this does not imply that educators or school officials always use their training well. In fact, over the last few decades, many teachers and school officials have adopted a punitive mindset to discipline children that may also contribute to the Pipeline. *See supra* Subsection I.E.

<sup>145</sup> *See supra* notes 2–9 and accompanying text; *see also* AARON KUPCHIK, HOMEROOM SECURITY: SCHOOL DISCIPLINE IN AN AGE OF FEAR 94–95, 115 (2010) (describing an officer's demand for harsher punishment than what was originally imposed by the school official).

<sup>146</sup> *See supra* note 16–19 and accompanying text; *see also* Wolf, *supra* note 30, at 3–4.

<sup>147</sup> *See, e.g.,* Remarks from the NRA Press Conference on Sandy Hook School Shooting, *supra* note 21 (calling for all schools to be staffed with armed guards).

<sup>148</sup> THE WHITE HOUSE, NOW IS THE TIME 11 (2013), available at [http://www.whitehouse.gov/sites/default/files/docs/wh\\_now\\_is\\_the\\_time\\_full.pdf](http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf).

<sup>149</sup> *See* Office of Cmty. Oriented Policing Servs., 2014 Grantee Award Package, U.S. DEP'T OF JUSTICE, <http://www.cops.usdoj.gov/Default.asp?Item=2738> (last visited Nov. 20, 2014); Office of Cmty. Oriented Policing Servs., 2013 Grantee Award Package, U.S. DEP'T OF JUSTICE, <http://www.cops.usdoj.gov/Default.asp?Item=2700> (last visited Nov. 20, 2014).

<sup>150</sup> *See* A SNAPSHOT OF LEGISLATIVE ACTION, *supra* note 117, at 1–2.

<sup>151</sup> *See id.*; *see also* Education Week, School Safety Legislation After Newtown, at <http://www.edweek.org/ew/section/multimedia/school-safety-bills-since-newtown.html> (last visited Feb. 13, 2015).

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

One cannot measure with precision the combined effect of these laws, policies, and practices on students. Nevertheless, there is objective evidence indicating their negative influence. For example, the number of students suspended or expelled in secondary schools nationwide increased from one in thirteen in 1972–1973 to one in nine in 2009–2010.<sup>152</sup> In 2004, there were almost 3.3 million student suspensions and over 106,000 expulsions,<sup>153</sup> and many of these suspensions and expulsions resulted from trivial infractions of school rules or offenses.<sup>154</sup> There is also evidence that school-based referrals to law enforcement have increased, although national data are not available.<sup>155</sup> For example, in North Carolina, the number of school-based referrals increased by ten percent from 2008 to 2013.<sup>156</sup> The number of school-based arrests also increased in the Philadelphia Public Schools (from 1,632 in 1999–2000 to 2,194 in 2002–2003),<sup>157</sup> Houston Independent School District (from 1,063 in 2001 to 4,002 in 2002),<sup>158</sup> Clayton County, Georgia (from 89 in the 1990s to 1,400 in 2004),<sup>159</sup> Miami-Dade County, Florida (a threefold increase from 1999 to 2001, and from 1,816 in 2001 to 2,566 in 2004),<sup>160</sup> and in Lucas

---

<sup>152</sup> KANG-BROWN ET AL., *supra* note 40, at 1. Between 1974 and 1997, the number of suspensions nationally increased from 1.7 million to 3.1 million. NAACP LEGAL DEFENSE & EDUC. FUND, *supra* note 95, at 3.

<sup>153</sup> KIM, LOSEN, & HEWITT, *supra* note 12, at 80; Black, *supra* note 31, at 8; *see also* Joanna Wald & Daniel J. Losen, *Defining and Redirecting a School-to-Prison Pipeline*, 2003 NEW DIRECTIONS FOR YOUTH DEVELOPMENT 9, 10 (2003) (reporting that the number of suspensions has doubled nationwide since 1974).

<sup>154</sup> *See* ABA JUVENILE JUSTICE COMM'N, ZERO TOLERANCE POLICIES: A REPORT 2 (2001), [http://www.americanbar.org/content/dam/aba/directories/policy/2001\\_my\\_103b\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/policy/2001_my_103b_authcheckdam.pdf) (explaining that students have been suspended or expelled for shooting a paperclip with a rubber band or bringing a manicure kit to school); *Are Zero Tolerance Policies Effective in Schools?*, *supra* note 48, at 852 (explaining that a ten-year-old girl was expelled because her mother put a small knife in her lunchbox to cut up an apple); *id.* (describing that a student was expelled for talking on a cell phone to his mother who was on deployment as a soldier to Iraq and with whom he had not spoken to for thirty days).

<sup>155</sup> *See* ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN, *supra* note 12, at 15.

<sup>156</sup> ACTION FOR CHILDREN, FROM PUSH OUT TO LOCK UP: NORTH CAROLINA'S ACCELERATED SCHOOL-TO-PRISON PIPELINE 8–9 (2013), *available at* [http://www.ncchild.org/wp-content/uploads/2014/05/2013\\_STPP-FINAL.pdf](http://www.ncchild.org/wp-content/uploads/2014/05/2013_STPP-FINAL.pdf).

<sup>157</sup> *See* ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN, *supra* note 12, at 15–16.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 14–15.

<sup>160</sup> *See* Sara Rimer, *Unruly Students Facing Arrest, not Detention*, N.Y. TIMES (Jan. 4, 2004), *available at* <http://www.nytimes.com/2004/01/04/us/unruly-students-facing-arrest-not-detention.html>.

County, Ohio (from 1,237 in 2000 to 1,727 in 2002).<sup>161</sup> In the only empirical study to compare referrals across multiple states,<sup>162</sup> researchers Michael Krezmien, Peter Leone, Mark Zablocki, and Craig Wells found that in four of the five states studied (Arizona, Hawaii, Missouri, and West Virginia) referrals from schools comprised a larger proportion of total referrals to the juvenile justice system in 2004 than in 1995.<sup>163</sup> That study also demonstrated that schools from Missouri, Hawaii, and Arizona referred greater proportions of their students in 2004 than in 1995.<sup>164</sup> And, similar to the increase of suspensions and expulsions, there is substantial evidence that the vast majority of these school-based referrals were for relatively minor offenses.<sup>165</sup>

The negative impact of suspending, expelling, or arresting a student should not be underestimated. Excluding a student from school, even for a short time period, disrupts that student's educational experience and provides that student with more time and opportunities to engage in harmful or illegal activities.<sup>166</sup> Ample studies demonstrate that a suspended student is less likely to advance to the next grade level and is more likely to drop out, commit a crime, get arrested, and become incarcerated as an adult.<sup>167</sup>

---

<sup>161</sup> *Id.*

<sup>162</sup> See EDUCATION UNDER ARREST, *supra* note 29, at 13.

<sup>163</sup> See Krezmien et al., *supra* note 54, at 286.

<sup>164</sup> *Id.* at 280. Schools from the states of South Carolina and West Virginia referred lower proportions of the students in 2004 than in 1995, but there was great variability in referral rates over that time period. See *id.* at 281, fig. 1.

<sup>165</sup> See, e.g., FEDERAL ADVISORY COMM. ON JUV. JUST., *supra* note 29, at 10; ACTION FOR CHILDREN, *supra* note 156, at 9–10 (“Students were most commonly referred to the juvenile justice system for low-level offenses.”); EDUCATION UNDER ARREST, *supra* note 29, at 14–15 (reporting that in 2007–08, ninety-six percent of school-based referrals in Jefferson County, Alabama were for misdemeanors); ARRESTING DEVELOPMENT, *supra* note 29, at 6 (explaining that during the 2004–05 school year in Florida, seventy-six percent of school-based referrals to law enforcement were for misdemeanor offenses such as disorderly conduct).

<sup>166</sup> See *Ending the School-to-Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. On the Judiciary*, 112th Cong. 1, 2–3 (2012) (testimony of Laurel G. Bellows, President on behalf of the Am. Bar Ass’n), available at [http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2012dec12\\_prisonpipeline\\_s.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2012dec12_prisonpipeline_s.authcheckdam.pdf) (explaining how exclusion is an indirect route to involvement in the justice system).

<sup>167</sup> *Id.*; see also OPPORTUNITIES SUSPENDED, *supra* note 57, at 13 (detailing the negative consequences to children who are arrested). In a study tracking Texas students from seventh through twelfth grade, researchers discovered that exclusion from school nearly tripled a student's chances of being involved in the juvenile justice system within the subsequent year. See TONY FABELO ET AL., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT 70 (2011), available at [http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf).

Of course, if a student ultimately is arrested and convicted, having a criminal record severely hampers a youth's ability to apply for college, obtain a scholarship or government grant, enlist in the military, find employment, or find housing.<sup>168</sup> But even if the student is not convicted, an arrest still has carries severe consequences. Sometimes schools will refuse to readmit arrested students.<sup>169</sup> If arrested students are readmitted, they often face emotional trauma, embarrassment, and stigma in their schools and among their classmates and teachers.<sup>170</sup> They may also face increased monitoring from teachers, school officials, and SROs.<sup>171</sup> These conditions often lead to lower standardized test scores, increased interaction with the justice system, and a higher likelihood that the student will drop out of school.<sup>172</sup> As the United States Court of Appeals for the Tenth Circuit recently observed, “[t]he criminal punishment of young school children leaves permanent scars and unresolved anger, and its far-reaching impact on the abilities of these children to lead prosperous lives should be a matter of grave concern for us all.”<sup>173</sup> Using data from the National Longitudinal Survey of Youth, criminologist Gary Sweeten found that, even after controlling for other relevant factors, a first-time arrest during high school almost doubles the odds that a student will drop out of school, and a court appearance associated with an arrest nearly quadruples those odds.<sup>174</sup> In another study involving inner-city students, most of whom lived in minority-dominated neighborhoods in Chicago, sociologist Paul Hirschfield found that those who were arrested in ninth or tenth grade were six to eight times more likely than students who were not arrested to dropout from high school.<sup>175</sup> These results held firm even after controlling for other demographic, behavioral, and academic variables.<sup>176</sup>

As one might imagine, the economic costs to society for arresting students, especially if it leads to incarceration or dropping out of school, are staggering. For example, economists from Columbia, Princeton, and Queens College predict that increasing graduation rates

---

<sup>168</sup> See ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN *supra* note 12, at 12.

<sup>169</sup> *Id.* at 17.

<sup>170</sup> *Id.*; Theriot, *supra* note 7, at 280–81.

<sup>171</sup> *Id.*

<sup>172</sup> See KIM, LOSEN, & HEWITT, *supra* note 12, at 113, 128.

<sup>173</sup> Hawker v. Sandy City Corp., \_\_\_ F.3d \_\_\_ (10th Cir. 2014); see also N.C. v. Commonwealth, 396 S.W.3d 852, 863 (Ky. 2013) (reasoning that the “shift away from traditional in-school discipline towards greater reliance on juvenile justice interventions, not just in drug cases, but also in common school misbehavior that ends up in the juvenile justice system . . . comes at a significant cost to state agencies and takes the student out of the normal education process.”).

<sup>174</sup> Sweeten, *supra* note 12, at 473.

<sup>175</sup> Paul Hirschfield, *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*, 82 SOC. OF EDUC. 368, 368 (2009).

<sup>176</sup> *Id.* at 382–85.

substantially decreases violent, drug, and property crimes.<sup>177</sup> Those economists also predict that the total lifetime cost-savings for each high school graduate amounts to \$26,600, with that amount being significantly higher for African-American and Hispanic males.<sup>178</sup> Further, one must not forget the strain that increased arrests have on our justice system. Judges, public prosecutors, and public defenders have complained that they are devoting scarce resources to handle school arrests that could be handled more effectively and efficiently by school officials.<sup>179</sup>

Another serious ramification of these laws, practices, and policies is their disproportionate impact on minority students.<sup>180</sup> Using a variety of measures, racial disciplinary disparities have been documented using national, state, and local level data at all school levels across all settings.<sup>181</sup> For example, the U.S. Department of Education's Office of Civil Rights Data Collection (CRDC) demonstrates that although African-American students make up only fifteen percent of the students in the CRDC database, they comprise thirty-five percent of students who were suspended once, forty-four percent of students suspended more than once, and thirty-six percent of the students who were expelled from school.<sup>182</sup> These disparities are not explained by more frequent or more serious misbehavior by minority students.<sup>183</sup> According to the Office of Civil Rights, "in our investigations we have found cases where African-American students were disciplined more harshly and more frequently because of their race than similarly situated white students. In short, racial discrimination in school discipline is a real problem."<sup>184</sup> And while very little data exist

---

<sup>177</sup> HENRY LEVIN, CLIVE BELFIELD, PETER MUENNIG, & CECILIA ROUSE, THE COSTS AND BENEFITS OF AN EXCELLENT EDUCATION FOR ALL OF AMERICA'S CHILDREN 13 (2006), available at [http://www3.nd.edu/~jwarlick/documents/Levin\\_Belfield\\_Muennig\\_Rouse.pdf](http://www3.nd.edu/~jwarlick/documents/Levin_Belfield_Muennig_Rouse.pdf).

<sup>178</sup> *Id.* at 14 (noting that most of these savings are from lower incarceration and criminal justice costs).

<sup>179</sup> See KIM & GERONIMO, *supra* note 119, at 13–14; Wolf, *supra* note 30, at 40.

<sup>180</sup> See KIM, LOSEN, & HEWITT, *supra* note 12, at 80; *Are Zero Tolerance Policies Effective in Schools?*, *supra* note 48, at 854–55; DEAR COLLEAGUE LETTER, *supra* note 10, at 3–4.

<sup>181</sup> Russell J. Skiba, Mariella I. Arredondo, & Natasha T. Williams, *More than a Metaphor: The Contribution of Exclusionary Discipline to a School-to-Prison Pipeline*, 47 EQUITY & EXCELLENCE IN EDUC. 546, 550 (2014).

<sup>182</sup> DEAR COLLEAGUE LETTER, *supra* note 11, at 3.

<sup>183</sup> *Id.* at 4. As Derek Black points out, few school systems today openly engage in blatant discrimination; instead, racial discrimination often is the result of implicit bias. DEREK BLACK, EDUCATION LAW: EQUALITY, FAIRNESS, AND REFORM 147 (2013); see also Jerry Kang, *Trojan Horses of Race*, 188 HARV. L. REV. 1489, 1506–14 (2005) (describing social cognition research demonstrating that the majority of people have implicit biases against racial minorities).

<sup>184</sup> *Id.*; see also Michael Rocque & Raymond Paternoster, *Understanding the Antecedents of the "School-to-Jail" Link: The Relationship Between Race and School Discipline*, 101 J. CRIM. L. & CRIMINOLOGY 633, 653–54 (2011) (finding that African-American students are significantly more likely than whites to be

demonstrating that SROs arrest minorities more frequently than white students,<sup>185</sup> there are data showing that that youth of color are disproportionately arrested and convicted compared to white youth for similar offenses.<sup>186</sup>

#### IV. THE EMPIRICAL STUDY

As in the past, many lawmakers, police departments, and school officials currently seek to put more SROs in schools despite the fact that research on the effectiveness of SRO programs is extremely limited.<sup>187</sup> But more importantly, too little empirical attention has been given to the potential negative consequences of using SRO programs, including their effects on exacerbating the Pipeline.<sup>188</sup> This Article's empirical study measures the relationship between a police officer's regular presence at a school and the odds that school officials will refer students to law enforcement for various offenses, including seemingly minor offenses. It differs from prior studies in at least two important ways. First, it analyzes restricted data from the 2009–2010 School Survey on Crime and Safety (SSOCS), the most recent SSOCS data

---

disciplined even after taking into account other salient factors such as grades, attitudes, gender, special education or language programs, and their conduct in school as perceived by teachers); Russell J. Skiba et al., *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCHOL. REV. 85, 95–101 (2011) (finding significant disparities for minorities with respect to school discipline after examining an extensive national sample).

<sup>185</sup> See EDUCATION UNDER ARREST *supra* note 29, at 21. An exception to this dearth of research is a study conducted by Kerrin Wolf, *supra* note 30, at 25–26, who found that among Delaware students, African-American students accounted for 67% of arrested students while comprising only 32% of the student body.

<sup>186</sup> See EDUCATION UNDER ARREST, *supra* note 29, at 21 (citing data); Mark Soler, et al., *Juvenile Justice: Lessons for a New Era*, 16 GEO. J. ON POVERTY L. & POL'Y 483, 530–31 (2009) (observing that African-American youth were nine times as likely to be incarcerated than white youth charged for the same offense when both had no prior admissions).

<sup>187</sup> See JAMES & MCCALLION, *supra* note 24, at 9.

<sup>188</sup> However, the limited research that has been conducted is telling. Researcher Matthew Theriot took advantage of a natural experiment in which a school district in the southeastern United States assigned full-time SROs to schools residing within the city limits, but not without. See Theriot, *supra* note 7, at 282. Theriot found that schools with SROs were more likely to arrest students for lower-level offenses such as disorderly conduct than schools without SROs, but not for more serious crimes. *Id.* at 284–85. Theriot concedes, however, that his findings may not be generalizable because they are based on a limited sample in only one school district. *Id.* at 286. A study conducted by researchers Chongmin Na and Denise Gottfredson contained findings consistent with Theriot's study. Na and Gottfredson analyzed national data from the 2006–2007 School Survey on Crime and Safety and found that schools with SROs reported higher percentages of non-serious offenses to law enforcement than schools that did not have SROs. See Chongmin Na & Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 640 (2013).

available. Second, it controls for other important variables that prior studies did not, such as (1) state statutes that require schools to report certain incidents to law enforcement, and (2) general levels of criminal activity and disorder that occurred in schools during that school year, while still controlling for other important demographic variables and school characteristics.

#### A. *The Data*

The data for the empirical analysis came from the School Survey on Crime and Safety for the 2009–2010 school year (2009–2010 SSOCS) published by the U.S. Department of Education’s National Center for Education Statistics (NCES).<sup>189</sup> It is the most recent data currently available on school safety from the NCES. The dataset is the restricted-access version, meaning that it contains sensitive, detailed information on school crime, such as the number of violent incidents that occurred on school grounds and the number of incidents that schools reported to law enforcement.<sup>190</sup> The restricted dataset recently became available to researchers who met specific conditions.<sup>191</sup>

NCES used the 2007–2008 school year Common Core of Data Public Elementary/Secondary School Universe File (CCD),<sup>192</sup> which is the most complete list of public schools available, as a sampling

---

<sup>189</sup> See NAT’L CTR. FOR EDUC. STATS., SCHOOL SURVEY ON CRIME AND SAFETY PRINCIPAL QUESTIONNAIRE: 2009–10 SCHOOL YEAR (2010) [hereinafter 2009–2010 SSOCS QUESTIONNAIRE], available at [http://nces.ed.gov/surveys/ssocs/pdf/SSOCS\\_2010\\_Questionnaire.pdf](http://nces.ed.gov/surveys/ssocs/pdf/SSOCS_2010_Questionnaire.pdf) (last visited Aug. 6, 2014).

<sup>190</sup> See *Statistical Standard Program: Getting Started*, NAT’L CENTER FOR EDUC. STATISTICS, [http://nces.ed.gov/statprog/instruct\\_gettingstarted.asp](http://nces.ed.gov/statprog/instruct_gettingstarted.asp) (last visited Aug. 6, 2014). The restricted-use data “have a higher level of detail in the data compared to public-use data files.” *Id.* The restricted-use datasets are not available to the general public. However, datasets that contain less sensitive data for prior school years can be downloaded at [http://nces.ed.gov/surveys/ssocs/data\\_products.asp](http://nces.ed.gov/surveys/ssocs/data_products.asp).

<sup>191</sup> NCES provides restricted-use datasets to certain researchers in qualified organizations. *Id.* In order to qualify, “an organization must provide a justification for access to the restricted-use data, submit the required legal documents, agree to keep the data safe from unauthorized disclosures at all times, and to participate fully in unannounced, unscheduled inspections of the researcher’s office to ensure compliance with the terms of the License and the Security Plan form.” *Id.*; see also *Statistical Standards Program: Applying for a Restricted-Use Data License*, NAT’L CENTER FOR EDUC. STATISTICS, [http://nces.ed.gov/statprog/instruct\\_apply.asp?type=rl](http://nces.ed.gov/statprog/instruct_apply.asp?type=rl) (last visited Aug. 6, 2014) (displaying the guidelines for applying to receive restricted-use datasets).

<sup>192</sup> The Common Core of Data “is an NCES annual census system that collects fiscal and nonfiscal data on all public schools, public school districts, and state education agencies in the United States.” NAT’L CENTER FOR EDUC. STATISTICS, 2009–2010 SCHOOL SURVEY ON CRIME AND SAFETY (SSOCS): RESTRICTED-USE DATA FILE USER MANUAL 8 (2011) [hereinafter 2009–2010 RESTRICTED-USE MANUAL] (on file with author).



frame<sup>193</sup> to select schools to participate in the study.<sup>194</sup> After subdividing the sample frame to ensure that subgroups of interest would be adequately represented,<sup>195</sup> NCES randomly selected 3,480 schools to participate in the study.<sup>196</sup> Of these public schools, 2,650 submitted usable questionnaires, which is a return rate of seventy-six percent.<sup>197</sup> NCES collected the data from February 24, 2010, to June 11, 2010.<sup>198</sup>

### *B. Dependent Variables*

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

- robbery (taking things by force) with a weapon
- robbery (taking things by force) without a weapon
- physical attack or fight with a weapon
- physical attack or fight without a weapon
- threats of physical attack with a weapon
- threats of physical attack without a weapon
- theft/larceny (taking things worth over \$10 without personal confrontation)
- possession of a firearm or explosive device

---

<sup>193</sup> A “sampling frame” is a list of units that could be selected for study. *See* RICHARD L. SCHEAFFER ET AL., *ELEMENTARY SURVEY SAMPLING* 43 (5th ed. 1996).

<sup>194</sup> *See* 2009–2010 RESTRICTED-USE MANUAL, *supra* note 192, at 8.

<sup>195</sup> *See id.* at 9. The sample was stratified by instructional level (e.g., elementary school, middle school, high school), locale (e.g., rural, suburb, urban), enrollment size, and region (e.g., Northeast, Midwest, South, and West). In addition, the sample frame was stratified by percent of combined student population as Black/African American, Hispanic/Latino, Asian, Native Hawaiian/other Pacific Islander, or American Indian/Alaska Native. *Id.*

<sup>196</sup> *Id.* at 10. NCES guidelines for using restricted data require that raw numbers be rounded to the nearest ten. U.S. DEP’T. OF EDUC., *RESTRICTED-USE DATA PROCEDURES MANUAL* 20 (2011), *available at* <http://nces.ed.gov/pubs96/96860rev.pdf>.

<sup>197</sup> *Id.* at 1, 9–13. A response rate of seventy-six percent is excellent and reduces bias in the data. EARL BABBIE, *THE PRACTICE OF SOCIAL RESEARCH* 256 (9th ed. 2001).

<sup>198</sup> 2009–2010 RESTRICTED-USE MANUAL, *supra* note 192, at 1.

- possession of a knife or sharp object
- distribution, possession, or use of illegal drugs
- distribution, possession, or use of alcohol
- vandalism

I considered the odds that school officials referred students to law enforcement for committing the above offenses.<sup>199</sup> If the school reported more than one incident for a particular offense, I included each incident as a new variable.<sup>200</sup>

### C. Independent Variables

The 2009–2010 SSOCS asked principals to report whether sworn law enforcement officers were present at their school at least once a

---

<sup>199</sup> The 2009–2010 SSOCS asks principals to include all incidents that occurred at school, regardless of whether students or non-students were involved. See 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 189, at 11. Thus, it is possible that some of the incidents recorded related to non-students. However, while more precise questions are needed to identify exactly how many students were involved, it seems highly likely that the vast majority of cases recorded involved students.

<sup>200</sup> While it is possible to calculate for each school the proportion of the offenses referred to law enforcement and use that proportion as the dependent variable, I chose not to do that for two reasons. First, a school referring 4 out of 5 students to law enforcement and another school referring 40 out of 50 students for a certain offense would generate the same proportion (.80). However, the later proportion would be more meaningful because more data are embedded within that proportion. Accordingly, by adding each new incident as a new variable, even if it comes from the same school, no data are lost. See Karen Grace-Martin, *Proportions as Dependent Variables in Regression—Which Type of Model?*, at <http://www.theanalysisfactor.com/proportions-as-dependent-variable-in-regression-which-type-of-model/> (last visited Sept. 12, 2014). Second, running a regression analysis in which the dependent variable is a proportion creates model fit problems because the relationship is not linear, but sigmoidal. See *id.*; see also Francisco Cribari-Neto & Achim Zeileis, *Beta Regression in R*, 34 J. STAT. SOFTWARE 1, 1–2 (2010), available at <http://cran.r-project.org/web/packages/betareg/vignettes/betareg.pdf>. Treating the proportion as a binary response and running a logistic regression addresses this problem if a researcher has data for the total number of trials and successes. See Grace-Martin, *supra*.

week.<sup>201</sup> This was the independent variable of primary interest for this study.<sup>202</sup>

The 2009–2010 SSOCs also contained a number of other variables, many of which could influence the rate at which schools report students to law enforcement. These variables served as control variables. For example, the general level of crime that exists at a school may influence the rate at which school officials refer students to law enforcement for various offenses.<sup>203</sup> If students engage in many illegal activities, school officials might be more inclined to refer more students to law enforcement to stabilize the environment.<sup>204</sup> Further, because referral rates for certain offenses may change in accordance with the types of offenses that occur at school,<sup>205</sup> I divided the offenses into two categories: “weapon/sex offenses” (rape; sexual battery; robbery with a weapon; physical attack with a weapon; threat of physical attack with a weapon; possession of a firearm or explosive device; and possession of a knife or sharp object), and “non-weapon/non-sex offenses” (physical attack without a weapon; threats of physical attack without a weapon; theft; drug possession; alcohol possession; vandalism; and robbery without a weapon). I categorized the offenses in this manner because our current legislative landscape indicates a strong proclivity to refer juveniles to the justice system for committing sexual crimes

---

<sup>201</sup> 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 189, at 8. Specifically, the 2009–2010 SSOCS asks principals to report separately the number of “School Resource Officers” which includes “all career law enforcement officers with arrest authority, who have specialized training and are assigned to work in collaboration with school organizations,” and the number of “[s]worn law enforcement officers who are not School Resource Officers.” *Id.* I included in my empirical study only schools that indicated that they have either a part-time or full-time school resource officer or sworn law enforcement officer present at their school at least once a week.

<sup>202</sup> While additional information regarding how much time the SROs spent at the schools would have been useful for this study, unfortunately the 2009–2010 SSOCS did not contain such information. *See* 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 189, at 8.

<sup>203</sup> *See* Kelly Welch & Allison Ann Payne, *Racial Threats and Punitive School Discipline*, 57 Soc. Probs. 25, 27 (2010) (“One factor presumed to be closely associated with school punitiveness and disciplinary practices is the level of school crime and disorder.”); *see also* LAWRENCE F. TRAVIS III & JULIE KIERNAN COON, THE ROLE OF LAW ENFORCEMENT IN PUBLIC SCHOOL SAFETY: A NATIONAL SURVEY 20 (2005); Aaron Kupchik & Geoff K. Ward, *Race, Poverty, and Exclusionary School Security: An Empirical Analysis of U.S. Elementary, Middle, and High Schools*, YOUTH VIOLENCE & JUV. JUST. (forthcoming) (manuscript at 10), available at <http://yvj.sagepub.com/content/early/2013/09/16/1541204013503890.full.pdf+html>; Nance, *Students, Security, and Race*, *supra* note 75, at 33.

<sup>204</sup> *See* Welch & Payne, *supra* note 203, at 27.

<sup>205</sup> For example, consistent with the “broken window” theory, school officials may take a harder line against less severe offenses in an effort to deter more serious offenses. *See* Feld, *supra* note 55, at 886–87. *See also generally* James Q. Wilson & George L. Kelling, *Broken Windows*, ATLANTIC MONTHLY 31 (Mar. 1982) (theorizing that broken windows, if not fixed, lead to more crime because they transmit a message of societal indifference to disorder).

and using or bringing weapons on school grounds.<sup>206</sup> I transformed these variables into rates per one hundred students to account for variations in school size.<sup>207</sup>

The general level of school disorder also may influence the rate of referrals to law enforcement.<sup>208</sup> To control for school disorder, I created an index based on several questions in the 2009–2010 SSOCS. Principals were asked to rate on a scale of one to five the frequency of various student disciplinary problems such as racial tensions, bullying, sexual harassment of other students, harassment of other students based on sexual orientation, disorder in the classroom, verbal abuse of teachers, acts of disrespect other than verbal abuse, gang activities, and cult or extremist group activities.<sup>209</sup> I recoded the scale so that higher values indicated greater frequency and then computed the mean value of the principals' responses.

I also took into account the principals' perceptions of the level of crime near their schools.<sup>210</sup> The 2009–2010 SSOCS asks principals to rate the level of crime in the geographic area of their schools on a scale of one to three (high, moderate, or low).<sup>211</sup> I recoded the principals' responses so that a higher number indicated a higher level of crime.

In addition, I included student demographics that are consistent with student marginalization,<sup>212</sup> such as the school's student minority

---

<sup>206</sup> Of course, there are other rational ways to categorize these offenses. I limited my categories to two for purposes of simplicity. It is important to note, however, that when I tested my models using different categorizations of offenses, those different categorizations did not affect the overall results of my empirical study—that a police officer's weekly presence at a school significantly increases the odds that school officials will refer students to law enforcement for various offenses, including lower-level offenses.

<sup>207</sup> For example, if the variable were a "1" for crimes using a weapon, that would imply that this school reported one incident for every 100 students during the school year.

<sup>208</sup> See TRAVIS & COON, *supra* note 203, at 20; Kupchik & Ward, *supra* note 203, at 10; Nance, *Students, Security, and Race*, *supra* note 75, at 33; Welch & Payne, *supra* note 203, at 27.

<sup>209</sup> See 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 189, at 13.

<sup>210</sup> See TRAVIS & COON, *supra* note 203, at 20 (observing that school crime is more common in schools located in crime-prone neighborhoods).

<sup>211</sup> See 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 189, at 17.

<sup>212</sup> See DAVID CANTOR & MAREENA MCKINLEY WRIGHT, SCHOOL CRIME PATTERNS: A NATIONAL PROFILE OF U.S. PUBLIC HIGH SCHOOLS USING RATES OF CRIME REPORTED TO POLICE 8 (2001), available at <https://www2.ed.gov/offices/OUS/PES/studies-school-violence/school-crime-pattern.pdf> (finding that large high schools located in urban areas serving a high percentage of minority students tend to experience more school crime); TRAVIS & COON, *supra* note 203, at 20 (observing that crime is more common in schools that serve students from disadvantaged backgrounds).

population<sup>213</sup> and student poverty level.<sup>214</sup> I also included the percentage of students enrolled in special education, the percentage of students with limited English proficiency, and the percentage of students who scored in the bottom fifteen percent on a state assessment exam.<sup>215</sup> All of these percentages were reported by the school principals.<sup>216</sup>

Further, I included other school characteristics as control variables such as building level (elementary, middle, high, or combined);<sup>217</sup> school urbanicity (urban, suburban, town, or rural);<sup>218</sup> whether the school was non-traditional (charter school or magnet school);<sup>219</sup>

---

<sup>213</sup> NCES provided each school's percentage of the school's student population that consisted of African-Americans, Hispanics, Asian/Pacific Islanders, and American Indian/Alaska Native Students. See SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2011, at iv (2012), available at <http://nces.ed.gov/pubs2012/2012002rev.pdf>. Racial data for the 2009–2010 SSOCS came from the 2007–2008 CCD school data file. See 2009–2010 RESTRICTED-USE MANUAL, *supra* note 192, at 29. Although there was a two-year difference, it is unlikely that a school would undergo a major shift in student demographics over a two-year period.

<sup>214</sup> To measure student poverty levels, I used the percentage of students eligible to free or reduced price lunch, which is a commonly-used proxy. See, e.g., Michael Heise, *Litigated Learning, Law's Limits, and Urban School Reform Challenges*, 85 N.C. L. REV. 1419, 1441 (2007) (using student eligibility for free and reduced-price lunch as a proxy for student poverty). Principals were asked to report the percentage of their current students were eligible for free or reduced-price lunch. See 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 189, at 16.

<sup>215</sup> See TRAVIS & COON, *supra* note 203, at 20; Kupchik & Ward, *supra* note 203, at 10; Nance, *Students, Security, and Race*, *supra* note 75, at 33.

<sup>216</sup> 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 190, at 16.

<sup>217</sup> See CANTOR & WRIGHT, *supra* note 212, at 8 (finding that the schools that tended to have the most violence included large high schools located in urban areas). NCES categorized a school as an elementary, middle school, high school, or combined school. See 2009–2010 RESTRICTED-USE MANUAL, *supra* note 189, at 28. These variables were dummy-coded, with the reference group being high school. Elementary schools are “schools in which the lowest grade is not higher than 3 and the highest grade is not higher than grade 8.” NAT'L CENTER FOR EDUC. STATISTICS, CRIME, VIOLENCE, DISCIPLINE, AND SAFETY IN U.S. PUBLIC SCHOOLS: FINDINGS FROM THE SCHOOL SURVEY ON CRIME AND SAFETY: 2009–10, at 7 tbl.1 n.5 (2011), available at <http://nces.ed.gov/pubs2011/2011320.pdf>. Middle schools are “schools in which the lowest grade is not lower than grade 4 and the highest grade is not higher than grade 9.” *Id.* High schools are “schools in which the lowest grade is not lower than grade 9 and the highest grade is not higher than grade 12.” *Id.* Combined schools include “other combinations of grades, including K–12 schools.” *Id.*

<sup>218</sup> See CANTOR & WRIGHT, *supra* note 212, at 8. NCES categorized schools as being located in a city, suburb, town, or rural area. See 2009–2010 RESTRICTED-USE MANUAL, *supra* note 189, at 47. These variables were dummy-coded, with “urban” as the reference group.

<sup>219</sup> 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 189, at 17. I categorized these variables into two groups: traditional schools and non-traditional schools.

student population size,<sup>220</sup> and the school's average daily attendance rate.<sup>221</sup>

Finally, I controlled for whether a school official was statutorily required to report the incident to law enforcement. To do this, I located the statutes and regulations in each of the fifty states that mandated that certain incidents that occurred on school grounds be reported to the police during the 2009–2010 school year.<sup>222</sup> If the statute or regulation clearly and unambiguously required that the incident be reported to law enforcement, I coded that variable as a “1.”<sup>223</sup> If the state did not have a statutory reporting requirement or that requirement was unclear or ambiguous, I coded that variable as a “0.”<sup>224</sup>

Because several of the continuous independent variables were positively skewed and may be unduly influenced by outliers, I used the natural logarithm of each of the continuous variables.<sup>225</sup> I report the means, standard deviations, and ranges for each of the variables in Table 1 below.

---

<sup>220</sup> See CANTOR & WRIGHT, *supra* note 212, at 8. Principals were asked to report their school's total enrollment. 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 189, at 16.

<sup>221</sup> Principals were asked to report the school's average daily attendance as the percent of students present at school. 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 189, at 17.

<sup>222</sup> I could not take into account whether a school district had a specific policy to report incidents to the police, as this information was not available to me. Future research might be targeted in this area.

<sup>223</sup> For example, Nebraska requires school administrators to report to law enforcement acts property damage, stealing, and unlawful possession of drugs or alcohol. See NEB. REV. STAT. § 79-267 (2013).

<sup>224</sup> For example, Illinois requires principals report all incidents of “intimidation” to law enforcement. Because it is not clear, for example, that all threats without a weapon would constitute “intimidation” under the statute, I coded Illinois as a “0” under that category. See Part I.A.3 for a complete list of state reporting requirements for each of the various offenses.

<sup>225</sup> See Kupchik & Ward, *supra* note 203, at 11. I added one to each variable before taking its natural logarithm in order to maintain my zero values. (The natural logarithm of zero is undefined while the natural logarithm of one is zero.) See *id.* at 20 n.5.

**Table 1: Descriptive Statistics for Schools in Sample**

	Mean	Std. Dev.	Range
<u>Indep. Variables</u>			
SRO	.55	.50	0–1
Elementary	.26	.44	0–1
Middle	.34	.47	0–1
High	.36	.48	0–1
Combined	.04	.20	0–1
Urban	.27	.44	0–1
Suburban	.33	.47	0–1
Town	.15	.35	0–1
Rural	.25	.44	0–1
Non-traditional	.08	.28	0–1
Minority % (ln)	3.20	1.13	0–4.62
Poverty % (ln)	3.61	.85	0–4.62
Special Ed. % (ln)	2.49	.59	0–4.62
ESL % (ln)	1.49	1.25	0–4.62
Low Test Score % (ln)	2.17	.99	0–4.62
Student Pop. (ln)	6.50	.73	2.08–8.38
Attendance % (ln)	4.54	.21	1.10–4.62
Disorder	1.89	.50	1–4.73
Serious Offenses (ln)	1.19	.28	0–2.43
Other Offenses (ln)	1.35	.79	0–4.16
Neighborhood crime	1.31	.58	1–3
Rob. (no weap.) Rep. Req.	.21	.41	0–1
Theft Rep. Req.	.15	.36	0–1
Drug Rep. Req.	.73	.45	0–1
Alcohol Rep. Req.	.39	.49	0–1
Vandalism Rep. Req.	.15	.36	0–1
<u>Dep. Variables</u>			
Robbery With Weapon	1.00	.00	1–1
Robbery Without Weapon	.68	.36	0–1
Attack With Weapon	.55	.41	0–1
Attack Without Weapon	.40	.41	0–1
Threat With Weapon	.45	.43	0–1
Threat Without Weapon	.32	.43	0–1
Theft	.55	.44	0–1
Firearms	.71	.45	0–1
Sharp objects	.67	.47	0–1
Drugs	.83	.32	0–1
Alcohol	.72	.43	0–1
Vandalism	.47	.46	0–1

#### *D. Models and Empirical Methodology*

I modeled the propensity of school officials to refer students to law enforcement for various offenses as a function of whether a police officer is present at the school at least once a week and the control

variables. The basic form of the models and descriptions of each variable is listed in the Appendix.

I estimated all models using survey regression methods that account for observations' survey sampling probabilities. Accordingly, the empirical results provide population-level estimates. Because the dependent variables were indicator variables, I employed logistic regression to fit the models. Logit coefficients are not easy to interpret. To facilitate their interpretation, I transformed the raw logit coefficients into exponentiated coefficients ( $\text{Exp}(B)$ ), or odds ratios.<sup>226</sup>

#### *E. Results of the Empirical Analysis*

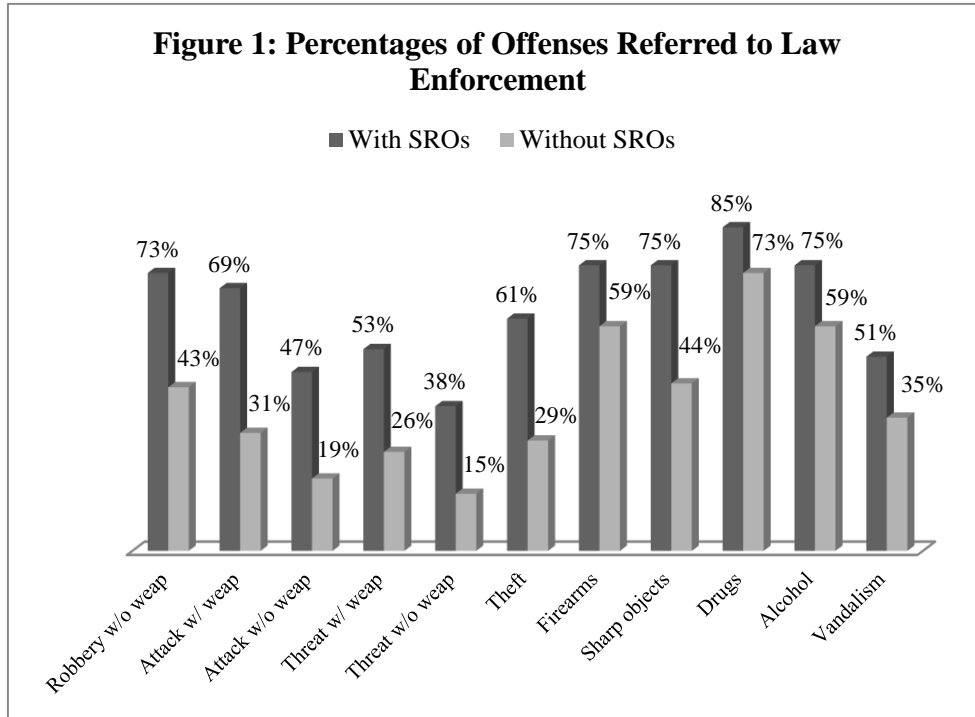
Figure 1 compares the percentage of incidents referred to law enforcement at schools having regular contact with SROs against that percentage at schools that do not have regular contact with SROs for various types of offenses.<sup>227</sup>

---

<sup>226</sup> The exponentiated coefficient, or " $\text{Exp}(B)$ ," estimates the change in odds of a school referring a student to law enforcement for the offenses listed for each one-unit increase in an independent variable, or, if the variable is categorical, for the alternative category. See Raymond E. Wright, *Logistic Regression, in READING AND UNDERSTANDING MULTIVARIATE STATISTICS* 217, 223 (Laurence G. Grimm & Paul R. Yarnold eds., 1995) ("The odds ratio estimates the change in the odds of membership in the target group for a one-unit increase in the predictor."). For example, hypothetically, if the odds ratio for the independent variable "SRO" were two, then the odds of a student being referred for a certain offense would be twice greater for schools having SROs than for school not having SROs.

<sup>227</sup> As explained in Part III.D, I define regular contact with an SRO as having an SRO or sworn law enforcement officer present at the school at least once a week.





Without taking into account the control variables listed above, there are clear, visible differences in the rates of referral for each of the listed offenses,<sup>228</sup> suggesting that an SRO's weekly presence increases the number of students who will be involved in the justice system. Perhaps most glaring is that the rate of referral for lower-level offenses, such as fighting without using a weapon or making a threat without using a weapon, increases more than two fold when a school has regular contact with an SRO.

Table 2 displays the results for the logistic regression model predicting the odds of a school reporting students to law enforcement for each of the various offenses when controlling for other factors that may influence reporting rates.<sup>229</sup> It displays the exponentiated coefficient estimates, or the change in odds for each one-unit increase in an independent variable, and whether the effects of the independent variables are statistically significant.

<sup>228</sup> Using chi-square tests, I determined that there were significant differences between the referral rates for each above offenses. The p-value was less than .001 for all of these tests except for possession of firearms, which had a p-value of less than .05. I also note that I did not include the offenses of rape, sexual battery, or robbery with a weapon because, understandably and predictably, schools referred all or a high proportion of those offenses to law enforcement independent of whether schools relied on SROs.

<sup>229</sup> The variation inflation factors (VIF), a common statistic to detect multicollinearity, indicated that multicollinearity was not an issue for the models.

**Table 2: Logistic Regression Model Predicting Odds of School Referring Students to Law Enforcement for Various Offenses (Exp(B) Reported)<sup>230</sup>**

	Rob. w/o weapon	Attack w/ weapon	Attack w/o weapon	Threat w/ weapon	Threat w/o weapon	Theft	Guns	Sharp Objects	Drugs	Alcohol	Vandalism
SRO	3.54***	2.56*	1.38***	1.98**	1.41***	1.83***	1.51	1.35**	1.91***	1.79***	1.54***
Building level <sup>a</sup>											
Elem.	0.77	0.22**	0.35***	0.42*	0.35***	0.52***	0.78	0.46***	0.61	0.34*	1.03
Middle	1.50	1.02	0.52***	0.62	0.56***	0.81***	0.33*	0.81*	1.38***	1.24	0.75***
Combined	1.30	0.23	0.72***	1.18	1.05	1.97***	3.80	0.78	0.58***	1.12	0.57**
Urbanicity <sup>b</sup>											
Suburb	2.05**	1.54	1.11***	1.42	1.01	1.00	1.64	1.22*	1.26***	1.01	1.27***
Town	1.21	3.39	1.27***	2.25*	1.05	1.63***	4.05*	1.32*	2.57***	1.11	1.59***
Rural	1.34	3.76*	1.07	1.82	1.13*	1.35***	2.60	1.22	1.09	2.11***	1.27**
Nontraditional	2.52**	0.70	0.78***	1.64	1.42***	1.01	1.74	0.99	1.58***	1.35*	1.28**
Minority% (ln)	0.55**	0.69	1.00	0.93	0.97	0.96	0.91	1.08	0.97	0.79***	0.96
Poverty% (ln)	1.47*	0.93	1.05*	0.87	1.01	1.08**	0.89	0.99	1.01	0.89	0.92*
Attendance% (ln)	1.59	0.07	2.94***	1.10	1.35	1.27	0.36	0.73	2.11***	1.17	1.19
Special Ed.% (ln)	0.86	2.70*	0.92***	1.06	0.98	0.94*	1.56	1.12	1.35***	1.20*	1.09*
LEP% (ln)	1.04	1.58**	0.97**	1.13	1.11***	1.03	0.82	1.10*	0.94*	1.08	1.02
Low Test Score% (ln)	1.07	1.60*	1.11***	0.99	0.98	0.99	1.23	1.07	1.05	1.18***	1.00
Student Pop. (ln)	0.92	3.69**	1.15***	0.92	1.05	1.19***	1.41	1.25**	1.09	1.47***	1.02
Disorder	0.99	0.87	1.03	1.51*	0.96	1.08*	2.27*	1.01	1.14*	1.08	1.05
Neigh. Crime	1.21	3.88**	1.06**	1.42*	1.05	0.99	2.27**	1.25**	0.98	1.24**	1.12**
Weapon/Sex Offenses (ln)	1.62*	0.28***	1.33***	0.20***	0.94	1.02	0.90	0.86	1.30**	1.37*	1.32***
Non-Weapon/Non-Sex Offenses (ln)	0.72*	1.72*	0.80***	1.35	0.88***	0.84***	0.87	1.04	0.91*	1.01	0.73***
Rep. Req.	1.39	n/a	n/a	n/a	n/a	1.13*	n/a	n/a	0.84**	0.85	1.13

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

a. High schools were the comparison group.

b. Urban schools were the comparison group.

All of the models but one demonstrate that having regular contact with an SRO is a strong predictor of whether a school will refer a student to law enforcement for committing an offense. This is true even after controlling for other important factors that may influence a school's decision to refer a student to law enforcement such as having a state statute that requires referral for committing a certain offense, general levels of criminal activity and disorder in the school, and the general level of crime in the neighborhood in which the school resides.

<sup>230</sup> The sample sizes for each of the offenses are as follows: robbery without a weapon (n=840); attack with a weapon (n=430); attack without a weapon (n=35,960); threat with a weapon (n=980); threat without a weapon (n=19,490); theft (n=17,530); firearm possession (n=250); sharp object possession (n=3,740); drug possession (n=9,620); alcohol possession (3,410); vandalism (n=8,940). In accordance with guidelines for presenting results from the restricted-use SSOCS database, raw sample numbers are rounded to the nearest ten. U.S. DEP'T OF EDUC., RESTRICTED-USE DATA PROCEDURES MANUAL, *supra* note 196, at 20.

This relationship is present for various serious offenses such as attacks using a weapon and threats with a weapon. But of more concern, this relationship exists for lower-level offenses as well, such as fighting without a weapon, threats without a weapon, theft, and vandalism. In fact, the odds of referring a student to law enforcement for these lower-level offenses are between 1.38 and 1.83 times greater in schools that have regular contact with SROs than for schools that do not. For other non-weapon offenses, such as robbery without a weapon, drug offenses, and alcohol offenses, the odds of referral increase by 3.54, 1.91, and 1.79 respectively.

Although I included the other independent variables as control variables, the empirical analysis reveals other noteworthy relationships, some of which are expected, but others more interesting. For example, one interesting finding is that the number of weapon/sex offenses in a school generally is a strong positive predictor of whether a school refers a student to law enforcement for several types of offenses, including several lower-level offenses, except in two instances (attack with a weapon and threat with a weapon) where there were strong negative relationships.<sup>231</sup> While more study is needed to explore this trend, this may be evidence that many schools do indeed embrace the broken-window disciplinary model. The “broken window” theory suggests that failure to respond to minor infractions will lead to more serious infractions, the same way that a single broken window in an abandoned building will attract more vandalism in that building.<sup>232</sup> This empirical analysis shows that schools that experience high levels of serious crimes such as weapon and sex offenses are more likely to refer students to law enforcement for various lower-level offenses, perhaps in an attempt to regain control of the school.

Further, the strong negative relationships that exist between the number of weapon/sex offenses and referral rates for attack with a weapon and threat with a weapon are also interesting. Because causality and temporal order cannot be detected from the data, one cannot discern whether higher referral rates caused the number of those offenses to decline, or whether the higher numbers of those offenses caused the referral rates to decline, or no causal relationship exists at all. More study is needed to further explore this trend. Nevertheless, this trend suggests that when schools experience high levels of serious crimes, they are less likely to refer all of those incidents to law enforcement. While the reasons for this behavior may vary, one possible explanation is that school officials wish to avoid the potentially harmful publicity that comes with a high number of referrals to law enforcement. Another possible explanation is that school officials cooperating with law enforcement are strategic regarding which incidents or which students they will refer to law enforcement,

---

<sup>231</sup> An odds ratio less than one signals a negative relationship between the independent and dependent variables.

<sup>232</sup> See Feld, *supra* note 55, at 886–87.

perhaps because they believe that not all of these incidents justify law enforcement involvement or that law enforcement will not cooperate with school officials if they refer too many students.

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

Other control variables also proved to be significant predictors. For example, the odds of referral are greater for high schools than for middle schools or elementary schools. The one exception is that middle schools are more likely than high schools to refer students to law enforcement for drug offenses. The odds of referral are also greater for schools located in suburbs, towns, and rural areas than for schools located in urban areas when controlling for all the other listed factors. This weakens support for the theory that only urban schools invoke heavy-handed, justice-oriented measures to discipline children.<sup>233</sup> Further, the data suggest that non-traditional schools such as charter schools and magnet schools are more likely to refer students to law enforcement for certain violations such as robbery without a weapon, threats without weapons, vandalism, drugs, and alcohol, but less likely to refer students for fighting without a weapon.

As expected, the odds of referring students to law enforcement were greater in schools with larger student populations for several types of offenses. This suggests that schools with large student populations may lack the resources to address disciplinary problems using pedagogically-sound methods.<sup>234</sup> They may not have the resources to hire additional personnel such as teachers, counselors, school psychologists, and behavioral specialists, or to implement alternative programs described below.<sup>235</sup> Also as expected, neighborhood crime tended to be a significant predictor. That is, when school officials

---

<sup>233</sup> These empirical findings are consistent with the observational findings of Professor Aaron Kupchik, who maintains that harsh disciplinary practices that were once used principally by schools serving primarily low-income minority students are now used in white middle-class schools as well. See Aaron Kupchik, *Things Are Tough All Over: Race, Ethnicity, Class, and School Discipline*, 11 PUNISHMENT AND SOC'Y 291, 291 (2009); see also KUPCHIK, *supra* note 145, at 161.

<sup>234</sup> See *supra* Part I.E.

<sup>235</sup> See *supra* Part V.

perceived crime to be higher in the neighborhood in which the school resided, the odds of referral increased. Likewise, for many types of offenses, school disorder was a significant positive predictor of referrals to law enforcement.

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

Other independent variables, including several student demographic variables, had mixed relationships. For example, the percentage of students qualifying for free or reduced-price lunch was a positive predictor for three non-weapon offenses (robbery without a weapon, attack without a weapon, and theft), but a weak negative predictor for vandalism. The results for the percentage of students enrolled in special education were also mixed. It was a strong predictor for attacks involving a weapon and for drug-related offenses, which may be legally-permissible reasons for temporarily removing students from school who qualify for special services under the Individuals with Disabilities Education Act (IDEA).<sup>236</sup> But this variable had a significant negative relationship with respect to lower-level offenses, which is also consistent with the IDEA, because students who qualify under IDEA receive special protections from removals for longer than ten days.<sup>237</sup>

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

---

<sup>236</sup> See 20 U.S.C. § 1415(k)(1) (allowing school officials to remove students to an interim educational setting for up to forty-five days when a student brings a weapon or drugs to school).

<sup>237</sup> See 20 U.S.C. § 1415(j). Further, because suspending special education students is often viewed as complex and rife with litigation, school officials may be hesitant to refer special education students for any offenses that do not involve weapons or drugs, even if removal would be less than ten days.

More research must be conducted in this area to detect this important relationship.

Finally, it is noteworthy that the statutory mandatory reporting requirements proved to be an insignificant predictor for the majority of the offenses, although it was a weak, positive predictor for theft and, curiously, a negative predictor for drug-related offenses. These findings suggest that the reporting statutes do not appear to be the driving force behind referrals to law enforcement, perhaps because they are not enforced or school officials are unaware of them.<sup>238</sup>

#### *F. Limitations of the Empirical Study*

A brief explanation of the limitations of this study is warranted. One limitation is that the data do not allow researchers to categorically conclude that having regular contact with SROs causes a school to refer a student to law enforcement for committing an offense. To better assess the impact of SROs on a school, one would need to collect observational data on referrals to law enforcement during a period when a school did not have regular contact with an SRO (the control period), and after that school had regular contact with an SRO (the treatment period).<sup>239</sup> Further, observing the incidents as they occur (or at least interviewing witnesses who observed them) rather than relying on written, generic descriptions of the offenses is important to determine if there were other contextual reasons that might explain why one student was referred to law enforcement but another was not for the same offense category. The findings of this empirical study should justify a significant investment of resources to conduct such a study in several schools in several different types of settings before our nation invests more funds in these costly SRO programs.

Another limitation of this study is that it is not clear exactly how the school official respondents interpreted the question asking school officials to record the total number of incidents “reported to police or other law enforcement.”<sup>240</sup> The survey question suggests that school officials should record the total number of students that the school officials themselves referred to law enforcement. But it also seems plausible that school officials included in that report the number of arrests that SROs made while on duty in the school. This is a section of the 2009-2010 SSOCS Questionnaire that the U.S. Department of Education might consider redrafting to reduce ambiguity. It is also an area for further scholarly research. But this ambiguity does not weaken

---

<sup>238</sup> It should be emphasized again that many school districts have reporting policies which may have a measurable effect on referral rates, but could not be taken into account in this study. Nevertheless, it is important to acknowledge that because these policies most likely are formed by school boards or district officials, school officials have greater influence over changing these policies than state or federal reporting statutes.

<sup>239</sup> Cf. JAMES & MCCALLION, *supra* note 24, at 9.

<sup>240</sup> 2009–2010 SSOCS QUESTIONNAIRE, *supra* note 189, at 11.

the importance of these findings—that the odds that a student will be reported to law enforcement increase—from whatever the source—when a school has regular contact with an SRO. Nevertheless, in future studies, it is important to distinguish exactly how the student was referred to law enforcement so reformers have a better sense of where they can direct their resources to institute change.

A third limitation of this study is that the data do not contain information regarding what happened to the students after they were reported to law enforcement. Most likely some students were arrested and convicted, some were arrested but not convicted, and some were released without an arrest. More study is needed in this area as well, because an arrest is more detrimental than a referral, and a conviction is far worse than an arrest or a referral. In addition, more research is needed to identify the types of offenses and the conditions under which a referral to law enforcement ultimately leads to an arrest and a conviction. Nevertheless, it is important to emphasize that whenever a student is referred to law enforcement, whatever the outcome is, it most likely changes that student's life for the worse. Even referrals can leave permanent scars and unresolved anger; disrupt the student's educational process by leading to suspension or expulsion; lead to embarrassment and stigma among classmates and teachers; incite distrust and negative views towards law enforcement; and tax public resources.<sup>241</sup>

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

#### IV. DISCUSSION AND RECOMMENDATIONS

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

##### A. *Discussion of Empirical Findings*

Although causation cannot be determined, the results of this empirical study support the conclusion that having regular contact with SROs increases the odds that students will be referred to law enforcement for various offenses. But more disturbingly, these findings suggest that having regular contact with SROs increase the odds that

---

<sup>241</sup> See *Hawker v. Sandy City Corp.*, \_\_\_ F.3d \_\_\_ (10th Cir. 2014); *N.C. v. Commonwealth*, 396 S.W.3d 852, 863 (Ky. 2013); *KIM & GERONIMO*, *supra* note 119, at 10; *see also* Part III, *supra*.

schools will refer students to law enforcement for lower-level offenses that should be addressed by school officials themselves using pedagogically-sound disciplinary methods. These findings hold true across many types of schools in many types of settings, even after controlling for variables such as state statutes mandating referral to law enforcement, general levels of criminal activity and disorder, neighborhood crime, and other demographic variables. Importantly, these findings are consistent with two prior studies also suggesting that schools with SROs were more likely to report students to law enforcement for lower-level offenses than schools without SROs, although both of those studies relied on older datasets and employed different models.<sup>242</sup>

The reasons why the odds of referral increase when schools have regular contact with an SRO are not clear from this dataset and require further study. Nevertheless, it seems to be a logical outcome. When school officials and SROs develop working relationships with one another, it is reasonable to assume that SROs encourage school officials to refer students to law enforcement for offenses that in the past were handled internally. Along these same lines, perhaps once SROs have a consistent presence at the school and regularly arrest students, arresting students for certain offenses simply becomes the expectation among school officials, teachers, and parents. In addition, once school officials and SROs establish regular patterns of communication, school officials might rely on SROs as legal consultants. That is, when a student commits an offense, it is possible that school officials seek advice from SROs regarding whether that offense should be reported to law enforcement for processing because they trust that SROs understand the law better than they do.<sup>243</sup> Further, some school officials might use SROs as cover when school officials seek to evade the responsibility of working with challenging students by turning those students over to law enforcement. When confronted by angry parents or other community members, school officials can respond that the SROs told them that they should refer a student to law enforcement for processing.

Regardless of the reasons behind the increase in odds, these findings should raise serious concerns regarding our nation's SRO programs. These data support the conclusion that a school's regular contact with SROs leads school officials to redefine lower-level offenses as criminal justice issues rather than as social or psychological issues that can be addressed using more pedagogically-sound disciplinary methods or employing mental health treatments.<sup>244</sup> In other words, SRO programs appear to facilitate a criminal justice orientation

---

<sup>242</sup> See *supra* note 188.

<sup>243</sup> This pattern was observed by Professor Aaron Kupchik in his ethnographical study of four high schools. See KUPCHIK, *supra* note 145, at 95 (“The principals at the schools I studied each rely on their officer as a legal advisor of sorts.”).

<sup>244</sup> See KUPCHIK, *supra* note 145, at 115.



to how school officials respond to offenses that were once handled internally.<sup>245</sup>

A logical extension of these findings is that, as more funding becomes available to schools to hire more SROs through post-Newtown legislation, more students may be referred to law enforcement (either by way of school officials or the SROs themselves), and that more students may be arrested and, possibly, convicted. As described above, the consequences of involving students in the criminal justice system are severe and have lasting, negative impacts on the students themselves and society at large.<sup>246</sup> Indeed, what is so disturbing about these findings is that despite empirical studies suggesting that more law enforcement in schools leads to more student involvement in the criminal justice system, lawmakers and school officials continue to propose the same solutions and rely on the same methods to enhance school safety in the wake of high-profile acts of school violence.

Some may argue that the safety of our children in schools is paramount, which is all the justification needed for funding SROs programs. The safety of children in schools is extremely important. No one can plausibly argue otherwise. However, one must also remember that the current research on the effectiveness of SRO programs in preventing violence is very limited.<sup>247</sup> In addition, SROs and other strict security measures simply do not and cannot prevent all acts of violence from occurring in schools. For example, in a Washington, D.C. school that had metal detectors, perimeter fencing, and guards, a student was shot by another student inside the school.<sup>248</sup> The Columbine massacre also occurred in a school that used metal detectors and employed guards.<sup>249</sup> But far more importantly, even if SROs and other strict measures do deter some from bringing weapons to schools, these measures do not support long-term solutions to help students develop socially responsible behavior, understand collective responsibility, and resolve conflict peacefully.<sup>250</sup> Rather, reliance on these strict measures may exacerbate underlying tensions by creating adversity and mistrust within the school climate.<sup>251</sup> Further, investing millions of dollars in SROs and other security equipment diverts scarce resources away from pedagogically-sound methods to improve school

---

<sup>245</sup> *Id.*

<sup>246</sup> *See supra* Part III.

<sup>247</sup> *See supra* Part II.

<sup>248</sup> *See* Sara Neufeld & Sumathi Reddy, *Violent Week Renews Metal Detector Debate*, BALT. SUN, Oct. 14, 2006, at 1A.

<sup>249</sup> *See* Amanda Terkel, *Columbine High School Had Armed Guard During Massacre in 1999*, HUFFINGTON POST (Dec. 21, 2012, 11:07 PM), [http://www.huffingpost.com/2012/12/21/columbine-armed-guards\\_n\\_2347096.html](http://www.huffingpost.com/2012/12/21/columbine-armed-guards_n_2347096.html); Marcus Wright, *Experts Say Intrusive Security at Public Schools Reproduces Social Inequality*, MICH. CITIZEN (Nov. 15, 2012), <http://michigancitizen.com/dps-eaa-tighten-security/>.

<sup>250</sup> *See* Nance, *Students, Security, and Race*, *supra* note 75, at 24.

<sup>251</sup> *Id.*; *see also* note 133 and accompanying text.

safety that enhance the learning environment.<sup>252</sup> And while these alternative methods may not prevent a deranged individual from harming members of the school community, it should not be forgotten how rare these Newtown-like events are.<sup>253</sup> Schools still remain among the safest places for children generally.<sup>254</sup> As Professor Aaron Kupchik observes, “I find that the presence of police in schools is unlikely to prevent another school shooting, and that the potential for oppression for students—especially poor and racial/ethnic minority youth—is a more realistic and far more common threat.”<sup>255</sup>

### B. Recommendations

It is crucial to recognize that there are better, more pedagogically-sound methods to address school violence and help students maximize the educational opportunities available to them. For example, rather than spending exorbitant amounts of money hiring SROs and installing other strict security measures to promote school safety, we should use our resources to provide students with more mentoring programs; counselors; mental health services; programs that build a strong sense of community, character, collective responsibility, and trust; and programs that help student develop anger management skills and teach students how to resolve conflict.<sup>256</sup> In fact, there are abundant alternative methods to enhance school safety more effectively than implementing measures that rely on coercion and fear.<sup>257</sup> Indeed, school safety experts and educators have long recognized that creating a safe environment depends largely on creating a positive school climate based on trust, respect, and open communication among members of the school community.<sup>258</sup>

---

<sup>252</sup> See Nance, *Students, Security, and Race*, *supra* note 75, at 24.

<sup>253</sup> Scott, *supra* note 42, at 541 (observing that serious acts of school violence are rare).

<sup>254</sup> See *supra* note 28.

<sup>255</sup> KUPCHIK, *supra* note 145, at 82.

<sup>256</sup> See Nance, *Random, Suspicionless Searches*, *supra* note 75, at 400–401; Nance, *Students, Security, and Race*, *supra* note 75, at 48–55.

<sup>257</sup> See Nance, *Students, Security, and Race*, *supra* note 75, at 48–55; see also generally U.S. DEP’T OF EDUCATION, GUIDING PRINCIPLES: A RESOURCE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE (2014) [hereinafter GUIDING PRINCIPLES]. While I will introduce the alternative programs and strategies here, I provide much greater detail in a forthcoming article. See Jason P. Nance, *The School-to-Prison Pipeline: Problems and Solutions*, \_\_ ARIZ. ST. L.J. \_\_ (forthcoming) [hereinafter *The School-to-Prison Pipeline*].

<sup>258</sup> See GUIDING PRINCIPLES, *supra* note 257, at 5 (maintaining that positive school climates can enhance school safety); ROBERT A. FEIN ET AL., U.S. SECRET SERVICE & U.S. DEP’T OF EDUCATION, THREAT ASSESSMENT IN SCHOOLS: A GUIDE TO MANAGING THREATENING SITUATIONS AND TO CREATING SAFE SCHOOL CLIMATES 11–12 (2002) (“In educational settings that support climates of safety, adults and students respect each other. A safe school environment offers positive personal role models in its faculty. It provides a place for open discussion where diversity and differences are respected; communication between adults and

One very effective initiative to build safer schools is called Positive Behavioral Interventions and Supports (PBIS). It is a data-driven initiative that provides educators and students with strategies to define, teach, model, and support appropriate behavior that helps create an optimal learning climate.<sup>259</sup> PBIS sets out a decision-making framework to help educators choose and implement evidence-based practices, develop a set of behavior interventions and supports, use data to address school issues, and create environments to prevent behavioral problems from developing.<sup>260</sup> This program has been successful in promoting school safety in all settings, including the juvenile justice system.<sup>261</sup> In fact, several studies empirically demonstrate substantial improvement in student behavior, school climate, and overall academic achievement when schools implement the PBIS program.<sup>262</sup>

Another effective practice in reducing school violence is restorative justice. Restorative justice initiatives are dispute resolution-based tools that involve both the victims and offenders.<sup>263</sup> It focuses on “repairing the harm, engaging victims, establishing accountability, developing a community, and preventing future actions.”<sup>264</sup> Schools can employ a

---

students is encouraged and supported; and conflict is managed and mediated constructively.”).

<sup>259</sup> See Catherine P. Bradshaw et al., *Altering School Climate Through School-Wide Positive Behavioral Interventions and Supports: Findings from a Group-Randomized Effectiveness Trial*, 10 PREVENTION SCI. 100, 100 (2008) (finding improved organizational health and safety in schools that implemented PBIS); Matthew J. Mayer & Peter E. Leone, *School Violence and Disruption Revisited: Equity and Safety in the School House*, 40 FOCUS ON EXCEPTIONAL CHILD., Sept. 2007, at 13 (observing that PBIS can “transform[] the school environment to support overall student success, behaviorally, socially, and academically”).

<sup>260</sup> See *PBIS FAQs*, POSITIVE BEHAV. INTERVENTIONS & SUPPORTS, <http://www.pbis.org/school/swpbis-for-beginners/pbis-faqs> (last visited Dec. 12, 2014).

<sup>261</sup> *Id.*; see also David Domenici & James Forman Jr., *What It Takes to Transform a School Inside a Juvenile Justice Facility: The Story of the Maya Angelou Academy*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 283, 290 (Nancy E. Dowd ed., 2011) (successfully using a modified version of PBIS in a school inside a juvenile justice facility to improve student behavior).

<sup>262</sup> See, e.g., Cynthia M. Anderson & Donald Kincaid, *Applying Behavior Analysis to School Violence and Discipline Problems: Schoolwide Positive Behavior Support*, 28 THE BEHAVIOR ANALYST 49, 57–58 (2005) (describing several empirical studies that demonstrate improvements in student behavior and school climate); James K. Luiselli et al., *Whole-School Positive Behaviour Support: Effects on Student Discipline Problems and Academic Performance*, 25 EDUC. PSYCH. 183, 183 (2005) (empirically demonstrating improvements in student behavior and academic achievement after implementing PBIS).

<sup>263</sup> See N.Y. CIVIL LIBERTIES UNION, SAFETY WITH DIGNITY: ALTERNATIVES TO THE OVER-POLICING OF SCHOOLS 8 (2009).

<sup>264</sup> Thalia N.C. González & Benjamin Cairns, *Moving Beyond Exclusion: Integrating Restorative Practices and Impacting School Culture in Denver Public Schools*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 241, 241 (Nancy E. Dowd ed., 2011).

variety of restorative practices ranging from on-the-spot responses to misbehavior to community conferencing involving parents, students, and teachers.<sup>265</sup> During conferences, victims share with offenders how they have been harmed, and offenders are given the opportunity to apologize and make amends.<sup>266</sup> This practice teaches students to share feelings, which can humanize the victims and transform the dynamics of the relationship to prevent further wrongdoing.<sup>267</sup> As with PBIS, schools that have implemented restorative justice practices have improved school safety and student discipline. For example, after the first year of implementation, West Philadelphia High School, formerly known as one of Philadelphia's most dangerous schools, experienced a decrease in violent offenses by fifty-two percent.<sup>268</sup> After the second year of implementation, violence incidents decreased by an additional forty percent.<sup>269</sup> Several other schools implementing restorative justice practices likewise have significantly improved student behavior.<sup>270</sup> PBIS and restorative justice initiatives are but a few of the many programs and initiatives available to school officials to enhance school safety while strengthening the learning climate.<sup>271</sup>

Perhaps the most effective way to enhance school safety is to improve the quality and strength of the educational program schools offer.<sup>272</sup> When teachers have well-planned lessons, employ a varied-instructional approach that includes hands-on learning activities to target different learning styles and student needs, establish clear behavioral expectations, and help students understand how the material is useful, teachers engage students and behavioral problems dissipate.<sup>273</sup> Such a learning environment provides students with a

---

<sup>265</sup> GUIDING PRINCIPLES, *supra* note 257, at 24, n.25.

<sup>266</sup> *Id.*; see also Nance, *Students, Security, and Race*, *supra* note 75, at 51.

<sup>267</sup> Nance, *Students, Security, and Race*, *supra* note 75, at 52.

<sup>268</sup> See INT'L INST. FOR RESTORATIVE PRACTICES, IMPROVING SCHOOL CLIMATE: FINDINGS FROM SCHOOLS IMPLEMENTING RESTORATIVE PRACTICES 6 (2009), available at <http://www.iirp.edu/pdf/IIRP-Improving-School-Climate.pdf>.

<sup>269</sup> *Id.*

<sup>270</sup> *Id.* at 9–31; see also González & Cairns, *supra* note 264, at 252–53 (describing the benefits of restorative justice).

<sup>271</sup> See generally GUIDING PRINCIPLES, *supra* note 257; see also DANIEL J. LOSEN & JONATHAN GILLESPIE, OPPORTUNITIES SUSPENDED: THE DISPARATE IMPACT OF DISCIPLINARY EXCLUSION FROM SCHOOL 35–37 (2012), available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-2012.pdf>; Nance, *Students, Security, and Race*, *supra* note 75, at 48–55; Nance, *The School-to-Prison Pipeline*, *supra* note 257.

<sup>272</sup> LOSEN & GILLESPIE, *supra* note 271, at 26; see also MICHAEL ESKENAZI, GILLIAN EDDINS & JOHN M. BEAM, EQUITY OR EXCLUSION: THE DYNAMICS OF RESOURCES, DEMOGRAPHICS, AND BEHAVIOR IN THE NEW YORK CITY PUBLIC SCHOOLS 2 (2003) (observing that teacher qualifications have a strong positive effect on student behavior).

<sup>273</sup> See ESKENAZI, EDDINS & BEAM, *supra* note 272, at 36; LOSEN & GILLESPIE, *supra* note 271, at 36; FEDDERS, LANGBERG, & STORY, *supra* note 28, at 8.

sense of purpose, commitment, and personal responsibility. Students want to be in the classroom and fully participate in the educational experience offered to them. They feel that the educational process will work for them if they commit themselves and establish positive relationships with other members of the school community.<sup>274</sup>

These alternative approaches for reducing school violence are not easily implemented, but they are certainly possible for all schools. Six New York City schools serving at-risk students demonstrate that it is feasible. All six of these schools have successfully created safe, constructive learning environments without relying on strict security measures.<sup>275</sup> These schools focus on promoting dignity and respect among all members of the school community; strong lines of communication among students, teachers, and school officials; strong and compassionate school leadership; and clear, fair rules and disciplinary methods.<sup>276</sup> None of them relies on an SRO. And despite the fact that these schools serve primarily disadvantaged students, each school experiences above-average attendance rates, graduation rates, and significantly lower than average suspension and crime rates.<sup>277</sup>

To be clear, I do not propose that school officials should never rely on SROs under any circumstances. While schools should not use SROs as a first-order response to address school crime and disorder, perhaps there are unusually dangerous environments where it would be appropriate to use them.<sup>278</sup> If school officials decide to rely on SROs to promote school safety, the following two recommendations should be adopted to ameliorate the ill effects of SRO programs. First, as suggested by the U.S. Department of Education, lawmakers and school officials should provide regular training to teachers, school officials, and SROs regarding how to support positive behavior and engage students without using the justice system.<sup>279</sup> Many school communities desperately need more systematic training regarding how to employ pedagogically-sound measures to support positive behavior and avoid referring students to law enforcement, especially for lower-level offenses. Included in this training should be an emphasis regarding equity and fairness for all students, particularly with respect to racial minorities.<sup>280</sup>

---

<sup>274</sup> See Nance, Students, Security, and Race, *supra* note 75, at 53.

<sup>275</sup> N.Y. CIV. LIBERTIES UNION, SAFETY WITH DIGNITY: ALTERNATIVES TO THE OVER-POLICING OF SCHOOLS 7–8 (2009), *available at* [http://www.nyclu.org/files/Safety\\_with-Dignity.pdf](http://www.nyclu.org/files/Safety_with-Dignity.pdf).

<sup>276</sup> *Id.* at 7.

<sup>277</sup> *Id.* at 7.

<sup>278</sup> See Hirschfield & Celinska, *supra* note 110, at 9 (acknowledging that failing to appropriately respond to dangerous and disruptive students may also have an adverse effect on fear, trust, and the school climate).

<sup>279</sup> See GUIDING PRINCIPLES, *supra* note 257, at 7–8.

<sup>280</sup> *Id.* at 8; *see also* PETER FINN & JACK MCDEVITT, NATIONAL ASSESSMENT OF SCHOOL RESOURCE OFFICER PROGRAMS FINAL PROJECT REPORT 44 (2005) (recommending training for SROs and stating that “any delay in training can be a

Second, schools relying on SROs should consider crafting written agreements or memorandums of understandings (MOUs), ideally before establishing an SRO program, to ensure that SROs and school officials understand that SROs and other law enforcement should not become involved in routine-discipline matters.<sup>281</sup> There may be philosophical differences between school officials and SROs that need to be addressed before SROs begin working inside schools.<sup>282</sup> This MOU should clearly delineate all actors' roles and responsibilities.<sup>283</sup> A report that evaluated nineteen SRO programs stated that “[w]hen SRO programs fail to define the SROs’ roles and responsibilities in detail before—or even after—the officers take up the posts in the schools, problems are often rampant—and may last for months and even years.”<sup>284</sup> The American Civil Liberties Union, the Congressional Research Service, the National Association for School Resource Officers, the United States Department of Justice, and several states all support the use of MOUs if schools use SROs.<sup>285</sup>

#### CONCLUSION

The terrible shootings at Sandy Hook Elementary School have caused our nation to deeply consider violence, student safety, SROs, and other security measures in schools. A natural response to these shootings is to bolster school security by assigning more police officers to schools to protect students. However, this strategy may be short-sighted and deeply misguided. It is an incredibly expensive and unproven tactic, and the rarity of Newtown-like events alone suggests that our nation should use our limited resources to aid students in other ways, especially when we acknowledge that it is impossible to protect students at all times and in all places. But the empirical research set forth here provides further justification for reconsidering the decision of many to invest in more SRO programs. When a police officer has regular contact with a school, the odds that a student will be referred to law enforcement for committing various offenses significantly

---

serious problem because SROs then have to learn their jobs by ‘sinking or swimming.’”).

<sup>281</sup> GUIDING PRINCIPLES, *supra* note 257, at 9–10.; *see also* KIM & GERONIMO, *supra* note 120, at 12–13;

<sup>282</sup> JAMES & MCCALLION, *supra* note 24, at 11.

<sup>283</sup> *Id.*

<sup>284</sup> PETER FINN ET AL., COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS 43 (2005).

<sup>285</sup> *See* IND. CODE § 20-26-18.2-2 (2013); TEX. EDUC. CODE ANN. § 37.0021 (West 2013); MD. CODE ANN., EDUC. § 26-102 (West 2014); JAMES & MCCALLION, *supra* note 24, at 11; KIM & GERONIMO, *supra* note 119; RAYMOND, *supra* note 110, at 30 (“An operating protocol or memorandum of understanding is a critical element of an effective school-police partnership.”). Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 991 (2010) (“[T]he National Association of School Resource Officers (“NASRO”) strongly recommends the use of MOUs.”).

increases, including for lower-level offenses that should be handled by school officials. These findings hold true even after controlling for state statutes that require schools to report certain incidents to law enforcement, general levels of criminal activity and disorder, neighborhood crime, and other demographic variables.

When one considers the devastating impact the justice system can have on youth, it is easy to see that changes are necessary. It is imperative for all of us to understand that there are better ways to discipline students, address school violence, and meet students' needs. As the United States Court of Appeals for the Tenth Circuit recently observed, "thousands of [students] thrust into the criminal justice system deserve better.... It [is] too easy for educators to shed their significant and important role in [the disciplinary] process and delegate it to police and courts... A more enlightened approach to ... school discipline by educators, police, and courts will enhance productive lives and help break the school-to-prison chain."<sup>286</sup> Indeed, the existence of safe, successful schools in challenging environments demonstrates that it is possible,<sup>287</sup> and we owe it to our youth to give educators the resources they need to make it possible.

#### APPENDIX

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

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

where:

- $\text{Referral}_i$  = an indicator variable equal to one if school officials report an offense to law enforcement and zero otherwise.<sup>288</sup>
- $\text{SRO}_i$  = an indicator variable equal to one if the principal indicates that a resource officer or sworn law enforcement officer was present at the school at least once a week and zero otherwise.
- Control variables are as follows:
  - $\text{Elementary}_i$  = a dummy variable equal to one for elementary schools and zero otherwise.<sup>289</sup>

---

<sup>286</sup> Hawker v. Sandy City Corp., \_\_\_ F.3d \_\_\_ (10th Cir. 2014) (Lucero, J., concurring).

<sup>287</sup> See Nance, *Students, Security, and Race*, *supra* note 75, at 54–55.

<sup>288</sup> I conducted the analysis for each offense. Those offenses include: rape, sexual battery, robbery with a weapon, robbery without a weapon, attack with a weapon, attack without a weapon, threat with a weapon, threat without a weapon, theft, firearm possession, knife possession, drug possession, alcohol possession, and vandalism.

<sup>289</sup> The reference group is high schools.

- $Middle_i$  = a dummy variable equal to one for middle schools and zero otherwise.<sup>290</sup>
- $Combined_i$  = a dummy variable equal to one for combined schools and zero otherwise.<sup>291</sup>
- $Suburban_i$  = a dummy variable equal to one for schools located in a suburban area and zero otherwise.<sup>292</sup>
- $Town_i$  = a dummy variable equal to one for schools located in towns and zero otherwise.<sup>293</sup>
- $Rural_i$  = a dummy variable equal to one for rural schools and zero otherwise.<sup>294</sup>
- $Nontraditional_i$  = a dummy variable equal to one for charter or magnet schools and zero otherwise.
- $Minority\%(ln)_i$  = the natural log of the proportion of students in the school who consist of African-Americans, Hispanics, Asian/Pacific Islanders, and American Indian/Alaska native students.
- $Poverty\%(ln)_i$  = the natural log of the proportion of students in the school who were eligible for free or reduced-priced lunch.
- $Special\ Ed.\%(ln)_i$  = the natural log of the proportion of students in the school enrolled in special education.
- $LEP\%(ln)_i$  = the natural log of the proportion of students in the school who have limited English proficiency.
- $Low\ Test\ Score\%(ln)_i$  = the natural log of the proportion of students in the school that have scored below the fifteenth percentile on standardized tests.
- $Student\ Pop.\%(ln)_i$  = the natural log of the school's total student enrollment.
- $Attendance\%(ln)_i$  = the natural log of the school's average proportion of students attending school daily.
- $Disorder_i$  = an index from one to five that reflects the frequency of occurrences relating to school disorder.
- $Weapon/Sex\ Offenses(ln)_i$  = the natural log of the rate per 100 students of serious offenses occurring in the school.<sup>295</sup>

---

<sup>290</sup> The reference group is high schools.

<sup>291</sup> The reference group is high schools.

<sup>292</sup> The reference group is urban schools.

<sup>293</sup> The reference group is urban schools.

<sup>294</sup> The reference group is urban schools.

<sup>295</sup> "Weapon/Sex Offenses" include rape, sexual battery, robbery with a weapon, physical attack with a weapon, threats of physical attack with a weapon,



- Non-Weapon/Non-Sex Offenses( $\ln$ )<sub>*i*</sub> = the natural log of the rate per 100 students of less serious offenses in the school.<sup>296</sup>
- Neighborhood Crime<sub>*i*</sub> = the principal's perception of crime problems near the school on a scale of one to three.
- Rep. Req.<sub>*i*</sub> = a dummy variable equal to one if the state in which the school is located has an unambiguous reporting statute for the offense and zero otherwise.<sup>297</sup>

---

possession of a firearm or explosive device, or possession of a knife or sharp object.

<sup>296</sup> "Non-Weapon/Non-Sex Offenses" include robbery without a weapon, physical attack without a weapon, threats of physical attack without a weapon, theft, distribution, possession, or use of illegal drugs or alcohol, and vandalism.

<sup>297</sup> Because all schools are required to have a reporting policy for any offenses involving weapons, *see* 20 U.S.C. §7151, this variable was applicable for the various offenses not involving weapons.