



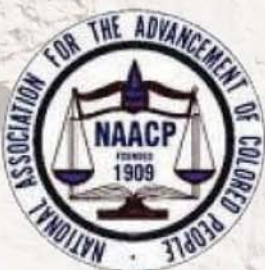
Still Haven't Shut Off the School-to-Prison Pipeline: *Evaluating the Impact of Florida's New Zero-Tolerance Law*

By

ACLU of Florida

Advancement Project

Florida State Conference of the NAACP



March 2, 2011

Dear Education and Juvenile Justice Policymakers,

In the spring of 2009, the Florida legislature amended its harsh zero-tolerance school discipline law with the passage of SB 1540. The law enacted some significant changes, such as encouraging schools to handle petty disciplinary infractions and misdemeanor offenses in school instead of relying on the juvenile justice system and exclusionary discipline. It seemed like after nearly a decade's worth of embarrassing news reports and multiple studies about the devastating effects of harsh school disciplinary practices in Florida schools, Florida was finally moving in the right direction.

Unfortunately, our analysis demonstrates that meaningful reform has still not reached most of the schools – and students – across the state. While there has been some encouraging progress, the implementation of Florida's new zero-tolerance law has fallen substantially short of what is needed to adequately address the over-criminalization of Florida's youth and the over-reliance on exclusionary discipline by Florida's schools. For example:

- Nearly half of all Florida school districts had more or the same number of referrals to the Department of Juvenile Justice following the passage of SB 1540 than they had the year before.
- 67% of student referrals to the juvenile justice system were for misdemeanor offenses, meaning there were over 12,000 referrals just for these lower-level offenses.
- Racial disparities in referrals to the juvenile justice system actually got worse after the passage of SB 1540.
- Most school districts' policies still allow for extremely severe punishments – such as arrest, referral to law enforcement, and expulsion – for relatively minor infractions.

Because Florida's students continue to have their educational opportunities – and thus, their life chances – limited by the over-use of harsh and unfair school discipline, there is an urgent need for action, at both the state and local levels. Fortunately, schools and districts across the country have already shown the way forward, and have pursued highly-effective strategies that can serve as a model for Florida. *Still Haven't Shut Off the School-to-Prison Pipeline: Evaluating the Impact of Florida's New Zero-Tolerance Law* presents a series of recommendations that, if implemented, can reduce Florida's dropout rate, build safer and more effective schools, limit the number of youth entering the juvenile and criminal justice systems, use the State's law enforcement agencies more efficiently, save taxpayer dollars, and build healthier communities throughout Florida.



Among them are the following:

- Strengthen the text of SB 1540 to expressly prohibit the arrest, citation, expulsion, disciplinary referral to an alternative school, and out-of-school suspension longer than five days of students for all offenses that do not pose a serious, ongoing threat to the safety of students or staff.
- Create stronger accountability systems for districts, schools, and law enforcement agencies that over-rely upon zero-tolerance school discipline and fail to address persistent racial disparities in school discipline and school-based arrests.
- Provide trainings to district administrators, teachers, and staff on the adverse effects of zero tolerance, child and adolescent development, effective classroom management, restorative justice, Positive Behavior Interventions and Supports, conflict resolution, disciplinary alternatives, and student engagement through challenging and culturally relevant curricula.
- Provide resources for the formation of local or regional councils comprised of various stake holders charged with developing comprehensive strategies for addressing the School-to-Prison Pipeline in their communities.
- Allocate additional funding, and divert funding used for law enforcement and security infrastructure, to support proven and promising school-based discipline frameworks such as restorative justice and for other educational purposes, such as additional guidance counselors, social workers, and school psychologists.

The state of Florida has reached a critical juncture. We need your help to make sure we stay on the right track and complete the work that was started to dismantle the School-to-Prison Pipeline once and for all. We thank you for your attention to this vitally important issue, and look forward to collaborating with you on behalf of Florida's children.

ACLU of Florida, Advancement Project,
& the Florida State Conference of the NAACP



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INTRODUCTION

It was only five years ago that two police officers pinned down five-year-old kindergarten student Ja'eisha Scott down onto a table, handcuffed her, and dragged her out of school and into a police cruiser after throwing a tantrum during a jelly bean counting game.¹ They then refused to release Ja'eisha into her mother's custody, keeping her in the back of the car for hours.² The video that captured the infamous incident – showing the tears streaming down the tiny child's face and unmistakable look of fear in her eyes – has been forever imprinted in the minds of many who saw it.



Just two years later, in Avon Park, six-year-old Desre'e Watson was also handcuffed, arrested, and taken away from school in a police car after a tantrum in her kindergarten class.³ Desre'e's wrists were so small that the handcuffs had to be placed around her biceps.⁴ She was taken to county jail, fingerprinted, had a mug shot taken, and was charged with a felony and two misdemeanors.⁵

Many of the more than 20,000 referrals from Florida schools to the juvenile justice system that occurred each year were similarly outrageous. Many others were simply unnecessary. In response, a groundswell of grassroots advocacy emerged across the state, with youth, parents, and other community members speaking out against these harsh, “zero-tolerance” disciplinary practices and the School-to-Prison Pipeline that had been created in Florida.⁶ These determined advocates demanded action from the legislature, and in the spring of 2009, Florida's lawmakers responded. They passed a new zero-tolerance law (SB 1540), which urged Florida schools to limit the use of law enforcement intervention and other severe punishments for school behavior.

Finally, after nearly a decade of embarrassing news reports and studies about the devastating effects of harsh school disciplinary practices in Florida schools,⁷ the State was apparently moving in the right direction. Indeed, the law propelled Florida to the forefront of school discipline reform nationally.⁸ The stage was set for meaningful reform of school discipline practices in Florida, with the hope that student misbehavior would once again be dealt with in less damaging and more developmentally appropriate ways. Yet sadly, just a few months after Governor Crist signed SB 1540 into law, in October 2009, a 14-year-old student in Lehigh Acres was tasered by a school resource officer during a schoolyard fight at her middle school.⁹ And just this past October, we were reminded once again of the progress still to be made, as police were called to a Fort Pierce elementary school to handle yet another “unruly” five-year-old child having a tantrum.¹⁰

¹Tobin, T. (2005, April 22). Video shows police handcuffing five-year-old. *Tampabay.com*. Retrieved November 11, 2010, from http://www.sptimes.com/2005/04/22/Southpinellas/Video_shows_police_ha.shtml.

²Advancement Project, Florida State Conference NAACP, & NAACP Legal Defense and Educational Fund. (2006, Spring). *Arresting development: Addressing the school discipline crisis in Florida*, 14. Retrieved October 5, 2010, from <http://advancementproject.org/sites/default/files/full%20report.pdf>.

³Herbert, B. (2007, April 9). Six-year-olds under arrest [Opinion-Editorial]. *The New York Times*. Retrieved March 30, 2009, from <http://select.nytimes.com/2007/04/09/opinion/09herbert.html?pagewanted=print>.

⁴*Id.*

⁵*Id.*

⁶See, e.g., Advancement Project, et al. (2006, Spring), 6, 18.

⁷See, e.g., Advancement Project, et al. (2006, Spring); Advancement Project. (2005, March). *Education on lockdown: The schoolhouse to jailhouse track*, 37-42. Retrieved November 11, 2010, from <http://www.advancementproject.org/sites/default/files/publications/FINALEOLrep.pdf>; Advancement Project. (2003, May 14). *Derailed: The schoolhouse to jailhouse track*, 13-14, 21-28. Retrieved November 10, 2010, from http://advancementproject.org/sites/default/files/publications/Deraillerepor_0.pdf.

⁸Dorell, O. (2009, January 2). Schools' zero-tolerance policies tested. *USAToday.com*. Retrieved November 11, 2010, from http://www.usatoday.com/news/nation/2009-11-01-zero-tolerance_N.htm.

⁹Teen tasered by school resource officer, arrested for assault. (2009, October 15). *TheGrio.com*. Retrieved October 15, 2010, from <http://www.thegrio.com/news/teen-tasered-by-school-officer.php>.

¹⁰Jones, E. (2010, October 13). Police called after Fort Pierce 5-year-old throws toy at classmate, kicks teacher and principal. *TCPalm.com*. Retrieved October 21, 2010, from <http://www.tcoasttalk.com/2010/10/13/police-called-after-fort-pierce-5-year-old-throws-toy-at-classmate-kicks-teacher-and-principal/>.

An analysis was launched to determine how effectively the changes made in Tallahassee were reaching the students in Florida's school districts. We reviewed and analyzed zero tolerance policies and codes of conduct from 55 out of the 67 total districts within the state.¹¹ We also reviewed the available school discipline data from the last school year. Our key finding is:

While there has been some encouraging progress, the implementation of Florida's new zero-tolerance law has fallen substantially short of what is needed to adequately address the over-criminalization of Florida's youth and the over-reliance on exclusionary discipline by Florida's schools.

After discussing the history of zero tolerance in Florida briefly below, we summarize our analysis and ultimately recommend additional steps that the legislature, state Departments of Education and Juvenile Justice, and school districts should take to ensure that the promise of SB 1540 is fulfilled so that Florida's children are no longer needlessly criminalized, deprived of their education, and pushed out of school by the misapplication of zero tolerance.

BACKGROUND



Florida enacted its first zero-tolerance school discipline law in 1997 and proceeded to rewrite it three times by 2002 to make it harsher.¹² Under that law, public schools were allowed to – and in some cases were required to – refer students to law enforcement agencies for a variety of school behaviors. Many districts decided to go even further than what the law required, broadening the array of school disciplinary matters that triggered very severe punishments. These harsh school policies and practices combined with the increased role of law enforcement in schools to create a School-to-Prison Pipeline throughout Florida's public school system.

The use of out-of-school suspensions, expulsions, and school-based arrests to address student misbehavior skyrocketed across the State, especially for minor incidents.¹³ As a result, huge numbers of children and youth were pushed out of school and into the juvenile and criminal justice systems. Incidents that previously had been handled on the school campus by teachers, administrators, and parents were now handled by the police. For example, in 2004-05, over 28,000 students were arrested and referred to the Florida Department of Juvenile Justice (DJJ), and 63% of the referrals were for misdemeanor offenses.¹⁴ And this “get-tough” approach to discipline turned many Florida schools into unwelcoming and even hostile environments for students, thus (1) making many schools less safe than before zero tolerance was implemented; and (2) jeopardizing the right of all Florida children under the state constitution to receive a high-quality education.¹⁵

¹¹As of February 2, 2011, the authors did not have a full set of 2009-10 policies for 12 districts. Therefore, they were excluded from the analysis.

¹²Tarbuton, M. R. (2006, December 4). *Redefining zero tolerance in Florida schools: An analysis of options*, 5. Retrieved October 24, 2010, from <http://www.askew.fsu.edu/current/masters/actionreport/fa2006/Michelle%20Tarbuton%20-%20Redefining%20Zero%20Tolerance%20In%20Florida's%20Schools.pdf>.

¹³Advancement Project. (2010, March). *Test, punish, and pushout: How zero tolerance and high-stakes testing funnel youth into the school-to-prison pipeline*, 32-34. Retrieved October 24, 2010, from http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf; Advancement Project, et al. (2006, Spring); Advancement Project. (2005, March), 37-42; Advancement Project. (2003, May 14), 13-14, 21-28.

¹⁴*Id.*

¹⁵Advancement Project. (2010, March), 32-34; Advancement Project, et al. (2006, Spring).

The failure of this harsh, unforgiving form of discipline has been well-documented. In fact, national research demonstrates that zero-tolerance policies have not made schools any safer since the policies were first implemented.¹⁶ There is also no credible evidence that zero-tolerance policies are an effective means for changing student behavior.¹⁷ On the contrary, research has shown that zero-tolerance policies are associated with lower individual and schoolwide academic achievement, lower graduation rates, and worse school climate.¹⁸ Zero tolerance has also been found to make students feel less “connected” to school, which is linked to increased likelihood of engaging in risky behaviors, violence, and alcohol or substance abuse.¹⁹ And suspension and expulsion increase the likelihood that the child or youth will enter the juvenile or criminal justice systems.²⁰

When students are brought into contact with the juvenile justice system, the effects can be even more severe and long-lasting. Students who are arrested or ticketed in school face serious consequences within the justice system, but also when applying for college, the military, or a job.²¹ Students who miss school time are pushed farther behind their peers and are more apt to fall behind academically. They are also frequently traumatized by these experiences, and become more alienated from their schools, families, and communities.²² Students arrested in school are also far more likely to drop out of school and ultimately to wind up being incarcerated.²³

There are also huge economic costs to zero tolerance. It often costs schools districts (and taxpayers) millions of dollars for school police officers who spend most of their time disciplining students for conduct that should be addressed by classroom interventions, school programs, and counseling.²⁴ Moreover, the costs to the community of pushing these students out of school far exceed the costs of keeping them in school.²⁵

Thus, these “get-tough” practices have had dire consequences for children, families, and communities across the country, and across Florida. In particular, students of color and students with disabilities have been disproportionately affected. These young people already have to struggle to catch up to peers who have been provided greater educational opportunities, and zero tolerance sets them back even further. For example, in 2008-09, Black students were nearly three times more likely to be referred to the juvenile justice system than their White peers, and the most recently available statewide suspension data shows that Black students were almost four times more likely to be suspended out-of-school.²⁶ Yet there continues to be no evidence that those disparities can be explained by differences in student behavior. To the contrary, there is considerable evidence that students of color are disciplined more harshly than their peers for identical behavior.²⁷

¹⁶American Psychological Association (APA) Zero Tolerance Task Force. (2006, February 1). *Are zero tolerance policies effective in the schools? An evidentiary review and recommendations*. (on file with authors). See also APA. (2008, December). *Are zero tolerance policies effective in the schools? An evidentiary review and recommendations*. *American Psychologist*, 63(9), 852-62. Retrieved October 24, 2010, from <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>, 853.

¹⁷*Id.*

¹⁸*Id.*

¹⁹Blum, R. W. & Rinehart, P.M. (2001). *Reducing the risk: Connections that make a difference in the lives of youth*, 21-24. Retrieved January 10, 2009, from <http://www.cpc.unc.edu/projects/addhealth/faqs/addhealth/Reducing-the-risk.pdf>; The Public Policy Research Institute. (2005). *Study of minority overrepresentation in the Texas juvenile justice system final report*, 24-27. Retrieved March 30, 2009, from <http://DMCFinalReport.tamu.edu>; Kentucky Center for School Safety. (n.d.). *School characteristics related to the use of suspension*, 1, 4-6. Retrieved March 30, 2009, from <http://www.kysafeschools.org/pdfs-docs/clearpdf/issuesbriefs/EDJJresearch.pdf>.

²⁰APA. (2008, December), 856.

²¹Advancement Project. (2005, March), 17.

²²APA. (2008, December), 856.

²³Blum, R. et al. (2001); National Center for Education Statistics. (2006, June 1). *The conditions of education 2006, Table 27-2*. [Data File]. Retrieved July 4, 2009, from http://nces.ed.gov/pubs2006/2006071_App1.pdf.

²⁴Advancement Project. (2010, March), 17, 24.

²⁵Levin, H., Belfield, C., Muennig, P. & Rouse, C. (2007, January). *The costs and benefits of an excellent education for all of America's children*, 5-18. New York: Center for Benefit-Cost Studies of Education, Teachers College, Columbia University. Retrieved March 30, 2009, from http://www.cbcsse.org/media/download_gallery/Leeds_Report_Final_Jan2007.pdf; APA Zero Tolerance Task Force. (2006, February 1), 82-85. Alliance for Excellent Education. (2007, October). *The high cost of high school dropouts*, 1-2, 4. Retrieved December 9, 2010, from <http://www.all4ed.org/files/archive/publications/HighCost.pdf>, 1-2, 4.

²⁶Florida Department of Juvenile Justice. *Delinquency in Florida's Schools: A five-year study (2004-05 to 2008-09)*, 7. Retrieved November 7, 2010, from http://www.djj.state.fl.us/Research/School_Referrals/FY-2008-09-Delinquency-in-Schools-Analysis.pdf; SESIR Discipline Data Reports. (2006-07). Florida Department of Education. Retrieved November 11, 2010, from <http://www.criminologycenter.fsu.edu/sdfs/reports-pubs-SESIR-results.php?Discipline=1&year=2004&district=00>; Florida Department of Education. *Florida School Indicators Report 2008-09*. Retrieved November 7, 2010, from <http://www.fldoe.org/eias/eiaspubs/0809fsir.asp>.

²⁷See, e.g., Skiba, R. et al. (2000, June). *The color of discipline*, 2-4, 14-19. Indiana Education Policy Center. Retrieved December 1, 2010, from <http://www.indiana.edu/~safeschl/cod.pdf>.

In short, Florida's zero-tolerance approach to school discipline has been both ineffective and costly, and necessitated a dramatic change.

Florida's Revised Zero-Tolerance Law

In response to the overwhelming evidence of the failures and mounting social and economic costs of damaging zero-tolerance practices, on July 1, 2009, the Florida Legislature amended the state's zero-tolerance law.²⁸ The amendment, known as Senate Bill (SB) 1540, passed unanimously in both the House and Senate and was signed into law by Governor Crist. At the time of signing, the Governor aptly stated, "Florida's children are one of our most important resources for securing Florida's future, and we must ensure they have a safe, fair, and first-class education."²⁹



SB 1540 makes six important changes:

1. It encourages schools to handle petty disciplinary infractions and misdemeanor offenses – such as disrupting a school function, disorderly conduct, simple assault or battery, affray, trespassing, theft (less than \$300), and vandalism (less than \$1,000) – without relying on police officers, prosecutors, and judges, and without expelling students from school.³⁰ It further says that zero-tolerance policies may not require the reporting of these offenses to law enforcement.³¹
2. The law encourages schools to use alternatives to expulsion and referral to law enforcement agencies, such as restorative justice.³²
3. It addresses disparities in discipline by stating that zero-tolerance policies must apply “equally to all students, regardless of their economic status, race, or disability.”³³
4. The law pushes back against the “one size fits all” approach to discipline by requiring districts to take the particularized circumstances of the student’s misconduct into account before punishing a student under a zero-tolerance policy.³⁴
5. It requires districts to provide each student with an opportunity for review of any disciplinary action taken against the student pursuant to the school’s zero-tolerance policy.³⁵ (Prior to the law’s revision, only students who were expelled from school, not those who faced in-school or out-of-school suspensions, were afforded this basic due process right.)
6. The law requires districts with corporal punishment policies to review those policies every three years at district school board meetings in which public testimony is taken.³⁶

The new law was undoubtedly a significant step forward. Nevertheless, it did not go as far as many advocates thought necessary to adequately address the problem. In fact, by merely encouraging districts to decriminalize certain behaviors, SB 1540 fell short of the Florida DJJ’s Blueprint Commission’s recommendation to eliminate the referral of students to law enforcement for misdemeanor offenses.³⁷ Thus, the

²⁸Fla. Stat. 1006.07 (2010).

²⁹Governor Crist signs DJJ priority legislation enhancing zero tolerance in schools. [Press Release]. (2009, June 17). Retrieved October 24, 2010, from <http://www.djj.state.fl.us/zero-tolerance/index.html>.

³⁰Fla. Stat. §1006.13(1) (2010).

³¹Fla. Stat. § 1006.13(4)(c) (2010).

³²Fla. Stat. §1006.13(1) (2010).

³³Fla. Stat. § 1006.13(1) (2010).

³⁴Fla. Stat. § 1006.3(7) (2010).

³⁵Fla. Stat. § 1006.3(2)(e) (2010).

³⁶Fla. Stat. § 1002.20(4)(c)(2) (2010).

³⁷Florida Department of Juvenile Justice Blueprint Commission. (2008, February). *Getting smart about juvenile justice in Florida*, 18. Retrieved October 2, 2010, from http://www.djj.state.fl.us/blueprint/documents/Report_of_the_Blueprint_Commission.pdf. The Commission recommended decriminalizing all misdemeanor offenses.

potential impact of the law was limited from the start. But to better understand the impact SB 1540 actually had, an evaluation was undertaken of the implementation process.

FINDINGS

To assess the performance of Florida's school districts in implementing SB 1540, each Florida school district was asked to provide the new policies that they were instructed to write by the legislature, and then we analyzed the available policies (representing 55 out of 67 Florida school districts) for compliance.³⁸ Additionally, we reviewed the available data on school-based referrals to the juvenile justice system, provided by the state Department of Juvenile Justice (as of this writing, the Department of Education has not released suspension and expulsion data for 2009-10).³⁹ From that research we conclude that the results of SB 1540 implementation have been mixed. While there are certainly some encouraging signs, the overall performance of Florida school districts with regard to school discipline remains deeply concerning, and it appears that a substantial number of districts are not implementing SB 1540 as the state legislature intended. In fact, some districts appear to be in direct violation of the law.

Overall, for the 2009-10 school year, there were 18,467 referrals to DJJ, which represents a modest 8.7% drop statewide in the number of school-based referrals to the Department of Juvenile Justice, compared to the previous year.⁴⁰ However, almost half of all Florida districts – 27 – had more or the same number of referrals to the Department of Juvenile Justice following the passage of SB 1540 than they had the year before.⁴¹ This indicates uneven implementation of the law. Perhaps most troubling is that 67% of school-based referrals to DJJ following the passage of SB 1540 were for misdemeanor offenses. It has been over two years since the Department of Juvenile Justice's Blueprint Commission recommended eliminating referrals of students to DJJ for misdemeanors, yet in the school year following the passage of SB 1540, there were still over 12,000 referrals for misdemeanor offenses.⁴²



While the State deserves credit for the 34% drop in DJJ referrals since 2004-05,⁴³ it is important to point out that most of that change is due to statewide advocacy around this issue prior to the implementation of the new law. In fact, the drop in referrals this year is far lower than it was in many of the years prior to the passage of SB 1540.⁴⁴ More importantly, far too many districts have failed to demonstrate significant improvement, and far too many students are still finding themselves thrust into the juvenile justice system for minor misconduct. Thus, while the overall reduction in school-based referrals last year is a positive development, considering the many years SB 1540 was in the making and the far-reaching nature of the legislation, it would seem that the legislature intended a much more substantial reduction in the number of Florida students entering the juvenile justice system directly from schools. Indeed, even with the reduced number of referrals, Florida still has the highest documented number of school-based refer-

³⁸We analyzed discipline policies from 55 out of 67 districts. Of those that are included, in some cases, an online search was conducted for the district's Student Code of Conduct, Student Handbook, or Zero-Tolerance policy, and that was included in the study.

³⁹As of February 2, 2011, the Florida Department of Education had not released any school discipline data from the 2009-10 school year.

⁴⁰Florida Department of Juvenile Justice. (2010, November). *Delinquency in Florida's schools: A six-year study (2004-05 through 2009-10)*, 3. Retrieved December 5, 2010, from http://www.djj.state.fl.us/Research/School_Referrals/FY-2009-10-Delinquency-in-Schools-Analysis.pdf.

⁴¹*Id.* Florida Department of Juvenile Justice. (2009, November), 4-5.

⁴²Florida Department of Juvenile Justice. (2010, November), 8. Florida Department of Juvenile Justice Blueprint Commission. (2008, February), 66.

⁴³Florida Department of Juvenile Justice. (2010, November), 3.

⁴⁴*Id.*

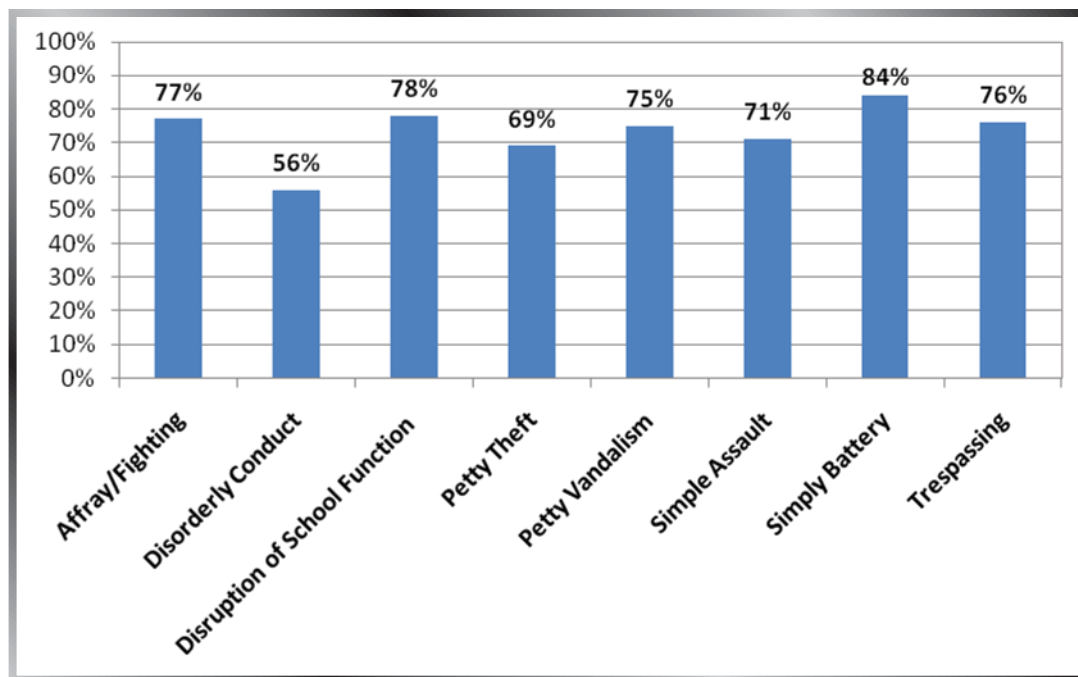
als to law enforcement in the country.⁴⁵ Clearly, much more is needed to dismantle Florida's School-to-Prison Pipeline.

Continued Over-Reliance on Referrals to Law Enforcement and Expulsion

Our analysis of the school discipline policies in 55 Florida school districts helps explain why the initial results of SB 1540 have fallen well short of what the law intended. For example, while the law requires each district to rewrite their zero-tolerance policies to define both “petty acts of misconduct” and “serious threats to school safety,”⁴⁶ 43 of the districts’ policies we reviewed failed to comply.⁴⁷ That amounts to a direct violation of state law.

Additionally, while districts were instructed to rewrite their zero-tolerance policies to promote broader use of alternatives to expulsion and referrals to law enforcement for acts of petty misconduct and misdemeanors, most districts continue to allow for severe punishments for these acts. For example, SB 1540 listed eight examples of petty or misdemeanor offenses that should not be subject to zero tolerance: disorderly conduct, disruption of a school function, simple assault, simple battery, affray (fighting), theft of less than \$300, trespassing, and vandalism of less than \$1,000.⁴⁸ While these offenses may not trigger automatic referral to law enforcement or expulsion anymore, most districts’ policies still allow for these excessively harsh punishments.

Percentage of Districts that Allow Students to be Referred to Law Enforcement for Minor Offenses 2009-2010



⁴⁵Currently, this data is not collected nationwide. Many individual states report this information, but no other state reports as many school-based referrals to law enforcement as Florida.

⁴⁶Fla. Stat. § 1006.13 (2)(b)(2010); Fla. Stat. § 1006.13 (2)(c) (2010).

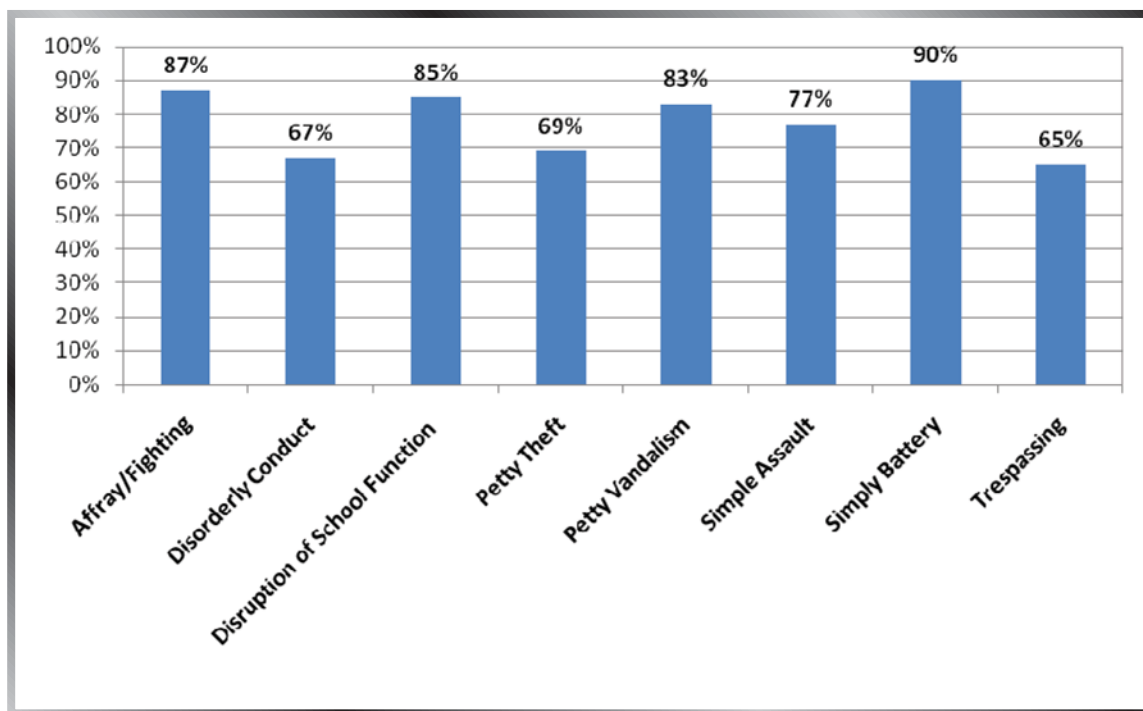
⁴⁷This is based on zero-tolerance policies collected by public records requests that were conducted by the ACLU of Florida and the codes of conducts, student handbooks, and zero-tolerance policies that were found through an online search.

⁴⁸Fla. Stat. § 1006.13(1) (2010).

In fact, 44% of the districts analyzed had policies that permitted referral to law enforcement for all eight petty or misdemeanor offenses.⁴⁹ For seven of the eight offenses, at least 69% of the school districts analyzed allowed for law enforcement referrals.⁵⁰ “Simple battery,” for example, can still result in referral to law enforcement in 84% of the districts analyzed. In other words, the vast majority of Florida districts appear not to have decriminalized these behaviors in their policies. As a result, a substantial percentage of school-based referrals to DJJ continue to be for these offenses; in fact, they account for three of the five most common offenses resulting in referral (misdemeanor assault/battery, disorderly conduct, and trespassing).⁵¹

Moreover, the vast majority of districts failed to change their policies to prevent students from being expelled from school for these behaviors. For example, 87% of the analyzed policies allow for fighting/affray to result in expulsion, and 83% of district policies analyzed say that students can be expelled for petty vandalism.⁵²

Percentage of Florida Districts Analyzed that Allow Students to Be Expelled for Minor Offenses 2009-2010



Behind these data are a large number of policies that continue to over-rely on harsh, exclusionary disciplinary measures, contrary to the intent of SB 1540. For example, Broward County Schools has a discipline “matrix” that it uses to advise school administrators about the appropriate consequences for disciplinary matters.⁵³ The matrix allows for law enforcement referrals following disruptions of school

⁴⁹This is based on 2009-2010 zero-tolerance policies collected by public records requests that were conducted by the ACLU of Florida and the codes of conducts, student handbooks, and zero-tolerance policies for 2009-2010 that were found through an online search. A sampling of the districts’ policies, 55, was analyzed.

⁵⁰*Id.*

⁵¹Florida Department of Juvenile Justice. (2010, November), 8.

⁵²*Supra* note 49. With regard to expulsions, our analysis included 52 districts instead of 55 districts because the information regarding expulsion was incomplete in 3 districts.

⁵³Broward County Public Schools Administrative Discipline Matrix. Retrieved September 15, 2010, from http://www.browardschools.com/schools/pdf/secondary_matrix.pdf.

functions, trespassing, fighting, battery, and assault/threat, among many other types of student behavior.⁵⁴ It should be of no surprise that Broward had the most referrals to DJJ of any Florida county in 2009-10 – 1,668 – as well as the largest increase from the previous year.⁵⁵

Many other districts also appear not to have taken SB 1540 seriously. For example, within the discipline policy of Bay District Schools it states:

“All felonies and violent misdemeanors, whether committed by a student or adult, and delinquent acts that would be felonies or violent misdemeanors if committed by an adult, shall be reported to law enforcement.”⁵⁶

Because simple battery and affray/fighting are, by definition, “violent misdemeanors,” Bay is in direct violation of SB 1540 by requiring referrals to law enforcement for misdemeanors.⁵⁷ Again, it is not surprising that the Bay School District had 20% more DJJ referrals in 2009-10 than it did the previous year.⁵⁸

In short, Florida must take dramatic action – at the state and local levels – to end the unnecessary use of law enforcement referrals and expulsions for its students.

Continuing Racial Inequities

SB 1540 states “the Legislature finds that zero-tolerance policies must apply equally to all students regardless of their . . . race.”⁵⁹ Florida’s lawmakers were evidently, and rightfully, concerned about the state’s history of disciplining students of color far more harshly than their peers. However, even after the passage of the new law, the implementation of school discipline continues to be highly inequitable along racial lines. In fact, racial disparities in school-based referrals worsened in 2009-10. Students of color actually comprised a higher percentage of school-based referrals to DJJ after the implementation of the law – 65% – than they did before it was passed.⁶⁰

While it certainly should not have been expected that these persistent disparities would be eliminated in the first year of implementation, we are concerned that not enough has been done to address this very serious problem. For example, we have seen no evidence that a significant number of districts are collecting, reporting, and analyzing school discipline data disaggregated by race, or holding school administrators accountable for reducing those disparities. Moreover, the vast majority of districts have not altered the other policy conditions that make racially disproportionate discipline possible, such as:

- Allowing severe punishments for highly subjective offenses, like “disobedience,” “defiance,” and “disrupting a school function.”
 - For example: Martin County Public Schools permits referral to law enforcement, in addition to suspension and expulsion, for engaging in classroom “disruption,” “insubordination,” “defiance,” “disorderly conduct,” and any other “serious” misconduct.⁶¹

⁵⁴*Id.*

⁵⁵Florida Department of Juvenile Justice. (2010, November), 5.

⁵⁶2009-2010 Bay District Schools Student Code of Conduct, 4. Retrieved September 2, 2010, from <http://www.bay.k12.fl.us/LinkClick.aspx?fileticket=EA%2bIAdPvE8c%3d&tabid=1760>.

⁵⁷Fla. Stat. § 1006.13(4)(c) (2010).

⁵⁸Florida Department of Juvenile Justice. (2009, November), 5; Florida Department of Juvenile Justice. (2010, November), 5.

⁵⁹Fla. Stat. §1006.13(1) (2010).

⁶⁰Florida Department of Juvenile Justice. (2010, November), 7.

⁶¹2009-2010 Martin County School District Student Conduct and Discipline Code, Secondary. Retrieved October 5, 2010, from http://www.sbm.org/new/docs/repository/2009/2009-2010-secondary_student_conduct_and_discipline_code.pdf.



- Granting excessive discretion to school officials to impose harsh punishments for low-level behavior.
 - For example, in Hendry County Schools, the code of conduct states that a wide range of offenses – including many low-level behaviors extremely common among children and youth – can be punished through suspension, expulsion, or an “alternative” like corporal punishment. Additionally, the code allows principals and teachers to “take additional or more severe administrative action if, in his/her opinion, the nature of the misconduct warrants it.”⁶²

While discriminatory and unfair school discipline can be caused by a number of factors, research shows that the worst disparities are evident for subjective offenses.⁶³ And of course the severity of racial disparities in discipline increases dramatically when such life-altering consequences like long-term out-of-school suspension, expulsion, and referral to law enforcement are being used for relatively minor behavior. These conditions put students of color in a particularly precarious situation, and simply must be eliminated for the goals of SB 1540 to be realized. As the chart below illustrates, Florida school districts with a history of racial disparities in school discipline should instead be implementing policies with low levels of discretion and subjectivity, as well as less severe punishments for low-level behavior.

DISCRETION AND SUBJECTIVITY IN DISCIPLINE POLICY

		<i>High</i> <i>Low</i>	
SEVERITY OF PUNISHMENTS ALLOWED FOR LOW-LEVEL BEHAVIOR IN DISCIPLINE POLICY	<i>High</i>	Worst Policies - Highest Likelihood of Unnecessary and Unfair Punitive Discipline	
	<i>Low</i>		Best Policies - Lowest Likelihood of Unnecessary and Unfair Punitive Discipline

It is also worth noting that some districts add even more barriers for students. For example, while the Lake County School District offers some alternatives to suspension, it informs students and parents that “Any fees from counseling on anger management, substance abuse, tobacco education, prevention or treatment programs that are stipulated in a student’s alternative placement or alternative to suspension plan, as part of a disciplinary action, are the responsibility of the student and parent/guardian.”⁶⁴ By

⁶²2009-2010 Hendry County Schools Student Code of Conduct. (on file with authors).

⁶³Skiba, R. et al. (2000, June), 13.

⁶⁴2009-2010 Lake County School District Code of Student Conduct & Policy Guide. Retrieved October 5, 2010, from http://lake.k12.fl.us/16511031010632497/lib/16511031010632497/2009-2010_Code_of_Conduct.pdf.

requiring payment to avoid suspension, it is blatantly obvious that low-income students will be unfairly subjected to punitive, unproductive consequences, while wealthier students will benefit from non-punitive alternatives where they can learn appropriate behavior and gain additional life skills.

RECOMMENDATIONS

Because Florida's students continue to have their educational opportunities – and thus, their life chances – limited by the over-use of harsh and unfair school discipline, there is an urgent need for action, at both the state and local levels. Fortunately, schools and districts across the country have already shown the way forward, and have pursued highly-effective strategies that can serve as a model for Florida.⁶⁵ If implemented, the recommendations below can reduce Florida's dropout rate, build safer and more effective schools, limit the number of youth entering the juvenile and criminal justice systems, use the State's law enforcement agencies more efficiently, save taxpayer dollars, and build healthier communities throughout Florida.



Recommendations for Florida Legislature

1. Strengthen the text of SB 1540 to expressly prohibit the arrest, citation, expulsion, disciplinary referral to an alternative school, and out-of-school suspension longer than five days of students for all offenses that do not pose a serious, ongoing threat to the safety of students or staff, which should be limited to the following:
 - a. Capitol felonies;
 - b. Life felonies;
 - c. First degree felonies;
 - d. Second or third degree felonies involving a firearm, weapon, or use of fire or explosives;
 - e. Bringing a firearm or other deadly weapon to school, any school function, or on school-sponsored transportation;
 - f. Possessing a firearm at school;
 - g. Making a false report or threat related to explosives or weapons of mass destruction and involving school or school personnel's property, school transportation, or a school-sponsored activity;
 - h. Aggravated battery;
 - i. Aggravated battery against school personnel; and
 - j. Dealing or delivering in controlled substances.
2. Implement an accountability structure under which state funding can be withheld from districts that: (a) repeatedly refer students to the Department of Juvenile Justice for offenses that do not pose a serious, ongoing threat to school safety; (b) demonstrate a continuing over-reliance on out-of-school suspensions, expulsions, and referrals to disciplinary alternative schools; and (c) have persistent racial disparities in the use of exclusionary school discipline and have not developed and implemented a plan for addressing them.
3. Hold law enforcement officials accountable for reducing the use of school-based arrests for school disciplinary matters by making funding for school-based law enforcement contingent on reductions in arrests and reductions of racial disparities.

⁶⁵ Advancement Project. (2010, March), 34-43.

4. Provide resources for the formation of local or regional councils comprised of parents, youth, and representatives from school systems, juvenile courts, law enforcement agencies, social service agencies, and non-profit community organizations that would be charged with developing comprehensive strategies for addressing the School-to-Prison Pipeline in specific communities. In particular, the councils should be focused on the allocation of public resources and how they can be optimized to ensure that every child and youth in the community receives a full and equal opportunity to receive a high-quality education.
5. Allocate additional funding, and divert funding used for law enforcement and security infrastructure, to support proven and promising school-based discipline frameworks to be implemented in a culturally relevant manner, such as restorative justice/restorative practices, Positive Behavior Interventions and Supports, and other educational purposes, such as additional guidance counselors, social workers, and school psychologists.
6. Prohibit the use of corporal punishment in schools.
7. Enhance the public reporting system for school discipline data, to ensure that all schools – including charter schools and alternative schools – are reporting data on the use of exclusionary discipline, referrals to law enforcement, school-based arrests that is disaggregated by offense, age, gender, grade, race/ethnicity, disability, school, and result.

Recommendations for Florida Departments of Education and Juvenile Justice

1. Provide all districts with a model discipline policy designed to create more effective, caring, and supportive learning environments for students by eliminating policies and practices that unnecessarily push students out of school through the use of suspensions, expulsions, referrals to alternative schools, referrals to law enforcement, and school-based arrests.
2. Provide all districts with a model memorandum of understanding between schools and law enforcement agencies that provides guidance on limiting the involvement of law enforcement and security personnel in schools to conduct that poses a serious, ongoing threat to the safety of students or staff.
3. Issue a report detailing “best practices” from around the state and country on alternatives to zero tolerance and reducing racial disparities in discipline.
4. Provide trainings to district administrators, teachers, and staff on the adverse effects of zero tolerance, child and adolescent development, effective classroom management, restorative justice/restorative practices, Positive Behavior Interventions and Supports, conflict resolution, disciplinary alternatives, and student engagement through challenging and culturally relevant curricula.
5. Provide trainings to school-based law enforcement officers on the adverse effects of zero tolerance, child and adolescent development, restorative justice/restorative practices, Positive Behavior Interventions and Supports, conflict resolution, and cultural competence.



Recommendations for Florida School Districts

1. Create working groups of stakeholders within the community – including parents, students, teachers, principals, and other community members – to craft school discipline policies and

alternatives that limit the use of exclusionary discipline and reduce the flow of students to the juvenile justice system. The focus of the working groups should be on the following:

- a. Limiting the use of out-of-school suspensions longer than five days, expulsions, disciplinary referrals to alternative schools, referrals to law enforcement, and school-based arrests to conduct that poses a serious, ongoing threat to the safety of students or staff.
 - b. Limiting short-term out-of-school suspensions to serious misconduct or to when other interventions have been unsuccessful in addressing low-level misconduct.
 - i. Using a graduated approach to assigning consequences.
 - ii. Eliminating long-term suspensions and placing caps on the duration of all suspensions, especially for low-level infractions.
 - iii. Ensuring that students are provided academic work during suspension periods and are not penalized academically for suspensions.
 - iv. Limiting the use of suspensions for conduct that occurs away from school.
 - v. Substituting in-school suspensions for out-of-school suspensions.
 - c. Eliminating racial disparities in the use of suspensions, expulsions, disciplinary referrals to alternative schools, referrals to law enforcement, and school-based arrests.
 - d. Strengthening the protection of parents'/guardians' and students' due process rights during all disciplinary proceedings and placements, especially around the rights to be notified of disciplinary actions, to be heard throughout the disciplinary process, to have representation at hearings, and to file an appeal for all disciplinary proceedings.
 - e. Ensuring that all students and parents/guardians are educated on their rights under the discipline policies, and that all school officials and staff are trained on how to implement the new policies.
2. Implement an accountability structure under which school officials are held responsible for: (a) reducing the use of out-of-school suspensions, expulsions, referrals to alternative schools, referrals to law enforcement, and school-based arrests; and (b) eliminating racial disparities in exclusionary discipline measures, and law enforcement officials are held responsible for: (c) reducing the use of school-based arrests for school disciplinary matters; and (d) eliminating racial disparities in school-based arrests.
3. Clarify the roles and responsibilities of school police through a memorandum of understanding between the school district and police department.
 - a. Limit police involvement to felony offenses that pose an ongoing, serious threat to the safety of students or staff.
 - b. Require that school resource officers receive training on the adverse effects of zero tolerance, child and adolescent development, restorative justice/restorative practices, Positive Behavior Interventions and Supports, conflict resolution, and cultural competence.
4. Increase funding for guidance counselors, social workers, and school psychologists who are available to address students' academic and behavioral issues, and consider diverting funding for school resource officers, security guards, and security equipment within schools toward those purposes or toward proven prevention and intervention programs



- like Positive Behavioral Interventions and Supports and restorative justice/restorative practices.
5. Implement a district-wide training program for all school administrators, teachers, police and security officers, and school staff on the adverse consequences of the zero-tolerance approach, effective classroom management techniques, adolescent development, conflict resolution, restorative justice/restorative practices, Positive Behavioral Interventions and Supports, disciplinary alternatives, and student engagement through challenging and culturally relevant curricula.
 6. Create a public reporting system for school discipline data, including referrals to law enforcement and school-based arrests, disaggregated by offense, age, gender, grade, race/ethnicity, disability, school, teacher/school staff, and result. Data should also be used within districts to track program success, identify areas of improvement, and develop alternative programs tailored to the disciplinary issues that exist.
 7. Establish school discipline oversight committees, which would include school personnel, parents, students, and interested community members. The responsibilities of these committees could include: handling complaints about school discipline practices; handling complaints about the conduct of security and police officers; reviewing discipline and arrest statistics; and evaluating the school district's efforts to maintain safety in a fair and nondiscriminatory manner.
 8. Eliminate the use of corporal punishment.

CONCLUSION

The state of Florida took a significant step forward by adopting SB 1540 and amending its harsh zero-tolerance law. But the job is far from complete. Meaningful reform has still not reached most of the schools across the state, which means Florida's children, families, and communities continue to suffer from the devastating effects of zero tolerance. We know these "get tough" strategies are ineffective. We also know how to do it better, and that many school districts throughout the country already do better. So it is time to complete the work that was started to dismantle Florida's School-to-Prison Pipeline once and for all.

