

## **Boston Bar Issue Statement: School-to-Prison Pipeline**

January 12, 2018

While much of the debate about criminal justice has focused in recent years on “mass incarceration,” there is growing understanding of the ramifications of the ways in which the justice system’s broader footprint extends well beyond our jails and prisons. Additionally, there is growing public awareness of the ways in which both mass incarceration and its contributing factors and collateral consequences disproportionately and systematically affect people of color.

As an organization, the BBA is well-positioned to take on this issue. In the mid-1970s, we helped promote public understanding of the school busing plan after the decision in *Morgan v. Hennigan*, and we have a long-standing involvement with the Boston school district through efforts like our Summer Jobs Program and our Financial Literacy Program. The BBA’s robust educational and advocacy functions, as well as its unique relationship with law firms, government agencies, legal services organizations, local bar associations, the courts, and advocacy groups, can be leveraged to effect change in this area.

The BBA has increased its focus on criminal justice reform this year, with the release of its task force report [\*No Time To Wait: Recommendations for a Fair and Effective Criminal Justice System\*](#), and its heightened advocacy at the State House as the Legislature works to pass a reform bill. The task force report and the BBA’s advocacy efforts focus on a variety of areas of concern. For example, on the back end of the system ex-offenders attempting to successfully reintegrate into society upon their release face hurdles in the form of a welter of collateral consequences affecting employment, housing—even driver’s licenses. On the front end, though, more attention needs to be paid to the pathways that lead so many people into the criminal justice system, so that evidence-based practices can be applied to redirect them, where possible, away from future involvement.

Much of that focus needs to be applied to our school systems, and the ways in which they address student discipline, including suspensions, expulsions, and referrals to law enforcement. When disciplinary practices in schools lead to children interacting with the criminal justice system, those children are much more likely to be incarcerated as adults, leading to what’s been dubbed the school-to-prison pipeline.

As with other “get tough on crime” measures adopted toward the end of the last century (e.g., mandatory minimum sentences), zero-tolerance policies and placement of police officers on school grounds have been shown to be counter-productive:

- The former approach pushes kids away from the educational system, making them more likely to drop out and giving them time on their hands when, instead of learning under supervision, they are left to their own devices in their home neighborhoods, where crime is often rampant. And when out-of-school suspensions and expulsions are imposed, those students are significantly more likely to drop out.

- The latter approach tends to criminalize interactions that would otherwise be dealt with internally and lowers the bar for what constitutes chargeable offenses to include things like being disruptive and disobeying teachers and staff.<sup>1</sup>

The idea, however well-intentioned, that cracking down early on such misbehavior would prevent it from developing into more serious crime, has proven misguided. Children who are suspended or expelled are three times more likely than their peers to drop out of school, and dropping out triples the likelihood that a child will be incarcerated. In Massachusetts, one-third of children arrested before they turn 18 years old are arrested again within one year of release.<sup>2</sup>

And we cannot ignore the racial disparities at play here—differential treatment of white and non-white students that has been layered onto a set of yawning educational disparities (overcrowded classrooms, a lack of qualified teachers, insufficient funding) that pre-date these disciplinary policies. Not only do these disparities mirror those we see in our jails and prisons, but the school-to-prison pipeline is actively contributing to them, by steering students of color toward more frequent involvement with the justice system than their white counterparts.

Consider: In the 2012-13 school year in Massachusetts, 1 in 27 white students, 1 in 10 Latino students, and 1 in 8 Black students were disciplined at least once. These disparities extend also to low-income students and to students who have disabilities or are receiving special education.

In response to such concerns, Massachusetts adopted in 2012 [An Act Relative to Student Access to Educational Services and Exclusion from School](#), which took effect in the 2014-15 school year, and which targets the use of exclusionary disciplinary practices, increases due-process protections for students and families facing disciplinary action, provides alternative education for suspended students, and enhances reporting requirements, which can then be used to address districts evidencing disparities or disproportionate use of discipline. The law aims to reduce the amount of time a student is suspended for violations of school-based rules, rather than more significant statutory violations.

Research since then suggests that significant progress has been made across the state, but that more needs to be done to accomplish its goal of creating safe, supportive, and inclusive school environments for all students.

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<sup>1</sup> A [2012 report](#) from the ACLU of Massachusetts found: “Large numbers (in some cases well over half) of those who are arrested in school are charged with public order offenses such as “disorderly conduct,” “disturbing a lawful assembly” and “violating codes of conduct,” or assault-related charges stemming from school yard fights.” This included students who swore or exhibited other disrespectful behavior toward teachers, police officers or other adults.

A [separate 2014 analysis](#) by the Lawyers’ Committee for Civil Rights and Economic Justice, which focused on school-imposed discipline rather than arrests, reported: “Nearly two-thirds of all out-of-school suspensions were for ‘non-violent, noncriminal, non-drug’ offenses. ... Students of color were disciplined more harshly than White students for [such] incidents.”

<sup>2</sup> <https://www.gbls.org/our-work/elder-health-disability/school-to-prison-pipeline-intervention-project>

At the national level, a comprehensive [2016 Preliminary Report](#) of the ABA laid out the problem in detail and offered a set of 16 recommendations that the Association should adopt, many of which could be implemented by the BBA, including:

- Join with other partners to conduct Town Halls discussing solutions and offering training on implementation.
- Support legal representation for students at the point of exclusion from school, including the development of model best practice training modules for lawyers and law students for representation of students facing suspension or expulsion.
- Support ongoing convenings where educators, school resource officers, law enforcement, and juvenile justice decision makers join together to develop strategies to reverse the school-to-prison pipeline.
- Encourage members to continue engagement in youth mentoring initiatives.
- Support related legislative and policy initiatives, such as:
  - Support legislation that eliminates the criminalization of student misbehavior that does not endanger others.
  - Support legislation that eliminates the use of suspensions, expulsions, and referrals to law enforcement for lower-level offenses.
  - Support demonstrated alternative strategies to address student misbehavior, including Restorative Justice.

The Boston Bar already has relationships with a number of grantees and partners that are working on addressing the school-to-prison pipeline. These include:

*Stakeholders:*

#### **Children’s Law Center of Massachusetts – EdLaw Project**

The EdLaw Project is a partnership between CLCM and the Committee for Public Counsel Services. It focuses on combating the school-to-prison pipeline for indigent, court-involved youth through trainings for juvenile justice and child welfare attorneys; technical assistance for youth, parents, community organizations; and direct education advocacy.

#### **Greater Boston Legal Services – School to Prison Pipeline Intervention Project**

This project offers representation for children in the Boston area to keep children in school, and to ensure that they receive trauma-informed treatment at school. It also offers representation in cases involving school discipline, Children’s Behavioral Health Initiative (CBHI) services, and special education. The project is supported by WilmerHale and Staples.

#### **Lawyers’ Committee for Civil Rights and Economic Justice**

This is an issue area for which the Lawyers’ Committee is engaged in advocacy. In 2015 it published a report in 2015 called “[Not Measuring Up: The State of School Discipline in Massachusetts](#),” and released a [toolkit](#) for parents and educators to ensure that schools comply with MA student discipline laws

#### **Massachusetts Advocates for Children**

MAC runs the School Discipline Project focuses its attention on school exclusion and the effects of zero tolerance policies and practices, particularly on students of color and students with

disabilities. It also runs the Boston School Reform project, which has the goal of increasing access to opportunity and eliminating racial and programmatic achievement gaps, particularly by encouraging the participation of stakeholders most affected by policies, supporting their leadership in school decision-making, and helping them shape systemic reform, with an emphasis on amplifying the voices of people of color and low-income families. MAC also convenes the Education Law Task Force, which addresses educational issues that face low-income students, focusing in particular on school discipline.

### **Prisoners' Legal Services**

PLS staff are involved with many coalitions across the state including a "school to prison pipeline" coalition that worked to have legislation passed in 2012. PLS testified in support of H.178: An Act Relative to Student Access to Education and Exclusion from School, testifying that "zero tolerance disciplinary policies result in the unnecessary criminalization of youth, disproportionate minority confinement, and an irresponsible policy of spending more public tax dollars to incarcerate rather than educate an individual."

*Other Partners:*

### **American Bar Association**

The ABA published a [report](#) on this issue in 2016, and its Coalition on Racial and Ethnic Justice has held panels on addressing the school-to-prison pipeline.

### **American Civil Liberties Union**

The ACLU has a commitment to challenging the school to prison pipeline, and has a "safe classrooms" pledge for educators to encourage the use of restorative justice practices instead of punitive discipline.

### **Massachusetts Appleseed Center for Law and Justice**

Mass Appleseed has a project called [Keep Kids In Class: Breaking the School-to-Prison Pipeline](#). It seeks to mitigate the effects of zero tolerance, remove barriers to access to public education, and support at-risk youth.

### **Boston Private Industry Council**

The PIC hosts the Youth Transitions Task Force, which has been carrying out research on the school-to-prison pipeline.

### **Boston Public Schools**

The BPS website has [resources and data](#) related to this issue, and BPS published a brief [report](#) on this issue in 2015.

### **Committee for Public Counsel Services**

CPCS runs the EdLaw Project alongside CLCM.