The School of Hard Knocks: Examining How Pennsylvania School Disciplinary Policies Push Black Girls into the Criminal Justice System

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The School of Hard Knocks: Examining How Pennsylvania School Disciplinary Policies Push Black Girls into the Criminal Justice System

Brazitte A. Poole*

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* Brazitte Poole is a third-year law student at Duquesne University School of Law. She received her B.A. in Political Science from Slippery Rock University of Pennsylvania, and M.A. in Global Security and Intelligence Studies from Point Park University. Thank you to my family and friends for their continued love and support. Most importantly, I want to acknowledge all of the beautiful, vibrant, Black girls who are excluded from the classroom and are silenced. As a Black woman who was once a Black girl, I consider it an honor to represent us and proudly accept the opportunity to shed light on our pain. Together we will be heard.
I. INTRODUCTION

Currently, there is immense discussion regarding the “pipeline framework” of the School-to-Prison Pipeline epidemic; however, there is a demographic that is conspicuously missing from the discussion: Black girls.\(^1\) Harsh school disciplinary policies and discriminatory law enforcement policies intersect, feeding children into the criminal justice system.\(^2\) While dialogue regarding the criminalization of all children through inappropriate school discipline is vital, and arguably overdue, the current conversation heavily focuses on challenges faced by Black boys and other boys of color.\(^3\) While Black boys are more likely to be suspended than any other student group, recent studies show that Black girls are being suspended at increasing rates throughout the country.\(^4\) However, due to the disparity in the discipline of boys and girls and the non-traditional forms of confinement girls face, Black girls are often excluded from the School-to-Prison Pipeline discussion.\(^5\) As a result, the ways that Black girls are marginalized by disciplinary tactics used in schools is obscured.\(^6\) Recently, in the report *Race, Gender, and the School to Prison Pipeline: Expanding Our Discussion to Include Black Girls*, researcher Monique Morris analyzed how Black girls are impacted by criminalizing policies, many of which take place in an environment that should serve as a safe space for expression and cultivation of their talents: school.\(^7\) According to that research, our inability to understand how school disciplinary policies affect Black girls is due to the flawed ways in which the experiences of Black Girls have been perceived—even by advocates.\(^8\)

The best approach for advocating on behalf of Black girls against harmful school disciplinary policies is to focus directly on ending...
the criminalizing school policies and the unique forms of punishment Black girls endure as a result of these policies.\textsuperscript{9} Such policies often lead to non-traditional forms of incarceration and can have long term effects that go well beyond adolescence and into adulthood.\textsuperscript{10} Indeed, Black girls experience forms of confinement beyond going to jail or prison, such as "detention centers, house arrest, electronic monitoring, and other forms of social exclusion."\textsuperscript{11} Thus, we must consider these diverse forms of confinement to fully understand this "school-to-confinement narrative."\textsuperscript{12}

This article focuses on the unique way Black girls experience exclusion from school settings. First, I will discuss factors that play a significant role in the criminalization of Black girls’ identity, which perpetuates discriminatory practices that overtly and covertly contribute to the establishment and use of disciplinary policies that criminalize and harm them. Then, I will address Pennsylvania school policies that criminalize Black girls and the impact those punitive policies have. Finally, I will examine the rehabilitative goals of the juvenile justice system and propose alternative approaches to school discipline that may curb this push of Black girls from the classroom into the criminal justice system.

II. THE SCHOOL-TO-PRISON PIPELINE: AN OVERVIEW

Over the past twenty years, there has been a "surge in school punishments including suspensions, arrests, and referrals to juvenile court."\textsuperscript{13} These punishments begin as early as pre-kindergarten, and almost always disproportionately involve students of color.\textsuperscript{14} The correlation between being punished at school and the likelihood of contact with the criminal justice system is now referred to as the "School-to-Prison Pipeline."\textsuperscript{15} This concept represents the notion that trouble at school increases the likelihood of trouble with the criminal justice system.

The School-to-Prison Pipeline epidemic is not specific to any one state or region, rather, it is a problem being faced in numerous school systems across the United States. According to a 2014 report by the United States Department of Education Office for Civil

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.} at 12.
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\end{enumerate}
\end{footnotesize}
Rights, from 2011 to 2012, Black students were suspended and expelled at a rate three-times greater than their counterparts.\textsuperscript{16} Unfortunately, for Black children this began as soon as they entered into the learning environment. While comprising only 18\% of preschool enrollment, Black children represented 48\% of preschool children who received more than one out-of-school suspension.\textsuperscript{17} For Black girls, the data was even more disheartening. According to the same study, Black girls were suspended at higher rates than girls of any other race or ethnicity and most boys.\textsuperscript{18}

In many cases, it is the school that is directly pushing students into the criminal justice system, often by having students arrested in school.\textsuperscript{19} On one hand, while “[B]lack students [only] represent 16\% of [overall] student enrollment, they represent 27\% of students referred to law enforcement and 31\% of students subjected to a school-related arrest.”\textsuperscript{20} On the other hand, white students represent 51\% of overall enrollment, and a more proportionate 41\% of students referred to law enforcement, and 39\% of those arrested.\textsuperscript{21} Once students have contact with the criminal justice system as children, it is likely that they will have contact with the system as an adult.\textsuperscript{22}

\section*{III. The Criminalization of the Black Girl’s Identity}

The marginalization of Black people is deeply rooted in United States history, and Black girls are not immune to the many forms that marginalization may take.\textsuperscript{23} Black girls’ marginalized identities of both \textit{Black} and \textit{female} cause them to experience race and gender in a unique way, different from all of their counterparts, including: Black boys, white boys, and white girls.\textsuperscript{24} Due to the complexity of this identity intersection, there may be countless factors that contribute to the criminalization of Black girls, however, available information suggests that “implicit biases, stereotyping, and

\begin{footnotesize}
\begin{enumerate}
\item U.S. DEPT OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: SCHOOL DISCIPLINE 1 (2014) (comparing general rates of 5\% suspension of white students with 16\% suspension of Black students).
\item Id.
\item Id.
\item U.S. DEPT OF EDUC. OFFICE FOR CIVIL RIGHTS, supra note 16, at 1.
\item Id.
\item See Kirk, supra note 13.
\item KIMBERLÉ WILLIAMS CRENSHAW, BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED 23 (2015).
\end{enumerate}
\end{footnotesize}
other cultural factors" play a significant role in the way Black girls are perceived in the school environment. Thus, it is important to consider historical images of Black females—both women and girls—that form the basis for the harmful misunderstanding of Black girls' identities and behaviors in the classroom.

Since the Slavery Era, Black women and girls have been portrayed as being outside of the "American ideal of womanhood." During that time, the Black woman's femininity was judged against the "prevailing vision of the True Woman, who was chaste, pure, and white." Out of this perception, socially constructed images of Black womanhood were created, including but not limited to, the "Sapphire," "Jezebel," and "Mammy" prototypes. The Sapphire represents the depiction of an angry Black female who is aggressive, emasculating, and unfeminine. The Jezebel represents the hypersexualized Black female, and the Mammy represents the nurturing asexual Black female. These oppressive depictions are ever-present in the ways Black girls are perceived, both inside and outside of school settings. Arguably, these images are present in everyday depictions in entertainment and impact the ways which Black girls are perceived by various types of people. The way Black girls are consistently depicted shows our failure as a society to imagine better futures for them.

Today, Black girls continue to deal with the strenuous balancing required for the participation in aforementioned "identity politics." Similar to the ideal vision of womanhood during the Slavery Era, the standard for the appropriateness of Black girls' behavior is tied to social norms rooted in a "white middle-class definition of femininity." The injustice of this narrow standard of appropriate-

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25. Id. at 24.
27. Id. at 11 (emphasis added).
29. Id.
30. Id.
31. See generally Vivian L. Gadsden, Gender, Race, Class, and the Politics of Schooling in the Inner City, 673 ANNALS AM. ACAD. POL. & SOC. SCI. 12, 17 (2017); Narissra M. Punyanunt-Carter, The Perceived Realism of African American Portrayals on Television, HOW. J. COMM. 241, 241 (2008) (finding responses from research questionnaire that majority of participants believed that negative stereotypical depictions of Black people on television were true to life).
32. Gadsden, supra note 31.
33. MORRIS, supra note 1, at 10.
34. Id.
ness is often at odds with the assumptions about Black girls’ behaviors and expressions.\textsuperscript{35} As a result, when Black girls act in ways that are common amongst all children, such as throwing tantrums or lashing out, those actions are often subjected to negative responses from school staff and teachers.\textsuperscript{36}

For instance, in 2007, a six-year-old Black girl was placed in handcuffs for throwing a “kicking and scratching” tantrum in a Florida classroom.\textsuperscript{37} In 2012, another six-year-old Black girl was arrested for throwing books and toys in a Georgia classroom, resulting in the child suffering from paranoia due to the trauma of the incident.\textsuperscript{38} Unfortunate incidents like these are the result of the current construction of the Black girls’ identity. For instance, Signithia Fordham examined the stereotype of “loudness” assigned to Black girls in “Those Loud Black Girls.”\textsuperscript{39} In her work, Fordham asserts that loudness becomes a metaphor for Black girls’ resistance to “proclaimed nothingness.”\textsuperscript{40} Essentially, Black girls use their voice to make themselves visible and audible in environments where they usually may be invisible or silenced.\textsuperscript{41} Still, Black girls deal with the results of these harmful identity constructions in many different ways.

A. \textit{Adultification: Black Girls Are Treated Like Adults}

The theory of Adultification contributes to the disparate treatment of Black girls and can take two forms.\textsuperscript{42} The first form occurs through a socialization process where children function in a mature adult-like manner based on necessity; this is especially true for Black girls who are raised in environments with few resources, placing them at the center of the disciplinary power of poverty management.\textsuperscript{43} The second form is based on social stereotypes centered on how “adults perceive children in the absence of knowledge of [the] children’s behavior and verbalizations.”\textsuperscript{44} This form often encompasses a racial component that is helpful in analyzing the way in which Black girls are perceived.\textsuperscript{45} The way that Black girls engage

\begin{thebibliography}{99}
\bibitem{35} Id.
\bibitem{36} Id.
\bibitem{37} Id. at 56.
\bibitem{38} Id. at 56-57.
\bibitem{39} Gadsden, \textit{supra} note 31, at 21-22.
\bibitem{40} Id. at 22.
\bibitem{41} Id. at 21-22.
\bibitem{42} EPSTEIN ET AL., \textit{supra} note 28, at 4.
\bibitem{43} Id.
\bibitem{44} Id. (emphasis added).
\bibitem{45} Id.
\end{thebibliography}
with the world is often scrutinized harshly, and their expressions are often assigned adult-like characteristics.\textsuperscript{46} Essentially, when a Black girl behaves in a way that a school official deems inappropriate, she is treated as if she has the maturity of a woman and should have the wisdom to act better or have more discipline and self-control.\textsuperscript{47} This does not just happen in schools; it happens to Black girls in all walks of life. For example, a study conducted by Georgetown University found that, compared to white girls of the same age, Black girls were perceived by participants to be more independent and know more about adult topics (such as sex), and needing of less nurturing, less protection, less support, and less comfort.\textsuperscript{48} According to the study, Black girls are viewed as “behaving and seeming older than they actually are” at as early as age five by adults of different racial, educational, and ethnic backgrounds.\textsuperscript{49} As a result of the assignment of more adult-like qualities than their counterparts, Black girls are often treated as though they are willfully engaging in behavior expected of Black women, which is often met with hostility.\textsuperscript{50}

The ramifications of the Adultification of Black girls can be seen in numerous reports of adults handling them in rough and inappropriate ways. For example, in 2012, Alexis Sumpter, a fifteen-year-old Black girl, was handcuffed by New York City Police Officers because they perceived her to be too old to use a student subway pass.\textsuperscript{51} The officers refused to let her go until her mother appeared and convinced them of her age.\textsuperscript{52} Due to the trauma she suffered from the incident, Sumpter had to be treated with on-going therapy.\textsuperscript{53} Another example can be found in a South Carolina classroom where student footage went viral of a police officer dragging a Black girl from her seat across the floor, handling her in a hyper-aggressive manner, which is ordinarily (and reasonably) considered an inappropriate way to deal with a child.\textsuperscript{54} The results of the Georgetown study, along with incidents such as these, suggests that Black girls are often on the receiving end of a double-edge

\textsuperscript{46} MORRIS, supra note 1, at 34-35.
\textsuperscript{47} Id. at 34.
\textsuperscript{48} EPSTEIN ET AL., supra note 28, at 1.
\textsuperscript{49} Id.; see also Collier Meyerson, Adults Think Black Girls are Older Than They Are—and It Matters, NATION (July 6, 2017), https://www.thenation.com/article/adults-thinks-black-girls-are-older-than-they-are-and-it-matters/ (surveying 325 adults: 74% white and 62% female).
\textsuperscript{50} MORRIS, supra note 1, at 34.
\textsuperscript{51} Meyerson, supra note 49.
\textsuperscript{52} Id.
\textsuperscript{53} Id.
\textsuperscript{54} Id.
sword. On one hand, they are viewed as more adult-like than their counterparts and are punished more because of this perception. On the other hand, however, this flawed perception makes them more vulnerable to mistreatment—often by authority figures who are charged with protecting their general welfare.

B. Black Girls Are Seen as Less Innocent Than Their Counterparts

Black girls do not have a chance to fully experience the innocence that separates childhood from adulthood. Childhood is a stage where children learn, make mistakes, and have experiences that will lead them to who they will eventually become as an adult. Ideally, this stage of development should be met with lots of patience, love, and respectful correction of improper behavior by teachers and adults, but unfortunately that is not the case for Black girls. The incessant assignment of maturated qualities to Black girls perpetuates the narrative that their mistakes, misbehaviors, or child-like mischiefs are “intentional and malicious,” rather than a consequence of a child’s immature reasoning. According to another Georgetown University study, this is particularly true for Black girls. Jamilia J. Blake, a researcher for the Center on Poverty and Inequality at Georgetown University, asserts that “if authorities in public systems view [B]lack girls as less innocent, less needing of protection, and generally more like adults, it appears likely that they would also view [B]lack girls as more culpable for their actions and, on that basis, punish them more harshly despite their status as children.”

In the education system, this tendency to view Black girls as less innocent may explain instances where Black girls are subjected to harsh treatment and punishment for relatively minor offenses. For instance, Kiera Wilmot, a sixteen-year-old Black girl, was conducting a volcano experiment for her science class in the hallway of her

55. Id.
56. Id.
60. Id.
61. Id.
62. Id. at 8.
high school, when the lid popped off and released smoke. While no one was hurt and nothing was damaged, school officials accused her of making a “bomb” and referred her to the police. As a result, she was charged with two felonies: possession of a weapon on school property and discharging a destructive device. In another instance, a teen-aged Black girl was punched in the mouth by a California police officer and bitten by a police dog after being mistaken for a male suspect on the loose. In that situation, Tatyana Hargrove stopped her bike for a drink of water when she found herself surrounded by police. When questioned, the officers claimed that they mistook Hargrove for a male suspect who was involved in an armed incident nearby. According to Hargrove’s father, the male suspect being sought was “5-feet-10 and about 170 pounds,” while his daughter was only “5-feet-2 and 115 pounds.” These situations help demonstrate how Black girls are vilified due to social constructions that dismiss their childhood innocence.

C. Black Girls’ Bodies and Appearance Are Over-Policed

Negative perceptions about Black girls’ appearance often leave them vulnerable to policies that exist to punish them for their physical qualities, essentially punishing them for “who they are.” This is demonstrated in policies that regulate natural hair textures and styles, as well as other aspects of Black girls’ appearance, such as the way clothes fit. For example, a Black girl at a Pennsylvania school was suspended for wearing colored braids to school. This is not an isolated incident applicable to the school in question; similar policies can be found throughout the country. Another example

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64. Id.
65. Id.
67. Id.
68. Id.
69. Id.
70. MORRIS, supra note 1, at 92.
is found in a Kentucky school’s policy on hair.\textsuperscript{72} In Kentucky, a school banned dreadlocks and twists, common hairstyles in Black culture.\textsuperscript{73} Policies like these are not only harmful to Black girls, but serve to reinforce negative social constructs about Black beauty, which is harmful to society as a whole and contributes to the vicious cycle of Black girls being punished for simply existing.\textsuperscript{74} Notably, similar policies are enforced in professional, adult settings, making the policing of appearance a life-long struggle for Black girls and Black women.\textsuperscript{75}

The policing of Black girls’ appearance may be more nuanced when considering how lightness or darkness of their skin tone affects the likelihood of being disciplined in school. A 2013 study examining whether skin tone affects the likelihood of suspension in school found that while Black youth are much more likely to be suspended at school than other racial groups, Black girls with darker skin tones are most likely to be suspended from school.\textsuperscript{76} This is rooted in the concept of “colorism.”\textsuperscript{77} Colorism refers to “prejudicial or preferential treatment of same-race people based solely on their color.”\textsuperscript{78} The concept of colorism suggests a racial hierarchy where minorities with skin tones that are closer to that of the dominant group are awarded certain privileges, in the context of school discipline, a lower likelihood of being suspended from school.\textsuperscript{79} Skin darkness and the likelihood of suspension are positively correlated.\textsuperscript{80} In other words, it is about three times as likely for a Black girl with the darkest skin tone to be suspended compared to one with the lightest skin.\textsuperscript{81} For the female sample of the study, the


\textsuperscript{73} Id.


\textsuperscript{77} Id. at 5.

\textsuperscript{78} Id. at 6 (quoting Pulitzer Prize winner Alice Walker).

\textsuperscript{79} See id.

\textsuperscript{80} Id. at 17.

\textsuperscript{81} Id. at 18-19.
odds of a suspension rise by a factor of over three moving from the lightest to the darkest skin tone. Therefore, not only are Black girls more likely to be disciplined in school than their white female counterparts, but even within the Black female demographic, the darker skinned Black girls are more likely to be subjected to disciplinary policies than their lighter-skinned Black peers.

IV. THE SCHOOL-TO-CONFINEMENT PIPELINE

The School-to-Prison pipeline is a result of schools’ use of “disciplinary policies that push students out of the classroom and into the criminal justice system at alarming rates.” Over the last two decades, schools have taken a penal approach to discipline giving rise to severe school punishments, including, but not limited to, suspensions, arrests, and referrals to juvenile court. These punishments can start as early as pre-kindergarten, and almost always disproportionately involve students of color. Research has uncovered that excessive use of these severe punishments in schools are an immense part of the pipeline to larger problems for students in the future, such as dropping out of school, which often leads to higher chances of students entering into the criminal justice system.

Exploring this phenomenon deeper, scholars have found that a similar pipeline exists where school disciplinary policies act as vehicles that push Black girls from the classroom into the criminal justice system, where they experience various forms of exclusion and confinement. Scholars suggest that racial and gendered biases play a significant part in the formation of disciplinary patterns in schools that reflect stereotypical perceptions about Black womanhood in general. As a result, Black girls are consistently subjected to exclusionary discipline including “out-of-school suspensions, expulsions, [and other punishments].” Indeed, approximately 12% of Black girls are suspended during their primary or

82. Id.
83. Id. at 30.
85. Candace Moore, Advocating for Access to Education Breaking the School to Prison Pipeline, CBA REC., October 2015, at 29.
86. See Kirk, supra note 13.
87. See generally MORRIS, supra note 1.
88. George, supra note 74, at 104.
89. Monique W. Morris, Education and the Caged Bird: Black Girls, School Pushout and the Juvenile Court School, 22 POVERTY & RACE 5, 5 (2013); see also supra Section III.
90. Morris, supra note 89.
secondary education, a rate higher than girls of any other race.\textsuperscript{91} Additionally, Black girls are also disproportionately referred to law enforcement for criminal punishments by school personnel, which pushes them into criminal confinements, such as juvenile detention centers and court-ordered residential placements.\textsuperscript{92} Being placed in these juvenile facilities removes Black girls from their homes and confines them to \textit{prison-like} atmospheres.\textsuperscript{93}

Even after being confined in a juvenile detention center or a court-ordered residential placement, Black girls cannot escape the exclusionary punishments of this criminalizing system.\textsuperscript{94} Consider a study that examined the educational experiences of Black girls confined in Northern California.\textsuperscript{95} Almost all of the girls who participated in the study reported being removed from classrooms \textit{within} detention centers, referred to as “juvenile court schools” or “juvenile court classrooms,” for stereotypical reasons such as “talking back.”\textsuperscript{96} Moreover, most of the participants reported occurrences that mirror experiences of Black girls in traditional classrooms who are stuck in this criminalizing structure.\textsuperscript{97} Over 88% of the participants reported a history of suspension from their traditional schools, and 65% reported a history of expulsion from their traditional schools.\textsuperscript{98} Further, over 50% of participants reported being subjected to exclusionary discipline, such as suspension and expulsion, as early as elementary school.\textsuperscript{99} The criminalizing disciplinary school policies at the crux of the School-to-Confinement epidemic have been in existence for a long time. These policies include, but are not limited to, Zero Tolerance policies, police presence in schools, and disparate numbers of suspensions and expulsions.\textsuperscript{100}

\textbf{A. Zero Tolerance Policies}

Zero Tolerance policies are perhaps one of the most prevalent factors that force Black girls out of school and into the criminal system.

\textsuperscript{91} U.S. DEPT OF EDUC. OFFICE FOR CIVIL RIGHTS, supra note 16, at 1.
\textsuperscript{92} Am. Civil Liberties Union of Pa., Q&A on Discipline and Policing, END ZERO TOLERANCE, https://www.endzerotolerance.org/discipline-q-a (last updated Jan. 7, 2019).
\textsuperscript{93} See generally Morris, supra note 89.
\textsuperscript{94} Monique Morris, Black Girls Disproportionately Confined; Struggle for Dignity in Juvenile Court Schools, PIT. COURIER (Dec. 18, 2013), https://newpittsburghcourieronline.com/2013/12/18/black-girls-disproportionately-confined-struggle-for-dignity-in-juvenile-court-schools/.
\textsuperscript{95} Id.
\textsuperscript{96} Id.
\textsuperscript{97} Id.
\textsuperscript{98} Id.
\textsuperscript{99} Id.
\textsuperscript{100} See generally MORRIS, supra note 1.
Generally, a Zero Tolerance policy is a school policy that “assigns explicit, predetermined punishments to specific violations of school rules, regardless of the situation or context of the behavior.”\textsuperscript{101} Initially, Zero Tolerance policies were implemented for practical safety reasons, such as keeping weapons out of school.\textsuperscript{102} However, these policies greatly expanded after Congress passed the Gun-Free Schools Act in 1994, which requires states to maintain laws requiring schools to expel students who bring a firearm to school or are caught in possession of a firearm in school.\textsuperscript{103} The mandatory expulsion period is to be no less than one year.\textsuperscript{104} Today, Zero Tolerance policies are applied more broadly. As these policies were implemented through differing state laws, their use was not confined to only firearms nor the most serious situations, instead the policies were applied liberally throughout schools.\textsuperscript{105} In some states, the definition of what is considered a “weapon” expanded the definition contained within the Gun-Free Schools Act, and added other offenses not included within the Act.\textsuperscript{106} This opened the flood gates for defiant or disruptive behavior to be punished under these punitive policies.\textsuperscript{107} Thus, under the guise of the firm stance on safety permitted by Gun-Free Schools Act, states were able to maintain practices that mandated or facilitated the removal of students for an infinite range of behaviors.\textsuperscript{108}

These policies have been devastating for Black girls. Under the great variance of states’ implementation of the Gun-Free Schools Act, Black girls have become the fastest-growing demographic to be subject to expulsions and school suspensions.\textsuperscript{109} Varying Zero Tolerance policies give great latitude to school personnel to disproportionately punish Black girls under the ambiguity of the term willful defiance.\textsuperscript{110} Generally, willful defiance is a subjective term assigned to student conduct that a teacher finds undesirable.\textsuperscript{111} This catch-
all category can encompass all sorts of student behaviors, from simple back-talk to failure to adhere to a dress code. Schools' adherence to such policies only serve to thwart the voices of Black girls in the learning environment.

Harmful social constructions affect the way Black girls' expressions are perceived, leaving them vulnerable to suspension or expulsion for making any assertion that is not aligned with the teacher's ideology or perspective. For example, India Landry, a Black girl in a high school in Houston, Texas, decided to sit quietly in her seat during the Pledge of Allegiance to show unity with recent protests against police brutality, in which notable National Football League (NFL) players refuse to stand during the national anthem. As a result of refusing to stand during the Pledge of Allegiance, Landry was expelled from school. Landry expressed that she refused to stand because she did not believe that the “flag is for what it says it’s for, liberty and justice.” This conscientious choice was met with hostility from school officials who proclaimed that “this isn’t the NFL,” and that Landry was going to “stand for the pledge like the other African American[s] in her class.” Incidents such as this are prime examples of how Black girls' choices that conflict with their teachers' ideology are punished, resulting in the disruption of their education.

B. Outsourcing Discipline to Officers and Juvenile Courts

The rise of Zero Tolerance policies birthed the adoption of policies that permitted the stationing of police in schools. While it is reasonable to expect police to respond to emergency situations that occur in schools, the permanent stationing of police in schools is one of major concern with regard to Black students. The concern is

112. Id.
113. See generally Am. Psychologist Ass'n Zero Tolerance Task Force, Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations, 63 AM. PSYCHOLOGIST 892, 860 (2008) (“Its application in suspension and expulsion has not proven an effective means of improving student behavior. It has not resolved, and indeed may have exacerbated, minority over-representation in school punishments.”).
115. Id.
116. Id.
117. Id.
118. Am. Civil Liberties Union of Pa., supra note 92.
119. Id.
that police officers treat schools as their “beat” and interject in disciplinary matters that are not dangerous or violent, thereby making what may otherwise be a minor infraction that could be handled by school administration, into one that subjects a student to law enforcement and possibly the juvenile justice system.\textsuperscript{120} For instance, a South Carolina student who had taken her phone out in class was violently ripped from her desk by a school-stationed police officer and criminally charged for the incident.\textsuperscript{121} The student’s classmate who criticized the officer’s actions was also charged.\textsuperscript{122} Essentially, if a teacher perceives a Black girl’s behavior to be inappropriate, he or she may contact the school-stationed police officer to intervene instead of a member of the school’s administration, thereby unnecessarily escalating the disciplinary situation. Another example can be found in Oklahoma City, Oklahoma, where a school police officer punched a student in the face for refusing to get out of the hallway without a hall pass.\textsuperscript{123} Yet another example can be found in Houston, Texas, where a tenth-grade girl was tackled to the ground by three school police officers for using her phone to call her mother—a simple matter of school discipline that required only administrative consequences and not the involvement with law enforcement.\textsuperscript{124} For Black girls, this police-in-school dynamic can blur the boundaries of authority and cause confusion. In essence, it may be difficult to determine who is the proper authority in any given situation—the teacher or the police officer.\textsuperscript{125} In reality, school officials have authority over day-to-day, in-school disciplinary matters; however, if an officer stationed at a school oversteps his or her authority, there is no way for a student to know what recourse is available in that situation.\textsuperscript{126}

Another pressing concern that comes with having police officers stationed in schools is the impact it can have on students’ rights and the increased possibility of entering the criminal justice system. Schools maintain a significant amount of private information on students.\textsuperscript{127} This information may include, among other things,
discipline reports, video recordings, medical information, and digital information. Constitutional privacy protections and statutory law can limit how this information can be used and who has access to it. However, school collaboration with school-based police officers invite opportunities for overreach of authority in this area. In some school districts, school officials are encouraged to share student information with school-based police officers. In addition, some school districts may classify certain information in a way that makes it freely accessible to law enforcement to be shared among other law enforcement agencies in criminal investigations. Therefore, police being stationed in schools creates a greater risk for criminalization of school students.

C. Suspensions and Expulsions

Suspensions and expulsions are punitive tools used to exclude Black girls from the classroom. According to the United States Department of Education Office for Civil Rights, Black students are suspended at higher rates than their counterparts; this is especially true for Black girls. In 2014, the Department of Education Office for Civil Rights released the Civil Rights Data Collection Snapshot that contained school disciplinary information from years 2011-2012 for every public school and district in the nation. The research revealed that nationally, Black girls are suspended at a rate of approximately 12%. The findings in the data snapshot also revealed that eleven states reported higher gaps than the nation regarding the suspension rates of Black students and white students for both boys and girls: Arkansas, the District of Columbia, Illinois, Indiana, Michigan, Missouri, Nebraska, Ohio, Pennsylvania, Tennessee, and Wisconsin. The snapshot also explored the racial and gender disparities of school discipline on a state-by-state basis.
basis. This state-centered approach revealed that Black girls account for extremely disproportionate rates of all out-of-school suspensions in some states, but more particularly in Wisconsin, Indiana, and Pennsylvania.

In September 2017, the National Black Women’s Justice Institute conducted an analysis of the United States Department of Education Office for Civil Rights’ statistics for the 2013-2014 school year, which was made available in June 2016. This study examined “the extent of disparate school disciplinary practices for female students nationwide,” focusing in part on Black girls in comparison to their white female counterparts.

The report analyzed the prevalence of disciplinary practices for female students by region. In the Northeast, 45,302 total female students received one or more out-of-school suspensions, with over half of the female students in Northeast schools identifying as white, and nearly 19% of the female students identifying as Black. The data indicated that Black female students were six times more likely to receive one or more out-of-school suspensions than white females. Schools in the Midwest were even worse for Black girls. In the Midwest, 90,927 total female students received one or more out-of-school suspensions, with over two-thirds of the female students in those schools identifying as white, and 14% identifying as Black. There, Black female students were ten times more likely than white female students to receive one or more out-of-school suspensions.

In the South, 140,027 total female students received one or more out-of-school suspensions. White female students accounted for approximately 45% of all female students, while Black female students accounted for 24% of all female students in the South. Research revealed that Black girls were over five times more likely than white girls to receive one or more out-of-school suspensions in

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137. Id. at 12-19.
138. Id. at 14-15 (finding that Black girls received out-of-school suspensions 21% annually in Wisconsin, 16% annually in Indiana, and 13% annually in Pennsylvania).
140. Id.
141. Id. at 4.
142. Id. at 6.
143. Id.
144. Id. at 7.
145. Id.
146. Id. at 8.
147. Id.
the South.\textsuperscript{148} Finally, in the West, the data indicated that a total of 48,562 female students received one or more out-of-school suspensions.\textsuperscript{149} Black female students accounted for 5\% of total female students in the West, but were five times more likely to receive one or more out-of-school suspensions, while white female students accounted for 38\% of total female students, but were nearly five times less likely to receive one or more out-of-school suspensions as their Black female counterparts.\textsuperscript{150} Thus, Black girls are forced to spend exceedingly more days outside of the learning environment than their counterparts.

\textbf{D. Confinement}

For Black girls, trouble in the classroom may lead to trouble with the juvenile justice system, which upon an adjudication of delinquency, may lead to various forms of confinement. Since 1997, there has been an overall reduction in the confinement of both Black and white girls.\textsuperscript{151} This fact, however, can be deceiving on its face. Between 1997 and 2013, the percentage of white girls in confinement dropped from 49\% to 41\%, while the percentage of Black girls in confinement only dropped 3\%, decreasing from 34\% to 31\%.\textsuperscript{152} However, despite the reduction in confinement, Black girls are still being confined for “status offenses.”\textsuperscript{153} Status offenses are offenses that are criminal simply because of the girl’s age, and include non-violent behaviors such as truancy, curfew violations, and running away from home.\textsuperscript{154} Adjudication for one of these offenses drives Black girls into confinement, such as juvenile detention centers and residential facilities, at disproportionate rates.\textsuperscript{155} Consequently, Black girls are confined at a rate of 123 per 100,000 girls, while their white counterparts are confined at a rate of 37 per 100,000 girls for the same behaviors.\textsuperscript{156}

\begin{thebibliography}{99}
\bibitem{148} \textit{Id.}
\bibitem{149} \textit{Id.} at 9.
\bibitem{150} \textit{Id.}
\bibitem{152} THE SENTENCING PROJECT, INCARCERATED WOMEN AND GIRLS 4 (2015).
\bibitem{153} \textit{Id.}
\bibitem{155} HALYARD, \textit{supra} note 151, at 3-4.
\bibitem{156} \textit{Id.} at 4.
\end{thebibliography}
Confinement can take many forms. Many states utilize various juvenile correctional systems, such as residential treatment centers, boot camps, group homes, or home detention. Additionally, states heavily rely on locked long-term youth correctional facilities, which are typically operated under prison-like conditions that include correctional guards, locked cell blocks, and individual cells. Confusion and inconsistency in the terminology used for confinement creates on-going problems with uncovering statistical data on how many Black girls are subjected to certain types of confinement. Currently, there is no standard definition for “residential treatment programs” and they may be referred to by many different names depending on the state. Some alternative names include: “detention centers, juvenile halls, reception and diagnostic centers, correctional facilities, wilderness camps, residential treatment centers, training schools, shelter care, and group homes.”

This varying definition is due, in part, to the lack of federal laws establishing a uniform standard of what constitutes a residential program or facility. As a result, confinement can take place in settings that range from “relaxed group homes or halfway houses to extremely structured, hospital-like environments.” Black girls may be confined at residential facilities that vary considerably in important programming and structural components, such as “program goals, security features, physical environment, facility size, length of stay, treatment services, and targeted population.” Some of these girls may find themselves in facilities or programs that resemble adult prisons or jails, while others may be placed in programs that resemble campuses or houses. Additionally, security features will vary depending on the type of placement. In more secure detention centers, there are usually cells and locks, but less secure confinements may allow the girls to come and go based on certain structural rules. However, these unclear and wide-

158. Id.
159. OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, RESIDENTIAL PROGRAMS 1 (2010).
160. Id.
161. Id. at 2.
162. Id.
163. Id.
164. Id.
165. Id.
166. Id.
ranging definitions of different types of residential treatment programs make it difficult to determine which treatment options work best, especially for vulnerable demographics, such as Black girls.167

Black girls that are confined outside of their homes in more secure detention centers are more likely to suffer harm. Cases from the past fifty years regarding the conditions of juvenile detention centers demonstrate the harsh reality of how traumatic juvenile detention centers can be for Black girls. In 1972, an Indiana federal district court addressed abuse in a juvenile detention center where confined juveniles were beaten with boards by staff members for violating institutional rules, the center’s nurse injected overwrought youths with tranquilizing drugs in the absence of medical staff to monitor potentially serious medical side effects, and some youths were placed in solitary confinement in nine-by-twelve-foot locked cells on any staff member’s request for as long as half a year.168 Two years later, remedial measures were ordered at juvenile institutions in Texas where widespread physical and psychological brutality was a regular occurrence.169

Indiana and Texas were not alone in the disgusting conditions of juvenile detention centers. Indeed, after Congress found atrocious conditions of juvenile facilities across the nation, the Civil Rights of Institutionalized Persons Act (“CRIPA”) was enacted in 1980.170 CRIPA authorizes the Justice Department to sue state and local governments to remedy “egregious or flagrant” conditions that deny constitutional or federal statutory rights to persons residing or confined in public institutions, including juvenile correctional facilities.171 After learning of alleged constitutional or statutory violations from any source, Justice Department personnel inspect a juvenile facility.172 The Department’s report detailing constitutional and statutory violations opens negotiations with the state for corrective action, with the prospect of a federal enforcement lawsuit

167. Id. at 3.
168. Nelson v. Heyne, 355 F. Supp. 451, 454-56 (N.D. Ind. 1972); see also, e.g., Training Sch. v. Affleck, 346 F. Supp. 1354, 1360 (D.R.I. 1972) (describing a juvenile correction institution maintained a dusky, cold solitary confinement room where youth were held for as long as a week, wearing only their underwear, and without toilet paper, sheets, blankets, or changes of clothes); Lollis v. N.Y. State Dep’t of Soc. Servs., 322 F. Supp. 473, 482 (S.D.N.Y. 1970), modified, 328 F. Supp. 1115 (S.D.N.Y. 1971) (granting temporary injunction on the ground that defendant agency violated the Eighth Amendment Cruel and Unusual Punishment Clause by confining a fourteen-year-old girl in a stripped room in night clothes with no recreational facilities or reading material for two weeks).
for violations left un-remedied. After finding such a report was ignored in Louisiana, the Louisiana Court of Appeals found the Tal-lulah Correctional Center for Youth remained marked by a “culture of violence.” These stories indicate the larger problem: Black girls being pushed into the criminal justice system are at risk of being victimized further while confined.

V. THE JUVENILE JUSTICE SYSTEM

The juvenile justice system was created to give youth a second chance by rehabilitating them, allowing them to become productive members of society. The first juvenile court was developed in 1889, recognizing that children are different from adults and should be treated differently, especially because the adolescent brain is not “fully formed or functional.” Research has proven:

that the frontal lobe undergoes far more change in adolescence than at any other stage of life. It is also the last part of the brain to develop, which means that even as they become fully capable in other areas, adolescents cannot reason as well as adults and therefore are far more impulsive.

Biologically, the age of maturation is closer to the age of twenty or twenty-two. Adolescence is a transitional period where an adolescent is experiencing “changes where emotions, hormones, judgment, identity, and the physical body are so in flux that even parents and experts struggle to fully understand.” In general, we have recognized the limitations of adolescents and their ability to make vital decisions. As a result, we restrict their activities such as voting, jury duty, alcohol consumption, explicit entertainment, and marriage. The United States Supreme Court also acknowledged the developmental differences between adolescents and

173. Id.
174. State ex rel. S.D., 832 So. 2d 415, 437 (La. Ct. App. 4th Cir. 2002) (holding that juvenile’s constitutional rights were violated when a guard repeatedly punched the juvenile in the face causing a broken jaw).
176. Id. (noting the work of Dr. Elizabeth Sowell, a member of the UCLA Brain Research Team).
177. Id.
178. Id. at *1.
179. Id.
adults and has rendered decisions anchored in a body of social science and neuroscience research.\textsuperscript{180}

Pennsylvania’s Juvenile Act has, in theory, the same rehabilitative approach. Under the Act, the primary objective is balancing the rehabilitative approach to juvenile justice with the public safety.\textsuperscript{181} Specifically, the Act states,

Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.\textsuperscript{182}

Pennsylvania courts have also taken opportunities to give youth a chance at redemption and rehabilitation, interpreting the record expungement provision of another statute, Pennsylvania’s Criminal History Record Information Act as, “an opportunity for children who crash upon the reef of criminal behavior to leave behind the damaging effect of such collision upon a showing that they had exercised sufficient restraint as to reasonably assure the authorities that total redemption was justified.”\textsuperscript{183} This is consistent with society’s promise “to insulate the child from the harshness of the criminal law and to provide treatment and rehabilitation instead of punishment.”\textsuperscript{184} The intent of Pennsylvania law is clear: to provide juveniles the opportunity to correct their behavior and continue on to become productive and responsible citizens.\textsuperscript{185} Regrettably, Black

\textsuperscript{180} See Miller v. Alabama, 567 U.S. 460, 465 (2012) (holding mandatory life imprisonment without parole for those under the age of eighteen at the time of their crimes violates the Eighth Amendment’s prohibition on cruel and unusual punishments); Graham v. Florida, 560 U.S. 48, 82 (2010) (holding Eighth Amendment prohibits imposition of life without parole sentence on juvenile offender who did not commit homicide); Roper v. Simmons, 543 U.S. 551, 569 (2005) (outlawing the death penalty for juveniles and recognizing the “underdeveloped sense of responsibility” found in youth); Eddings v. Oklahoma, 455 U.S. 104, 115–16 (1982) (noting juveniles are more vulnerable or susceptible to negative influences and outside pressures than adults).

\textsuperscript{181} 42 PA. CONS. STAT. § 6301(b)(2) (1978).

\textsuperscript{182} Id.


\textsuperscript{184} Interest of Jacobs, 483 A.2d at 909.

\textsuperscript{185} See 42 PA. CONS. STAT. § 6301(b)(2) (1978).
girls do not enjoy the benefits of a rehabilitative approach to juvenile offenses. At virtually every stage of the criminal justice process, Black girls "tend to benefit the least from opportunities for diversion from or lenient treatment within the system."  

Injury to an adolescent's reputation and future is inherent in the adjudicatory process. "Even if no direct economic loss is involved," and the juvenile is able to eventually secure employment as an adult, the injury to her reputation may be substantial. Moreover, there are multiple ways that a juvenile record may adversely affect an individual, even after she has paid her debt to society. "Opportunities for schooling, employment, or professional licenses may be restricted or non-existent." In more serious situations, arrest records can affect an individual's constitutional rights for the rest of her life. All of these factors serve to haunt an individual that has a criminal record. Thus, an adjudication of delinquency can open the flood gates for a substandard life for Black girls.

VI. PENNSYLVANIA'S SCHOOL-TO-CONFINEMENT PIPELINE

Pennsylvania schools also subject juveniles to Zero Tolerance policies as an approach to school discipline. In order to receive federal funding under the Gun-Free Schools Act, Pennsylvania is required to enact a state law requiring "local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school." The Act's Zero Tolerance approach to discipline places severe minimum standards for punishment in the event of a violation, which includes alternative education services for expelled students and automatic referral to law enforcement for any student that brings a firearm to school. The Act

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186. See infra Section VI.
187. See, e.g., Taylor-Thompson, supra note 154, at 1137-38 (discussing how prosecutors dismiss seven out of every ten cases involving white girls as opposed to three out of every ten cases for Black girls); see also infra Section VI.
189. Id.
190. Id.
191. Id. (noting an arrest record may be used to determine whether to arrest the individual concerned, bring formal charges against an individual already arrested, deciding whether to allow a defendant to present his/her story without impeachment by prior convictions, or as consideration by a judge in determining the sentence to be given a convicted offender).
193. Id. § 7961(b)(2); Id. § 7961(b)(1).
uses the traditional definition for “firearm” and this sets the minimum parameters of what constitutes a weapon in a school. However, school districts may adopt more expansive definitions for weapons, and Pennsylvania schools have.

In adopting this federal mandate, similar to other Zero Tolerance approaches to school discipline, Pennsylvania enacted an expansive definition of “weapon.” Pennsylvania’s Public School Code of 1949 defines “weapon” as “any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury.” Essentially, this gives school administrators more discretion in determining what constitutes a weapon, thereby making more children susceptible to expulsion under the statute. This precise situation occurred in Mount Carmel, Pennsylvania, when a five-year-old girl was issued a ten-day suspension for saying she would “shoot” her classmates and then herself with a Hello Kitty bubble gun. Even though she did not have the bubble gun with her at school when she made the statement, the school district still imposed a ten-day suspension. Eventually her suspension was reduced to two days after her mother zealously advocated against the suspension.

Pennsylvania’s Zero Tolerance approach to school discipline has left Black girls susceptible to another form of exclusionary discipline: out-of-school suspensions. Across the state, Black girls make up approximately 13% of all suspensions. Pittsburgh Public Schools’ Zero Tolerance approach to discipline demonstrates the detrimental effects of this trend. In the 2015-2016 school year, there was a total of 8,247 out-of-school suspensions, with students

194. 18 U.S.C. § 921(3) (2012) (defining weapon to include “(A) any weapon... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device”).
196. Id.
197. See Russell J. Skiba et al., African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy, 54 N.Y. L. SCH. L. REV. 1071, 1079 (2010) (“[T]he power to suspend or expel a student from school is based on state law, the use of these punishments varies between jurisdictions. Also, although the state determines the policies, local school districts have discretion to institute more detailed discipline policies than those described by the state. Thus, even within a state, policies may differ from school to school.”).
199. Id.
200. Id.
missing 16,005 days of school due to the use of out-of-school suspensions for discipline.\textsuperscript{202} Black girls made up approximately 30% of the total suspensions, and were suspended for 5,321 total days.\textsuperscript{203} Compare that to the suspensions of white girls, who only account for 5% of the total suspensions and were only suspended for a total of 632 days.\textsuperscript{204} Black girls as young as kindergarteners were subject to suspension, with Black girls in kindergarten through fifth grade accounting for 730 out of the 3,160 total suspension days for the entire kindergarten through fifth grade group.\textsuperscript{205} Again, Black girls’ suspensions are substantially higher than the suspensions of their white female counterparts for the same age group, who only account for sixty-two days of suspension out of the 3,160 total suspension days for the group.\textsuperscript{206} A similar situation can be found in Philadelphia, Pennsylvania, where 25% of Black girls received out-of-school suspensions, compared to only 2% of white girls.\textsuperscript{207}

Pennsylvania’s use of school-based police officers has also disparately impacted Black girls. As recently as 2012, Pennsylvania had the highest student arrest rate in the country.\textsuperscript{208} During the 2013-2014 school year, Pennsylvania’s student arrest rate was more than twice that of the United States overall.\textsuperscript{209} Although a multitude of factors impact school arrest rates, “the presence of school-based law enforcement correlates to racial and ethnic disparities in rates of arrest.”\textsuperscript{210} For the 2013-2014 school year, Black students were four-and-a-half times more likely to be arrested than white students in Pennsylvania schools.\textsuperscript{211} While Black students made up only 15% of student enrollment, they constituted 40% of student arrests in Pennsylvania.\textsuperscript{212} Conversely, white students in Pennsylvania

\begin{footnotes}
\footnotetext[1]{EDUC. RIGHTS NETWORK, SUSPENDED EDUCATION IN PITTSBURGH PUBLIC SCHOOLS 2015-16: A REPORT TO THE COMMUNITY 2-3 (2017).}
\footnotetext[2]{Id. at 3.}
\footnotetext[3]{Id.}
\footnotetext[4]{Id. at 5.}
\footnotetext[5]{Id.}


Id. (comparing 1 out of every 714 students arrested in the United States overall, with 1 out of every 337 Pennsylvania students having been arrested).

Id.

Id. (finding that Pennsylvania’s school arrest rate is two-and-a-half times greater than the national rate for Black students).

Id.
\end{footnotes}
schools comprised 69% of students, but received 41% of student arrests.\footnote{213}

As a result of Pennsylvania’s use of exclusionary school disciplinary policies such as suspensions and increased police presence in schools, Black girls have been pushed into the juvenile justice system at alarming rates.\footnote{214} On a national scale, Black girls are referred to the juvenile justice system three times more often than white girls; however, in Allegheny County, Pennsylvania, Black girls are referred to the juvenile justice system \textit{eleven} times more often than white girls.\footnote{215} At the same time, Black girls in Allegheny County are less likely to be diverted from formal processing in the juvenile justice system than their counterparts.\footnote{216} In addition, 33% of Black girls in Philadelphia were referred to law enforcement as opposed to 2% of white girls.\footnote{217} As a result, Black girls across Pennsylvania are vulnerable to the trauma resulting from the consequences of being adjudicated delinquent in the juvenile justice system.

Once adjudicated delinquent in juvenile court, Black girls may be subject to various forms of confinement.\footnote{218} In 2015, for every 100,000 Black female juveniles in Pennsylvania, 206 were placed in residential placement.\footnote{219} Contrasting, for every 100,000 white female juveniles in Pennsylvania, merely twenty-six were placed in residential placement.\footnote{220} This demonstrates the extent that Black girls are disproportionately confined outside of their homes as a form of punishment. While confined in residential placements, Black girls in Pennsylvania continue to suffer from discriminatory discipline.

Notably, parents of children affected by harmful school disciplinary practices in Pennsylvania schools have been proactive in taking a stand against the discrimination, by responding with legal action against schools who allow harmful school discipline. Five former students of Woodland Hills High School, in which two of the students are Black girls, brought suit against the Woodland Hills

\footnote{213. \textit{Id.}}
\footnote{214. \textsc{Sara Goodkind}, \textsc{Inequities Affecting Black Girls in Pittsburgh and Allegheny County} 11 (2016).}
\footnote{215. \textit{Id.}}
\footnote{216. \textit{Id.} (comparing 40% of Black girls who are diverted from formal processing versus 47% of white girls).}
\footnote{217. Booker, \textit{supra} note 207.}
\footnote{219. \textit{Id.}}
\footnote{220. \textit{Id.}}
School District in United States District Court for the Western District of Pennsylvania, “alleging a culture of abuse at the hands of high school administrators, security members, and school resource officers.” The students referred to specific incidents of harmful discipline that included school resource officers (school-based police officers) shocking students with stun guns and using body-slams. The lawsuit also claims that school administrators “intentionally discriminated” against students because of their race and filed false charges to cover up abuse. Most of the incidents that form the basis for the lawsuit have been captured on cell phone recordings; however, school administrators allege that they are powerless to intervene against school resource officers when they cross the line because they are fearful that they will be arrested for “impeding arrest.”

A significant milestone in the fight against disparities in school discipline includes the creation of the Pittsburgh Board of Education Office of Equity—a component of the Pittsburgh Board of Education tasked with maintaining equity in Pittsburgh Public Schools. The creation of the office was in response to a complaint from Advocates for African American Students against the Pittsburgh Board of Public Education. In the complaint, the advocates alleged that the school district had, among other things, “unlawfully discriminated against its [Black] students with respect to


222. Id. (including recorded incidents of resource officers shocking a fifteen-year-old with a stun gun, shoving another student into a locker while shocking the student with a stun gun, and another incident where a behavioral specialist threatened to punch a fourteen-year-old special education student in the face).

223. Id. (noting an incident where a student was charged with aggravated assault and disorderly conduct, but the lawsuit was subsequently dismissed when the district attorney reviewed video of the behavioral specialist slamming a student to the ground and breaking the student’s wrist).


226. Id.
suspensions and discipline... in violation of the Pennsylvania Human Relations Act.” The use of exclusionary discipline may continue to drive legislative and policy efforts in Pennsylvania.

VII. ALTERNATIVE APPROACHES TO SCHOOL DISCIPLINE AND CONFINEMENT

In January 2014, the United States Department of Justice and the United States Department of Education issued a joint letter to assist schools in lawfully disciplining students without discriminating on the basis of race, color, or national origin. The letter offered guidance to educators on how to administer “comprehensive, appropriate, and effective programs” to balance the need to reduce classroom disruption and misconduct, while also reinforcing positive student behavior to help students succeed in school. Both departments clarified that any disciplinary approach used must not discriminate based on immutable characteristics, such as race or color, in conformance with federal law.

In response to the “Dear Colleague” letter, school districts in Pennsylvania began implementing new approaches to school discipline. Philadelphia Public Schools instituted a Police School Diversion Program, which is open to students who are at least ten-years-old that have no prior delinquency adjudications and are not currently under juvenile probation supervision. Social workers and law enforcement work closely together to reduce incidences of students entering into the juvenile justice system by first identifying issues that may be affecting the student’s behavior and then referring the student and his/her family for services that are appropriate to address the identified issues.

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227. Id.; see also PA. CONS. STAT. § 958 (2018) (establishing a multicultural educational program to promote cultural understanding and appreciation “without regard to race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability;” allowing any problem of racial discrimination or racial tension arises to be settled through an investigatory hearing).


229. Id.

230. Id. at 2-3 (citing to Title IV of the Civil Rights Act of 1964, which prohibits discrimination in public elementary and secondary schools based on race, color, or national origin).


232. Id. at 7.
Various counties throughout Pennsylvania are also utilizing Youth Aid Panels. These panels are designed to use trained community volunteers to hear cases of first-time offenders. The hearings, which are similar to interviews, are intended to help the juvenile understand all the aspects and effects of the charges he or she is facing, but without involvement with law enforcement or the courts. A contract is developed during the panel to help the youth engage in balanced and restorative justice principles. The juvenile may have to complete tasks to fulfill their obligations, such as community service, writing an essay, writing a letter of apology to the victim, paying restitution, completing an art project, or joining an extracurricular activity. If the contract is successfully completed, the youth avoids being adjudicated delinquent for the charges resulting from the incident. Essentially, the use of such panels are an opportunity to divert juveniles and Black girls from delinquency adjudications. Pennsylvania has also used more targeted approaches for students in kindergarten through fifth grade. Recently, the Pittsburgh Public School Board successfully passed an amendment to discontinue use of suspensions in kindergarten through second grade for non-violent infractions. However, there is not a state-wide policy specifically enacted to protect Black girls from exclusionary disciplinary tactics.

Stopping the School-to-Confinement Pipeline that plagues Black girls by pushing them out of the classroom and into the juvenile justice system requires creative approaches to discipline. Although Pennsylvania has taken some steps in the right direction, there are other approaches to be considered that have been successful in other states. For instance, in Buffalo Public Schools of New York, the Board of Education approved a new student code of conduct as a response to the death of a student who was shot and killed while on suspension from school for roaming the halls. Under Buffalo's

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234. *Id.* at 1.
235. *Id.*
236. *Id.*
237. *Id.*
238. *Id.*
new policy, suspensions will no longer be used to address disciplinary issues such as "truancy, cheating, cutting class, running in the halls, smoking or violating dress codes." Additionally, California implemented state-wide reform through amending its education code. California AB 420 amended California Education Code section 48900(k) by eliminating the authority to suspend a student out-of-school or in-school in kindergarten through third grade for "disruption" or "willful defiance." This amendment also prevents a school from expelling a student for "disruption" or "willful defiance."

The best approach for Pennsylvania to create non-exclusionary school disciplinary policies that do not push Black girls into the juvenile justice system is to design a uniform policy that will be followed by the entire Pennsylvania Public School System. The United States Department of Education has released a resource to guide schools in improving school climate and discipline that could serve as a great starting point in reversing problematic disciplinary policies.

First, educators should take an instructional approach to discipline. A productive education environment does not necessarily require the complete elimination of discipline for students who misbehave. On the contrary, creating a positive learning environment involves a balance between supporting students and holding them accountable for behaving improperly in the classroom. In fact, a component of a positive school environment is disciplinary policies that lay out clear, developmentally appropriate, and proportionate consequences for misbehavior. Behavioral correction should help students learn from their mistakes and ultimately improve their behavior. Most importantly, school administration

241. Id.
242. CAL. EDUC. CODE § 48900(k)(2) (2018) (amending the code to eliminate these types of suspensions beginning July 1, 2018).
243. Id. § (k)(1).
244. See, e.g., Skiba et al., supra note 197, at 1075, 1096 (citing Sherpell v. Humnoke School Dist. No. 5 of Lonoke County, Ark., 619 F. Supp. 670, 677 (E.D. Ark. 1985)); Susan C. Kaeser, Suspensions in School Discipline, 11 EDUC. & URB. SOC'Y 465, 465-84 (1979) (discussing the inconsistency in the application of school suspension and expulsion appears to be due to variations in student behavior, however, some non-behavioral student characteristics (e.g., race) made a more significant contribution to predicting school suspension than student behavior and attitude).
246. Id. at 11-12.
247. Id.
248. Id. at 11.
249. Id. at 3.
250. Id.
should involve families and school personnel in the development of disciplinary policies, keep those stakeholders updated on the policies, and solicit feedback from them regularly. Essentially, this gives advocates for Black girls equitable opportunity to identify flaws in disciplinary policies or give feedback on what policies are working appropriately.

Next, educators should exclude students from the classroom only as a last resort. Maintaining the integrity of the learning environment is, and should be, the primary concern in any discipline policy. Yet, research has established that relying on out-of-school suspension or expulsion for minor behavioral issues is counterproductive in reaching the overall goal of helping students develop necessary skills to assess and improve their own behavior, and suspending or expelling students fails to improve the overall safety of the school environment. Before these exclusionary discipline tactics are used, Pennsylvania schools should ensure that other constructive interventions are used to avoid exclusion from the classroom. Prohibiting the use of exclusionary discipline for infractions that do not pose an immediate threat to the safety of students or school personnel, such as “tardiness, loitering, use of profanity, dress code violations, and disruptive or disrespectful behaviors,” will limit the unnecessary disruption of student learning. Black girls will benefit immensely from this more comprehensive approach because the subjective way in which schools apply dress codes and policies on disrespect may be curbed. In the event that exclusion from the classroom is necessary, which ideally would only occur in emergency situations where there are safety concerns, Pennsylvania school policy should prioritize facilitating a smooth classroom return for excluded students. By putting intensive services in place for students reentering the classroom after exclusion, students have a greater chance to succeed.

Finally, Pennsylvania school policies should carefully clarify the role of school-based police officers as being solely responsible for school safety. School-based police officers can be a useful component to maintaining a comprehensive school disciplinary policy;

251. Id.
252. See id. at 14.
253. Id.
254. Id.
255. Id. at 14-15.
256. Id. at 9-10.
257. Id. at 16.
258. See id.
259. Id. at 10.
however, Pennsylvania schools must develop clear guidelines of which responsibilities belong to these officers. In recognizing that in-school arrests and referrals to law enforcement can have life-long consequences for Black girls, Pennsylvania schools should ensure that school-based police officers understand that their role is narrowly focused on maintaining physical safety of the school environment and preventing criminal conduct. Thus, explicit, written documentation that plainly defines officers’ roles and responsibilities is crucial. Additionally, Pennsylvania schools should provide uniform training for both school-based police officers and school administration to ensure all school personnel have a clear understanding that school-based police officers should not be involved in responding to behaviors that can be appropriately handled by school staff. This approach can help lessen the contact between Black girls and school-based police for minor infractions, such as an attitude issue or dress code violation, thereby lessening the chances for inappropriate referrals to law enforcement and involvement with the juvenile justice system.

VIII. CONCLUSION

The challenge of balancing appropriate school discipline without disparately excluding Black girls from the learning environment presents a formidable task for educators, school administration, and advocates of Black girls because school disciplinary policies vary greatly from state-to-state and even between school districts. Black students’ academic performance is more directly linked to their relationship with teachers, which may be problematic given that black children are often labeled as “less conforming and more active” than their white counterparts, resulting in interactions with teachers that are “characterized by more criticism and less support.” However, with intentional, uniform steps, geared towards creating a culture of consciousness regarding identity intersectionality, especially in regard to the complexity of Black girls’ identity intersection of race and gender, Pennsylvania can move in the right direction and ensure that minor disruption in the classroom is not a future prison sentence for Black girls.

260. Id. at 9.
261. Id. at 10.
262. Id. at 10-11.
263. MORRIS, supra note 1, at 38.
School discipline has two main purposes: ensuring a safe learning environment for those within the school and creating an “environment conducive to learning.” In order to properly use exclusionary disciplinary policies in ways that are not detrimental for Black girls, there needs to be a consistent limited use of these exclusionary policies—ideally only to be used in relatively serious situations involving threats to school safety or the learning environment. An educational approach that combines a deep understanding of identity intersectionality, a limited use of exclusionary discipline such as suspensions and expulsions, and clear school policies outlining administrator and school-stationed police officers’ responsibilities, are the first steps to improving the educational experience of Black girls.

264. Skiba et al., supra note 197, at 1074.
265. Id.