



Department of Justice

STATEMENT FOR THE RECORD

OF

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BEFORE THE

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND
HUMAN RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ENTITLED

“ENDING THE SCHOOL-TO-PRISON PIPELINE”

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U.S. Department Of Justice**

**Subcommittee on the Constitution, Civil Rights and Human Rights
Committee on the Judiciary
United States Senate**

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Introduction

Chairman Durbin, Ranking Member Graham, and distinguished Members of this Subcommittee, thank you for the opportunity to testify about the Department’s work on school discipline and related efforts to keep our children and teens in school and out of the juvenile justice system. Studies show that children removed from school as a result of exclusionary disciplinary actions – that is, suspension, expulsion, or arrest – are more likely to repeat a grade, drop out, or become involved in the juvenile justice system. Yet, these studies document that removal is an all-too-common phenomenon.

My name is Melodee Hanes and I serve as the Acting Administrator for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) at the Department of Justice (the Department), Office of Justice Programs (OJP). OJJDP provides the national leadership, coordination, and resources to respond to the needs of our youth who are in contact with the justice system, victims and offenders alike.

OJJDP advances this mission by collaborating with professionals from diverse disciplines to improve juvenile justice policies and practices. As a prosecutor with 30-plus years of public service, including experience as an assistant county attorney general in Yellowstone County, Montana and assistant county attorney in Polk County, Iowa, I have dedicated myself to protecting and seeking justice for our most vulnerable population – our nation’s children. So, I greatly appreciate the opportunity to tell you more about the great work being done by the Department in this area and related juvenile justice programs that support our youth.

As you know, protecting children and ensuring they are put on a path to success has been a priority for Attorney General Holder. To improve the well-being of children, youth and families and promote public safety, the Attorney General has established seminal programs like the Supportive School Discipline Initiative, the Defending Childhood Initiative, the National Forum on Youth Violence Prevention, and Federal Interagency Reentry Council (Reentry Council) to identify and advance effective public safety and reentry strategies.

Supportive School Discipline Initiative

On July 21, 2011, Attorney General Holder and Secretary of Education Arne Duncan jointly announced the launch of the Supportive School Discipline Initiative at a meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention. This initiative encourages effective disciplinary practices that ensure safe, supportive, and productive learning environments and promote evidence-based practices that keep students in schools and out of the courts.

Each academic year, millions of public school students in grades K–12 are suspended or expelled, particularly in the middle and high school grades. One study in Texas, *Breaking Schools' Rules*, tracked nearly one million seventh graders for six years¹. It found that 60% of these public school students were removed from class at least once and 15 percent had 11 or more suspensions or expulsions between seventh and twelfth grade. What is important to understand is that only a very small percentage of these disciplinary actions were in response to conduct for which suspension or expulsion is mandated by state law – in fact, only three percent. Overwhelmingly, exclusionary disciplinary actions were made at the discretion of school officials.

The study also showed that minority students and students with disabilities are disproportionately disciplined for discretionary (non-mandatory) conduct. The study found that African-American students were 31 percent more likely to receive discretionary discipline actions as compared to white and Hispanic students. Students with educational disabilities were also disciplined at a higher rate than other students. But among the most disturbing findings is that suspension or expulsion of a student for a discretionary violation nearly tripled the likelihood of juvenile justice contact within the subsequent academic year.

In addition, research suggests that arrests, detention and juvenile court appearances have profound negative short-term and long-term consequences for children's mental and physical health, educational success, and future employment opportunities. Even one court appearance during high school increases a child's likelihood of dropping out of school, and court appearances are especially detrimental to children with no or minimal prior history of delinquency.² Research links incarceration of juveniles to significantly higher school dropout rates, which translate to higher unemployment, poorer health, substance abuse, shorter lifespan, lower earnings, and increased future contacts with the criminal justice system.³

Moreover, the overuse of juvenile courts and police for student misconduct has negative implications for court systems and law enforcement. Juvenile courts and juvenile detention facilities are more appropriately used to address serious delinquency, rather than school-based

¹ Tony Fabelo, Michael D. Thompson, Martha Plotkin, Dottie Carmichael, Miner P. Marchbanks, III, and Eric A. Booth, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (New York: Council of State Governments Justice Center, 2011);

² Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, Justice Quarterly, Vol. 23, No. 4 (December 2006).

³ See, e.g., Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, 2006, at 9-10.

misconduct. In addition, referrals to police may result in the use of law enforcement resources for behavior that is more appropriately dealt with in the context of school discipline.

The Attorney General has charged us to develop solutions to these systemic issues. As a result the Departments of Justice and Education came together to discuss our mutual interests in supporting student success and brought together our constituents and resources to jointly attack the issue. Thereafter, the Supportive School Discipline Initiative was born.

The goals of the Supportive School Discipline Initiative are to:

- Build consensus for action among federal, state and local education and justice stakeholders.
- Collaborate on research and data collection that may be needed to inform this work, such as evaluations of alternative disciplinary policies and interventions.
- Develop guidance to ensure that school discipline policies and practices comply with the nation's civil rights laws and to promote positive disciplinary options to both keep kids in school and improve the climate for learning; and
- Promote awareness and knowledge about evidence-based and promising policies and practices among educators and justice stakeholders.

Some of the Department's efforts include:

- Award of nearly \$1.5 million through the 2012 Field Initiated Research and Evaluation (FIRE) Program which focuses on research and evaluation studies of school-based practices that relate to reducing student victimization and the risk of delinquency. As one of the grant recipients, Texas A & M received funding to explore the potential of the school discipline system as an intervention to reduce juvenile justice contact among all youth, but particularly youth of color.
- Award of \$640,000 to the Council of State Governments (CSG), with matching funds provided by philanthropic organizations, for the School Consensus Project, through which the CSG has convened experts from education, law enforcement, school health and the courts to work with advocates, students, family members, state legislators and others to develop consensus recommendations. The recommendations will identify creative program and policy solutions to effectively and positively manage student behavior, support student engagement and learning, improve academic outcomes and reduce youth contact with the juvenile justice system.
- Assistance to the New York Permanent Judicial Commission on Justice for Children to host the March 2012 National Leadership Summit, for teams of top state education and judicial officials. Forty-five states, territories and the District of Columbia sent teams to begin the work of improving policy and practice related to school discipline. The Summit brought together expert practitioners, researchers and innovators from education, justice and school health to help kick off planning and action by the attending leaders in partnership with their local counterparts.
- Assistance to the National Council of Juvenile and Family Court Judges (NCJFCJ) in the replication of successful school-court partnerships working to reduce referrals to court of students for non-serious behavior. NCJFCJ manages the project along with an expert advisory committee and its public and private funders. NCJFCJ is developing a curriculum

to train a cadre of judges who will guide and support other judges to convene problem-solving teams as well as fund the evaluation of demonstration sites.

- Enforcement of federal civil rights laws, policy development and other activities to combat the discriminatory exclusion of students from classrooms and the shuttling of students to the juvenile justice system.
- Support to educators and justice practitioners through technical assistance including a webinar series that will be launched in mid-January, 2013.

The Department is also looking at what more we can do, for example, coordinating efforts across components to infuse youth development strategies in law enforcement training and working with Education to encourage application of multi-tiered behavioral frameworks in youth correctional education programs.

Protecting Student Rights Through Civil Rights Enforcement

As noted above, the Department's Civil Rights Division is combating the school-to-prison pipeline through important law enforcement and policy work. The Civil Rights Division is protecting the rights of children in schools, in juvenile court systems, and in juvenile detention facilities.

In schools, the Department combats racially discriminatory student discipline through enforcement of Title IV of the Civil Rights Act of 1964, which prohibits discrimination against students in the public schools based on race and national origin, among other bases. The Department is addressing allegations of racially discriminatory discipline, including discriminatory referrals to law enforcement agencies, as part of its enforcement of existing school desegregation orders, as well as new investigations under Title IV.

The Department is also working to address discriminatory discipline of students with disabilities under Title II of the Americans with Disabilities Act of 1990 ("ADA"), which requires public entities like school districts to provide services in the most integrated setting appropriate to the needs of students with disabilities. In addition, the Department is investigating school districts to determine whether they are meeting their federal obligations to English Language Learner students in their administration of discipline. Under the Equal Educational Opportunities Act of 1974, or the EEOA, school districts must take appropriate action to overcome language barriers that impede equal participation by all students in instructional programs. This responsibility includes ensuring that English Language Learner students are able to comprehend school rules and discipline policies.

In addition, using its authority under a section of the Violent Crime Control and Law Enforcement Act of 1994, the Department has investigated the conduct of police in arresting children for school-based offenses, and has examined whether entities involved in the administration of juvenile justice, including police, juvenile courts and juvenile probation systems, comply with children's procedural due process rights, with the constitutional guarantee of Equal Protection and with federal laws prohibiting racial discrimination.

Finally, the Department continues its long tradition, under the Civil Rights of Institutionalized Persons Act and the Violent Crime Control and Law Enforcement Act, of ensuring that conditions of confinement in juvenile detention facilities comply with the Constitution and federal laws, including through the provision of adequate special education services.

All of this work, including the protection of the rights of children of color and children with disabilities, is consistent with the objectives of SSDI. OJJDP works with our partners in the Civil Rights Division as appropriate, and strongly supports the Division's activities.

Reducing Disparity through Federal Programming and Training and Technical Assistance

For almost two decades, OJJDP has been a leader in efforts to reduce the over representation of minority youth in the juvenile justice system. The *Breaking School Rules* study show that school-based arrests and referrals to court have a disparate impact on minority youth as schools continue to implement and enforce policies such as zero tolerance. Additionally, data from 2006-2007 show that over 1,000 students in Memphis, Tennessee who were eligible for supportive school discipline practices were transported to juvenile court. African-American youth comprised 82 percent of all youth transports in Memphis and almost 90 percent of all youth placed in secure detention, according to OJJDP's Disproportionate Minority Contact (DMC) Web-Based Data Entry System.

To address this phenomenon, Memphis received OJJDP's Title II Formula Grant funds in 2007 from the Tennessee Commission on Children and Youth to implement the School House Adjustment Program Enterprise (SHAPE), as an alternative to juvenile court for students attending Memphis City Schools. The SHAPE Project is designed to reduce the number of minority students that are referred to the Juvenile Courts for minor offenses committed on school property, including assault (non-serious injury), disorderly conduct, and criminal trespass. The goal is to divert students from ever appearing on any paperwork in the juvenile court system.

Participation in the SHAPE program is voluntary. Students accepted into the program attend afterschool classes, must complete at least 12 sessions of the "Too Good for Drugs and Violence After-School Activities" curriculum and generally stay in the program for 45 days. Students participate in activities such as homework assistance, tutoring, mentoring, counseling, and social and life skills training.

The SHAPE program is credited with reducing the number of transports to juvenile court by over 52 percent from 1,000 in the 2006-2007 school year to 400 in the 2010-2011 school year based on the outcome evaluation conducted by the University of Memphis. There are currently 22 middle and high schools in the SHAPE program in Memphis. The SHAPE Program was recently added to OJJDP's DMC Best Practices Database and highlighted in our most recent Annual Report to Congress.

In addition to addressing school referrals to reduce DMC, OJJDP has developed a DMC Reduction Model. It provides a framework and structure to guide states through five phases: identification of the extent to which DMC exists; assessment to examine the factors that lead to

DMC; intervention to put in place proven strategies and approaches to reducing DMC based on the assessment results; evaluation of the chosen interventions; and monitoring to track changes over time. It is a rigorous framework for system improvement based on legislative authority, OJJDP regulations, research and the public health approach to problem resolution.

A number of states have made significant progress by applying this framework with fidelity and institutionalizing their efforts, incorporating the processes of the Model into everyday practice. When implementing the DMC model, we encourage states to learn from each other and share what works. For example, Connecticut, Pennsylvania, and Wisconsin have implemented policies, procedures, and activities to reduce DMC by homing in on the decision point of arrest and referrals to court. Referrals to court in Connecticut have been reduced by 60 percent for African-American youth and 64 percent for youth of Latino origin between 2006 and 2011, according to OJJDP's DMC Field Initiated Research and Evaluation (FIRE) Project.

We view the reduction of overrepresentation of minority youth as a significant lever for improving our nation's juvenile justice systems. However, many states and jurisdictions continue to struggle with DMC.

Four areas that present challenges and impede widespread progress are: 1) data collection and analysis by states and jurisdictions lacking the expertise, resources, and often the authority to undertake statewide data collection; 2) implementing intervention phase before conducting effective data collection and/or assessment; 3) lack of state-level leadership, support and commitment to improve their juvenile justice system; and 4) declining incentives to participate in the Juvenile Justice and Delinquency Prevention (JJDP) Act.

OJJDP is working with the states to overcome these challenges. We are sponsoring a webinar series, conducting trainings, and creating tools that allow states to apply the DMC Reduction Model with ease and at relatively low cost.

While we look at how school discipline policies affect our children, it is equally important to understand how deeply entwined the issue of student discipline is with other key issues.

Defending Childhood

During today's meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention, Attorney General Holder received testimony from his Task Force on Children Exposed to Violence – a component of the Defending Childhood initiative launched in 2010. Task Force members presented the Attorney General with a report compiling their findings and comprehensive policy recommendations to address the pervasive issue of children's exposure to violence at home, at school or in the community. The report was based on public testimony, comprehensive research, and input from experts, advocates, and impacted families and communities nationwide and represents a signal accomplishment of our Department's work to protect children.

The National Survey of Children’s Exposure to Violence (NatSCEV), a national survey sponsored by OJJDP, found that over 60% of children surveyed were exposed to violence, crime, or abuse in the prior year – either directly or indirectly. Nearly one-half of youth were assaulted at least once; more than 1 in 4 witnessed a violent act; and nearly 1 in 10 saw a family member assault another. Multiple victimizations were common. Children exposed to violence, as victims and witnesses, are often traumatized. A lack of effective and appropriate identification, response and intervention can result in children who are unfocused and disruptive and frequently truant, behavior which often plays out in classrooms nationwide.

Another critical issue in the health, engagement, and academic progress of students is the alcohol and drug use among our nation’s youth. Youth substance use is often an underlying cause in behavior problems exhibited by students. In 2011, we estimate that 3.1 million persons over the age of 12 used an illicit drug for the first time, most of whom (67.5 percent) said that marijuana was their first drug. There were more than 1.5 million new teen drug users ages 12-17⁴.

According to the Task Force report, this is a national crisis which requires a national response in defending our children from exposure to and consequences of violence and psychological trauma. Among the Task Force’s recommendations is the call to develop better policies to keep children in school. The Task Force explains that “successful school-based programs that help students develop better ways of handling emotional distress, peer pressures, and problems in family and peer relationships and that integrate recovery from trauma should be expanded and then embedded into existing school curricula and activities to increase students’ abilities to have positive experiences with education, recreation, peer relationships, and the larger community.”

The Department views the release of the Task Force Report as a defining moment. With the release of the report, we begin to explore the recommendations with our colleagues at the Departments of Health and Human Services, Education, Labor, Defense, Interior, and the other member agencies of the Council. We have enlisted the aid of the field to publicize and disseminate the findings of this report and are planning selected regional events to highlight its findings.

Our partnership with the Department of Education is critical and, as my colleague has testified, schools are an essential source of supports for our most vulnerable students, including those exposed to violence. To keep such students in school, and safe from further victimization, or worse, perpetration, we must consider the mental and behavioral supports they need.

⁴ Citation: Substance Abuse and Mental Health Services Administration, *Results from the 2011 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-44, HHS Publication No. (SMA) 12-4713. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2012. Specific Data table at <http://www.samhsa.gov/data/NSDUH/2011SummNatFindDetTables/NSDUH-DetTabsPDFWHTML2011/2k11DetailedTabs/Web/PDFW/NSDUH-DetTabsSect4peTabs5to8-2011.pdf>

Federal Reentry Efforts

Equally important to keeping students in school, is helping those youth involved in the juvenile justice system reenter their community and return to school. Approximately 100,000 youth are released each year from some type of detention facility⁵ to school systems that lack a comprehensive mechanism to assess and address the learning needs of youth reentering the system. According to the latest OJJDP Survey of Youth in Residential Placement (December 2010), more than two-thirds of youth in custody report that they have aspirations of higher education and research consistently shows that school attendance is a strong protective factor against delinquency; youth who are engaged in school are much less likely to commit crimes in the short and long-terms. However, some schools place obstacles to reenrollment for formerly incarcerated youth because these youth are considered difficult to manage. In fact, some states have enacted laws that create obstacles for youth attempting to re-enroll in school upon reentry.

To address some of the issues associated with reentry, the Attorney General established the Federal Interagency Reentry Council, comprised of 20 federal agencies, to coordinate reentry initiatives. The Reentry Council aims to reduce nation-wide recidivism, keep our communities safer, assist those returning from prison and jail in becoming productive, tax-paying citizens, and decrease the billions of dollars spent annually on incarceration. The Reentry Council maintains a focus on juvenile reentry issues, which carry their own unique opportunities and challenges.

Conclusion

The Department of Justice and our partners at the federal, state, and local levels are at the forefront of these issues. Although there is much work still to be done, I am very pleased with what we have accomplished in a very short time. This is a testament to the effort put forth by all of us – Congress, federal agencies, the philanthropic community, advocates, educators, law enforcement, judicial leaders, and most of all, the families and students deeply impacted by the continuation of punitive disciplinary practices.

We, at OJJDP, envision a nation where all of our children are healthy, educated and free from violence. Should they come in contact with the juvenile justice system, we want the experience to be rare, fair and beneficial to them. This vision is one shared by the 56 juvenile justice systems and hopefully by this Congress. We look forward to continuing to work with the members on this subcommittee and your staff on this substantive and important issue.

⁵ Barton, William H. 2006. Incorporating the Strengths Perspective Into Intensive Juvenile Aftercare. *Western Criminology Review* 7 (2):48–61.