

**Appendix B**  
**Data responsive to Texas Public Information Act Requests filed by Texas Appleseed**  
**with Bryan Independent School District (2011-12)**

# Texas' School-to-Prison Pipeline

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Ticketing, Arrest & Use  
of Force in Schools

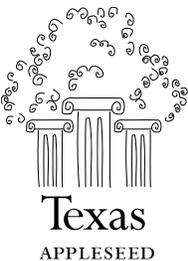
*How the Myth of the “Blackboard Jungle”  
Reshaped School Disciplinary Policy*



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Ticketing, Arrest & Use  
of Force in Schools

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## Texas Appleseed Mission

Texas Appleseed's mission is to promote justice for all Texans by using the volunteer skills of lawyers and other professionals to find practical solutions to broad-based problems. This report is the third in a series examining the intersection of school discipline and gateways to the juvenile justice system. It focuses on Class C misdemeanor ticketing and arrest of students and on use of force (including pepper spray and Tasers) by school police officers.

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**Visit the Texas Appleseed website at [www.texasappleseed.net](http://www.texasappleseed.net) to review this report along with the following data tables used to create this analysis:**

Comparison of Youth Homicide with Top Causes of Death for Youth Ages 5-19 in the U.S., 2005

Percentage Growth in School District Police Department Staffing, Between 2001-02 and 2006-07

Annual Budget for Sample of Texas ISD Police Departments

Class C Misdemeanor Referrals to Texas Juvenile System, 2008

Growth in School District Police Department Staff & Increase/Decrease in Ticketing During Same Period

Juvenile Justice Continuum, Fiscal Year 2009

Class C Misdemeanor Tickets Issued in 26 School Districts and Court Jurisdictions in 2006-07 School Year

Breakdown of Ticketing Offenses for 22 Texas School Districts, 2006-07

Breakdown of Disorderly Conduct Tickets for 22 Texas School Districts, 2006-07

Breakdown of Ticketing Offenses, Austin ISD (2006-07)

Breakdown of Ticketing Offenses, Corpus Christi ISD (2006-07)

Breakdown of Ticketing Offenses, Dallas ISD (2006-07)

Breakdown of Ticketing Offenses, El Paso ISD (2006-07)

Breakdown of Ticketing Offenses, Houston ISD (2006-07)

Breakdown of Ticketing Offenses, United ISD (2006-07)

Overrepresentation of African American Students in Class C Misdemeanor Ticketing in Reporting Texas School Districts, 2006-07

Breakdown of Tickets by School Level for 15 Texas School Districts, 2006-07

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School Districts Issuing Tickets to Elementary School Students, 2001-07

Growth in School District Police Department Staff & Increase/Decrease in Number of Students Arrested During Same Period

Increase in School-Based Arrests as a Percentage of Juvenile Justice Referrals, 2001-07

School-Based Arrests and Arrest Rates for 17 Texas School Districts, 2006-07

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Violent or Weapons-Related Offenses by Type for 11 Texas School Districts, 2006-07

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Representation of African American Students in School-Based Arrests in Seven Texas Districts, 2006-07

Texas Juvenile Arrest and Referral Rates by Race/Ethnicity, 2006 (per 1,000 juvenile population)

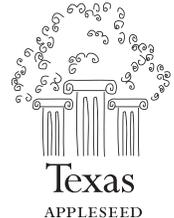
Counties Reporting a Significant Overrepresentation of Special Education Students in Referrals to the Juvenile System, 2007

School-based Arrests by School Level for Nine Reporting Texas School Districts, 2006-07

Number of Elementary School Students Arrested in Six Texas School Districts, 2006-07

Arrests of 10- to 12-Year-Olds in El Paso ISD by Type of Offense, 2001-05

Spectrum of Use of Force Options in Texas School Districts





# Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools

*How the Myth of the “Blackboard Jungle” Reshaped School Disciplinary Policy*

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## EXECUTIVE SUMMARY

*In a little over two decades, a paradigm shift has occurred in the Lone Star State. The misdeeds of children—acts that in the near recent past resulted in trips to the principal’s office, corporal punishment, or extra laps under the supervision of a middle school or high school coach, now result in criminal prosecution, criminal records, and untold millions of dollars in punitive fines and hefty court costs being imposed against children ages 10 through 16.*

—Ryan Kellus Turner & Mark Goodner

Passing the Paddle: Nondisclosure of Children’s  
Criminal Cases (2010)

Schools in Texas have historically been safe places for teachers to teach and students to learn—even in high crime neighborhoods, yet student discipline is increasingly moving from the schoolhouse to the courthouse. Disrupting class, using profanity, misbehaving on a school bus, student fights, and truancy once meant a trip to the principal’s office. Today, such misbehavior results in a Class C misdemeanor ticket and a trip to court for thousands of Texas students and their families each year.

It is conservatively estimated that more than **275,000 non-traffic tickets are issued to juveniles in Texas each year** based on information from the Texas Office of Court Administration (TOCA). Low reporting of juvenile case data by Justice of the Peace courts to TOCA suggests that the number of non-traffic tickets issued to students may very well **grossly exceed** that number. While it is impossible to pinpoint how many of these tickets are issued by campus police, the vast majority of these tickets are issued for offenses most commonly linked to school-related misbehavior—disruption of class, disorderly conduct, disruption of transportation, truancy, and simple assaults related to student fights.

“Criminalization” of student misbehavior extends to even the youngest students. In Texas, students as young as six have been ticketed at school in the past five years, and it is not uncommon for elementary-school students to be ticketed by school-based law enforcement.

School-based arrest of students is not as common, but does occur—and often without prior notice to parents or a lawyer being present during initial questioning of the student.

The increase in ticketing and arrest of students, in Texas and nationwide, has coincided with the growth in school-based policing. Campus policing is the largest and fastest growing area of law enforcement in Texas, according to its own professional association. With counselors stretched to handle class scheduling and test administration duties, school administrators and teachers are increasingly turning to campus police officers (also known as School Resource Officers or SROs) to handle student behavior problems. Today in Texas, most public schools have a police officer assigned to patrol hallways, lunchrooms, school grounds, and after-school events. According to media accounts, police officers in some Texas schools are resorting to “use of force” measures more commonly associated with fighting street crime—pepper spray, Tasers and trained canines—when a schoolyard fight breaks out or when students are misbehaving in a cafeteria or at a school event. The intent is to keep schools and students safe, but there can be unintended consequences to disciplining public school students in a way that introduces them to the justice system or exposes them to policing techniques more commonly used with adults.

This report is the third in a series of Texas Appleseed publications exploring the impact of school disciplinary policies on school dropout and future involvement in the juvenile justice system. The “school-to-prison pipeline” is a phenomenon documented in a growing body of state and national research, and it is a destructive path all too familiar to the hundreds of teens incarcerated in Texas Youth Commission (TYC) facilities. Their stories highlight being repeatedly suspended, expelled, ticketed and referred to court for minor offenses before committing the offense that triggered their incarceration in TYC. Lock up in TYC is the “end of the pipeline” for some, while others will be transferred or commit a new offense resulting in their imprisonment in an adult corrections facility. After three years researching these issues through data analysis, literature review, direct observations and interviews with stakeholders, our main finding is clear: *Texas can interrupt this destructive cycle and prevent the loss of more young people to the “school-to-prison pipeline” through early interventions focused less on punishment and more on creating positive school environments that address students’ academic and behavioral needs.* Recommendations for reform are included in this report.

### **Early Segments of the Pipeline—Suspension, Expulsion and Alternative Schools**

In 2006, Texas Appleseed partnered with pro bono attorneys, experts from a variety of disciplines, and the Population Research Center at The University of Texas to examine disciplinary data self-reported by school districts to the Texas Education Agency—and to conduct extensive field interviews with superintendents, school board members, principals, teachers and counselors and hold focus groups with parents and students around school discipline issues. Then and again in 2009, as part of our research into school expulsion and Juvenile Justice Alternative Education Programs, Texas Appleseed documented the disproportionate impact of school discipline on minority and special education students. Some highlights:

- Where a child attends school—and not the nature of the offense—is the greater predictor of a student’s likelihood of expulsion or referral to In-School Suspension (ISS), Out-of-School Suspension (OSS), or to a Disciplinary Alternative Education Program (DAEP) for non-violent misbehavior.
- Compared to their overall percentage in the total student population, African American (and to a lesser extent Hispanic) students are significantly overrepresented in schools’ discretionary referrals to ISS, OSS or DAEPs and in discretionary expulsions to Juvenile Justice Alternative Education Programs (JJAEPs) or “to the street.”
- Special education students are likewise significantly overrepresented in school districts’ discretionary disciplinary actions.

While there is insufficient record keeping and data reporting on ticketing and arrest of students on Texas school campuses across the state, available data indicates that minority and special education students are overrepresented here as well.

### **The Advent of Campus Policing and the Criminalization of Student Misbehavior**

The media and public policy debates surrounding school crime in the 1960s—and continuing through the next decade—triggered a growth in campus security planning and increased pressure to have a police presence in schools. The public’s fears about “heightened youth violence” far exceeded actual juvenile crime statistics or documented accounts of school-based violent outbreaks requiring law enforcement intervention (see Appendix, *The Genesis of the Myth of the Blackboard Jungle*). Still, by 1978, one in 100 surveyed schools reported having a police presence. In the 1990s, this practice became more widespread. Media accounts of isolated deadly school shootings, such as occurred at Columbine High School in Colorado (1999), fanned public fears of “gun-wielding disaffected youth” and shifted the public and policy dialogue from school crime to school violence. This shift in focus led to an increase in federal funding for School Resource Officer (SRO) programs—and school districts in Texas, and other parts of the country, embraced the concept of SROs in schools as way to prevent “another Columbine from happening here.”

Today, most Texas school districts have either contracted with local law enforcement to provide a School Resource Officer on school campuses or have created their own police department. Though national programs typically outline three roles for an SRO—law enforcement, counseling/mentoring, and teaching, research indicates that training for these officers is almost exclusively focused on traditional “law enforcement” with little provided on child behavior and development, mediation and de-escalation of tense campus situations, the role of student “intent” and the impact of disabilities on student behavior, or how to foster a positive school climate. Campus police officers also receive little to no guidance on how their decisions to discipline a special education student must account for the student’s disability.

## Assessing Ticketing, Arrest and Use of Force in Texas Public Schools

For purposes of this study, Texas Appleseed submitted an Open Records Request to the Texas school districts that have established their own school police departments and to municipal and justice courts, requesting Class C ticketing and arrest data for a five-year period (2001-02 through 2006-07)—broken down by race or ethnicity, the student’s age, the nature of the offense, and special education status of the student receiving the ticket. **Only 26 school districts and eight municipal courts could provide any part of the requested information from a searchable database.** Regarding Class C ticketing of students, only 22 school districts and four municipal court districts could provide any data for a two- to five-year-period. In 2006-07, these districts and court jurisdictions represented almost a quarter of all Texas students. Only 15 of these school districts could provide ticketing data that identified the race or ethnicity of the student, and age- or grade-range of the student. Only two districts kept ticketing data by special education status. The response was even lower for requested arrest data. It is also important to note that **the Texas Education Agency does not require school districts to report student ticketing or arrest data**, and very few school districts submit school-based crime data to the Texas Department of Public Safety for inclusion in the department’s annual Uniform Crime Report.

The school districts participating in this report are to be commended for efforts to track ticketing and arrest data. This sample data, while far from complete, provides important indicators as to the overall safety of public schools and the practice of ticketing and arresting students. It also underscores the necessity of more complete data keeping and analysis if school districts are to: 1) make informed decisions about the role of law enforcement in an educational, child-centered environment; 2) keep abreast of and promptly address overrepresentation of minority and special education students in ticketing and arrests on campus; 3) properly evaluate whether ticketing is a useful tool to improve student behavior; 4) determine the impacts of ticketing—and the potential for fines and community service—on students and families; 5) ensure that ISD police are adequately trained to the sensitivities of addressing problem behavior in a school setting; 6) routinely evaluate the quality and necessity for a police presence on campus and the appropriateness and effectiveness of tools and strategies used by campus police; and 7) make adjustments to campus policing as needed to mesh with overall goals for creating a positive school climate and ensuring a safe learning environment.

### Major Findings: Ticketing, Arrest and Use of Force in Texas Public Schools

#### Class C Misdemeanor Ticketing

- ❖ **Ticketing of students in Texas public schools has increased substantially over a two- to five-year period—consistent with a growing law enforcement presence in schools, but in sharp contrast to a reported overall drop in juvenile crime.**
  - ◆ Twenty-two of the 26 districts or jurisdictions supplying ticketing data reported an increase in the number of tickets issued to students at school.

- ♦ Some Texas school districts have more than doubled the number of Class C misdemeanor tickets issued over the two- to five-year period for which we have data.
- ♦ The increase in ticketing stands in marked contrast to the statewide *14 percent decrease* in referrals to the juvenile system between 2000 and 2008.

❖ **Most Class C misdemeanor tickets written by school police officers are for low-level, non-violent misbehavior—but ticketing of students can have far-reaching financial and legal impacts.**

- ♦ The most common misdemeanors for which students are ticketed in Texas public schools are non-violent Disruption of Class or Transportation, Disorderly Conduct, and curfew violations (leaving campus without permission)—however, unlike juvenile court, children convicted or entering “guilty or no contest” pleas in municipal and justice courts have *criminal records*.
- ♦ Legislation (SB 1056) adopted by the 81st Texas Legislature in 2009 mandated criminal courts (including municipal and justice courts) immediately issue a nondisclosure order upon the conviction of a child for a misdemeanor offense punishable by fine only, however due to the large volume of these cases and the burden on courts to clear Class C tickets through the Texas Department of Public Safety, the “non-disclosure law” is *not working*—and Class C misdemeanors are staying on a youth’s “criminal record” accessible by future employers and others.
- ♦ Students who fail to pay a court-imposed fine or complete court-imposed community service in the wake of a Class C ticket issued at school can be arrested at age 17—and incidents of this happening in Hidalgo County are currently being challenged in court.
- ♦ The courts providing information for this study reported assessing fines and court costs for Class C tickets ranging from less than \$60 to more than \$500—and many students receive *multiple tickets* in a single school year.

❖ **Where a child attends school, and not the nature of the offense, is the greater predictor of whether that child will be ticketed at school.**

- ♦ The practice of issuing Class C tickets depends on locally applied policy, not the nature of the student’s behavior.
- ♦ In 2006-07, some of the state’s largest school districts issued the greatest number of Class C misdemeanor tickets: Houston ISD, 4,828 tickets; Dallas ISD, 4,402; San Antonio ISD, 3,760; and Austin ISD, 2,653. However, some smaller districts also issued large numbers of tickets that year: Brownsville ISD, 2,856; Corpus Christi ISD, 2,095; Alief ISD, 1,926; and Waco ISD, 1,070.

❖ **African American and (to a lesser extent) Hispanic students are disproportionately represented in Class C misdemeanor ticketing on Texas public school campuses.**

- ♦ Of the 15 districts that could identify the race and ethnicity of ticketed students, 11 disproportionately ticketed African American students compared to their percentage of the total student population.
- ♦ In the most recent year for which ticketing data is available, these districts reported ticketing African American students at a rate double their representation in the student body: Austin ISD, Dallas ISD, Humble ISD, Katy ISD and San Antonio ISD.

❖ **Special education students are likely overrepresented in Class C ticketing on school campuses.**

- ♦ Only two school districts could break ticketing data down by special education status, but both reported ticketing special education students at rates more than double their representation in the student body: Midland ISD, 19 percent of ticketed students were in special education (8 percent in student body) and San Angelo ISD, 29 percent of ticketed students were in special education (12 percent in student body).

❖ **It is not unusual for elementary school-age children, including students 10 years old or younger, to receive Class C misdemeanor tickets at school—and data indicates students as young as six have been ticketed.**

- ♦ Ten school districts provided data broken down by school level—elementary, middle school, or high school. While the majority of tickets were issued to middle and high school students, more than 1,000 tickets were issued to elementary school children over the six-year period for which we have data. Districts reporting the largest number of tickets to elementary students are: Dallas ISD, 1,248 tickets; Alief ISD, 355; Wichita Falls, 99; Austin ISD, 91; and Humble ISD, 75.
- ♦ Five Texas school districts reported the specific age of ticketed students—and of these, three reported issuing tickets to children ages six to nine (or, in the case of Katy ISD, ages four to nine) between 2001 and 2007: Dallas, 14 tickets; Huntsville, three tickets; and Katy ISD, 34 tickets.

#### Arrest of Students at School

❖ **Of the 12 Texas school districts that were able to disaggregate arrest data by year, the arrest numbers for nine of those districts increased anywhere from 20 percent to more than 100 percent over the multi-year period for which they provided data.**

❖ **The majority of arrests in reporting school districts are for non-violent offenses that do not involve use of weapons—and Disorderly Conduct, one of the offenses resulting in the largest numbers of Class C misdemeanor tickets, is also one of the offenses for which students were most often arrested.**

- ♦ In the 11 reporting school districts that could provide arrest data disaggregated by offense type for 2006-07, only 20 percent of the more than 3,500 arrests involve violence or weapons. *In the vast majority of cases, the “weapon” used was fists.*
- ♦ Drug and alcohol offenses make up 31 percent of all arrests reported by these 11 school districts in 2006-07.

❖ **African American students are disproportionately represented in school-based arrests.**

- ♦ Of the 17 school districts providing school-based arrest data to Texas Appleseed, only 10 kept data on the race and ethnicity of arrested students. Of those 10 districts, seven showed an overrepresentation of African American students.

❖ **Very young children are being arrested on Texas school campuses.**

- ♦ Only nine of the 17 reporting school districts could disaggregate arrest data by age. Out of the 5,900 arrests in these districts in 2006-07, 225 of those involved elementary school children.
- ♦ Two districts reported the number of students under age 10 who had been arrested at some point over a six-year period: El Paso ISD, 11 students; and Katy ISD, three students.

❖ **Where a child attends school, and not the nature of the offense, is the great determining factor in whether a student will be arrested at school.**

- ♦ Some smaller school districts had some of the highest student arrest rates: East Central ISD, 51 arrests for every 1,000 students, and Corpus Christi ISD, 26 arrests for every 1,000 students, compared to 10 arrests per 1,000 students for San Antonio ISD and six arrests per 1,000 students for El Paso, Midland, Humble and United ISDs.

❖ **Only two-thirds of the 26 school district police departments providing data to Texas Appleseed could supply numbers on school-based arrests.**

- ♦ These 17 reporting districts—which accounted for only 13 percent of the state’s total student enrollment for 2006-07—arrested 7,100 students that year.
- ♦ Two of the state’s largest school police departments—in Dallas ISD and Houston ISD—could not provide data on school-based arrests.

## Use of Force at School

- ❖ **School district police departments are arming police officers with force that includes pepper spray, Tasers, “stun bags,” guns and canines—and some of these weapons are being used on students, despite the risks they pose.**
- ❖ **The Texas Education Code’s exemption of peace officers from reporting requirements for student restraint, along with a recent Attorney General opinion allowing school district police departments to withhold use of force policies from the public, result in a complete lack of transparency around school use of force practices.**
  - ◆ Of the 26 districts providing data to Texas Appleseed, only four were able to provide data related to the use of force by a school police officer on a student.
  - ◆ Of these four districts, only one could provide data for more than two years.
  - ◆ None of these districts could provide data relating to special education status of the students restrained.
- ❖ **Use of force policies reveal that many school police departments require officers to carry pepper spray, but few have policies that restrict its use in situations involving youth. This is in sharp contrast to the restrictions Texas’ juvenile justice agencies have placed on use of pepper spray on youth in their custody.**
- ❖ **African American and Hispanic students are disproportionately represented in use of force incidents at school.**
  - ◆ In two of the four districts that could provide data, African American students were subjected to use of force by ISD police at a rate more than twice their representation in the student body.
  - ◆ In the only district that could report this data by both race or ethnicity and type of force used, minority students were involved in an overwhelming majority of incidents involving pepper spray, baton or impact weapons, and Taser incidents.

## Educational Programming and Juvenile Facilities

- ❖ **Though a major study has been conducted and legislation passed in an attempt to improve educational programming in the Texas Youth Commission (TYC), little to no attention has been paid to educational programming in county-run juvenile detention facilities.**
  - ◆ In fact, county-run facilities house more juvenile offenders over the course of a year, compared to TYC. Quality educational programming in juvenile facilities has been proven to reduce recidivism and improve outcomes for youth.

## Major Policy Recommendations

### School-wide Positive Behavior Supports (PBS)

**1) Texas schools should adopt school-wide Positive Behavior Supports (PBS) proven to reduce student misbehavior and keep schools safer—resulting in fewer disciplinary referrals and reducing the need for law enforcement interventions.<sup>1</sup>**

When implemented with integrity, PBS has been proven effective in addressing behavioral issues in a proactive, positive way, seeing disciplinary interventions as an opportunity for a “teachable moment.” It has also been shown to reduce overrepresentation of minority and special education students in disciplinary referrals.

**2) When schools adopt PBS, they must include school police in training and use PBS as a framework for evaluating and fine-tuning campus policing policies.**

Failure to do so results in a potential inconsistency and conflict between school-based law enforcement methods and procedures and PBS.

### Training

**3) School-based law enforcement personnel should be required to receive post-certification training in issues specific to youth, including:**

- ♦ De-escalation and mediation techniques
- ♦ Soft-hand restraint techniques to be used when force cannot be avoided
- ♦ Signs and symptoms of trauma, abuse and neglect in children and youth, and appropriate responses
- ♦ Signs and symptoms of mental illness in children and youth, and appropriate responses
- ♦ Manifestations of other disabilities, such as autism, and appropriate responses
- ♦ Adolescent development
- ♦ Juvenile law
- ♦ Special education and applicable general education law

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<sup>1</sup> For more information about schoolwide PBS, see TEXAS APPLESEED, TEXAS’ SCHOOL TO PRISON PIPELINE: DROPOUT TO INCARCERATION 79-96; TEXAS APPLESEED, TEXAS’ SCHOOL TO PRISON PIPELINE: SCHOOL EXPULSION 22-23 (2010).

## Ticketing

**4) The Education Code should be amended to clearly prohibit school districts from receiving any revenue from Class C ticketing for truancy or any other offense.**

Chapter 25 of the Texas Education Code currently requires fines collected in Class C “parent contributing to nonattendance” cases to be split between the school district issuing the ticket and the justice or municipal court. During our research, Texas Appleseed was told that this type of arrangement may exist for other Class C misdemeanor fines associated with school-based ticketing. The Education Code should be amended to prohibit the practice.

**5) Chapter 37 of the Education Code should be amended to eliminate Disruption of Class and Disruption of Transportation as penal code offenses.**

These low-level offenses are channeling students into the criminal court system where they may face fines and possible jail time. This is not an effective method of encouraging students to behave, and places students on a path toward academic failure and further juvenile or adult criminal justice involvement.

**6) Chapter 37 of the Education Code should be amended to prohibit ticketing of students under the age of 14.**

Young children are simply not equipped to understand a Class C misdemeanor ticket as a meaningful consequence of misbehavior, and the consequences of court involvement on academic success are too great to allow this practice to continue.

**7) Chapter 37 of the Education Code should be amended to specify that ticketing of older students should be a last resort.**

Ticketing and arrest should be avoided in situations involving minor misbehavior (including a school yard fight that does not result in serious injury) that, in another era, would have simply resulted in a trip to the principal’s office. Offenses that should be targeted with this approach include Disorderly Conduct, campus-based curfew violations and trespass. The Code should require a graduated approach to ticketing whereby school-based law enforcement would warn students the first time they commit an offense, refer them to services or require in-school community service upon the second offense, and ticket *no sooner than the third offense*. School districts must be encouraged to find meaningful alternatives to using ticketing as a method of disciplining students for low-level misbehavior.

**8) Chapter 25 of the Education Code should be amended to eliminate Failure to Attend School as a criminal offense.**

The elements of this offense are identical to truancy, a CINS (Conduct In Need of Supervision) offense that is more appropriately handled by giving students and families access to services and resources that will assist in getting the student back on a path toward school success. Fining students for failing to go to school is an ineffective solution that places students on a path with a higher likelihood of academic failure.

**9) Schools should create or expand effective prevention and intervention programs, such as peer mediation and restorative justice practices, as alternatives to ticketing.**

These practices could be part of a comprehensive graduated sanctions approach, with school-based law enforcement referring youth to these programs rather than issuing a ticket.

Arrest

**10) Chapter 37 of the Education Code should be amended to specify that arrest of students for low-level, school-based misbehavior should be a last resort, and used only for behavior that includes weapons or threatens the safety of the campus, students or faculty.**

Steps should be taken to address behavior in a way that is proactive and positive rather than reactive and negative, given the extreme consequences that arrest can have on a young person's life.

**11) Juvenile justice stakeholders should determine what percentage of their referrals result from school-based arrests. If they make up a significant portion of referrals, juvenile justice stakeholders—including the local juvenile board and probation officials—should work with education stakeholders to create a plan to reduce school-based referrals.**

The consequences of a referral to the juvenile justice system are too serious to ignore the increasing percentage of youth referred by school-based law enforcement for behavior that in other settings might not merit a referral. Juvenile justice and education stakeholders must come together to explore solutions.

Use of Force

**12) Pepper spray and Tasers should be prohibited for use on students by school-based law enforcement, except in situations involving firearms or other weapons capable of causing serious bodily harm.**

These uses of force carry great risk for harm to youth, and should not be available to break up fights between students or to restore order in the absence of a threat of bodily harm to students or school staff.

**13) Prone restraints should be prohibited for use on students as a restraint technique by school-based law enforcement.**

This type of physical restraint carries great risk of harm to youth, has been prohibited in other institutional settings where youth are treated, and should not be used on students in Texas' schools.

Educational Programming & Juvenile Facilities

**14) The State should commission a comprehensive study on the quality of educational programming, including special education services, in juvenile detention facilities. The study should consider whether the programs comply with current law, should identify best practices, and determine where existing programs fall short.**

**15) Chapter 37 of the Texas Education Code should be amended to require the transition of *all students*, released from juvenile detention or TYC, back to their home school.**

Once a youth has been deemed rehabilitated, he or she should be allowed to reenter the mainstream school system, and not tracked to a DAEP or JJAEP.

**16) When making decisions about closure or location of new facilities, TYC should consider the availability of qualified administrative, teaching and special education staff for educational programs.**

### Transparency

**17) School district police departments should be required to compile a searchable database that includes the number of citations issued, custodial arrests, and use of force incidents by school district officers or security guards on each campus.**

The database must be able to generate reports that will disaggregate data according to:

- ♦ Whether the subject of the citation, arrest or use of force was a student or non-student.
- ♦ The campus where the incident occurred.
- ♦ The age, gender and race/ethnicity of the subject of the citation, arrest or use of force.
- ♦ Special education status, if the subject was a student.
- ♦ Nature of the offense.
- ♦ The type of force or restraint used, and the level of resistance (compliant, passive resistant, active resistant, aggressive) posed by the subject that justified the force employed by the officer.
- ♦ The name of the police officer who issued the citation, made the arrest, or used force.

**18) Section 37.109 of the Texas Education Code, which requires a “School Safety and Security Committee” in every school district, should be amended to require inclusion of a representative from a parent organization or a parent, if there is no parent organization in the district; a representative from a student leadership group, or a student; a representative from an organization that advocates for youth who have disabilities; representatives from local social service agencies; and a representative from the local juvenile probation department. In addition to the existing information that the committee is required to develop and review, the statute should be amended to require that the committee:**

- ♦ Review and assist in determining the appropriate role for school district police officers.
- ♦ Participate with the school district’s police department in reviewing ticketing, arrest and use of force and restraint data and developing the school district law enforcement’s annual report.

- ♦ If the district does not have a stand-alone police department, the committee should participate in reviewing and, if need be, amending the MOU with local law enforcement to reflect the data collection and reporting, training and transparency practices discussed in other recommendations.
- ♦ Work with school law enforcement to develop an appropriate use of force continuum that will be posted for public comment on the district's website before being considered by the school board.
- ♦ Review school law enforcement's use of force reports each school year, and determine whether the way force is being used by school law enforcement is appropriate.
- ♦ Periodically review ticketing and arrest data, and make recommendations to the district regarding preventative methods (including additional training for school law enforcement) that could reduce the number of youth referred to courts or the juvenile system.

**19) School district police departments should compile an annual report for the school board, made available to the public through the district's website, that includes an analysis of ticketing, arrest and use of force data. Annual reports should include:**

- ♦ The number of minority students (district-wide and by campus) who were ticketed, arrested or the subject of a use of force action, in relation to their percentage in the student body—and, if they are overrepresented, what measures have been identified by the Department, ISD police department and district and campus administrators to address any overrepresentation. The report should include any complaints or internal findings of racial profiling and corrective measures taken.
- ♦ The number of special education students ticketed, arrested, or who were the subject of a use of force district-wide and by school campus (in relation to their percentage in the student body) and, if they are overrepresented, what measures have been identified by the ISD police department, district and campus administrators, and special education staff to address those issues, with particular attention paid to whether a gap in resources, supports or services is related to the overrepresentation.
- ♦ An analysis of the number and rate of ticketing, arrests and use of force incidents by campus; a discussion of how the department can reduce such incidents in the future; and an assessment of whether school district police department resources are being appropriately utilized.
- ♦ How and with what frequency the ISD police department has used its data for the reporting year to inform its practices—including officer training, student mentoring, and teaching or providing information resources to students—on specific campuses and district-wide.
- ♦ How campus administrators have used police department data to inform and design preventative measures, disciplinary practices, and services to students to assist in addressing behavioral issues, and collaborative efforts between campus administrators and the school district police department to address issues revealed by their analysis of the data.

- ♦ An analysis of the types of offenses being committed broken down by campus, the places on the campus they are being committed, who (adults or students) is committing crimes by type of crime, the time of day when crimes are most likely to be committed, and any preventive measures taken to make particular areas of campus less prone to crime.

**20) For districts that contract with local law enforcement agencies for School Resource Officers, the district's Memorandum of Understanding (MOU) with the law enforcement agency should require the same data collection, analysis and reporting outlined above. The MOU also should include a schedule for the routine circulation of this information to inform their policies and practices around school discipline and preventative approaches to school crime.**

**21) Policymakers should determine an appropriate method of statewide collection and reporting of ticketing and arrest data for public school campuses to better inform educational and juvenile justice policy. Two options:**

- ♦ TEA could modify the PEIMS database to require school districts to report data related to student ticketing and arrest, and include it as part of the disciplinary data TEA posts. The data should be disaggregated by race/ethnicity, gender, age and special education status; or
- ♦ TJPC could modify the new Juvenile Case Management System that will be utilized by juvenile probation departments to allow for the collection of this data.

**22) Texas Education Code §37.0021, which requires reporting of restraint and seclusion, should be amended to require reporting for all students, not just special education students.**

Texas is currently under-reporting restraint and seclusion. To truly understand the extent to which these practices are used, we must require reporting for all students.

**23) Section 37.0021 should also be amended so that school-based law enforcement are no longer exempt from the reporting requirements for restraint and seclusion.**

There is no sound policy reason for excluding school-based law enforcement from reporting. The failure to include them encourages using school law enforcement to circumvent reporting requirements.

**24) School district police departments should be required to post unredacted copies of their policy manuals on the district's website.**

Parents and community members must be able to access information about directives determining how school law enforcement interacts with youth on school campuses.





# Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools

*How the Myth of the “Blackboard Jungle” Reshaped School Disciplinary Policy*

## INTRODUCTION

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The nation's schools have historically been safe places for young people, even in high crime neighborhoods. As detailed in this report, this is also true in Texas—both *before and after* assignment of police officers to public schools became routine in cities large and small across the state.

Over the past 50 years, the public perception of “out of control youth” has been fed more by popular culture and media headlines than by actual crime statistics. Incidents of horrific school violence, such as the Columbine High School shootings in 1999, are extremely isolated events, yet the widespread publicity surrounding them—not actual juvenile crime statistics—inspired tougher sentencing for juvenile offenders and provided the impetus to fund a growing police presence in public schools.

For purposes of this report, Texas Appleseed reviewed data from a variety of sources to assess school crime on the state's campuses. Appleseed researched studies of school crime in Texas and nationally; collected data from school district police departments, courts and juvenile justice agencies; and interviewed stakeholders in 10 Texas districts.

The good news is crime is low—with property crime accounting for the majority of crime occurring on school campuses. Violent and weapons-related incidents are low, with the primary weapon used in schools reported as “fists.” Our analysis of data available from the Texas Education Agency shows that, in 2008-09, ***less than one percent of Texas 4.7 million students were disciplined for conduct that could be punishable as a crime—and only 2,396 were mandatorily expelled from school as a result.***

Arrest and ticketing data from school district police departments gathered and analyzed by Texas Appleseed for this report supports the conclusion that few serious crimes occur on Texas public school campuses. Yet, it is clear from Texas Appleseed's research that ticketing, arrest and use of force in Texas public schools has out-paced development of data collection and reporting to measure their effectiveness and the development of officer training programs specifically tailored to school-based policing.

Texas Appleseed submitted an Open Records Request to the 167 Texas school districts that have established their own school police departments and to municipal and justice courts statewide, requesting Class C ticketing and arrest data for a five-year period (2001-02 through 2006-07)—broken down by race or ethnicity, the student’s age, the nature of the offense, and special education status of the student receiving the ticket. The response to our request for data was disappointing:

- **Only 22 school districts and four municipal courts districts could provide any ticketing data for a two- to five-year-period.** In 2006-07, these districts and court jurisdictions represented almost a *quarter* of all Texas students.
- **Only 15 of these school districts could provide ticketing data that identified the race or ethnicity and/or age- or grade-range of the student, and only two districts kept ticketing data by special education status.** The response was even lower for requested arrest data.
- **The Texas Education Agency does not require school districts to report student ticketing or arrest data.** Also, very few school districts submit school-based crime data to the Texas Department of Public Safety for inclusion in the department’s annual Uniform Crime Report.

While our analysis of the available data shows weapons-related and violent offenses to be rare occurrences in Texas’ schools, the widespread failure school law enforcement to collect and maintain a searchable database poses problems for school districts that must make decisions about allocating resources during tough economic times.

Campus policing is expensive. In 2006-07, some school districts included in this study reported spending millions of dollars on police department budgets—including Dallas ISD, \$13.7 million; Houston ISD, \$11 million; San Antonio ISD, \$4.7 million; Katy ISD, \$3.9 million; Pasadena ISD, \$3.3 million; Spring Branch, \$2.8 million; United ISD, \$2.7 million; Edgewood, \$1.7 million; Humble ISD, \$1.5 million; and Waco ISD, \$1.2 million.

Annual campus planning is not complete if it ignores a careful review of campus policing, which has relevance for decisions on budgeting, school safety, improving school climate, and effective student discipline. Unfortunately, the lack of available data indicates that this vital information is not considered when districts are making important decisions regarding resources directed at school safety, the effectiveness of disciplinary methods, and the need for preventative programming.

In 2009, the Texas Office of Court Administration (TOCA) reported more than 275,000 non-traffic tickets being issued to juveniles in Texas.<sup>2</sup> Because too few Justice of the Peace courts report this data to TOCA, the number of tickets issued to students is likely to **grossly exceed** that number annually.

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2 TEXAS OFFICE OF COURT ADMINISTRATION, ANNUAL REPORT FOR THE TEXAS JUDICIARY (2009), available at <http://www.courts.state.tx.us/pubs/AR2009/toc.htm>.

Particularly concerning is the *lack of required training for police officers specific to their work with children in a school setting*. Few campus police officers have been trained in child development and behavior, research-based de-escalation techniques shown to be effective in child-centered settings, and the issues surrounding behavior and appropriate discipline of students with mental and emotional disabilities. As a result, many officers assigned to schools approach student behavior with the traditional “policing” tools they are trained to use: ticketing, arrest and use of force (pepper spray, Tasers, canines).

This report first seeks to provide a context for considering these important issues—with the opening chapter discussing popular misconceptions about juvenile crime, followed by an examination of the shift toward a police presence in schools in Texas. What follows are the results of more than a year of data collection and analysis around ticketing, arrest and use of police force in schools.

The identified trends based on data from reporting school districts are disturbing, including but not limited to a likely *overrepresentation of minority and special education students* in ticketing, arrest and use of force incidents.

The data raises serious questions about the 1) financial impact on students and families; 2) the serious, unintended consequences of disciplining students in a way that builds a *criminal record* that, due to the volume of Class C fine-only misdemeanor cases, can potentially be accessed by future employers and others; 3) the potential for students’ arrest at age 17 for not complying with court-ordered fines or community service surrounding Class C tickets (now under legal challenge in Texas); 4) the arrest of thousands of students on Texas’ public school campuses for “crimes” that at one time would have been handled within the school, and 5) the practice of some school districts to withhold their policies on use of police force in schools from students, parents and the public.

At the root is the challenge of reconciling child-centered education philosophy and the public safety-centered law enforcement philosophy. *Specialized training of police officers, better data to inform careful analysis and policy development around school policing, and implementation of programs that emphasize positive, proactive ways to address discipline without putting youth into the school-to-prison pipeline are essential to meeting that challenge.*

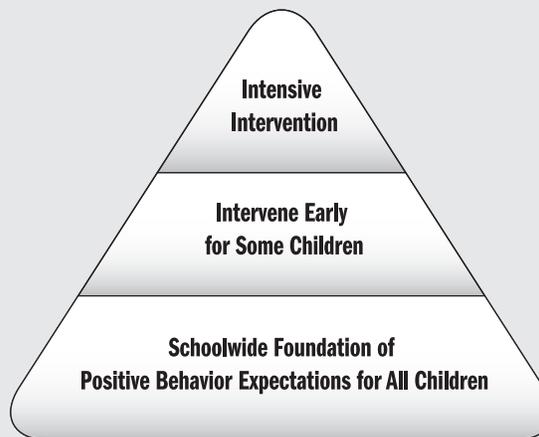
## Best Practices: School-wide Positive Behavior Supports

Research shows that successful programs for reducing disciplinary referrals do the following:

- Target all students.
- Use well-coordinated methods and approaches that are “research-based” and deemed effective.
- Implement positive behavioral expectations and supports school-wide.
- Provide adequate training and ongoing support to ensure effective implementation.
- Involve school administrators, teachers, students, parents, mental health professionals, and community resources.
- Incorporate regular, rigorous evaluation to determine if the programs to improve behavior are continuing to work.<sup>3</sup>

School-wide Positive Behavior Supports (PBS) is one model that incorporates each of these elements. PBS is an evidence-based, data-driven framework proven to reduce disciplinary incidents, increase a school’s sense of safety, and support improved academic outcomes.<sup>4</sup>

School-wide PBS uses the same three-tiered model recognized by the U.S. Department of Education in its *Guide to Safe Schools*, which is rooted in the understanding that students often have different needs, requiring individualized levels of intervention:



3 Robert Horner et al, A Randomized, *Wait-List Controlled Effectiveness Trial Assessing School-Wide Positive Behavior Support in Elementary Schools*, 11 J. POSITIVE BEHAVIOR INTERVENTIONS 133; Jeffrey R. Sprague & Robert H. Horner, School Wide Positive Behavioral Supports, in *THE HANDBOOK OF SCHOOL VIOLENCE AND SCHOOL SAFETY: FROM RESEARCH TO PRACTICE* (Shane R. Jimerson & Michael J. Furlong, eds., 2007). For additional research on PBS, please visit [www.pbis.org](http://www.pbis.org).

4 *Id.*

Several Texas school districts have adopted PBS to address behavioral issues on their campuses. Some of the results that Texas PBS campuses report are:

- Improved academic performance.
- Reduction in disciplinary referrals and class disruptions.
- Strengthened communication between home and school.
- Provision of least restrictive environment for all students.<sup>5</sup>

Schools in other parts of the nation show similar results after implementing PBS.<sup>6</sup> Many of these schools also find that implementation of school-wide PBS significantly reduces overrepresentation of minority students in disciplinary referrals.<sup>7</sup>

The federal government encouraged schools to spend stimulus funds on PBS programs, due to their effectiveness in combating behavioral issues and improving academic achievement.<sup>8</sup> The federal government also included language in the “Race to the Top” guidelines meant to encourage states to implement PBS programs.<sup>9</sup>

For more discussion of PBS and best practices to reduce disciplinary referrals, see the Best Practices chapter in Texas Appleseed’s report, *Texas’ School to Prison Pipeline: Dropout to Incarceration*.<sup>10</sup>

5 AUSTIN INDEPENDENT SCHOOL DISTRICT, POSITIVE BEHAVIOR SUPPORT FAQ’S, *available at* <http://www.austinisd.org/academics/sss/pbs/faq.phtml>.

6 *See* Sprague & Horner, *supra* note 4; *see also* NATIONAL ALLIANCE ON MENTAL ILLNESS (NAMI), SUPPORTING SCHOOLS AND COMMUNITIES IN BREAKING THE PRISON PIPELINE: A GUIDE TO EMERGING AND PROMISING CRISIS INTERVENTION PROGRAMS FOR YOUTH (2009).

7 *See* Illinois PBIS Network, *Illinois Schools Address Inequitable Discipline Practices*, ILLINOIS PBIS NETWORK NEWSLETTER, Vol. 14, Issue 1 (2009).

8 *See* DIGNITY IN SCHOOLS, STIMULUS FUNDS AND ALTERNATIVES TO ZERO TOLERANCE, *available at* <http://www.dignityinschools.org/alternatives>.

9 *Id.*

10 TEXAS APPLESEED, TEXAS’ SCHOOL TO PRISON PIPELINE: DROPOUT TO INCARCERATION 79 (2007).



## SCHOOL CRIME DATA—SEPARATING FACT FROM FICTION

*Objective studies have shown repeatedly that schools are safe places, and the level of violence in schools is actually much lower than suggested by both news reporters and academic researchers, both of whom have exaggerated the severity and pervasiveness of the problem. To be sure, there are some dangerous schools in America, but they are the exceptions; they are dangerous because they serve dangerous communities and are underfunded and understaffed.*

—Dewey G. Cornell  
School Violence Fears Versus Facts viii (2006)

Beginning with the publication of *The Blackboard Jungle* more than 50 years ago and its adaptation into a major motion picture, popular media has presented an image of juvenile delinquency and school crime that is out-of-keeping with reality.<sup>11</sup> *The Blackboard Jungle* fed America's fears of a frightening epidemic of juvenile delinquency,<sup>12</sup> and this image of "out of control" youth is one that has woven its way in and out of public consciousness and debate since then.<sup>13</sup> These fears are fed by intense publicity that surrounds the very isolated incidents of horrific school violence occurring in the United States, and have been used to justify a growing body of "get tough" laws on juvenile crime and school discipline that focus on punishment and "zero tolerance" as opposed to prevention and treatment.<sup>14</sup>

The reality is that America's public schools are very safe, even when located in high crime neighborhoods.<sup>15</sup> This is supported by annual surveys and available school crime data at

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11 See DEWEY G. CORNELL, *SCHOOL VIOLENCE FEARS VERSUS FACTS* (2006).

12 JAMES GILBERT, *A CYCLE OF OUTRAGE 183-86* (1986); see also Appendix, The Genesis of the Myth of the "Blackboard Jungle," *infra*.

13 For a historical look at public perception of school crime, see Appendix, *infra*.

14 For an annotated overview of how the image of "out of control youth" became reality for policymakers, including the role of oft-quoted, now debunked "reports" of a spike in youth crime, see Appendix, *infra*.

15 CORNELL, *supra* note 11.

the state and national levels. While there are gaping holes in readily available data that must be addressed, it is clear even from limited available reporting that America's students are far less likely to be victims of violent crime at school than anywhere else.<sup>16</sup> School-associated violent deaths are very rare occurrences.<sup>17</sup> Texas is no exception to this.<sup>18</sup>

Though media coverage following high-profile school shootings can make the public believe that these occurrences are becoming increasingly common, a look at national and state-level data tells a much different story.

### **School Crime Data: What It Shows**

At the outset, it is important to acknowledge deficiencies in reporting of school crime data, in Texas and nationally. Aside from the data that Texas Applesed received through open records requests (discussed later in this report), there are no easily available current estimates of school-based crime in Texas. ***School law enforcement officers are not required to report offenses or arrest information, and we've found nothing to indicate that school districts compile or review their own data to inform school safety decisions.*** As indicated by the response to our open records request, many Texas ISD police departments do not maintain searchable databases for student arrest and ticketing information.

With that in mind, one method of approximating the number of crimes that occur on school campuses statewide is to look at data reported to the Texas Education Agency on disciplinary referrals that could have involved criminal conduct. In the absence of arrest data, the list below reflects disciplinary referrals, rather than arrests, for student misconduct conduct that can be punishable as a crime. The data below should be understood in context: In 2008-09, Texas had a total student population of 4.72 million students. Assuming that each of these 36,598 disciplinary referrals represents an unduplicated student and incident (which is unlikely), this means that *less than one percent of Texas' student body was involved in some kind of criminal behavior that led to a disciplinary referral at school during the 2008-09 school year.*<sup>19</sup> These referrals include:

- Conduct punishable as a felony: 1,486 disciplinary referrals
- Controlled substance/drug violations: 20,529 referrals
- Alcohol violations: 2,687 referrals
- Abuse of a volatile chemical: 120 referrals

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16 Nat'l Youth Violence Prevention Res. Ctr, *School Violence Fact Sheet*, available at <http://www.safeyouth.org/scripts/facts/school.asp>; Cornell, *supra* note 11, at 18 (2006); NAT'L CTR. FOR EDU. STATISTICS, U.S. DEP'T OF EDU. & BUREAU OF JUSTICE STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2008 (2009).

17 Mark Anderson *et al*, *School-Associated Violent Death in the United States, 1994-1999*, J. AM. MED. ASS'N, Vol. 286, No. 21, at 2695 (2001); Center for Disease Control and Prevention, *Understanding School Violence Fact Sheet 2* (2008)(violent deaths at school accounted for less than 1% of all homicides and suicides among children ages 5-18).

18 Center for Disease Control and Prevention, *Youth Violence: State Statistics—Texas*, available at [http://www.cdc.gov/violenceprevention/youthviolence/stats\\_at-a\\_glance/TX.html](http://www.cdc.gov/violenceprevention/youthviolence/stats_at-a_glance/TX.html).

19 All of this data comes from the Texas Education Agency, *State Level Annual Discipline Summary PEIMS Discipline Data for 2008-09*, available at [http://ritter.tea.state.tx.us/cgi/sas/broker?\\_service=marykay&\\_program=adhoc.download\\_static\\_summary.sas&district=&agg\\_level=STATE&referrer=Download\\_State\\_Summaries.html&test\\_flag=&\\_debug=0&school\\_yr=09&report\\_type=html&Download\\_State\\_Summary=Generate+Report](http://ritter.tea.state.tx.us/cgi/sas/broker?_service=marykay&_program=adhoc.download_static_summary.sas&district=&agg_level=STATE&referrer=Download_State_Summaries.html&test_flag=&_debug=0&school_yr=09&report_type=html&Download_State_Summary=Generate+Report).

- Public lewdness or indecent exposure: 510 referrals
- Retaliation against a district employee: 312 referrals
- Firearm violation: 135 referrals
- Illegal knife: 324 referrals
- Prohibited weapon or club: 597 referrals
- Arson: 146 referrals
- Indecency with a child: 64 referrals
- Criminal mischief: 1,088 referrals
- Terroristic threat: 1,055 referrals
- Assault of a district employee: 1,379 referrals
- Assault of a non-district employee: 4,557 referrals
- Aggravated assault of a district employee: 51 referrals
- Aggravated assault of a non-district employee: 276 referrals
- Sexual assault of a non-district employee: 111 referrals
- Felony controlled substance violation: 1,111 referrals
- Aggravated robbery: 22 referrals
- Felony possession of marijuana: 38 referrals

Furthermore, *it is likely that many of the above incidents did not rise to the level of serious criminal behavior* since only 2,396 referrals were made for a mandatory expulsion and 5,806 referrals for a discretionary expulsion, though the Education Code requires expulsions for serious offenses.<sup>20</sup>

This conclusion is consistent with data reported by ISD police departments to the Texas Department of Public Safety for inclusion in the 2008 Uniform Crime Report (UCR):<sup>21</sup> no murders, 11 offenses involving rape, 24 robberies, 247 assaults, 374 burglaries, 4,082 larceny offenses, and 24 auto thefts.

Unfortunately, very few school district police departments provide data for the annual Uniform Crime Report. For 2008, only 35 ISD police departments reported data.<sup>22</sup> It is impossible to determine from the data whether the victim and offender were students.

Despite the very low participation in crime data reporting among ISD police departments, this data does provide a sense of the type of crimes that are occurring on Texas public school campuses. ***Property offenses top the list, with violent offenses representing a very small percentage of reported crimes.*** Assaults account for approximately five percent of all the reported offenses.

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20 *Id.*

21 Data from Texas Department of Public Safety (TDPS) on file with author; the 2007 Uniform Crime Report can be accessed on the TDPS website at [http://www.txdps.state.tx.us/administration/crime\\_records/pages/ucr.htm](http://www.txdps.state.tx.us/administration/crime_records/pages/ucr.htm).

22 *Id.*

The federal government passed legislation in 1990 requiring colleges and universities to report crime statistics to the Department of Education and to disclose those statistics to students, however there is no such mandate for public elementary and secondary schools.<sup>23</sup> While the Gun Free Schools Act requires schools to report the expulsion of a student for bringing a firearm to school, and Texas schools report disciplinary referral data to the Texas Education Agency, these reporting mechanisms do not necessarily reflect criminal student behavior. Also, there is no central database at the state or national levels that collects reports from school police officers on arrests or criminal incidents on school campuses.

That said, recent reporting on “school crime” at the national and state levels supports these conclusions:

- The level of violent school crime reported nationally and in Texas is extremely low.
- An extremely small percentage of reported school-based crimes involve weapons.

Texas Appleseed’s review of the data collected for this report also supports these conclusions.

### **National Reporting on School Crime**

The most frequently cited school crime reports are jointly published each year by the National Center for Education Statistics (NCES) and the Bureau of Justice Statistics (BJS).<sup>24</sup> However, rather than relying on data reported by schools when a crime occurs, the NCES and BJS rely on surveys of students, teachers and administrators.<sup>25</sup> Critics complain that relying on self-reported surveys for data related to crime in schools results in misreporting and skewed statistics.<sup>26</sup>

The FBI recently published a study of school crime that analyzed data reported by law enforcement entities through the National Incident Based Reporting System (NIBRS).<sup>27</sup> NIBRS is a database that supplements the information available through the traditional Uniform Crime Report (UCR). The NIBRS program collects data on both known offenses and persons arrested by law enforcement officers.<sup>28</sup> It includes a mechanism that allows law enforcement to specify crimes that occur on a school campus. While this may provide an interesting snapshot of reported data, this program is not being used by every law enforcement entity in the nation.<sup>29</sup> In fact, the study itself notes that, while the data appears to reflect increases from year to year in the number of crimes committed on school campuses, it more likely reflects the increase in the number of law enforcement agencies reporting their data in the NIBRS format.<sup>30</sup> NIBRS data includes offenses reported by colleges and universities,

23 See FED. BUREAU OF INVESTIGATION (FBI), CRIME IN SCHOOLS AND COLLEGES: A STUDY OF OFFENDERS AND ARRESTEES REPORTED VIA NATIONAL INCIDENT-BASED REPORTING SYSTEM DATA 2 (2007); see also *Hearing on Protecting our Schools: Federal Efforts to Strengthen Community Preparedness and Response Before the Committee on Homeland Security*, 110 Cong. (2007) (Testimony of Kenneth S. Trump, President and CEO of National School Safety and Security Services).

24 See NAT’L CTR. FOR EDU. STATISTICS, *supra* note 16.

25 *Id.*

26 CORNELL, *supra* note 11, at 18-20; Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, 34 J. CRIM. JUST. 591, 596 (2006).

27 FBI, *supra* note 23.

28 FBI, *NIBRS Frequently Asked Questions* (2009), available at [www.fbi.gov/ucr/index.html](http://www.fbi.gov/ucr/index.html).

29 FBI, *supra* note 23, at 3.

30 *Id.* at 3, 19.

and it is not possible to disaggregate the school crime data that applies to elementary and secondary schools.<sup>31</sup> Within those limitations, *the FBI study showed very low levels of crime in schools nationally*. For example:

- About 3.3 percent of reported crime occurred at school (including college and university campuses).<sup>32</sup>
- Students arrested at school most commonly used their hands, fists or feet as a “personal weapon.”<sup>33</sup> A gun or firearm was involved in only about three percent of all school-based offenses involving weapons, compared to eight percent involving a knife.<sup>34</sup>
- Young children were arrested on school campuses, with 12 children under age five arrested between 2000 and 2004, and 2,028 children ages five to nine arrested during the same period.<sup>35</sup> Again, these numbers may be low, since they only reflect crime data reported through NIBRS.
- Arrests divide along gender lines, with far more males than females arrested.<sup>36</sup>
- African American students are disproportionately arrested, making up about 25 percent of all the reported arrests;<sup>37</sup> however, the majority of school crime reports involved 13- to 15- year-old white males.<sup>38</sup>
- Simple assault was the offense for which students were arrested most often, representing 28 percent of all reported school-based arrests, followed by drug/narcotic violations (24 percent).<sup>39</sup> Vandalism was the third most common offense, representing seven percent of all reported school-based arrests.<sup>40</sup>

*Schools are safe places for students to be. While even one murder or one assault or robbery is too many, schools generally are much safer than the communities in which they are located. For many students, schools remain safe havens, places they can go to get away from violence.*

– **Holly Kuzmich**

*Deputy Chief of Staff for Policy and Programs*

U.S. DEPARTMENT OF EDUCATION

Testimony before House Committee on

Homeland Security, May 17, 2007

31 *Id.* at 19-20.

32 *Id.* at 20.

33 *Id.*

34 *Id.* at 14-15.

35 *Id.* at 17.

36 *Id.*

37 *Id.* at 18.

38 *Id.* at 20.

39 *Id.* at 16.

40 *Id.*

The most recent report on school crime and safety from the NCES and BJS indicates that surveys of students, teachers and school administrators showed:

- Four percent of students ages 12-18 reported being a victim of a crime at school.<sup>41</sup>
- Students are 50 times more likely to be a victim of homicide away from school than at school.<sup>42</sup>
- Seven percent of teachers surveyed indicated they were threatened with an injury by a student from their school in 2003-04.<sup>43</sup>
- Three percent of teachers reported being physically attacked in 2003-04. A greater percentage of elementary school teachers reported having been physically attacked (four percent) than secondary school teachers (two percent).<sup>44</sup>
- Between 1993 and 2007, the percentage of students reported being threatened or injured with a weapon on school property fluctuated between seven and nine percent.<sup>45</sup>
- Though the rate of student victimization at school has declined between 1995 and 2007, this trend is also true of victimization away from school.<sup>46</sup>

Data on school crime dating back to the 1950s defies claims that violent school crime has increased so substantially in recent years that it can be considered a “crisis.” *Polls of teachers show very little difference between the rate of assaults on teachers in 1956 and in 2003-04, the most recent year for which we have national data.*<sup>47</sup>

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41 NAT'L CTR FOR EDU. STATISTICS, *supra* note 16, at 6,12. A violent incident included serious violent incidents plus physical attacks or fights without a weapon and threats of physical attacks without a weapon. A serious violent incident was defined as rape or attempted rape, sexual battery other than rape, physical attack or fight with a weapon, threat of physical attack with a weapon, and robbery with or without a weapon.

42 *Id.* at 6.

43 *Id.* at 16.

44 *Id.*

45 *Id.*

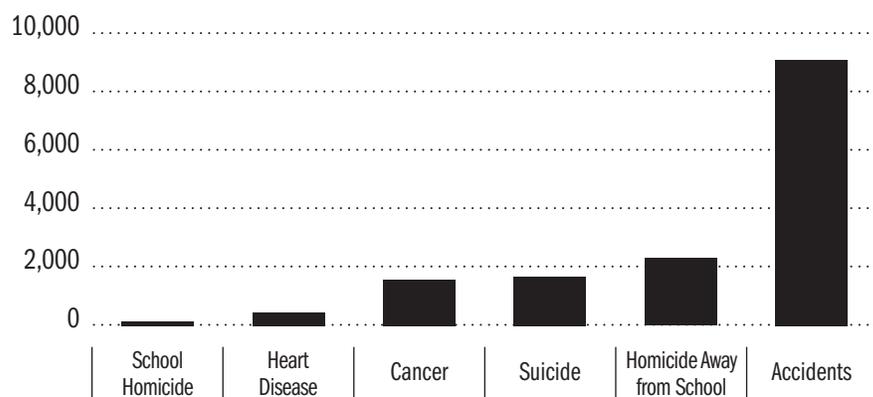
46 *Id.*

47 ROBERT J. RUBEL, TRENDS IN STUDENT VIOLENCE AND CRIME IN SECONDARY SCHOOLS FROM 1950 TO 1975: A HISTORICAL VIEW 17 (1978)(polls carried out annually by the National Education Association between 1956 and 1975 showed that about two to three percent of teachers reported being assaulted).

When compared with the leading causes of death for young people, the small role that school violence plays becomes clearer:<sup>48</sup>

### Comparison of Youth Homicide with Top Causes of Death for Youth Ages 5-19 in the U.S.

2005



*School Crime  
Data—Separating  
Fact from Fiction*

29

Even in 1999, the year that 12 students and one teacher died at the hands of two student shooters at Columbine High School in Colorado, only 33 homicides took place at schools nationwide that year.<sup>49</sup> In 1968, a survey of 110 urban school districts documented 26 homicides.<sup>50</sup> During 2004-05, according to the NCES report, there were 21 homicides at school, fewer than the number of school-related homicides occurring in 1968.<sup>51</sup>

Even one homicide is a tragedy. However, one thing is abundantly clear: ***property crimes have always accounted for the largest percentage of crimes committed on public school campuses.*** This is consistent with data for crimes committed by juveniles away from school—which shows that 92 percent of juvenile crime is classified as non-serious property crime and minor juvenile offenses.<sup>52</sup> Violent crimes committed against teachers and other students have been—and remain—statistically low.<sup>53</sup>

48 Table based on data from U.S. Dep't of Health & Human Services, Centers for Disease Control & Prevention, *Unintentional Injuries, Violence, and the Health of Young People* (2005), available at <http://www.cdc.gov/HealthyYouth/injury/pdf/facts.pdf>; see also CORNELL, *supra* note 11, at 22.

49 NAT'L CTR. FOR EDU. STATISTICS, *supra* note 16, at 7.

50 ROBERT J. RUBEL, *THE UNRULY SCHOOL* 126 (1977).

51 NAT'L CTR. FOR EDU. STATISTICS, *supra* note 16, at 7.

52 WILLIAM L. TURK, *SCHOOL CRIME AND POLICING* 14 (2004).

53 See RUBEL, *THE UNRULY SCHOOL*, *supra* note 50, at 126 (In discussing a chart showing the arrest rates of school-aged youth for specific crimes, author concludes, "It is particularly important to note that despite some common beliefs to the contrary, the data—when presented in this fashion—clearly shows that crimes against property grew at a faster rate than crimes against persons"); NAT'L CTR. FOR EDU. STATISTIC, *supra* note 16, at 10 (students report more thefts at school than away from school); CORNELL, *supra* note 11, at 21 (Over the eight-year period between 1992 and 2000, fewer than one percent of homicides of school-age children took place at school).

*The vast majority of schools in the United States are safe places, and in recent years they have become even safer. Safe schools are essential to young people's ability to learn and develop healthy relationships. The overall rates of violence in schools have fallen, and students feel safer in schools today than they have for several years. In fact, students are much less likely to commit harm at school than away from school...A great deal of media attention has been directed to school shootings in recent years. However, school-associated violent deaths remain rare events.*

– National Youth Violence  
Prevention Resource Center  
School Violence Fact Sheet (2002)

### **An Early Push for Centralized School Crime Data Reporting in Texas**

Good data is imperative to campus safety.<sup>54</sup> It not only helps school police officers identify where crime occurs and who is committing crime, it allows districts to see where abuses might be occurring.<sup>55</sup> It is also a means of determining whether the school police department is effectively reducing crime on campus.<sup>56</sup> School districts should review school crime data when determining how to budget for school security, whether to adjust the size of their police force, and how to use preventative programs to reduce the likelihood that crime will occur.

One Texas ISD Police Chief described the benefits of data collection this way:<sup>57</sup>

*One of the most impressive features of the [ARMS] software is the large variety of report formats available (about 200 different formats and search criteria). Many of the reports are designed to calculate service calls and pinpoint where and when crimes occur. The reports produce valuable data for manpower assignments and adjustments. You can also use the data to justify and request additional personnel during budget preparation. The software automatically calculates Uniform Crime Report values and prints complete reports ready for submission to your state agency.*

*...The software has helped us in many ways, but the most obvious area is the instantaneous access to usable data for the officers in the field and for reporting purposes. The ability to immediately produce a statistical report for incidents on crimes on request from the superintendent, a board member, or other person is very valuable and necessary. The offense and other reports created by the ARMS software are professionally formatted, and we have received several positive comments from other agencies and courts.*

54 OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, U.S. DEP'T OF JUSTICE, GUIDE TO USING SCHOOL COP TO ADDRESS STUDENT DISCIPLINE AND CRIME PROBLEMS 3 (2003).

55 *Id.* at 7-8.

56 *Id.*

57 Alan Bragg, Chief of Police, Spring ISD Police Dep't, *Letter to the Editor*, TEXAS ASSOCIATION OF SCHOOL BUSINESS OFFICIALS REPORT, June 1995. Ironically, this same official responded to Texas Appleseed's open records request for data with a letter indicating that responding to the request would require 49 hours of staff time and 120 hours of programming time, and would cost Texas Appleseed \$5,100. Appleseed opted not to pay for the data.

The 2009 Texas Unified School Safety Standards, developed by the Texas School Safety Center and in keeping with recommendations by the U.S. Department of Education, also recognize the benefit of data keeping:

*1.4 The school district should complete a multi-hazard assessment of the community and school district properties—identifying hazards from natural, accidental, and intentional incidents, including violence and property crime.*

*1.5 The school district multi-hazard assessment should include frequency, magnitude, warning time, and severity of potential incidents.*<sup>58</sup>

Without accurate data, it is difficult to imagine how schools can assess the potential threats posed by violence or property crime. In the absence of data, schools are left to the mercy of media hyperbole and anecdotal evidence in decision-making surrounding campus security. Unfortunately, despite the recognition that data keeping represents a “best practice,” Texas has failed to require collection or reporting of data by school police departments. This is true despite early recommendations for a centralized database.

Texas first considered creating a school-crime reporting database in the early 1990s, but no such system was implemented. The 1993 Texas Senate passed a resolution encouraging the Central Education Agency (the precursor to TEA) and the Department of Public Safety to develop a statewide uniform crime reporting system that school districts could use.<sup>59</sup> The state Senate resolution was rooted in the following “findings:”

- *The numerous incidents of crime and violence at the campuses of our state’s primary and secondary schools are threatening the health and safety of the schoolchildren in the State of Texas; and*
- *More and more weapons are being confiscated on school premises, creating a nonconductive learning environment.*<sup>60</sup>

The resolution also found that “the allocation of resources to combat campus crime should be based on accurate data,” and noted that the Central Education Roundtable Committee recommended collecting data on campus crime on a statewide basis “to provide much-needed information for future allocation of state resources to combat campus crime.”<sup>61</sup> This resolution was likely an outgrowth of the State Board of Education (SBOE) roundtable on school safety, as well as the joint task force created by the SBOE and the Texas Juvenile Probation Commission to look at problems and needs associated with juvenile crime and violence.<sup>62</sup>

As a result of this resolution, the DPS conducted a three-month survey in fall 1994 with a random sampling of 50 Texas school districts.<sup>63</sup> During the survey period, the 50 districts reported on the frequency, nature, time, location, victims and consequences of criminal

58 TEXAS SCHOOL SAFETY CENTER, TEXAS UNIFIED SCHOOL SAFETY STANDARDS (2009), available at <http://www.txssc.txstate.edu/K12/>.

59 Tex. S. Res. 879, 73<sup>rd</sup> Reg. Sess. (1993).

60 *Id.*

61 *Id.*

62 See TEXAS APPLESEED, TEXAS’ SCHOOL-TO-PRISON PIPELINE DROPOUT TO INCARCERATION 130 (2007).

63 TEXAS EDUCATION AGENCY, TEXAS INDEPENDENT SCHOOL DISTRICT CRIME REPORT (1995).

behaviors on school campuses.<sup>64</sup> The TEA then compiled a report discussing the survey findings, including:

- About one-third (36%) of the campuses included in the survey did not report any crimes during the reporting period.
- Crime frequency was actually lower in the largest districts in this sample than would be expected on the basis of chance alone.
- About one-third (34%) of all reported incidents occurred before or after school hours or when school was closed. Only 40% of all reported incidents occurred during class and only 27% of all reported incidents physically took place in the classrooms, a relatively low frequency considering that students spend most of their day in classrooms.
- Most of the reported offenses involved no weapons. Of those that did, hands, fists and feet were the weapons most commonly used while firearms of any kind (handgun, shotgun, etc.) were very rarely used. The most common offenses were simple assaults and disorderly conduct.
- Over 16% of the offenders were not authorized to be on campus. In this survey, students comprised the vast majority of both offenders (88%) and victims (88%).
- A small percentage of reported incidents were gang-related. No gang-related incidents were reported on rural campuses.<sup>65</sup>

These findings appear to contradict, rather than support, the Senate resolution that spurred the survey. Rather than showing that schools were overrun by “numerous incidents of crime and violence” and that “more and more weapons” were being confiscated, the study appears to show that crime and violence were relatively rare occurrences, and that when crime and violence did occur, it was most often in the absence of a weapon. This study underscores the importance of reviewing data before making policy.

The report recommended that TEA and DPS modify existing databases so that data on school crime could be more easily collected and analyzed.<sup>66</sup> The report also recommended linking databases so that law enforcement and education data could be analyzed within both the criminal justice and education contexts.<sup>67</sup> Alternatively, the report suggested incident-based reporting by school personnel, similar to the method used for the survey of the 50 school districts.<sup>68</sup> These recommendations have not been implemented.

Despite the findings of this report, policymakers and stakeholders continued to express fears surrounding crime in Texas schools.<sup>69</sup> This was true even after it was recognized that juvenile crime and crime on school campuses were decreasing, nationally and in Texas.<sup>70</sup>

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<sup>64</sup> *Id.* at 9.

<sup>65</sup> *Id.* at 10-11.

<sup>66</sup> *Id.* at 24-28.

<sup>67</sup> *Id.* at 27.

<sup>68</sup> *Id.*

<sup>69</sup> See CENTER FOR PUBLIC POLICY PRIORITIES, VIOLENCE AND WEAPONS IN TEXAS SCHOOLS (1999); TEXAS APPLESEED, *supra* note 62, at 130-33; Tex. S. Res. 79, 77<sup>th</sup> Reg. Sess. (1999).

<sup>70</sup> TEXAS LEGISLATIVE COUNCIL, YOUTH VIOLENCE IN THE UNITED STATES AND IN TEXAS 1 (2000).

In fact, the same year that the above report was published, the Texas Legislature passed an omnibus education bill that enacted the tough “zero tolerance” statutes that fundamentally changed the way that school children were disciplined in Texas.<sup>71</sup> During the same session, the Texas Legislature passed an omnibus bill reforming Texas’ juvenile justice system, enacting tougher sanctions and expanding the number of offenses that qualified for the most severe sentences for youth.<sup>72</sup> But, despite the recommendations of the report prepared for the legislature by TEA and DPS, nothing was done to ensure uniform reporting of school crime.

### Texas Appleseed’s Data

Texas Appleseed began its research into ticketing, arrest and use of force by ISD police in 2008, sending out open records requests to every school district police department in the state. Texas Appleseed also sent letters to municipal courts and Justice of the Peace courts requesting any data they kept and could share regarding school-based ticketing. Texas Appleseed requested the following data spanning the 2001-02 school year through 2006-07:

- The number of Class C misdemeanor tickets issued to students, broken down by offense, race/ethnicity, gender and special education status.
- The number of arrests of students, broken down by offense, race/ethnicity, gender and special education status.
- Use of force data disaggregated by race/ethnicity, gender and special education status.

Appleseed also requested staff and budgetary information for the school district police departments. Appleseed encouraged districts to let us know if they could comply with any part of the request, even if they were not able to provide all of the requested data.

There was a very low level of response.<sup>73</sup> ***Many of the school district police departments could not produce any data relating to arrest or ticketing of students on school campuses.*** Others were able to produce data, but did not keep the data in a searchable database, which meant that it could only be reproduced at a very high cost. Several districts offered to provide the data if Texas Appleseed paid data programming, copying and personnel fees that ran into the thousands of dollars.

Many others simply never responded to the requests for information, even after Texas Appleseed followed up with phone calls to campus police departments. In some cases, Texas Appleseed was only successful in obtaining data after an informal request for assistance to the Texas Attorney General’s Open Records Division. It took Texas Appleseed close to two years to gather the data we have included in this report.

The quality of the data collected from school district police departments and the courts varies a great deal. Some districts were able to produce data disaggregated by gender, but not by race or ethnicity. Others could not distinguish between a student who was arrested

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71 See TEXAS APPLESEED, *supra* note 62, at 132.

72 U.S. DEP’T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, STATE RESPONSES TO SERIOUS & VIOLENT JUVENILE CRIME 57 (1996).

73 For a listing of the school districts and courts that produced data and the type of data produced, see the Methodology section in the Appendix of this report.

and taken into custody, and a student who was simply given a Class C citation (though the data did include offense information). Only two districts were able to provide data that included special education status.

The data that was finally provided to Texas Appleseed comes from school districts accounting for approximately 27 percent of Texas' students, and includes urban, suburban and rural districts with populations of varying size.<sup>74</sup>

### **Conclusion**

Better data collection is needed to document a realistic picture of “school crime” and to evaluate the need for and effectiveness of law enforcement responses to student misbehavior. Today’s emphasis on school safety goes hand in hand with evidence-based programming; without data, there can be no analysis to determine what is working and what isn’t working in a school’s safety model.<sup>75</sup>

The data that is available underscores the reality that our schools are safe places, free of the violent crime that youth more often encounter away from school. While school safety should remain a priority for Texas, ***more emphasis should be placed on understanding the nature and quality of school crime through better data collection*** rather than on “get tough” measures that do not reflect the reality of the crimes that are occurring on school campuses. Better data will allow policymakers, districts, schools, parents and communities to gain a clearer understanding of the nature and extent of the crimes that occur on their school campuses so that they can respond with effective policy. “Best practices” cannot be achieved without data to point decision makers in the right direction.

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<sup>74</sup> *Id.*

<sup>75</sup> See DR. ANN J. ATKINSON, SAFE AND SECURE: GUIDES TO CREATING SAFER SCHOOLS GUIDE 5 FOSTERING SCHOOL-LAW ENFORCEMENT PARTNERSHIPS (2002); OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, *supra* note 54.





## THE GROWTH IN SCHOOL-BASED LAW ENFORCEMENT

*[S]chool-based policing [is] the fastest growing area of law enforcement.*

—National Association of School Resource Officers

Despite the lack of verifiable, concrete data documenting a high rate of serious crime on public school campuses, school-based law enforcement programs have gained popularity nationally and in Texas. It is important to examine the expanding role of school-based police officers to better understand why a significant share of responsibility for student discipline has shifted from the schoolhouse to the courthouse.

In many Texas schools, school-based law enforcement officers make direct referrals to the court system by ticketing students for Class C misdemeanors, or arresting them for more serious offenses. Students in Texas are ticketed and arrested at school in surprisingly high numbers; in large school districts, police officers are writing thousands of tickets every year, some of them to children as young as six years old. In the same districts, hundreds of children are arrested on campus each school year. A large body of research has been published around the “criminalization” of student behavior, its impact on dropout and justice system involvement, and what amounts to a “school-to-prison pipeline” for too many young people.

Much of this shift to a growing reliance on law enforcement in schools has to do with the way that schools responded to public concern about “rising” juvenile crime rates.<sup>76</sup> While the rhetoric of the juvenile justice policy enacted in the 1970s was rooted in prevention and rehabilitation, “broken windows” theories of policing<sup>77</sup> and predictions of “teenage

<sup>76</sup> See Appendix, for longer discussion of the development of public policy around school law enforcement.

<sup>77</sup> The “broken windows” theory refers the philosophy that in order to eliminate more serious criminal behavior, police must address low-level behavior like vandalism. See James Q. Wilson & George L. Kelling, *Broken Windows*, ATLANTIC MONTHLY, March 1982.

super-predators”<sup>78</sup> led policymakers to shift gears in the late 1980s and early 1990s to focus instead on enforcement and punishment.<sup>79</sup> Texas led the way, with a major overhaul of the juvenile justice code—and the discipline section of the Texas Education Code—during the 1995 legislative session.<sup>80</sup> The changes to the Texas Education Code mirrored the “tough on crime” approach taken in amending juvenile delinquency laws—with zero tolerance disciplinary policies mimicking determinate sentencing statutes.<sup>81</sup>

Even before the changes made during the 1995 legislative session, school districts in Texas began to implement school-based law enforcement programs, following two popular models.<sup>82</sup> The first to develop was the School Resource Officer model, which relies on a contract between a local law enforcement agency (the local police department or—in more rural areas—sheriff’s office) and the school district, with the local law enforcement agency assigning one or more officers to the district.<sup>83</sup> The second model, whereby school districts create their own police departments, is a more recent development.<sup>84</sup> Under that model, school districts commission their own police force. This model is popular in southern and western states<sup>85</sup> and is widely used in Texas.<sup>86</sup>

## History of School-Based Law Enforcement

### School Resource Officer Programs

The first School Resource Officer (SRO) program was implemented in Flint, Michigan in the mid-1950s.<sup>87</sup> However, use of SROs did not begin to grow until concerns surrounding school crime surfaced in the media and public policy debates in the 1960s.<sup>88</sup> During the 1960s through the 1970s, schools began to develop school security plans.<sup>89</sup> There was an increasing call for use of school-based police or security officers to assist in handling student disorder:

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- 78 John J. DiIulio, *The Coming of the Super-Predators*, THE WEEKLY STANDARD, November 27, 1995.
- 79 Dr. Barry Krisberg, Youth Violence Myths and Realities: A Tale of Three Cities, testimony before the House Subcommittee on Crime, Terrorism, and Homeland Security (February 11, 2009).
- 80 See TEXAS APPLESEED, *supra* note 62, at 115; OJJDP, *supra* note 72.
- 81 Paul J. Hirschfeld, *Preparing for Prison? The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 82 (2008).
- 82 Kenneth S. Trump, *Keeping the Peace*, AMERICAN SCHOOL BOARD JOURNAL, Vol. 185, No. 3, pp. 31-35 (1998).
- 83 *Id.*
- 84 *Id.*
- 85 *Id.*
- 86 See Todd J. Gillman, *Badges in the Halls Growing Number of School Districts Operate Campus Police Departments*, DALLAS MORNING NEWS, October 18, 1993.
- 87 OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP), U.S. DEP’T OF JUSTICE, *OJJDP Fact Sheet: School Resource Officer Training Program* (2001); Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, 34 CRIM. JUST. 591, 592 (2006).
- 88 *Id.* (SRO concept flourished during the 1960s and 1970s, particularly in Florida); Mike Kennedy, *Teachers with a Badge*, AMERICAN SCHOOL & UNIVERSITY, February 1, 2001 (Tucson, AZ established SRO program in 1962 and similar program subsequently begun in Miami, FL); Christopher F. McNicholas, *School Resource Officers Public Protection for Public Schools*, available at [http://www.ifpo.org/articlebank/school\\_officers.html](http://www.ifpo.org/articlebank/school_officers.html) (Fresno, CA police department deployed police officers to elementary and middle schools in 1968). For a full discussion of public concern over school crime, see Appendix.
- 89 RUBEL, THE UNRULY SCHOOL, *supra* note 50, at 56.

*A hypothetical example of such a situation is: in a classroom setting, an insolent pupil is sent to the main office, escorted by another student; the offending pupil breaks away from the escort, runs back to the classroom, and yells at the teacher. When other teachers come to help the verbally assaulted teacher, a fight breaks out among the class members. It is at this point—and perhaps even at the escort phase—that school security officers should have played a role and had an interest in the outcome of the fray. Since the ramifications of this kind of altercation (suspension, or possibly pressing criminal charges) would have inevitably involved the security office in more work, that office, if only out of self-interest, would have developed a vested interest in helping to prevent such situations from mushrooming in the first place. As potentially serious disorders increasingly concerned urban school systems in the 1970s, security officers were increasingly involved in individual schools.<sup>90</sup>*

By 1978, one in 100 schools surveyed reported having a police presence.<sup>91</sup> One out of 10 senior high schools in smaller cities reported having at least one police officer, and one in five senior high schools in large cities utilized school-based police.<sup>92</sup> A number of schools reported employing security guards.<sup>93</sup> The increased focus on school security also resulted in other measures that included identification cards, emergency call systems, closed-circuit television monitors, and perimeter alarms.<sup>94</sup> The 1978 National Institute of Education's report to Congress on school crime described the increasing use of school security guards and police:

*More than one-third of all big city schools employ trained security personnel; more than half of the big city junior high schools have them, as do two-thirds of all big city senior high schools...As with police, the use of professional security personnel is heavily concentrated in secondary schools in the city.<sup>95</sup>*

In 1986, the Department of Justice released a report on school crime that encouraged schools to develop a cooperative relationship with local police.<sup>96</sup> The report described several different models highlighting programs in large, urban districts as well as smaller districts.<sup>97</sup> These descriptions reflect not only a growing police presence in public schools, but also an increased reliance on the use of law enforcement techniques to directly address student misbehavior.<sup>98</sup>

However, it wasn't until the 1990s that the presence of school police became more widespread.<sup>99</sup> Though school crime began to decrease in 1992, public fears surrounding violence were

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90 *Id.*

91 THE NATIONAL INSTITUTE OF EDUCATION (NIE), *VIOLENT SCHOOLS—SAFE SCHOOLS: THE SAFE SCHOOL STUDY REPORT TO THE CONGRESS VOLUME 1* 145 (1978).

92 *Id.*

93 *Id.*

94 RUBEL, *THE UNRULY SCHOOL*, *supra* note 50, at 150.

95 NIE, *supra* note 91, at 144-45.

96 NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, *REDUCING SCHOOL CRIME AND STUDENT MISBEHAVIOR: A PROBLEM SOLVING STRATEGY* 61-64 (1986).

97 *Id.* at 62-64.

98 *Id.*

99 OJJDP, *supra* note 87; SCHOOL VIOLENCE RESOURCE CENTER, *BRIEFING PAPER: SCHOOL RESOURCE OFFICERS* (2001).

heightened by high-profile school shootings.<sup>100</sup> Public discourse shifted from discussion of “school crime” to a focus on “school violence,” leading many to believe schools were suffering from an epidemic of youth violence.<sup>101</sup> This shift in focus led to an increase in federal funding for School Resource Officer programs.<sup>102</sup>

The National Association of School Resource Officers (NASRO) was founded in 1990, becoming a resource for information and training of SROs.<sup>103</sup> According to NASRO, school-based policing is one of the fastest growing areas of law enforcement.<sup>104</sup> By 1996, the U.S. Department of Education reported that about 19 percent of the nation’s public schools had the full-time presence of a police officer or other law enforcement representative.<sup>105</sup> By 1999, there were 9,130 local police department officers assigned to a school campus full time, and 3,447 SROs employed by sheriff’s offices.<sup>106</sup> By 2005, in a survey conducted by the U.S. Department of Justice to determine what role law enforcement was playing in public school safety, almost half of the responding schools (47.8 percent) indicated that they relied on SROs.<sup>107</sup>

Since much of the funding and impetus for SRO programs was part of the “community-oriented policing” movement, the model for these programs is slightly different than a traditional law enforcement model.<sup>108</sup> Community-oriented policing emphasizes getting law enforcement officers into the community to form collaborative relationships with members of the community.<sup>109</sup> A SRO is typically expected to have three roles—law enforcement, counseling/mentoring, and teaching.<sup>110</sup> The Texas Association of School Resource Officers describes this SRO triad concept as follows:

*The officer acts as a law enforcement officer, an informal counselor, and a law-related presenter. As a law enforcement officer, the primary purpose is to “keep the peace.” As an informal counselor, the officer provides resource guidance to students, parents, teachers and staff, and acts as a link to support*

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100 LAWRENCE F. TRAVIS, III & JULIE KIERNAN COON, THE ROLE OF LAW ENFORCEMENT IN PUBLIC SCHOOL SAFETY: A NATIONAL SURVEY 19-20 (2005).

101 *Id.*; JACK McDEVITTE & JENN PANNIELLO, NATIONAL ASSESSMENT OF SCHOOL RESOURCE OFFICER PROGRAMS: SURVEY OF STUDENTS IN THREE LARGE NEW SRO PROGRAMS 3 (2005).

102 SCHOOL VIOLENCE RESOURCE CENTER, *supra* note 99; Peter Finn, *School Resource Officer Programs: Finding the Funding, Reaping the Benefits* 5-6, FBI LAW ENFORCEMENT BULLETIN, Vol. 75, No. 8, August 2006 (federal government funding sources include grant funding through COPS and Byrn grants, but also includes Safe and Drug Free Schools Act formula grants); *see also* Randall R. Beger, *Expansion of Police Power in Public Schools and the Vanishing Rights of Students*, SOCIAL JUSTICE, Vol. 29, Nos. 1-2 (2002).

103 *See* National Association for School Resource officers website at [http://www.nasro.mobi/cms/index.php?option=com\\_content&view=article&id=157&Itemid=334](http://www.nasro.mobi/cms/index.php?option=com_content&view=article&id=157&Itemid=334)

104 Mike Kennedy, *supra* note 88; *see also* National Association of School Resource Officers, *About NASRO*, NASRO website, at [http://www.nasro.mobi/cms/index.php?option=com\\_content&view=article&id=157&Itemid=334](http://www.nasro.mobi/cms/index.php?option=com_content&view=article&id=157&Itemid=334).

105 Randall R. Berger, *supra* note 102.

106 SCHOOL VIOLENCE RESOURCE CENTER, *supra* note 99; Peter Finn, *supra* note 102, at 1.

107 LAWRENCE F. TRAVIS III & JULIE KIERNAN COON, *supra* note 100, at 6.

108 Safe & Responsive Schools Project, *School Community Resource Officers* (2002), available at [www.indiana.edu/~safeschl](http://www.indiana.edu/~safeschl); Office of Community Oriented Policing Services, *COPS Fact Sheet: COPS in Schools*, available at [www.cops.usdoj.gov](http://www.cops.usdoj.gov).

109 *Id.*

110 Texas Association of School Resource Officers (TASRO), *SRO Triad Approach*, available at <http://tasro.org/triadconcept.aspx>.

*services both inside and outside the school. As a law-related presenter, the officer will share special law enforcement expertise by presentations in the classroom to promote a better understanding of our laws. Furthermore, the SRO also serves as a positive role model for the students on campus during school hours and off campus at extracurricular activities.*<sup>111</sup>

Among SRO programs, the emphasis placed on each role varies.<sup>112</sup> Thus, “it is more accurate to think in terms of where individual programs and SROs fall along a continuum between, at one extreme, engaging in mostly law enforcement activities and, at the other extreme, engaging in mostly teaching and mentoring.”<sup>113</sup> Among 322 SRO agencies surveyed nationwide, on average, the officers reported dividing their time as follows:

- 50 percent on law enforcement activities
- 25 percent on counseling and mentoring
- 13 percent on teaching
- 12 percent on other activities like meetings<sup>114</sup>

The SRO—as a community-oriented policing model—is also viewed as a position that can improve relationships between law enforcement officers, youth, schools and the community as a whole.<sup>115</sup> From a law enforcement perspective, this “[results] in increased crime reporting.”<sup>116</sup> However, among the SROs surveyed in 2005, most reported that they “do not have the time” to pursue a collaborative problem-solving model.<sup>117</sup>

### **Anti-Drug, Anti-Gang Curriculums in Schools: D.A.R.E. & G.R.E.A.T.**

Even before the rapid growth of SRO and school district police programs began in the 1990s, the Drug Abuse Resistance Education or D.A.R.E. program was created and embraced as a method of combating drug use among school-age students. Some have suggested that these programs paved the way for the large-scale introduction of law enforcement into schools.<sup>118</sup>

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111 *Id.*

112 PETER FINN ET AL., COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS 1-2 (2005).

113 *Id.*

114 *Id.* at 14.

115 FINN ET AL., *supra* note 112, at 2, 3.

116 *Id.* Community policing is often discussed as an opportunity to shift policing from being reactive and incident-specific to proactive and preventative. It emphasizes collaborative problem solving, with police officers encouraged to bring stakeholders from the community in to assist in solving law enforcement issues. JACK MCDEVITT & JENN PANNIELLO, NATIONAL ASSESSMENT OF SCHOOL RESOURCE OFFICER PROGRAMS: SURVEY OF STUDENTS IN THREE LARGE NEW SRO PROGRAMS 4 (2005).

117 FINN ET AL, *supra* note 112, at 53.

118 Elyshia Aseltine, *Juvenile Justice in the Shadows: Texas Municipal Courts and the Criminalization of Student Misbehavior* 41 (2010)(unpublished Ph.D. dissertation, University of Texas)(on file with author).

D.A.R.E. was created in 1983 by Los Angeles, California Police Chief Darryl Gates and the Los Angeles Independent School District.<sup>119</sup> The program uses uniformed law enforcement officers to teach a drug abuse resistance curriculum in school settings.<sup>120</sup> The federal government assisted school districts in funding the program, and poured millions of dollars into the program, beginning in 1986.<sup>121</sup> By 1993, total national expenditures for the D.A.R.E. program were estimated at \$700 million, and by 2001 spending on the program was estimated at more than \$1 billion per year.<sup>122</sup>

A similar program, Gang Resistance Education and Training or G.R.E.A.T., was created in 1991 by the Phoenix Police Department.<sup>123</sup> G.R.E.A.T. is an anti-gang curriculum also taught in schools by uniformed police officers.<sup>124</sup> The federal Bureau of Alcohol, Tobacco, and Firearms began funding officer training for this program shortly after it was created,<sup>125</sup> but federal grant programs are now administered through the Bureau of Justice Assistance (BJA). BJA boasts that it has awarded more than \$58 million in grant funding for G.R.E.A.T. programs since 2004.<sup>126</sup>

Unfortunately, despite the popularity of these programs, studies have repeatedly determined that both D.A.R.E. and G.R.E.A.T. are ineffective. In fact, in 2003, the federal General Accounting Office (GAO) released its own report concluding that D.A.R.E. was ineffective,<sup>127</sup> and in 2004, the National Institute of Justice released a report concluding that while a long-term study of the G.R.E.A.T. program showed “modest” positive results for improving students’ perceptions of police and greater awareness of the consequences of gang involvement, the program had no impact on reducing gang involvement.<sup>128</sup>

### School District Police Department Model

Some school districts create their own police department, with the police force commissioned by the district itself.<sup>129</sup> Rather than rely on a Memorandum of Understanding with local law enforcement to assign a police officer to a particular campus, this model allows a school district to keep its police force “in-house,” with the superintendent and school board providing oversight of the department.<sup>130</sup>

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119 LAWRENCE W. SHERMAN ET AL., PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING, A REPORT TO CONGRESS 23 (1997); CORNELL, *supra* note 11, at 150-55.

120 *Id.*

121 Aseltine, *supra* note 118, at 41.

122 *Id.*

123 LAWRENCE W. SHERMAN ET AL, *supra* note 119, at 28.

124 *Id.*

125 Aseltine, *supra* note 118, at 42.

126 Bureau of Justice Assistance, *Gang Resistance Education and Training (G.R.E.A.T.) Program*, <http://www.ojp.usdoj.gov/BJA/grant/great.html>.

127 GENERAL ACCOUNTING OFFICE, YOUTH ILLICIT DRUG USE PREVENTION: DARE LONG-TERM EVALUATIONS AND FEDERAL EFFORTS TO IDENTIFY EFFECTIVE PROGRAMS (2003).

128 NATIONAL INSTITUTE OF JUSTICE OF JUSTICE, EVALUATING G.R.E.A.T.: A SCHOOL-BASED GANG PREVENTION PROGRAM (2004).

129 See Trump, *supra* note 82 (describing various models for school policing).

130 *Id.*

While it is not clear how widely this model is used in other parts of the nation,<sup>131</sup> it is very popular among Texas districts, with 167 Texas school districts operating their own police department.<sup>132</sup> These 167 school districts educate approximately half of the state's public school students. This model is not only used by the largest districts in the state, but is also in place in suburban and rural districts.<sup>133</sup>

The use of this model in Texas has grown significantly in the last 20 years: in 1989, there were only seven ISD police departments in the state.<sup>134</sup> By 1993, the number of districts with their own police department had grown to 46.<sup>135</sup> Two professional organizations for school police officers were created in the 1990s—the Texas Association of School District Police and the Texas School District Police Chiefs Association.<sup>136</sup> Both organizations claim they were created in order to facilitate professionalizing this law enforcement model.<sup>137</sup>

Texas has long had legislation allowing schools to hire peace officers as security personnel. The Texas legislature passed a bill allowing school district security departments to hire licensed peace officers for campus security purposes as early as 1973.<sup>138</sup> However, it wasn't until 1993 that the legislature amended the statute to allow school districts to commission "school district peace officers."<sup>139</sup> The language adopted by the legislature in 1993 was very much like that included in the omnibus education bill in 1995—still in effect today—that allows a district's board of trustees to commission a school district police force.<sup>140</sup>

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131 In 1993, a Dallas Morning News article noted that 245 of the 8,000 school districts nationwide with more than 10,000 students had their own security or police forces. This represented a 65 percent increase over the number with police forces in 1990. Todd J. Gillman, *Badges in the Halls*, DALLAS MORNING NEWS, October 18, 1993.

132 Texas Commission on Law Enforcement Officers Standards and Education (TCLEOSE), List of school districts that have registered a police departments (on file with author); see also Eric Dexheimer, *Questions of Authority, Accountability Arise with State Boards, Trade Groups and Schools Having Own Peace Officers*, AUSTIN AMERICAN STATESMAN, August 23, 2009; Emily Ramshaw, *Hidden Force*, TEXAS TRIBUNE, November 25, 2009.

133 The Texas Commission on Law Enforcement Officers Standards and Education (TCLEOSE) produced a list of the 167 school district police departments in response to an open records request from Texas Appleseed. It includes very large districts—like Houston and Dallas ISDs—but also includes some of the smallest districts in the state, with a number of districts that have an enrollment of 1,000 or fewer students.

134 Katy ISD, *Katy Independent School District Police Department "Serving Campus and Community"* (2008), available at <http://kisdwebs.katyisd.org/Communications/Leadership/Documents/Reading%20Room%20Documents/May%202008/KISD%20Police%20April%202008.pdf>.

135 Todd J. Gillman, *Badges in the Halls*, DALLAS MORNING NEWS, October 18, 1993.

136 Texas Association of School District Police, *History*, available at <http://www.tasdp.com/history.html> (TASDP formed in 1992); Texas School District Police Chiefs' Association, *Our History*, available at <http://www.texasisdchiefs.com/historyphotos.html> (TSDPC formed in 1996).

137 *Id.*

138 Tex. H.B. 237, 64<sup>th</sup> Reg. Sess., Bill Analysis.(1973).

139 Tex. H.B. 633, 73<sup>rd</sup> Reg. Sess. (1993). This language may have been added to the statute, in part, to clarify confusion over the roles and responsibilities of peace officers commissioned by school boards. See Tex. Att'y Gen. Op. No. JM-219 (1984)(Texas Commission on Law Enforcement Standards and Education has no licensing responsibility concerning "peace officers" commissioned under section 21.483 of the Texas Education Code & scope of officers' powers depends on scope of duties defined by school board).

140 *Id.*; see also TEX. EDU. CODE §37.081.

Yet, in 1995, the legislature added language referring specifically to a school district police department that would be overseen by a chief who would be accountable to the superintendent.<sup>141</sup> This moved schools into a new era of an institutionalized police force; rather than simply including peace officers among their security personnel, school districts could create an internally controlled police department that would have a constant presence on campuses district-wide. Even if this was only a change in the rhetoric used to discuss school peace officers, it is a significant shift—with the focus moving from “security” to institutionalized law enforcement. Many of the existing school district police departments started out as security departments and became fully licensed police agencies after the legislative changes that took place in the 1990s.<sup>142</sup>

While school district police departments often refer to their police officers as School Resource Officers, there is nothing in the education code recognizing the triad structure used by the SRO programs (law enforcement, teaching, mentoring). In practice, school police departments often appear to follow a much more traditional law enforcement model.<sup>143</sup> Many of the school district police chiefs worked in traditional law enforcement agencies before moving into school law enforcement.<sup>144</sup>

### **Increased Use of Law Enforcement Technology**

As the police presence grew in the 1990s, schools increased their use of surveillance methods and security technologies. Metal detectors and security cameras were installed in many schools.<sup>145</sup> Security technology was seen as a method of increasing security without having to invest in more manpower.<sup>146</sup> Technology was also touted as an effective deterrent; making potential perpetrators aware of the likelihood of getting caught was seen as an efficient method of crime prevention.<sup>147</sup>

At the same time, proponents of security technology encouraged schools to use technology to assist in law enforcement:<sup>148</sup>

*Unlike other facilities, where a perpetrator would be handed over to authorities, and the consequences determined by law, a school often has the authority and/or opportunity to establish the consequences for incidents that occur on their campus. It is imperative, however, that schools do not assume authority that they do not have. Issues governed by law must be reported to the appropriate authority.*

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141 TEX. EDU. CODE §37.081(f).

142 James Richard Walker, Post Academy Training Needs Analysis of Selected School District Police Agencies in Texas 18 (2003)(unpublished Ph.D. dissertation, Texas A&M University)(on file with author).

143 See Martha Ann Neely, The Impact of the Threat of Violence on Selected School Districts in Texas 86, 100, (2003)(unpublished Ph.D. dissertation, Texas A&M University)(on file with author)(survey of ISD Police revealed that they typically used more reactive measures in responding to school violence, including arrest, investigation and interrogation, and searches).

144 Walker, *supra* note 142, at 115 (high number of officers surveyed entered ISD policing with prior law enforcement experience).

145 See NATIONAL INSTITUTE OF JUSTICE, THE APPROPRIATE AND EFFECTIVE USE OF SECURITY TECHNOLOGIES IN U.S. SCHOOLS (1999).

146 *Id.* at 1 (“Through technology, a school can introduce ways to collect information or enforce procedures and rules that it would not be able to afford or rely on security personnel to do.”)

147 *Id.* at 7.

148 *Id.*

Some of the “security technologies” recommended for use in schools were not focused on crime prevention so much as law enforcement. The National Institute of Justice included the following enforcement tools in its list of potential technologies for schools:<sup>149</sup>

- Drug detection swipes
- Hair analysis kits for drug use detection
- Drug dogs
- Vapor detection of drugs
- Breathalyzer test equipment
- Saliva test kits
- Vapor detection of gun powder
- Gunpowder detection swipes

The same publication embraced security technology as part of a “broken windows” approach to school policing:<sup>150</sup>

*If a school is perceived as unsafe (i.e. it appears that no adult authority prevails on a campus), then “undesirables” will come in, and the school will actually become unsafe. This is an embodiment of the broken window theory: one broken window left unrepaired will encourage additional windows to be broken. Seemingly small incidents or issues such as litter on a school campus can provide the groundwork for (or even just the reputation of) a problem school. Issues of vandalism and theft can be almost as harmful to a school as actual violence because they can create a fertile environment for loss of control and community confidence.*

Research indicates that the schools most likely to embrace security technology are large, urban high schools with a high percentage of students eligible for free lunch.<sup>151</sup> Schools that have a police presence are also more likely to embrace security technology.<sup>152</sup>

The use of security technology gained popularity in Texas school districts at the same time that it was being embraced in other parts of the nation. In 1995, Dallas ISD built a charter school that was hailed as “the ultimate safe school.”<sup>153</sup> An article in *The New York Times* article described the new school:<sup>154</sup>

*It is not the Big House. It is a schoolhouse: Dallas’ \$41 million state-of-the-art Townview Magnet Center, which has been touted as a model for high-tech school security since it opened for the new school year.*

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149 *Id.* at 11.

150 *Id.* at 21.

151 *Id.* at 135.

152 *Id.* at 136.

153 Peter Applebome, *For the Ultimate Safe School, Eyes Turn to Dallas*, NY TIMES, September 20, 1995.

154 *Id.*

...Security was an integral part of the school design—all straight lines with no nooks or crannies or shrubbery around which to hide. Perimeter lights illuminate all public spaces and an eight-foot iron-pole fence seals off the school from an adjacent residential area. The halls are unusually broad and bright, to deter bumping and the potential for fights that could come with it. Windows everywhere permit the grounds to be visible from inside. All students, teachers, administrators and staff members wear name tags.

The room that houses the mainframes for the school's computer system is a security command post, where officers scan 37 cameras monitoring the building and grounds. Security personnel are stationed at the front doors and metal detectors, and others patrol different parts of the buildings. All teachers except for department heads do a 45-minute-a-day school monitoring stint as well, and officers prowl around the airy atrium-like cafeteria, weaving between tables with stern looks, as students eat their sausage pizzas or play dominos.

Security technology is often promoted by schools as a method to protect school children from outside risks. Security technology became a method of preventing and solving crime committed both by individuals from outside the school and by students.<sup>155</sup> For example, Spring ISD, a suburban Houston district, experimented with technology that would allow school district police to track students through a computer chip in their student identification cards:<sup>156</sup>

*In front of her gated apartment complex, Courtney Payne, a nine-year-old fourth grader...exits a yellow school bus. Moments later, her movement is observed by Alan Bragg, the local police chief, standing in a windowless control room more than a mile away.*

*Chief Bragg is not using video surveillance. Rather, he watches an icon on a computer screen. The icon marks the spot on a map where Courtney got off the bus, and, on a larger level, it represents the latest in the convergence of technology and student security.*

*Hoping to prevent the loss of a child through kidnapping or more innocent circumstances, a few schools have begun monitoring student arrivals and departures using technology similar to that used to track livestock and pallets of retail shipments.*

*...When the district unanimously approved the \$180,000 system, neither the teachers nor parents objected, said the president of the board. Rather, parents appear to be applauding. "I'm sure we're being overprotective, but you hear about all this violence," said Elisa Temple-Harvey, 34, the parent of a fourth grader. "I'm not saying this will curtail it, or stop it, but at least I know she made it to campus."*

Though the advocates for this technology claimed it would not be used to track students' whereabouts after class, they did acknowledge that it could be used "to track whether students attend individual classes."<sup>157</sup>

155 JULIE KIERNAN COON, THE ADOPTION OF CRIME PREVENTION TECHNOLOGIES IN PUBLIC SCHOOLS 132 (2004).

156 Matt Richtel, *In Texas, 28,000 Students Test an Electronic Eye*, NY TIMES, November 17, 2004.

157 *Id.*

However innocuous some of the technologies may appear, there is always the potential for abuse. This was made clear by headlines in national media about a student whose school used a camera on a school-issued laptop to monitor the student while he was at home.<sup>158</sup> The technology was intended as an anti-theft tool.<sup>159</sup> The student found out it had been used to record his activity away from school when an assistant principal told the student he had been photographed via the webcam while he was at home.<sup>160</sup>

## Growth in Texas School District Police Departments

The size and budget of school district police departments—particularly in urban districts—rival those of mainstream police departments. Eighteen school districts provided police department staffing and budget data to Texas Appleseed. Fourteen of these districts reported police staffing increases over a five-year period (see chart below). During this same period, growth in local (non-school) police departments slowed, according to national data.<sup>161</sup> While national data showed that “[f]ewer sworn personnel were added [in local law enforcement agencies] in 2000 to 2004 than from 1996 to 2000,”<sup>162</sup> a look at the information provided to Texas Appleseed shows the opposite trend in school district police department staffing.

### Percentage Growth in School District Police Department Staffing, Between 2001-02 and 2006-07<sup>163</sup>

School District	Police Department Staff 2001-02	Police Department Staff 2006-07	Percent Growth
Alief ISD	35	46	31%
Austin ISD	53	65	20%
Dallas ISD <sup>164</sup>	187	231	24%
Edgewood ISD	23	31	35%
Edinburg ISD <sup>165</sup>	69	95	38%
El Paso ISD	41	56	37%
Houston ISD	222	289	30%

158 CNN.com, *FBI Investigates Allegations Webcam Used to Monitor Student*, February 22, 2010.

159 *Id.*

160 *Id.*

161 BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES 2004.

162 *Id.*

163 Texas Appleseed requested information regarding staff size in the open records requests sent to school district police departments. Appleseed did not receive responsive information from every district, but has included districts that provided that information. The only districts that are not included in the chart are those that did not grow during the time period for which they provided information. Those districts are East Central ISD (staff of 11-12), Midland ISD (staff of 21-22), Spring Branch ISD (staff of 9), White Settlement ISD (staff of 5-7). Brownsville ISD only provided staffing information for two school years, so could not be included in an analysis of agency growth.

164 The first year of data available for Dallas ISD was for the 2003-04 school year, so the numbers in the chart reflect growth between 2003-04 and 2006-07.

165 The first year of data available for Edinburg ISD was 2002-03, so the documented growth is between that school year and 2006-07.

<b>School District</b>	<b>Police Department Staff 2001-02</b>	<b>Police Department Staff 2006-07</b>	<b>Percent Growth</b>
Humble ISD	12	23	92%
Katy ISD	81	105	30%
Pasadena ISD	29	40	28%
San Angelo ISD	35	44	26%
San Antonio ISD	90	92	2%
United ISD	90	154	71%
Waco ISD	31	34	10%

The officer-to-student ratio for the above school districts ranges from about one officer for every 250 students to approximately one officer for every 1,000 students. This compares to the 2004 nationwide civilian-to-police average of about one sworn officer for every 405 U.S. residents.<sup>166</sup> In fact, a glance at the 50 largest municipal police departments in the nation shows that some ISD police department numbers rival the officer-to-resident ratio in some of those cities. In 2004, for example, Dallas' municipal law enforcement agency had a ratio of 243 sworn officers per 100,000 residents.<sup>167</sup> This compares to the 2006 ratio for the Dallas ISD Police Department, which had 210 security or peace officers for 158,000 students, making the ISD police department almost as large—proportionally—as the city's municipal police force.

The ISD police departments, in some cases, also have sizeable budgets, even in small school districts.

#### **Annual Budget for Sample of Texas ISD Police Departments**<sup>168</sup>

<b>School District</b>	<b>Student Population</b>	<b>ISD Police Department Budget</b>	<b>Policing Cost Per Student</b>
Corpus Christi ISD	38,576	\$2,286,047	\$59
Dallas ISD	158,814	\$13,707,231	\$86
East Central ISD	8,770	\$581,306	\$66
Edgewood ISD	11,735	\$1,708,552	\$145
Edinburg ISD	28,677	\$987,764	\$34
Houston ISD	202,449	\$11,085,082	\$55
Humble ISD	32,804	\$1,545,049	\$47

<sup>166</sup> BUREAU OF JUSTICE STATISTICS, *supra* note 161, at 3 (based on their data showing 249 sworn officers for every 100,000 residents).

<sup>167</sup> *Id.*

<sup>168</sup> Texas Appleseed asked for budget information in its public information requests to school district police departments; however, not all responded. We have included information for every ISD police department that provided budgetary information. The following ISD police departments provided budget information for the 2006-07 school year: Dallas ISD, Edinburg ISD, Houston ISD, Katy ISD, Midland ISD, Pasadena ISD, San Angelo ISD, San Antonio ISD, Spring Branch ISD, United ISD, Waco ISD, White Settlement ISD, and Wichita Falls ISD. East Central ISD, Edgewood ISD, Humble ISD, and Lubbock-Cooper ISD provided budget information for 2007-08.

<b>School District</b>	<b>Student Population</b>	<b>ISD Police Department Budget</b>	<b>Policing Cost Per Student</b>
Katy ISD	50,725	\$3,942,256	\$78
Lubbock-Cooper ISD	3,058	\$221,744	\$73
Midland ISD	20,827	\$842,143	\$40
Pasadena ISD	49,630	\$3,360,986	\$68
San Angelo ISD	14,333	\$234,650	\$16
San Antonio ISD	55,322	\$4,720,314	\$85
Spring Branch ISD	32,098	\$2,816,680	\$88
United ISD	37,671	\$2,793,087	\$74
Waco ISD	15,403	\$1,262,768	\$82
White Settlement ISD	5,405	\$189,413	\$35
Wichita Falls ISD	14,675	\$254,081	\$17

This chart shows a large variation in per student policing costs from district to district, ranging from just \$16 in San Angelo ISD to \$145 in Edgewood ISD. Just as the staffing levels for most of these departments grew over the five-year period for which Texas Appleseed received data, their budgets also grew. In some cases, budget growth far exceeded the growth in staff. For example, the budget for the Dallas ISD Police Department grew close to 70 percent between the 2003-04 and 2006-07 school years, and the Houston ISD Police Department saw 43 percent growth in its budget between the 2001-02 and 2006-07 school years.<sup>169</sup> This level of growth was typical for the school district police departments that provided budgetary information to Texas Appleseed.<sup>170</sup>

The ISD police department budget does not capture a school district’s total spending on school security services. For example, the 2008 Houston ISD financial audit shows that HISD spent more than \$18 million on “security and monitoring” during the 2006-07 school year, and close to \$20 million the following school year.<sup>171</sup> Similarly, Dallas ISD spent more than \$17 million on “security and monitoring,” though the budget for their police department only represented a portion of that spending.<sup>172</sup> Thus, school security—both ISD police departments and related services—represents a sizeable and growing proportion of school districts’ budgets. In many cases, a district’s budget for school security dwarfs money spent on social work services, curriculum development, or food services, and is comparable to spending for health services.<sup>173</sup>

169 According to information provided to Texas Appleseed pursuant to open records requests, Dallas ISD PD had a budget of \$8,073,846.37 in 2003-04. Houston ISD PD’s 2001-02 budget was \$7,755,855.52.

170 For example, Humble ISD PD’s budget grew by more than 140 percent, Katy ISD PD’s budget grew by 68 percent, Lubbock-Cooper ISD PD’s budget more than tripled, Pasadena ISD PD’s budget grew 65 percent, and United ISD PD’s budget increased by more than 200 percent.

171 HOUSTON INDEPENDENT SCHOOL DISTRICT, COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2008, *available at* www.tea.state.tx.us.

172 DALLAS INDEPENDENT SCHOOL DISTRICT, ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDING JUNE 30, 2008, *available at* www.tea.state.tx.us.

173 *See* HOUSTON INDEPENDENT SCHOOL DISTRICT, *supra* note 171; DALLAS INDEPENDENT SCHOOL DISTRICT, *supra* note 171.

## **Impact of School Police Growth on Educational Culture**

Today's widespread use of police and law enforcement technology in schools has had an impact on the educational environment and culture that may not be entirely positive. While school districts increased law enforcement presence out of concern for the safety and security of campuses, students and teachers, this may have had unintended consequences, including an increase in the number of school-based citations and arrests for low-level "offenses" that do not pose a threat to school safety. This is often referred to as the "criminalization" of student misbehavior.<sup>174</sup> Indeed, the use of police tactics in schools has become so routine and normalized that the U.S. Supreme Court was recently required to weigh in by issuing an opinion outlawing the use of strip searches in school.<sup>175</sup>

This impact has been documented in states and cities across the nation, from New York City to Clayton County, Georgia:

- In Pennsylvania, a study revealed that students with disabilities were disproportionately represented in school-based arrests. In many of these cases, students had not been provided with the specialized instruction and related services required by federal special education law.<sup>176</sup>
- In New York, the increased presence of law enforcement in schools has been linked to an increase in police interventions in student misbehavior, leading to "over-policing" which treats students like criminals even in situations that do not involve criminal behavior.<sup>177</sup>
- New York City's Impact Schools Initiative, which increased uniformed police presence in 12 schools in an attempt to control crime, failed to address the causes of school crime and created a zero-tolerance atmosphere that led to increased criminalization of student behavior.<sup>178</sup>
- In Clayton County, Georgia, an increased school law enforcement presence resulted in increased referral to the juvenile system for low-level, non-violent misdemeanors that were traditionally handled by the school and were not considered to be appropriate for referral to the juvenile court.<sup>179</sup>
- A study of SRO programs in three Connecticut towns revealed that data collection and reporting was inadequate. When the authors of the study were able to obtain data, it showed that minority students were overrepresented in arrests, and that young students were being arrested in each of the three districts.<sup>180</sup>

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174 Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 CRIM. JUST. 280 (2009).

175 Adam Liptak, *Strip-Search of Girl Tests Limit of School Policy*, NY TIMES, March 23, 2009.

176 PENNSYLVANIA PROTECTION & ADVOCACY, INC, *ARRESTED DEVELOPMENT: STUDENTS WITH DISABILITIES AND SCHOOL REFERRALS TO LAW ENFORCEMENT IN PENNSYLVANIA* (2004).

177 NEW YORK CIVIL LIBERTIES UNION, *CRIMINALIZING THE CLASSROOM, THE OVER-POLICING OF NEW YORK CITY SCHOOLS* (2007).

178 PRISON MORATORIUM PROJECT, *THE IMPACT SCHOOLS INITIATIVE: A CRITICAL ASSESSMENT AND RECOMMENDATION FOR FUTURE IMPLEMENTATION* (2006).

179 BLUE RIBBON COMMISSION ON SCHOOL DISCIPLINE, *A WRITTEN REPORT PRESENTED TO THE SUPERINTENDENT AND BOARD OF EDUCATION* (2007).

180 AMERICAN CIVIL LIBERTIES UNION OF CONNECTICUT, *HARD LESSONS: SCHOOL RESOURCE OFFICER PROGRAMS AND SCHOOL-BASED ARRESTS IN THREE CONNECTICUT TOWNS* (2008).

- In Florida, misdemeanor offenses accounted for 68 percent of all school-based referrals to the juvenile justice system, and African American students were disproportionately represented in school-based referrals. In one county, 65 percent of the school-based referrals were of first time offenders, showing that in many places the schools serve as “gateways” to the juvenile system.<sup>181</sup>
- In Massachusetts, interviews with police officers in 16 school districts led to the conclusion that the decision to arrest a student rather than use traditional school disciplinary measures is often based on subjective and inconsistent reasoning. The officers’ lack of training was also determined to be “highly problematic.”<sup>182</sup>

Academic research supports many of these findings,<sup>183</sup> and many of them are echoed by the findings of this report.

## Conclusion

Increased law enforcement presence on school campuses occurred during a time when the public was misinformed about the reality of school crime, and fearful of an onslaught of teenage “super predators.” As police presence increased on school campuses, “criminalization” of student misbehavior also increased. While it is imperative that schools are safe places where students can focus on learning, the role of school law enforcement should be carefully scrutinized to ensure that school police do not unintentionally contribute to the “school-to-prison pipeline.”

181 FLORIDA DEPARTMENT OF JUVENILE JUSTICE, *DELINQUENCY IN FLORIDA A FIVE-YEAR STUDY* (2009).

182 CHARLES HAMILTON HOUSTON INSTITUTE FOR RACE AND JUSTICE, *FIRST, DO NO HARM: HOW EDUCATORS AND POLICE CAN WORK TOGETHER MORE EFFECTIVELY TO KEEP SCHOOLS SAFE AND PROTECT VULNERABLE STUDENTS* (2010).

183 Randall R. Beger, *Expansion of Police Power in Public Schools and the Vanishing Rights of Students*, *SOCIAL JUSTICE*, Vol. 29, Nos. 1&2 (2002); Randall R. Beger, *The “Worst of Both Worlds”: School Security and the Disappearing Fourth Amendment Rights of Students*, 28 *CRIM. JUST. REV.* 336 (2003); Paul J. Hirschfield, *Preparing for Prison?: The Criminalization of School Discipline in the USA*, 12 *THEORETICAL CRIM.* 79 (2008); Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 *CRIM. JUST.* 280 (2009); Mario S. Torres & Jacqueline A. Stefkovich, *Demographics and Police Involvement: Implications for Student Civil Liberties and Just Leadership*, 45 *EDU. QUART.* 450 (2009).



## THE NEED FOR SPECIALIZED TRAINING OF SCHOOL POLICE OFFICERS

*The effectiveness of [school] security staff appears to depend not on their precise responsibilities, but on how fully integrated into the school structure officers are and the extent to which they have trusting relationships with students and staff.*

—Vera Institute of Justice  
Approaches to School Safety  
in America's Largest Cities (1999)

Today, the majority of students on Texas' public school campuses encounter a police presence, with most schools served either by the district's internal police force or by a School Resource Officer through a contract with local law enforcement. The rapid expansion of law enforcement on campuses correlates with the increase in the number of tickets being issued and the number of students being arrested at school.

In practice, traditional law enforcement techniques—including ticketing, arrest and use of force—have been placed squarely into the mainstream of educational policy in Texas and in other states without a great deal of thought being given to whether they are appropriate for a school setting. While SRO associations encourage the use of community-oriented policing methods, to our knowledge there has been little policy debate over the necessity for, or appropriateness of, using law enforcement models to maintain order and safety on elementary and secondary public school campuses<sup>184</sup>—nor has there been any legislative initiative aimed at placing parameters around police action on school campuses.

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<sup>184</sup> Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L.S. LAW REV. 977, 980 (2010) (“In the debate over whether police should be placed in schools, there is little information on how officers see their role and how they perform it.”)

These policy omissions, combined with a lack of state oversight, result in practices that often seem at odds with educational philosophy. Perhaps the most obvious example of this is the increased introduction of physical restraints and non-lethal weapons like pepper spray and Tasers into educational settings by school police officers. Parents and child advocates also have raised concerns about the way that students are searched and interrogated in school settings.<sup>185</sup> Other stakeholders have wondered about the message that increased use of technology like metal detectors sends to students—particularly when this type of security seems to be used only in schools with a high enrollment of minority and low-income students.<sup>186</sup> Because of the impact that these policies can have on school climate—and the role school climate plays in dropout and academic success—these issues should be carefully considered before they are adopted and implemented.<sup>187</sup>

### **Schools & Policing: Conflicting Philosophies**

Perhaps the most important question to ask in determining an appropriate role for school law enforcement is how to fashion a police model that is cognizant of the unique environment in which school police operate. Houston ISD, the largest school district in Texas and the seventh largest district in the nation,<sup>188</sup> declares the following in its “vision” statement:

*The importance of a high-quality education in an individual’s success cannot be overstated. The world is changing rapidly, and students must be prepared to live and work productively in a new economy with new technology, new competition, and new expectations...Our diverse, vibrant student population, reflecting Houston’s international standing, is an asset. We must ensure that every student, regardless of culture, ethnicity, language, or economic status, has both equal opportunity and equal access to high-quality education evidenced through results of growth and accountability ratings.<sup>189</sup>*

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185 *Id.* at 982.

186 See Deborah N. Archer, *Introduction: Challenging the School-to-Prison Pipeline*, 54 N.Y.L.S. LAW REV. 867 (2009).

187 Poor school climate has been linked to dropout and discipline problems. See TEXAS APPLESEED, *TEXAS’ SCHOOL TO PRISON PIPELINE: DROPOUT TO INCARCERATION* (2007).

188 See Houston Independent School District, *About HISD*, available at <http://www.houstonisd.org/HISDConnectDS/v/index.jsp?vgnextoid=c7782f796138c010VgnVCM10000052147fa6GRCRD>.

189 Houston Independent School District, *2010 Declaration of Beliefs and Visions*, available at <http://www.houstonisd.org/HISDConnectEnglish/Images/PDF/BeliefsGoals2010.pdf>.

This child-centered focus is typical of Texas school districts' mission statements and guiding principles.<sup>190</sup> The philosophy of the educational system speaks to a community that endeavors to provide the support that every child needs to flourish. The focus of educational environments tends to be on supporting children in a protective setting where they are encouraged to learn, explore new ideas, and discover their talents. In contrast, law enforcement models focus on the safety of the community as a whole, rather than on the individual, with the goal of ensuring public safety through enforcement of laws.<sup>191</sup> In a law enforcement model, the law-breaking individual is taken out of the community for the greater good of the whole.<sup>192</sup> Thus, most school district police department's mission statements speak of creating an environment where "safety is job one," rather than prioritizing the success of the individual child.<sup>193</sup>

The difference between the child-centered educational philosophy and the public safety centered law enforcement philosophy can result in a clash of ideologies. A school law enforcement officer may be less likely to consider the individual circumstances of a student before imposing a consequence for behavior that is technically law breaking, even when understanding the student's circumstances and intent might cast the incident in a different light. One researcher summed up the disconnect between educational philosophy and law enforcement this way:

*[S]chool police officers are trained in law enforcement....Because the officers have little or no training in fields such as education and developmental psychology and because the officers may be evaluated by supervisors who have little*

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190 See AUSTIN INDEPENDENT SCHOOL DISTRICT, STRATEGIC PLAN 2010-2015 (List of things AISD wants to accomplish: "1) All students will perform at or above grade level; 2) Achievement gaps among all student groups will be eliminated; 3) All students will graduate ready for college, career, and life in a globally competitive economy; 4) All schools will meet or exceed state accountability standards."); Dallas ISD, *Core Beliefs*, available at <http://www.dallasisd.org/about/vision.htm> ("We believe that every student can perform at or above grade level and graduate college and workforce ready to compete in the global economy; We believe that educators have the most powerful impact on student achievement; We believe that educational quality and excellence will eliminate the achievement gap; We believe that every student must be educated in a safe, welcoming, effective, and innovative learning environment... We believe that a supportive community is fundamental to achieving and sustaining our success."); San Antonio ISD, *Core Values*, (SAISD is "Student Centered"), available at [http://www.saisd.net/main/index.php?option=com\\_content&view=article&id=28&Itemid=2](http://www.saisd.net/main/index.php?option=com_content&view=article&id=28&Itemid=2).

191 See Houston Police Department, *Mission Statement*, available at <http://www.houstontx.gov/police/mission.htm> ("The mission of the Houston Police Department is to enhance the quality of life in the City of Houston by working cooperatively with the public and within the framework of the U.S. Constitution to enforce the laws, preserve the peace, reduce fear and provide for a safe environment").

192 John Ellison, *Community Policing: Implementation Issues*, FBI LAW ENFORCEMENT BULLETIN, April 2006 ("The traditional model of law enforcement focuses on catching the 'bad guys,' operate reactively, and seeks to remain autonomous from external influence."). However, the author describes community based policing—which forms the basis for the SRO "triad model"—as "strengthening the capacity of communities to resist and prevent crime and social disorder," whereas educational philosophy focuses on strengthening individual student capacity. *Id.*

193 See Houston ISD Police Department, *Mission Statement*, available at <http://www.houstonisd.org/portal/site/police>; Dallas ISD Police Department, *Mission Statement*, available at <http://www.dallasisd.org/pd/>.

*knowledge of educational theory and practice, it is possible that the officers' discretionary actions (e.g. whether to arrest a student) will be based on criteria which do not include the students' educational attainment.*<sup>194</sup>

A study of School Resource Officers in Massachusetts found “tremendous variation in approaches to school policing” which, on one end of the spectrum, included a “zero tolerance approach” to misbehavior that viewed fights or disruptive behavior as law-breaking behavior subject to arrest, no matter the context.<sup>195</sup> In these cases, the officers followed what was described as a “black and white street cop” law-and-order approach to school policing, which focuses on stopping and controlling the incident rather than discerning the underlying causes of the incident.<sup>196</sup>

Texas Appleseed often hears from parents whose description of a school police officer's behavior is in keeping with this “street cop,” law-and-order approach. This is obvious from the innumerable anecdotes we've received from the parents and lawyers of students with disabilities who were arrested or given Class C tickets for behavior that was directly related to their disability, which will be discussed in subsequent chapters. In some cases, the school's attitude towards the misbehavior seems at odds with the law enforcement decision made by the school police officer.

One parent contacted Texas Appleseed after her son had received five Class C tickets at school. She wrote:

*The most recent ticket was the last day of school. It was for fighting. I received a call...from the principal who just wanted to inform me he was ticketed. She said she was proud of my son because he tried to avoid the incident. An older child came up behind my son and pushed him down in the hallway attempting to start a fight. My child did not physically touch the other child, but he did curse at him. Both of the boys were ticketed.*

In this instance, the student received a ticket even though the principal was “proud” of him for attempting to avoid the conflict. The principal's attitude reflects the child-centered approach of the educational environment, while the school police officer's actions reflect an adherence to a traditional “law and order” paradigm.<sup>197</sup> Texas Appleseed learned of another situation in which a psychologist, treating a child who had received multiple tickets at school, encouraged a school police officer to allow the student time to “cool off” and reflect on her behavior in lieu of issuing a ticket. The school police officer responded that writing tickets was part of his job, and refused the alternative suggested by the psychologist. The psychologist and the school police officer were operating from divergent paradigms. When divergent paradigms leave students in the crosshairs, it makes sense for educators to consider

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194 Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, 34 J. CRIM. JUST. 591 (2006).

195 CHARLES HAMILTON HOUSTON INSTITUTE, FIRST DO NO HARM 5 (2010).

196 *Id.* at 6.

197 The anecdote also speaks to another problem—the mother reports that her son was ticketed for fighting, though he did not touch the other child and the other child provoked the incident. It is quite possible that these facts would give rise to a successful defense to the ticket (self defense, or provocation). However, because juveniles are not entitled to appointed counsel in Class C cases, most of them plead to the offense without understanding that they might have avoided the conviction altogether.

the possibility that training officers in an approach that is more consistent with a child-centered school environment could benefit both the individual child and campus safety.<sup>198</sup>

Existing statutory provisions relating to the creation and structure of ISD police departments *should* encourage resolution of the tension between these competing philosophies. The Texas Education Code requires school boards and superintendents to be actively involved in the creation and startup of a district’s police department.<sup>199</sup> Under the Code, a school board is vested with the authority to commission a police force, determine whether to allow officers to carry weapons, and determine the jurisdiction of its police force.<sup>200</sup> The board must also decide the duties of school district police officers and the scope of their law enforcement activities.<sup>201</sup> The district’s superintendent is responsible for supervising the police department’s chief.<sup>202</sup>

An expected benefit of vesting control over the district police department in the educational administration should be increased communication between the two systems, leading to resolution of differences between competing paradigms. In practice, district administrators, who may feel unqualified when it comes to creating or supervising a police force, often defer to a security consultant or a strong police chief. One study of responses to school violence in Texas concluded, “[T]here might be limited knowledge and/or working relationships between schools and police authorities in some locations.”<sup>203</sup> Another study of training for Texas school police officers found that “ISD administrators did not understand their (the ISD police department’s) purpose and responsibilities.”<sup>204</sup> Both studies point to conflict—or a “disconnect”—between the education and law enforcement worlds of Texas districts.<sup>205</sup> This “disconnect” can only be remedied through increased attention to determining an appropriate role for school police officers that emphasizes the educational mission of the school in which these officers work.

### Training of School District Police Officers

Specialized training of school police officers is as critical as defining their appropriate role in the educational environment. The school setting is a unique environment for law enforcement—school police officers interact with a highly vulnerable population in a very controlled setting.<sup>206</sup> While school police officers will interact with school administrators, teachers and parents (and possibly adult offenders or trespassers on school campuses)—their

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198 See Ben Brown, *supra* note 194; Matthew T. Theriot, *supra* note 183.

199 TEX. EDU. CODE §37.081.

200 TEX. EDU. CODE §37.081(a).

201 TEX. EDU. CODE §37.081(d)&(e).

202 TEX. EDU. CODE §37.081(f).

203 Martha Ann Neely, *supra* note 143.

204 *Id.* at 119.

205 *Id.*

206 Some have compared the controlled environment of the school—with most schools severely restricting entry and exit of the campus and movement within the campus—to a prison environment. See Paul. J. Hirschfield, *supra* note 183, at 80, 84. Another researcher noted, “[G]iven that juveniles are legally required to attend school where they are granted fewer liberties and rights than adults, it is necessary to conceptualize school police officers as a hybrid of correctional and law enforcement agents who police a partially institutionalized populace which is subject to a number of rules and regulations and granted limited privacy rights.” Ben Brown, *supra* note 194, at 594.

primary interaction is with the young people that they are charged with overseeing. This sets school police apart from traditional law enforcement officers, who are much more likely to interact with adults than with youth.

In other government systems, adults who work with young people often receive specialized training to sensitize them to issues surrounding youth and enable them to recognize the unique problems and strengths of the children with whom they interact. Many juvenile court judges seek out specialized training around adolescent brain development, information about the way that young people respond to trauma, or symptoms of mental health problems in young people.<sup>207</sup> Juvenile probation officers and juvenile correctional officers are trained in areas specific to youth.<sup>208</sup> Caseworkers who assist neglected or abused children receive training focused on these and other child issues.<sup>209</sup>

Unfortunately, *Texas does not require any specialized training for police officers working in school settings*. Those who wish to become school police officers in Texas must complete the same basic training required of officers who wish to work in more traditional law enforcement venues.<sup>210</sup> *The 618-hour, 16-week basic peace officer training course only includes 10 hours of information related to juveniles*, with this short segment focused only on the delinquency statutes found in the Texas Family Code.<sup>211</sup> Unless officers actively seek out additional training on issues related to children or school-based policing, school police officers come to the job without any training related to the unique needs or behaviors of children and youth.

Nor are there specialized continuing education requirements for school police officers—they follow the same requirements that must be met by traditional police officers. A study of 37 Texas school district police department’s training programs recognizes this as a major shortcoming:

*Without a formal structured plan of its own, training programs for the school district police officers have often followed the template of other local and state policing organizations to determine their own in-service training curriculum. Unfortunately, following the guidelines and programs set up by these outside policing organizations has led to training that is not indicative of the school police officers bona fide training needs.*<sup>212</sup>

207 See Hon. John Specia, Jurist in Resident Letter to Texas Judges Hearing Child Protective Services Cases, February 2010 (making fellow judges aware of training opportunities specific to child welfare law), available at <http://www.supreme.courts.state.tx.us/children/pdf/2ndJIRLetter2010.pdf>.

208 37 TEXAS ADMIN. CODE § 344.620 (setting out required training for juvenile probation officers, which includes requirements focused on mental health issues and adolescent development); TEX. HUM. RES. CODE §61.0356 (300 hours training required for Juvenile Correctional Officers which includes information on a range of youth-specific issues).

209 See Texas Department of Family and Protective Services, *What is a Protective Services Intake Specialist?*, available at <http://www.dfps.state.tx.us/ComeWorkForUs/swi.asp> (describing seven week training program for new employees).

210 TEX. EDU. CODE §37.081.

211 TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION, 618-HOURE BASIC PEACE OFFICER COURSE, available at [http://www.tcleose.state.tx.us/content/training\\_instructor\\_resources.cfm](http://www.tcleose.state.tx.us/content/training_instructor_resources.cfm).

212 James Richard Walker, *supra* note 142.

As part of his research around this study, the author surveyed school district police officers to determine whether there were tasks unique to policing in a school environment. The list of 28 “Unique ISD Police Officer Competencies” is revealing. Not only does it indicate that school police officers feel there are activities and tasks specific to their setting, it also provides a sense of how the surveyed officers view their roles. The surveyed officers identified the following as unique tasks and competencies associated with campus policing:

### Types of Disturbance

- Disturbance of classroom activities
- Disruption of school activities
- Disruption of transportation
- Dispersing and controlling crowds at sporting events
- Dispersing and handling disorderly juvenile groups

### Service Activities

- Assist in school crossing duties
- Advising/mentoring children (on and off campus)
- Patrolling schools and district property
- Notification of criminal activity off campus

### Traffic and Auto Activities

- Issuing moving violations near school grounds
- Assisting motorists on school grounds

### Miscellaneous Activities

- Speaking to parent groups (PTAs, etc.)
- Presentations to faculty groups
- Presentations to student groups
- Making contact with juvenile offenders
- Handling irate parents on school grounds
- Assisting/conducting fire drills
- Emergency preparedness
- Assisting faculty in non-criminal disciplinary actions
- Schools’ records checks of students
- Security meetings with faculty
- Enforcing Student Code of Conduct regulations
- Hallway security monitoring
- Lunchroom security monitoring

### Duties Involving Crime and Crime-Related Activities

- Bomb threat calls at school
- Domestic disturbances involving parents/teachers/children
- Drug usage/overdose on school grounds
- Arrest due to administrative searches<sup>213</sup>

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213 *Id.* at Appendix C.

This list gives a sense of the broad range of activities that school police officers are asked to undertake, and also gives a sense of the role that they are asked to play by school administrators. While the list includes law enforcement duties that might be expected of school police officers—such as “making contact with juvenile offenders” and “domestic disturbances,” it also includes “assisting faculty in non-criminal disciplinary actions.” It lists “disturbance of classroom activities” as potentially necessitating law enforcement intervention.

The study acknowledges the need for specialized training of school police officers:

*[I]t should be recognized that...policing environments are not always the same, and this observation should be considered in the design of the training program for the individual ISD police department. For example, while patrolling and patrol functions are a commonly instructed course in law enforcement, a course revolving around the school environment might take into account the young ages of the victims and the suspects, or the searching of a building might take into account the layout of the schools and surrounding properties, and the best method of entry and exit for the officer.<sup>214</sup>*

Yet, the study concludes that ISD police officers receive little specialized training, since “currently in Texas there is no master training plan that has been designed specifically for school district policing organizational needs.”<sup>215</sup> The author found that school police departments did not have an adequate budget for training, and had time constraints that restricted opportunities for training.<sup>216</sup> The surveyed officers felt also that specialized training was not supported by either the school district administration or the state agency that oversees post-graduate training of police officers.<sup>217</sup> The author noted, “Current in-service is not based on what the ISD police officer does on a daily basis and is not job specific enough, and the officers and chiefs both are aware of this fact.”<sup>218</sup>

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214 *Id.* at 121.

215 *Id.* at 3.

216 *Id.*

217 *Id.* at 112.

218 *Id.* at 122.

## **Best Practice: Children’s Crisis Intervention Training in Bexar County**

After Bexar County Juvenile Probation discovered that more than half of the youth referred to the county’s juvenile system were referred by school police, they determined that a change was needed. Many of these children suffered from untreated mental health problems—and often the campus police officer referred them to the juvenile system for behavior directly related to their unmet mental health needs.

To reduce the number of school-based referrals and assist school police in identifying behaviors that may be associated with untreated mental health issues, Bexar County created the Children’s Crisis Intervention Training (CCIT) for school police officers. The focus of CCIT is to divert juveniles with mental health needs into treatment instead of referring them to the juvenile justice system.

The CCIT course consists of 40 hours of training, which includes:

- Officer tactics and safety in school campus environment
- Active listening and de-escalation techniques
- Mental, learning and developmental disorders and substance abuse in children and youth
- Psychotropic medications
- Family perspective and community resources
- Legal issues relating to school environment and minors and emergency detention
- Role-play scenarios that allow officers to gain practical experience in active listening and de-escalation techniques specific to students experiencing a crisis<sup>219</sup>

The training is also available for other school staff, including administrators. To date, Bexar County has trained 77 school district police officers.

At least one ISD police department in Texas—Conroe ISD Police Department—recognized the lack of specialized training for school police officers, and worked to develop a Field Training Program for its officers. The goal was to design a program “specifically for a school district police department, not merely copy a program designed for some other department.”<sup>220</sup> However, the training manual developed for this program does not include any categories that appear to deviate from what would be considered “traditional” law enforcement duties—instead, the manual seems to simply adapt these duties to a school setting. According to the manual, the officers are trained in the following categories:

- Conducting Searches, Seizures & Execution of Investigative/Evidentiary Techniques
- Control of Conflict & Scene Management
- Knowledge of Department Procedures

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219 Bexar County Judges’ Children’s Diversion Initiative, PowerPoint Presentation: Children’s Crisis Intervention Training (2010)(on file with author).

220 CONROE ISD POLICE DEP’T, FIELD TRAINING PROGRAM TRAINEE MANUAL 1 (2003).

- Knowledge of Texas Education Code and Health & Safety Code
- Knowledge of Texas Family Code
- Knowledge of Texas Penal Code Offenses
- Knowledge of Texas Traffic Laws
- Professional Demeanor
- Radio—Appropriate Use, Listening & Comprehension
- Report Writing—Organization, Detail, Grammar, Spelling & Neatness
- Routine Forms
- Safety Awareness
- Use of Key Map/District Awareness
- Knowledge of Arrest Procedures<sup>221</sup>

Fashioning a role for school police that is consistent with an educational mission, focusing on the healthy academic and social development of all children, requires training that goes beyond memorization of the penal code and grammatically correct report writing. One study suggests that optimal training of School Resource Officers should impact the way that school police understand and interact with children:

*Many officers take courses offered by the National Association of School Resource Officers (NASRO), but these are not required by the state or the district. Moreover, NASRO instruction often focuses on “getting officers out of the patrol car and into the schools.” It tends to emphasize technical training, such as a review of laws determining whether Miranda warning must be given and the deployment of security devices and cameras within schools. The officers...did not receive training in mediation, basic de-escalation techniques, or in detecting symptoms and behaviors of youths who have been exposed to violence, trauma, or abuse. They rarely had any formal knowledge of, or training in, adolescent psychology or development, how to secure the respect and cooperation of youths, or on the behavioral precautions and protections that need to be taken with youths on Individual Education Plans (IEPs).<sup>222</sup>*

Similar problems with training have been noted in several other studies of school-based law enforcement. A study of 19 SRO programs, funded by the U.S. Department of Justice, found:

*Few of the 19 programs train SROs before they go on the job... Delay in training can be a serious problem because SROs then have to learn their jobs by “sinking or swimming” with the possible consequences of providing ineffective services and making serious mistakes on the job.<sup>223</sup>*

This study noted the importance of training school police officers in specialized areas including child psychology.<sup>224</sup> The study also noted, “SROs may need help to ‘unlearn’ some of the techniques they learned to use on patrol duty that are not appropriate in dealing with

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221 *Id.*

222 CHARLES HAMILTON HOUSTON INSTITUTE, *supra* note 195, at 7.

223 PETER FINN ET AL., COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER PROGRAMS 47 (2005).

224 *Id.* at 48.

students (for example, resorting too quickly to using handcuffs or treating misconduct as part of a person's criminal make-up when, in a student, the behavior may be an example of youthful indiscretion).<sup>225</sup> A resource published by the U.S. Department of Justice identifies several non-traditional law enforcement topics that should be addressed in pre-service training for school police officers:

- Child Development and Psychology
- Working with Kids in Schools
- Handling Especially Difficult Students (including students who have a mental illness)
- Learning School Policies and Procedures
- Preparing Safe School Plans<sup>226</sup>

A report published by the Texas Attorney General's School Violence Prevention Task Force included a recommendation that school police officers receive specialized, standardized training and be certified.<sup>227</sup> The Task Force suggested officers should be knowledgeable in areas that included counseling and "developing and cultivating student-officer relationships."<sup>228</sup> The Task Force recommended creating regional training programs to reduce travel costs and the time that officers had to spend away from the school campus for training.<sup>229</sup>

Unfortunately, though at least two organizations have begun offering specialized post-licensing training for Texas school police officers, Texas has not responded to the Task Force's call for training that includes non-traditional courses. The Texas School Safety Center and the Texas School District Police Chiefs' Association both provide training opportunities for school police officers. While the School Safety Center does appear to be trying to incorporate some youth-specific information in the classes it offers, there is little to no emphasis on non-traditional information like de-escalation techniques, trauma-informed care, or adolescent psychology.

Instead, much of the available training appears to perpetuate myths of widespread school violence. The three-hour opening session at the 2010 Texas School Safety Center's School-Based Law Enforcement Conference was entitled "Inside the Mind of a Teen Killer."<sup>230</sup> The 2009 conference materials included the following in the description of the School-Based Law Enforcement Officer Certification Training Program:

*The SBLE Officer Training Program is a force multiplier capable of mitigating, deterring, responding and recovering from any conceivable threat based on a holistic and all hazards approach and methodology. The primary and secondary school systems in the United State present an inviting and unprotected target to domestic active shooters, terrorist cells, drugs, gangs and other violent activities.*

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225 *Id.*

226 U.S. DEP'T OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, A GUIDE TO DEVELOPING, MAINTAINING, AND SUCCEEDING WITH YOUR SCHOOL RESOURCE OFFICER PROGRAM 116 (2005).

227 TEXAS ATTORNEY GENERAL'S SCHOOL VIOLENCE PREVENTION TASK FORCE, FINAL REPORT 25 (2000).

228 *Id.*

229 *Id.*

230 2010 Texas School-Based Law Enforcement Conference, Conference at-a-Glance Tentative Program Guide, available at <http://www.txsbleconference.com/about/program/>.

...The Project SBLE Officer Certification Training Program is not just another Homeland Security initiative focusing on just active shooters or potential threat of a terrorist attack. It is a holistic all hazards approach designed to meet all the threats of violence faced by our campuses today. Such as drugs, gangs, bullying, dating violence, teenage suicides, truancy, absenteeism, bomb threats, bombing incidents, concealed weapons, as well as other disrupted [sic] and violent behaviors that plague our campus classrooms, administrators, staff, educators, students, parents, law enforcement and security officers on a daily basis.

...The key to success lies in an all-hazards holistic approach that would start with elementary campuses and go up through college and university campuses. If we allow a single focus and forget the early educational campuses, we allow for an un-checked and un-controlled breeding ground for violence to develop. By the time these students get to our colleges and universities we will have lost them to the negative environments.<sup>231</sup>

The opening and general sessions for the 2009 conference were “School Violence and Its Impact on Today’s Schools and Universities,” and “Why Texas Hasn’t Had a Columbine and Why That Will Change.”<sup>232</sup> Breakout sessions included:

- Gang Identifiers, Threats, and Violence
- Active Shooter Awareness Training
- Enhancing the Lockdown Strategy
- Taser Awareness and Information Training
- Counter-Terrorism: Radical Islamic Terrorists<sup>233</sup>

While some breakout sessions did focus on youth-specific issues—like bullying and dating violence—there were no sessions on non-traditional policing techniques (like de-escalation or mediation), or information that would inform the way school police officers interact with youth by changing the way they understand youth behavior. Instead, the youth-specific information tended to focus on crime problems specific to youth—bullying, dating violence, and sexual assaults. The youth was cast in the role of perpetrator, with the officer cast as the enforcer—a traditional law enforcement perspective.

This year’s Texas School District Police Chiefs’ Association training included only two components: “Ethical, Character Driven Leadership” and “Risk Management and Customer Service in Law Enforcement.”<sup>234</sup> While these are no doubt important issues for school law enforcement, such training fails to provide the kind of youth-specific information that is critical for school police officers.

These two organizations even appear at odds with each other over appropriate training for school police officers in Texas. In a letter to the Texas School Safety Center, the Executive Board

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231 TEXAS SCHOOL SAFETY CENTER, PROJECT SBLE OFFICER CERTIFICATION TRAINING PROGRAM (2009).

232 Texas School Safety Center, 2009 School Based Law Enforcement Conference at a Glance (on file with author).

233 *Id.*

234 Texas School District Police Chiefs Association, 14<sup>th</sup> Annual Training Conference Registration Packet, available at <http://www.texasisdchiefs.com/images/2010-Conf-Invite-Participant.pdf>.

of the Texas School District Police Chiefs' Association formally withdrew their representative from the School-Based Law Enforcement (SBLE) Advisory Committee.<sup>235</sup> The letter noted that "TSDPCA continues to be in support of training for ISD officers but not in the concept and manner in which [the Texas School Safety Center] is attempting to establish the SBLE concept."<sup>236</sup> The letter also noted that the Texas Association of School Resource officers were "strongly against the SBLE concept as it was presented."<sup>237</sup> The concerns about the SBLE training program, voiced by school police officers who were TSDPCA members, included:

- Concerns about and resistance to training and certification becoming mandated.
- Resistance to the assumption of a difference between a street law enforcement officer and a school police officer.
- Resistance to the assumption that there is a need for specialized training, since other law enforcement positions do not require it.
- Concern that certification and training would contribute to "tiering" of law enforcement officers, with school police occupying a lower rung in the hierarchy.<sup>238</sup>

The concerns expressed above have less to do with the content of the training program offered by the Texas School Safety Center and more to do with a school police culture that is resistant to having its role characterized as "different than" other police officers. Changing the way that school police envision their role is critical to changing the way that they interact with youth. While training is a key factor, leadership must also come from the school district administrators who oversee ISD police departments. In order to fully integrate campus policing into the school structure so that it contributes to a good school climate, educators and school law enforcement must work together to develop a new understanding of school policing—one that bridges the gap between child-centered educational philosophy and law-and-order policing.

## Conclusion

Texas school police officers should be trained to interact with the young, complex and, ultimately, vulnerable population they are tasked with protecting. This does not simply mean adapting traditional law enforcement techniques to a school setting. Rather, officers should be trained to be sensitive to the way youth think and behave so that they are better able to determine when a youth is simply behaving with characteristic immaturity, and when they are engaging in criminal behavior that warrants a law enforcement response. Officers should be trained in de-escalation techniques and restraints appropriate for use on youth, and alternatives to more traditional uses of force. If Texas is going to resolve the philosophical disconnect that exists between educational philosophy and the law-and-order mentality that many school police bring to the job, it must require specialized training for school police officers.

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<sup>235</sup> Letter from Chief John Page, President TSDPCA, to Dave Williams, Executive Director, Texas School Safety Center (December 15, 2009), *available at* <http://texasisdchiefs.com/images/TSDPCA-Withdrawal-ICJS.pdf>.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*



## CLASS C MISDEMEANOR TICKETING OF STUDENTS AND THE “CRIMINALIZATION” OF MISBEHAVIOR IN SCHOOLS

*In a little over two decades, a paradigm shift has occurred in the Lone Star State. The misdeeds of children—acts that in the near recent past resulted in trips to the principal’s office, corporal punishment, or extra laps under the supervision of a middle school or high school coach, now result in criminal prosecution, criminal records, and untold millions of dollars in punitive fines and hefty court costs being imposed against children ages 10 through 16.*

—Ryan Kellus Turner & Mark Goodner  
Passing the Paddle: Nondisclosure of  
Children’s Criminal Cases (2010)

Texas Appleseed’s analysis clearly reveals that ***school districts are becoming increasingly reliant on Class C misdemeanor ticketing to address low-level student misbehavior***. In many cases, this ticketed behavior is evidently so minor that it does not merit a referral to the district’s Disciplinary Alternative Education Program (DAEP).

Proponents of school-based policing, and the officers themselves, contend crime and violence are extremely low in Texas public schools *because* there are officers assigned to school campuses. However, as noted in the first chapter of this report (and discussed in more depth in the Appendix, see *The Myth of the Blackboard Jungle*), available data documents a low level of violence and crime in Texas schools both before and after the advent of campus-based policing. Research suggests that the assigning of police officers to schools and the creation of school district police departments merits careful review by educators and policymakers to avoid unintended consequences. ***While problem behavior must be addressed and students held accountable for breaking school rules, discipline “at the courthouse” for more minor***

*misbehavior can result in even greater school disengagement and increased likelihood of dropout and/or involvement in the juvenile justice system for at-risk students.*<sup>239</sup>

Out of the more than 160 Texas school districts and hundreds of municipal and Justice of the Peace courts asked to produce Class C ticketing data for a five-year period for purposes of the Texas Appleseed study, only 22 school districts and four municipal courts provided data. There is a ***need for better data collection*** if school administrators are to make informed decisions about what constitutes effective discipline of minor student misbehavior and if campus police are to critically evaluate their role on campus and the impact of their policing strategies.

Texas Appleseed documented these trends from available data supplied by responding Texas school districts and courts:

- As police presence increased on Texas school campuses, school ticketing numbers significantly increased.
- Large numbers of Class C misdemeanor tickets are being issued to Texas students, with the majority issued for low-level offenses like Disruption of Class or Disorderly Conduct—behaviors historically addressed by school administrators.
- In some cases, teachers or school administrators are initiating ticketing as a form of school discipline.
- African American students are overrepresented in Class C misdemeanor ticketing, particularly for offenses like Disorderly Conduct and Disruption of Class and, in the case of Hispanic students, may be “profiled” for gang membership on the basis of clothing or other “signs.”
- Very young students are receiving Class C misdemeanor tickets at school. Texas Appleseed found that several districts reported having ticketed students as young as four and six years old.
- It is unusual for school districts to keep Class C misdemeanor ticketing data disaggregated according to special education status—but those that do (along with our interviews with attorneys and parents) indicate special education students are overrepresented in ticketing.

Before comparing the ticketing data from respondents for a single school year (2006-07), it is important to understand the potential consequences to a student’s receiving a Class C misdemeanor ticket at school.

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<sup>239</sup> Arresting juveniles for minor offenses causes them to become more delinquent in the future than if police merely warn them. Lawrence W. Sherman, *Policing for Crime Prevention*, in PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING A REPORT TO THE UNITED STATES CONGRESS (1997); Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, JUSTICE QUARTERLY, Vol. 23, Issue 4 (2006) (first time court appearance during high school increases odds of high school dropout by at least a factor of three); Paul J. Hirschfield, *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*, 82 SOCIOLOGY OF EDU. 368 (2009) (“juvenile justice intervention is a frequent pathway to school dropout, especially in poor urban neighborhoods”).

## Consequences of Receiving a Class C Misdemeanor Ticket

Many adults and students tend to minimize the gravity of a Class C misdemeanor ticket—equating it with a traffic ticket, which is usually discharged by mailing in payment of a fine or taking an online driver education course. In reality, receiving a ticket for a non-traffic-related Class C misdemeanor can have much more serious implications for youth.

Until the mid-1990s, all juvenile offenses (with the exception of traffic offenses) were handled by the juvenile court.<sup>240</sup> However, in 1991, the Texas Legislature changed the law so that juveniles who are charged with a Class C misdemeanor now fall under the jurisdiction of municipal or Justice of the Peace (JP) courts.<sup>241</sup> Municipal and JP courts are criminal venues, unlike the juvenile courts which are considered civil courts, in a deliberate attempt to spare young people the stigma of being labeled a criminal.<sup>242</sup>

When a student is charged with a non-traffic-related Class C misdemeanor, the student's parent must appear in municipal or JP court with his or her child.<sup>243</sup> The fine for a Class C misdemeanor can be up to \$500.<sup>244</sup> Students may also be assessed court costs. The base fee for court costs associated with misdemeanors is \$52, but courts may add additional fees.<sup>245</sup>

Texas Appleseed received data from eight municipal courts as part of our research around school-based ticketing.<sup>246</sup> Seven courts provided information on the costs and fines assessed. ***In each of these courts, fines and costs ranged from less than \$60 to more than \$500.*** Also, it is not unusual for students to receive multiple tickets at school. One municipal court providing data to Texas Appleseed indicated a youth had received as many as 11 tickets. ***In the same court, more than 350 youth had received multiple tickets, with some receiving six or more. This seems to suggest that ticketing does not act as an effective deterrent to future misbehavior.***

The financial repercussions of a ticket, or multiple tickets, for families with limited resources can be devastating.

## IN THEIR WORDS

Two parents shared their experiences with Texas Appleseed:

*My son has received tickets for various offenses ranging from horseplay that resulted in accidental assault by contact, [to] having cigarette butts (washed) in his jean pockets, a fight he did not start that he simply defended himself, three for foul language, [and] one huge one for missing school (classes—not whole days). The total for said tickets was \$1,520, [but] it might as well have been a million to someone in my financial situation. The tickets were*

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240 Ryan Kellus Turner & Mark Goodner, *Passing the Paddle: Nondisclosure of Children's Criminal Cases* (2010)(on file with author).

241 *Id.*

242 *Id.*

243 TEX. CODE OF CRIM. PROC. §45.0215.

244 TEX. PENAL CODE §12.23.

245 Aseltine, *supra* note 118, at 135.

246 For the list of courts that provided data to Texas Appleseed, see the Methodology section in the Appendix.

*all assessed when he was 15 and 16 years old. Now since he has turned 17... they consider my child, who cannot vote, an adult and made us go to court and told us that if it wasn't paid immediately that he would be placed in an adult jail facility.*

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*My daughter...was ticketed by the school police officer for having a cigarette butt in her purse. I know she shouldn't have cigarette butts...but when I was in high school this meant detention, for her it meant a \$200 fine and community service (for which I had to take off work).*

As an alternative to fines, some municipal courts have hired juvenile case managers who work with students to find community service, rehabilitative services or classes that students can complete in place of paying the fine.<sup>247</sup> In these courts, the Class C charges may be dismissed after the student completes the community service ordered by the court, but court costs can still be assessed. When court costs are waived, youth are generally given more community service hours in lieu of the costs.<sup>248</sup> Many of the rehabilitative services or classes that youth are ordered to attend require payment of a fee. In some cases, these fees are up to \$100.<sup>249</sup>

The Austin Municipal Court routinely allows students to opt for a deferred dismissal—so that once the student completes the court-ordered community or rehabilitative services, the case is dismissed.<sup>250</sup> Of the other municipal courts that provided information to Texas Appleseed about case outcomes, only about 12 percent of the cases were dismissed.

If the student fails to appear in court, the judge can issue a bench warrant for the student's arrest.<sup>251</sup> ***One study of a large, urban Texas municipal court found that 30 percent of African American and 59 percent of Hispanic youth who received Class C misdemeanor tickets at school had a warrant issued for their arrest as the result of the failure to appear on a Class C charge they received in connection with a school-based offense.***<sup>252</sup> In several interviews, Texas Appleseed heard that youth often do not realize how serious these tickets can be, and may not tell their parents they received a ticket.

Anecdotally, Texas Appleseed has been told that because municipal courts do not have jurisdiction to order a juvenile into detention and cannot put juveniles in jail, these bench warrants are rarely enforced.<sup>253</sup>

If the student does not comply with the terms of the court order, the municipal or JP court may find the student in contempt.<sup>254</sup> When a youth is held in contempt, the court may

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247 See Natasha Chen, *Temple Considers Juvenile Case Manager*, KXXV-TV News, May 12, 2010.

248 Aseltine, *supra* note 118, at 169.

249 *Id.*

250 As part of our research, Texas Appleseed observed the Austin Municipal Court's juvenile docket and interviewed the court's juvenile case managers.

251 TEX. CODE CRIM. PROC. §45.058 & 45.059.

252 Aseltine, *supra* note 118, at 176.

253 Interview with Ryan Kellus Turner, General Counsel, Texas Municipal Courts Education Center (notes on file with author).

254 TEX. CODE CRIM. PROC. §45.050.

refer the case to juvenile court, or retain jurisdiction and order payment of another fine and/or suspend the youth's driver's license.<sup>255</sup>

In addition, if the youth fails to pay the fine or complete court-ordered community service or rehabilitation services, once the youth turns 17 the court may issue a Notice of Continuing Obligation to Appear.<sup>256</sup> **Failure to appear once this notice is issued may result in additional Class C charges, and a warrant being issued for the youth's arrest.**<sup>257</sup> **Unfortunately, this is not an unusual occurrence.**<sup>258</sup> **The ACLU of Texas recently filed suit against Hidalgo County, after discovering that hundreds of teens had been jailed for unpaid truancy tickets issued years earlier.**<sup>259</sup> A study of Class C ticketing in an urban Texas school district revealed that of the youth who were issued a school-based citation, more than 2,000 either had an outstanding warrant for their arrest or had served time as the result of a warrant being issued.<sup>260</sup> African American and Hispanic youth were disproportionately affected by this practice, with 30 percent of the warrants issued for African American youth and 59 percent issued for Hispanic youth.<sup>261</sup>

Because Class C tickets are not processed in juvenile courts, students who are convicted of a Class C misdemeanor do not enjoy the protections that apply in the juvenile setting.<sup>262</sup> For example, cases in municipal and justice court lack an intake process comparable to that of a juvenile court, and there is no requirement of prosecutorial review.<sup>263</sup> This means that there is no opportunity for a prosecutor to exercise discretion to dismiss a case before it reaches the court.

Normally, a conviction in a municipal or justice court is a matter of public record. During the 2009 legislative session, in an effort to address concerns surrounding the impact this had on juveniles, the legislature passed a bill requiring the Texas Department of Public Safety (DPS) to issue non-disclosure orders in these cases.<sup>264</sup> While this does provide more protection than previously existed, there are massive problems with this system—one of which is that the **non-disclosure orders do not appear to be reaching the appropriate entities, possibly as a result of a backlog at DPS.**<sup>265</sup>

**Another protection commonly afforded juveniles—appointment of counsel—does not apply in Class C misdemeanor cases.**<sup>266</sup> Our interviews with attorneys, parents and students revealed that this often means that young people simply plead guilty even when they have a viable defense to the charge. For example, “self defense” is a defense to a charge of disorderly conduct for fighting, but few students or their parents are aware of this.

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255 TEX. CODE CRIM. PROC. §45.050.

256 TEX. CODE CRIM. PROC. §45.060.

257 *Id.*

258 See American Civil Liberties Union of Texas, *ACLU of Texas Sues Hidalgo County, Challenges “Debtor’s Prison” for Truant Teens*, July 27, 2010, available at <http://www.aclutx.org/article.php?aid=855>.

259 *Id.*

260 Aseltine, *supra* note 118, at 176.

261 *Id.*

262 Turner, *supra* note 240, at 1.

263 *Id.* at 1.

264 *Id.* at 3.

265 *Id.* at 6.

266 *Id.* at 1.

## CASE STUDY

An attorney who represents special education students in school discipline cases shared one client's story with Texas Appleseed:

*A 16-year-old youth with Asperger's Syndrome, who made good grades and never got in trouble at his Houston suburban high school, began to get harassed by a bully because of his poor social skills. His mother asked the school to do something about the bully, but the school never took any serious action and never informed the mother of her son's right to move to another classroom or school. One day, the bullying turned physical when the young man was attacked in the high school hallway. The youth managed to hit his attacker once in self defense, but it was anything but an even fight, with the victim going to the emergency room for stitches while his attacker walked away without injury. Still, the school police issued both youth citations for assault at the principal's request. Until the family was lucky enough to have their case accepted by a disability rights nonprofit, they had no idea that their son had a right to self defense under Texas criminal law. They also had no idea their son could move schools to prevent future bullying and abuse. Of course, typically a youth in this situation would have no lawyer and would agree to whatever plea bargain was offered in court, even though the youth never committed a crime under Texas criminal law.*

## Class C Misdemeanor Referrals to Juvenile Court

Judges in municipal and JP courts have the discretion to refer Class C misdemeanor cases to the juvenile system, and are required to refer them after the second conviction for a Class C offense.<sup>267</sup> However, data from TJPC shows that this is a relatively unusual occurrence, given the volume of Class C tickets that municipal and JP courts handle statewide.

### Class C Misdemeanor Referrals to Texas Juvenile System, 2008

Offense	Number of Referrals to Juvenile System
Liquor Laws	178
Runaways	27
Curfew/Loitering	13
Disorderly Conduct	449
Other <sup>268</sup>	2,512

This table includes only the cases that resulted in a formal referral to the juvenile court. It does not include those that resulted in some other type of intervention. ***In 2008, a total of 5,518 Class C misdemeanor cases were referred from a municipal or JP court to the juvenile system.***

<sup>267</sup> TEX. FAM. CODE §51.08.

<sup>268</sup> Includes school-based offenses like disruption of class or transportation, failure to attend school, and CINS offenses like truancy and expulsion from a DAEP.

Referrals to juvenile court include Disruption of Class and Disruption of Transportation cases. According to data from the Texas Juvenile Probation Commission, in a six-month period (January-June 2009), 348 disruption cases were transferred from municipal or JP courts to juvenile courts.<sup>269</sup>

It is absurd on its face for any youth to be subject to court proceedings for low-level, disruptive behavior that would not be considered a criminal offense in any other setting. Yet, while referral to juvenile court is supposedly a more severe sanction, a youth who is referred to a juvenile court is afforded more protections than the youth whose ticket is handled in the municipal or JP court.

**COMPARABLE FACTS, TWO OUTCOMES:  
A Hypothetical Case Handled in Municipal or JP Court v. Juvenile Court**

“Dana,” a youth who steals a shirt worth \$49, is charged with a Class C misdemeanor. She is required to appear in **municipal or Justice of the Peace court** with a parent. The case proceeds to court without a prosecutor having reviewed the charges to determine whether they have merit. At court, “Dana” is not entitled to appointed counsel. If her parent cannot hire an attorney, “Dana” must represent herself. If “Dana” is found guilty, she is convicted of the Class C misdemeanor and may be ordered to pay a fine of up to \$500. While a non-disclosure order *should* be issued, problems with that overloaded system mean that there may be lengthy delays in issuing/complying with such an order.

\* \* \* \* \*

“Loretta” steals a shirt worth \$51. She is referred to a juvenile probation officer who first reviews her case to determine whether she is eligible for a first offender or early diversion program. The prosecutor is required to review “Loretta’s” case and has discretion to dismiss it if it is without merit. If the case results in a formal referral, “Loretta” is entitled to appointed counsel. She will not be “convicted” of a crime, but may instead be “adjudicated delinquent.” The juvenile court does not have the authority to impose a fine—rather, the focus in the juvenile court will be on “Loretta’s best interest” and what she needs to be “rehabilitated.” All the records of the proceeding are sealed.

**Ticketing Increases as Police Presence Increases**

In almost every jurisdiction for which Texas Appleseed has data disaggregated by school year, there has been a substantial increase in ticketing over the two- to five-year period for which we have data. *Of the 26 districts or jurisdictions for which Texas Appleseed received ticketing data, only four reported a drop in the number of tickets issued between the first year for which we have data and the last.* Furthermore, the data shows that ticketing of students has increased by as much as 25 percent in many districts, with some districts more than doubling the number of tickets issued.

While it is possible that the upward trend in ticketing reflects a change in student behavior rather than a change in ISD police department expansion, the overall number of youth referred to the juvenile justice system in Texas decreased during the same period.<sup>270</sup> County-

269 Data provided to Texas Appleseed pursuant to an open records request to the Texas Juvenile Probation Commission.

270 TEXAS JUVENILE PROBATION COMMISSION, THE STATE OF JUVENILE PROBATION ACTIVITY IN TEXAS CALENDAR YEAR 2007 8.

specific data for each of the juvenile probation departments serving these districts reflects the same downward trend in referrals.<sup>271</sup>

This suggests that the upward trend in student ticketing in these districts is not related to a higher rate of misbehavior, but may instead reflect either the increased presence of police officers in the district's schools or the increased reliance on issuing tickets to address student misbehavior. Studies of school resource officers (SROs) and "criminalization" of student misbehavior support this theory, finding that while an SRO presence *may* deter more serious crimes, it also leads to an increase in the number of youth referred to the court system for low-level crimes like "disorderly conduct."<sup>272</sup>

For the handful of districts that were able to produce staffing and ticketing data across corresponding years, the rapid increase in the number of police officers assigned to Texas' public schools (see prior chapter) corresponds with a dramatic increase in the number of Class C misdemeanor tickets issued to at school in five out of eight of the districts.<sup>273</sup>

### Growth in School District Police Department Staff & Increase/Decrease in Ticketing During Same Period

School District	Percentage Growth of Police Department Staff	Increase/Decrease in Ticketing
Austin ISD	31%	50%
Dallas ISD	24%	95%
Edgewood ISD	35%	-72%
El Paso ISD	37%	59%
Humble ISD	92%	29%
Katy ISD	30%	-55%
United ISD	71%	37%
Waco ISD	10%	-22%

One study of data from a Texas municipal court found that during the 14-year period between 1994 and 2008, of the 42,283 tickets issued to juveniles, the percentage issued by school police officers increased from 2 percent in 1994 to more than 40 percent in 2008.<sup>274</sup> This shows the large role that the increased presence of law enforcement on school campuses plays in Class C ticketing.

<sup>271</sup> Data provided to Texas Appleseed pursuant to open records request to Texas Juvenile Probation Commission.

<sup>272</sup> Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 JOURNAL CRIM. JUSTICE 280 (2009).

<sup>273</sup> Texas Appleseed did not receive data across all years for both staffing levels and the number of citations issued. For example, while we received data from Houston ISD across all six years for staffing levels, we only received two years of data from the district for the number of citations issued. Similarly, while we received data from San Antonio and Pasadena ISDs disaggregated by year for staffing levels, we received aggregate counts across all years for the number of citations issued. Thus, we were only able to perform this analysis for a handful of the districts that provided ticketing data in response to our open records request.

<sup>274</sup> Asetline, *supra* note 118, at 68.

*Some districts do appear to have reduced the number of tickets issued to students.* For example, Dallas ISD issued 4,546 tickets in 2005-06 compared to 4,402 tickets in 2006-07. Austin ISD shows the same slight reduction between 2006-07 and 2007-08. Edgewood ISD has shown a consistent downward trend during each of the years for which they reported data. Katy ISD and Waco ISD show a decrease in the number of tickets issued between the first year for which they produced data and the last, but show a fluctuation in the number of tickets issued during the years in between. Without more data, it is difficult to determine whether decreases in these districts are indicative of a larger trend and whether decreases are sustainable over time. Houston ISD, for example, showed a decrease in ticketing between 2005-06 and 2006-07, with 5,970 tickets in 2005-06 but only 4,828 tickets in 2006-07. However, this reduction was short-lived, with more recent data showing that Houston ISD issued 5,763 tickets in 2008-09.<sup>275</sup>

### **Promising Practice: Graduated Sanctions**

In Clayton County, Georgia, stakeholders in the education and juvenile justice systems took action after they noticed a vast increase in the number of youth being referred to the juvenile system for low-level misdemeanor offenses like fighting, disorderly conduct, and disruption of school.<sup>276</sup> In 2004, members from the county's juvenile justice system, law enforcement, the local school system, and social service groups came together to draft a cooperative agreement aimed at limiting the number of school referrals to juvenile court.<sup>277</sup> Under the cooperative agreement, misdemeanor crimes like fighting, disrupting school, disorderly conduct, and trespass do not result in a referral to juvenile court unless the student commits a third or subsequent offense during the same school year.<sup>278</sup> Instead, youth receive warnings after the first offense and referral to mediation or school conflict programs after a second offense.<sup>279</sup> Elementary school students cannot be referred to law enforcement for misdemeanors if committed on school premises.<sup>280</sup>

Since the agreement was implemented, schools have seen a drastic decrease in the number of misdemeanor offenses committed on school campuses, and improved relationships between students and school police officers.<sup>281</sup> The agreement also resulted in a significant reduction in the number of referrals of African American students, who were overrepresented in referrals prior to the agreement.<sup>282</sup>

The success of this initiative in Clayton County led officials in districts in several other states, including Alabama and Massachusetts, to implement similar initiatives.<sup>283</sup>

275 Brian Thevenot, *School District Cops Ticket Thousands of Students*, TEXAS TRIBUNE, June 2, 2010, available at <http://www.texastribune.org/texas-education/public-education/school-district-cops-ticket-thousands-of-students/>.

276 CLAYTON COUNTY BLUE RIBBON COMMISSION ON SCHOOL DISCIPLINE, WRITTEN REPORT PRESENTED TO THE SUPERINTENDENT AND BOARD OF EDUCATION 35 (2007). In Clayton County, juveniles who receive tickets for Class C misdemeanors are referred to juvenile courts. *Id.*; see also *Stop the Schoolhouse to Jailhouse Track*, Clayton County, Georgia, available at <http://www.stopschoolstojails.org/clayton-county-georgia.html>.

277 *Stop the Schoolhouse to Jailhouse Track*, *supra* note 276.

278 *Id.*

279 *Id.*

280 *Id.*

281 *Id.*

282 *Id.*

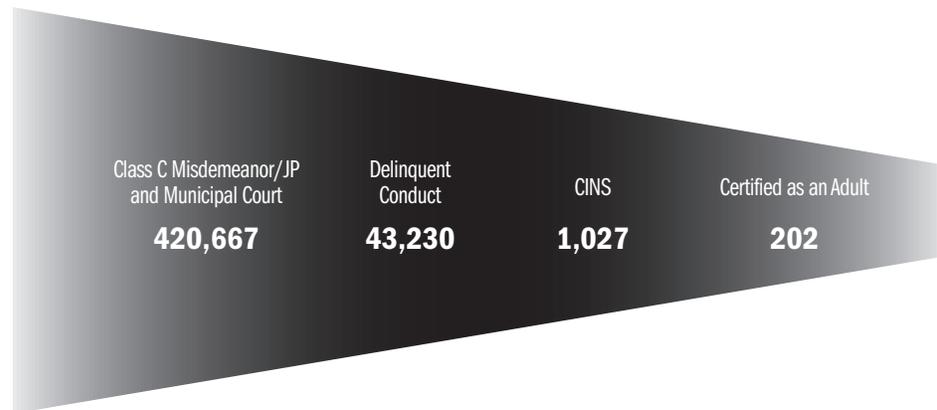
283 E-mail from Steve Teske to Deborah Fowler, April 27, 2009 (on file with author).

## Volume of Class C Misdemeanor Ticketing of Students at School

Though we do not know how many tickets are issued by school law enforcement officers statewide, 2009 data from the Texas Office of Court Administration shows that municipal and Justice of the Peace (JP) courts in Texas handled more than 158,000 juvenile cases that did not involve traffic violations or truancy.<sup>284</sup> Truancy violations represent another 120,000 cases.<sup>285</sup> Even these numbers are low, because JP courts are not reporting data using a method that shows all of the Class C tickets issued to juveniles.<sup>286</sup>

The Texas Office of Court Administration created a chart that shows the large number of juvenile cases that are processed through municipal and JP courts, and puts these numbers in perspective by comparing them to the number of cases for youth processed by juvenile courts (in the case of youth adjudicated delinquent or charged with a CINS offense) or adult courts (in the case of juveniles certified as adults).<sup>287</sup>

### Juvenile Justice Continuum Fiscal Year 2009



NOTE: A CINS offense is a status offense included in section 51.03 of the Texas Family Code as “Conduct in Need of Supervision” of the court, and includes “offenses” like truancy and running away from home.

<sup>284</sup> Based on data provided to Texas Applesseed by the Office of Court Administration; *see also* OFFICE OF COURT ADMINISTRATION, ANNUAL REPORT (2009).

<sup>285</sup> *Id.*

<sup>286</sup> Justice of the Peace courts only break out two categories of juvenile citations: “failure to attend school” and curfew violations. *See* TEXAS OFFICE OF COURT ADMINISTRATION, ANNUAL REPORT (2009). Next year, JP courts will begin reporting juvenile case data disaggregated the same way that municipal courts report juvenile cases, which will likely lead to an increased understanding of the volume of juvenile Class C citations issued statewide.

<sup>287</sup> Chart provided by Texas Office of Court Administration.

Only 34 percent of the 420,667 Class C cases (see prior chart) involved traffic violations.<sup>288</sup> Class C cases involving “failure to attend school,” the majority of which are handled in Justice of the Peace courts, constitute about another 120,000 tickets.<sup>289</sup> It is highly likely that the majority of the remaining cases are also school-based. One study of trends in Class C juvenile cases in a municipal court found that school police officers were responsible for up to 98 percent of the citations issued for specific offenses.<sup>290</sup>

The data that Texas Applesseed received from school districts and courts confirms the large number of Class C misdemeanor tickets being issued, even in smaller school districts.

**Class C Misdemeanor Tickets Issued in 26 School Districts and Court Jurisdictions in 2006-07 School Year<sup>291</sup>**

<b>School District/Municipal Court (Enrollment)</b>	<b>Number of Class C Tickets</b>	<b>Ticketing Rate</b>
Alief ISD (45,625)	1,926	4 %
Austin ISD (81,917)	2,653	3 %
Brownsville ISD (48,284)	2,856 <sup>292</sup>	6%
Castleberry ISD (3,322)	181	5%
Corpus Christi ISD (38,785)	2,095	5%
Dallas ISD (158,814)	4,402	3%
East Central ISD (8,470)	501	6%
Edgewood ISD (11,906)	233	2%
El Paso ISD (62,635)	1447	2%
Galveston ISD (8,430)	921	11%
Houston ISD (202,449)	4,828	2%
Humble ISD (31,144)	431	1%
Huntsville Municipal Court (Huntsville ISD 6,229)	245	4%
Katy ISD (50,725)	1336	3%
Lewisville-Flower Mound Municipal Court (Lewisville ISD 48,890)	262	Less than 1%
Midland ISD (20,827)	369	2%

288 Data provided to Texas Applesseed by the Office of Court Administration.

289 *Id.*

290 Aseltine, *supra* note 118, at 103 (School police officers wrote 98 percent of disruption tickets; 86 percent of tickets issued for Disorderly Conduct—Profanity; 93 percent of Disorderly Conducting—fighting; and 99 percent of the tickets for gang membership).

291 Texas Applesseed has data for a two districts that were not included in this chart because their numbers were so small: Lubbock-Cooper ISD (one ticket issued in 2006-07 for tobacco possession), and Tioga Municipal Court (three tickets issued during the 2006-07 school year); Texas Applesseed has data through 2005-06 for Caddo Mills Municipal Court (nine tickets issued that year and 15 issued the year before) and data for 2007-08 for two districts—Austin ISD (2,364 tickets issued) and Humble ISD (500 tickets issued).

292 Data from Brownsville tracked law enforcement “events” rather than citations. Texas Applesseed subtracted any “events” that were not criminal violations (such as “welfare concern” and “K9 Sweeps”), truancy violations, and arrest counts.

<b>School District/Municipal Court (Enrollment)</b>	<b>Number of Class C Tickets</b>	<b>Ticketing Rate</b>
Pasadena ISD (49,630)	329 <sup>293</sup>	Less than 1%
San Angelo ISD (14,333)	321	2%
San Antonio ISD (55,322)	3,760 <sup>294</sup>	7%
Somerville Municipal Court (Somerville ISD 529)	38	7%
Southlake Municipal Court (Carroll ISD 7,772)	85	1%
Spring Branch ISD (32,098)	510 <sup>295</sup>	2%
United ISD (37,671)	522	1%
Waco ISD (15,403)	1070	7%
White Settlement ISD (5,405)	160	3%
Wichita Falls ISD (14,675)	369	3%

The 26 districts or jurisdictions above represented approximately 23 percent of the Texas student body in 2006-07. These districts combined issued almost 32,000 tickets during the 2006-07 school year. The above chart includes large and small districts in urban, suburban and rural areas—and provides a snapshot of the extent to which students are being ticketed in Texas public schools.

Within districts providing data to Texas Appleseed, there is clearly a great deal of variation in the rate at which students are being ticketed—with rates ranging from less than one percent to as high as 11 percent. This is in keeping with our findings in Texas Appleseed’s first two “school-to-prison pipeline” reports on more traditional forms of school discipline, which documented wide variations in the number of suspensions and referrals to Disciplinary Alternative Education Programs and Juvenile Justice Alternative Education Programs between school districts. As a result, it is possible to conclude that where a student attends school, and not the nature of the misbehavior, determines the likelihood that a student will be suspended, referred to a DAEP or JJAEP, or ticketed.

In many districts, students are being issued tickets at rates that exceed use of other discipline options. In fact, in most of the 24 districts listed above, Class C misdemeanor tickets are issued more often than students are referred to the districts’ Disciplinary Alternative Education Programs (DAEPs). For example, during the 2006-07 school year, Alief ISD made only 1,664 referrals to their DAEP, but its school police officers issued more than 1,900 tickets.

<sup>293</sup> Pasadena ISD did not disaggregate data by school year. The total number of tickets issued during the six-year period for which they provided data was 2054. Texas Appleseed divided 2054 by the number of months for which we have data, then multiplied by 12 to come up with a yearly average. The number included in the chart could be higher or lower than the actual number of tickets issued to students in 2006-07.

<sup>294</sup> San Antonio ISD did not disaggregate their data by year. Texas Appleseed divided the total number of tickets issued—21,618—by the total number of months for which we have data, and then multiplied by 12 to get a yearly average.

<sup>295</sup> Spring Branch ISD could not disaggregate data by school-based citation versus school-based arrest. The total number of incidents for 2006-07 was 808. Texas Appleseed included only those offenses—disorderly conduct, disruption of class or transportation, curfew, tobacco and gang membership—that are traditionally handled with a Class C misdemeanor citation rather than a school-based arrest with the student taken into custody. However, the actual number of citations issued could be higher or lower.

Austin ISD issued more than 2,600 tickets to its students, but made only 2,183 DAEP referrals. Similarly, in Dallas ISD, 3,074 students were referred to the DAEP, while more than 4,400 tickets were issued. One of the most extreme examples is Galveston ISD—which made 356 referrals to its DAEP but issued more than 900 tickets. ***The only disciplinary methods that are more popular than ticketing in many of the districts listed above are in-school and out-of-school suspension.***

This alone raises a red flag concerning “criminalization” of low-level student misbehavior. In other words, ***though the behavior for which students are given Class C misdemeanor tickets is not always serious enough to result in a referral to a DAEP, it puts the student on a direct path to court involvement.*** It also places a significant financial burden on families and ties up the court system with cases involving behavior that, historically, would have been handled by the school.

Our interviews also indicate that students who receive tickets often receive a disciplinary referral at the same time. For example, we have heard from parents whose child not only received a ticket for fighting or profanity, but also received a referral to a DAEP.

### **Ticketing of Students for Minor Violations**

Texas Appleseed’s analysis of reported data reveals that the majority of tickets being issued are for minor violations like using profanity, schoolyard fights, or misbehaving in class. The most common misdemeanors for which students are ticketed on school campuses are Disruption of Class or Transportation (offenses specific to school settings), Disorderly Conduct, and curfew violations.

Disorderly Conduct tickets are often given for schoolyard fights that are not serious enough to warrant an assault charge, but also can be issued for profanity or an “offensive gesture.”<sup>296</sup> According to the Texas Penal Code, a person commits “disorderly conduct” by:<sup>297</sup>

- Using abusive, indecent, profane or vulgar language in a public place that “tends to incite an immediate breach of the peace;”
- Making an offensive gesture or display that incites an immediate breach of the peace;
- Abusing or threatening someone in a public place in an “obviously offensive manner;”
- Making an unreasonable noise in a public place;<sup>298</sup> or
- Fighting with someone in a public place.

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296 TEX. PENAL CODE §42.01.

297 *Id.*

298 Noise is presumed “unreasonable” if it exceeds 85 decibels after the person making the noise has received notice that it is a public nuisance. *Id.* By way of comparison, a vacuum cleaner’s noise is generally measured at about 70 decibels, *see* Industrial Noise Control, Inc., Comparative Examples of Noise Levels, *available at* <http://www.industrialnoisecontrol.com/comparative-noise-examples.htm>.

## CASE STUDIES

### Class C Misdemeanor Ticketing for Disorderly Conduct

#### Fighting

*A school resource officer (SRO) was informed over the radio by the physical education teacher that a fight was taking place behind the gym. When he arrived, the fight was broken up. The officer met with “Anthony” and asked him why he had fought with [the other student]. “Anthony” told the officer that he had fought because the other student had made a comment about his family. The officer then met with the other student and asked him why he had fought with “Anthony.” He stated to the officer that he had fought with him because “Anthony” had swung at him. Both boys were issued tickets and suspended from school.<sup>299</sup>*

#### Profanity

*A middle school teacher was escorting a student, “Jose,” down the main hallway towards the principal’s office. “Jose” was disrespectful, used profanity, and told her to stop following him. [The teacher] stated she was offended by “Jose’s” words and actions and wanted to file charges against him. He received a Class C misdemeanor ticket and went to court.<sup>300</sup>*

#### “Indecent Exposure”<sup>301</sup>

*[A woman] advised she had been following a...school bus...when one of the students in the back of the bus dropped his pants exposing his buttocks. She said the boy then pulled his pants up and he and two other students on the bus began laughing. [The woman] advised she followed the bus [to the high school] where she then made contact with [the school police officer] who was standing in the front drive where the buses unload, and she was able to identify [the student] as he exited the bus. [The student] was taken to [the assistant principal’s] office where...he admitted to “mooning” [the woman]. He was ticketed for indecent exposure.<sup>302</sup>*

Disruption of Class is one of the enumerated penal code offenses found in Chapter 37 of the Education Code. A student commits Disruption of Class if he or she “intentionally disrupts the conduct of classes or other school activities” while on or within 500 feet of school property.<sup>303</sup> Disrupting class consists of:<sup>304</sup>

- Emitting noise of an intensity that prevents or hinders classroom instruction;
- Enticing or attempting to entice a student away from a class or other school activity;
- Preventing or attempting to prevent a student from attending class or other school activity; and
- Entering a classroom without the consent of the principal or teacher and disrupting class through use of loud or profane language.

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299 Aseltine, *supra* note 118, at 86.

300 *Id.* at 88.

301 The penal code’s definition of disorderly conduct does not include indecent exposure, though this was the offense for which this student was ticketed.

302 Aseltine, *supra* note 118.

303 TEX. EDU. CODE §37.124.

304 *Id.*

Disruption of Transportation consists of intentionally disrupting, preventing or interfering with transportation of children to or from school.<sup>305</sup>

Daytime curfews have been passed by a number of Texas cities in an attempt to ensure that school-age children are in school during school hours. Proponents of curfews argue that they give law enforcement a tool to enforce school attendance before a student is considered “truant,” which requires more than one unexcused absence from class.<sup>306</sup> Opponents point out that it is another example of criminalization of low-level behavior and argue that research disproves the claim that curfews reduce property crime and keep kids in school.<sup>307</sup> In school districts located in cities with a daytime curfew, this “offense” usually tops the list for school-based Class C misdemeanor tickets.

Other offenses that students may be ticketed for include misdemeanor alcohol offenses, possession of tobacco or drug paraphernalia, criminal mischief, misdemeanor theft (property with a value under \$50), trespass and membership in a secret society or gang. These make up a small percentage of the tickets issued in the jurisdictions or districts providing data to Texas Appleseed.

Of the 26 school districts or jurisdictions that provided ticketing data to Texas Appleseed, only 22 disaggregated the data by offense. These districts issued a total of 29,177 tickets during the 2006-07 school year. Of these, 17,903 of the tickets, or 62 percent, were for low-level, non-violent offenses.<sup>308</sup>

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305 TEX. EDU. CODE §37.126.

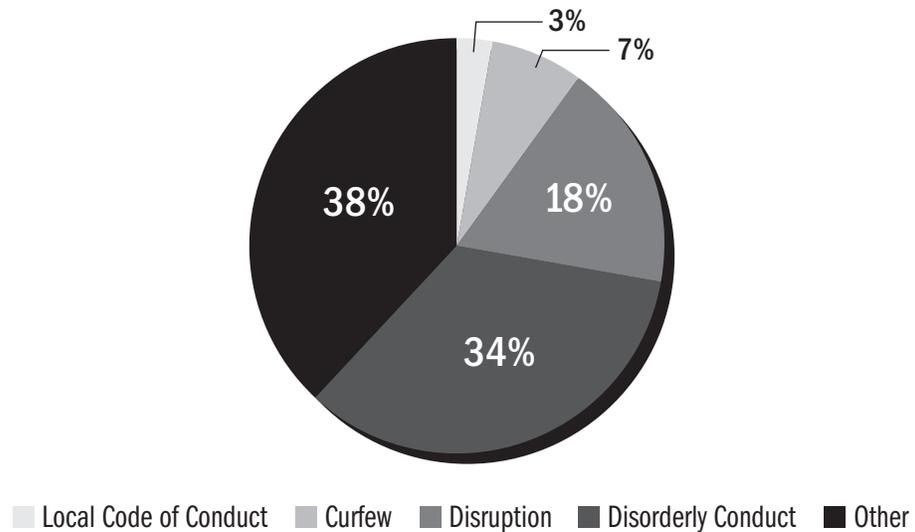
306 Dave Levinthal & Rudolph Bush, *Dallas Council Approves Daytime Curfew for Youth*, DALLAS MORNING NEWS, May 14, 2009.

307 *Id.*

308 While the Texas Legislature passed a bill during the 2007 session that eradicated the practice of ticketing students for violations of the Local Code of Conduct, these violations made up a very small percentage of the tickets issued in the 22 jurisdictions above. Most of the districts or jurisdictions for which Texas Appleseed has data by offense were not ticketing for local code of conduct violations.

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### Breakdown of Ticketing Offenses for 22 Texas School Districts 2006-07



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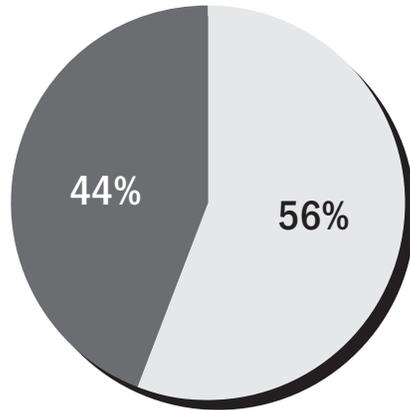
As illustrated by the above chart, *the majority of tickets issued in 2006-07 (52 percent) were for Disorderly Conduct and Disruption of Class or Transportation.* These account for 15,003 tickets issued in 2006-07 in the 22 school districts for which Texas Appleseed received data disaggregated by offense. Another 10 percent were for curfew or Student Code of Conduct violations, leaving only 38 percent of the tickets in the 22 districts written for behavior that most would consider criminal in the context of a school setting.

Only about 12 percent, or approximately 3,000 tickets, were issued to students in these districts for violent behavior (assault) or weapons-related offenses in 2006-07 (included in the Other category in above chart). Another 1,600 tickets (about 5 percent) were issued for tobacco, misdemeanor alcohol, or possession of drug paraphernalia offenses.

Out of the close to 10,000 tickets issued in the 22 school districts for Disorderly Conduct, only 56 percent were for fighting. The remaining 44 percent were issued for either profanity or an offensive gesture.

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**Breakdown of Disorderly Conduct  
Tickets for 22 Texas School Districts  
2006–07**



■ Disorderly Conduct - Fighting    ■ Disorderly Conduct - Other

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It is interesting to note that, according to the annual Uniform Crime Reporting (UCR) Index for Texas, juveniles account for a very small percentage of crime overall (11 percent), but they make up a much larger percentage of Disorderly Conduct offenses (44 percent).<sup>309</sup> It is quite possible that the high number of tickets issued in schools for Disorderly Conduct drive up the numbers for this offense.

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<sup>309</sup> TEXAS DEPARTMENT OF PUBLIC SAFETY, CRIME IN TEXAS 2008 83. The only other UCR categories that include a high percentage of reported incidents for juveniles are vagrancy violations and curfew violations. Though there are fewer vagrancy offenses overall, juveniles account for 56 percent of these offenses. *Id.*

**CASE STUDIES**

**Class C Misdemeanor Ticketing for Disruption of Class**

*A middle school teacher reported to a campus School Resource Officer (SRO) that “Ernesto” disrupted the class by yelling out answers (knowing that the answers were wrong), making the students around him laugh. [The teacher] stated that he told “Ernesto” to stop at least two times before the final incident. [The teacher] stated that next the primary teacher asked the class where a word could be found in the text. “Ernesto” stated, “It’s in your culo.” [The teacher] said that everyone around “Ernesto” started laughing out loud disrupting the class and the learning environment.<sup>310</sup> He was issued a ticket.*

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*Over the course of several days, a high school student, “Castor,” made paper airplanes with a staple at the end and threw them up in the air causing it to stick to the ceiling. [The school administrator] stated his teachers had to stop teaching class in order to deal with his disruptive behavior. [The administrator] stated she has warned “Castor” numerous times about receiving a citation if his disruptive behavior did not cease.<sup>311</sup> He was ticketed for disrupting class.*

\*\*\*\*\*

*The day before he was issued a citation, a middle school student, “Brian,” had been spitting on another student in his 6th grade class. The teacher instructed him to stop. Later in class, he started poking the other student in the hand with a pencil. The teacher stopped teaching and addressed the issue with “Brian,” who then walked out of the class. The teacher notified campus security and referred “Brian” to school administration. He received a Class C misdemeanor ticket.<sup>312</sup>*

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310 Aseltine, *supra* note 118.

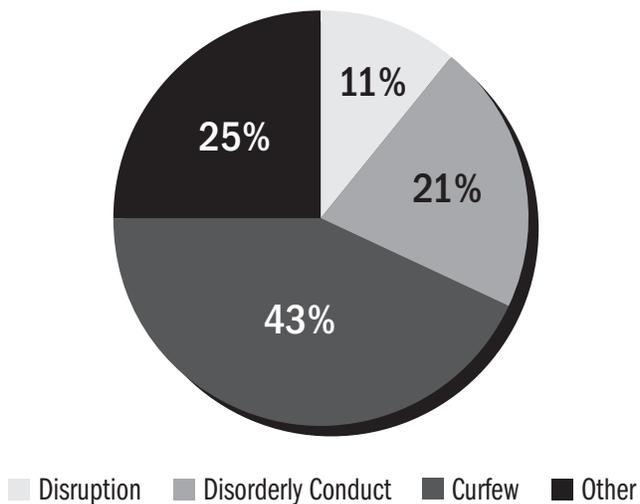
311 *Id.*

312 *Id.* at 83.

The large percentage of Class C tickets devoted to addressing Disorderly Conduct, Disruption of Class, and curfew violations is even more apparent in school-district level data.

### Breakdown of Ticketing Offenses

Austin ISD (2006–07)

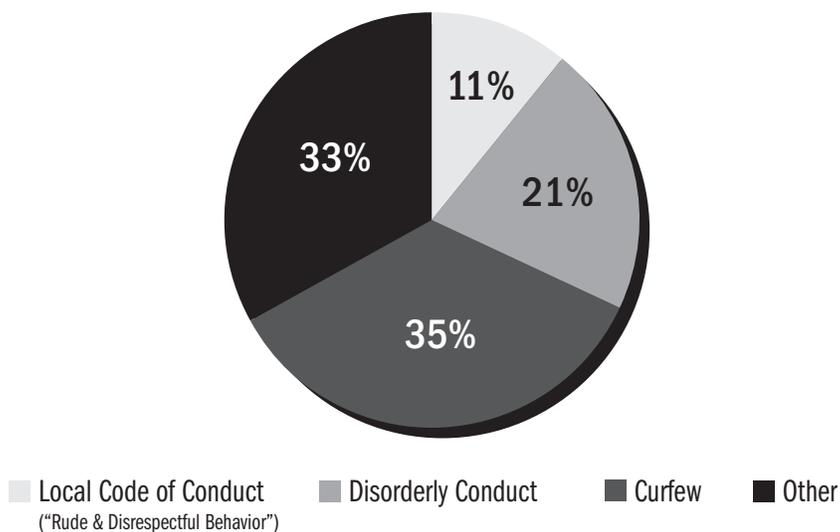


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Misdemeanor  
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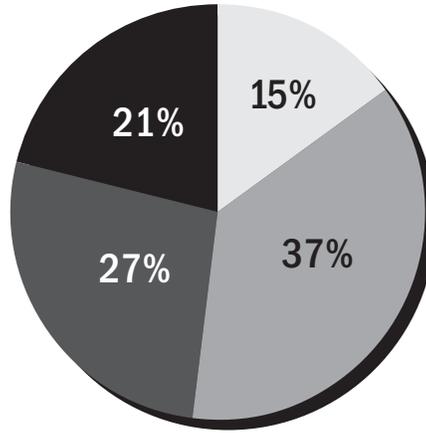
### Breakdown of Ticketing Offenses

Corpus Christi ISD (2006–07)



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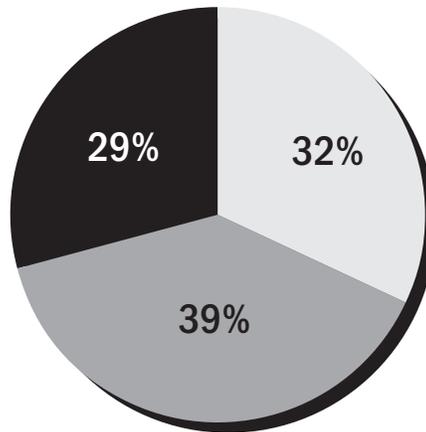
**Breakdown of Ticketing Offenses**  
Dallas ISD (2006–07)



■ Disruption ■ Disorderly Conduct-Fighting ■ Disorderly Conduct-Other ■ Other

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**Breakdown of Ticketing Offenses**  
El Paso ISD (2006–07)

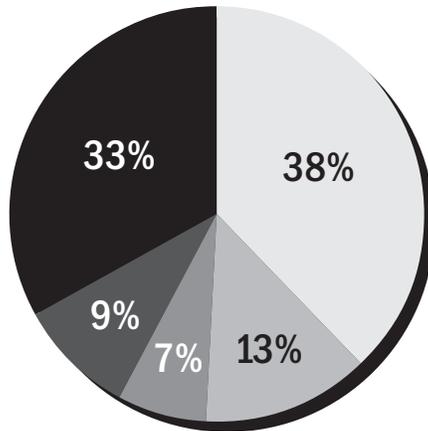


■ Disruption ■ Disorderly Conduct ■ Other

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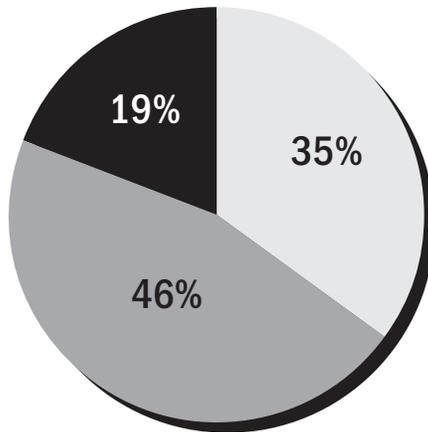
**Breakdown of Ticketing Offenses**  
Houston ISD (2006–07)



■ Disruption ■ Disorderly Conduct-Fighting ■ Disorderly Conduct-Other ■ Curfew ■ Other

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**Breakdown of Ticketing Offenses**  
United ISD (2006–07)



■ Disruption ■ Disorderly Conduct ■ Other

### Who initiates ticketing?

In some instances, tickets are issued by the campus police officer at the request of school administrators or teachers. According to one study, “[i]n 97 of the 214 [Probable Cause Affidavits] analyzed, a school police officer became involved because a school staff member requested their assistance.”<sup>313</sup> The study noted that this was particularly true of disruption citations, with 65 percent of the disruption citations issued at the request of a school staff person.<sup>314</sup> The following example was cited:<sup>315</sup>

*At the request of the Assistant Principal, three middle school students were issued citations. The Assistant Principal advised that the teacher [said] that the students were talking very loud, laughing and making noises on the table ... while the rest of the class was trying to work. She [said] that the students were disruptive during the whole time class was in session. The teacher could not conduct class and had to have the students removed. The Assistant Principal advised that this is not the first time that these students have disrupted classes and had to be taken out of the class.*

Texas Appleseed’s interviews with parents and attorneys who represent students confirm this practice of teachers and administrators asking that tickets be issued.

### Disproportionate Representation of African American and Hispanic Students in Ticketing

African American students were overrepresented in school-based Class C misdemeanor ticketing in districts that were able to disaggregate ticketing data by race or ethnicity. This trend mirrors their overrepresentation in in-school and out-of-school suspensions, expulsions and referrals to Disciplinary Alternative Education Programs as documented in Texas Appleseed’s earlier reports on Texas’ school-to-prison pipeline.<sup>316</sup>

Within the 26 districts or courts providing ticketing data to Texas Appleseed, only 15 were able to disaggregate the Class C misdemeanor data by race and ethnicity. Of those, African American students were overrepresented in 11 of the districts.

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313 Aseltine, *supra* note 118, at 115.

314 *Id.*

315 *Id.* at 116.

316 See TEXAS APPLESEED, *supra* note 1.

## Overrepresentation of African American Students in Class C Misdemeanor Ticketing in Reporting Texas School Districts, 2006-07

School District	African American Percentage in Student Body	African American Percentage in Class C Misdemeanor Tickets
Austin ISD	12%	25%
Corpus Christi ISD	5%	7%
Dallas ISD	30%	62%
El Paso ISD	5%	8%
Humble ISD	17%	42%
Huntsville ISD	27%	51%
Katy ISD	9%	18%
Midland ISD	10%	19%
Pasadena ISD	8%	14%
San Antonio ISD	8%	16%
White Settlement ISD	8%	14%

In addition, Hispanic students were overrepresented in Class C misdemeanor tickets in San Angelo ISD, where Hispanic students made up 50 percent of the student body, but were issued 76 percent of the Class C misdemeanor tickets in 2006-07.

The districts providing ticketing data to Texas Appleseed disaggregated by race and ethnicity represent a very small percentage of the total districts in the state—and without more data, it is impossible to determine the extent of the problem of overrepresentation of African American and Hispanic students in Class C ticketing. *The districts and court jurisdictions that do keep and provide this data are to be commended.* Houston ISD, the largest school district in Texas and one of the largest districts in the nation, was not able to disaggregate its data by race and ethnicity, despite the large number of tickets issued each year. This highlights a significant gap in the data being gathered by ISD Police Departments—even among those that keep data in a searchable database.

### CASE STUDY

A parent posted the following on Texas Appleseed's Facebook page:

*My 12 year-old son has received five tickets from his school since he entered middle school...He once received one of these misdemeanor tickets for throwing food in the cafeteria during lunch. The ticket [was] for "disturbing the educational environment."*

*We had to appear in court eight times so far, and have two pending dates for next school year. This is really interfering with my child's education. The offenses are so petty it's amazing this can continue to happen. My son is biracial (black). What bothers me is how his school is predominantly white, yet most of the kids in the court from his school are minorities.*

It is highly unlikely that overrepresentation of African American and Hispanic students in Class C ticketing is confined to the districts and court jurisdictions providing data for this report. Based on the very high over-representation of African American and Hispanic students in disciplinary referrals in some districts, it is possible that there are Texas school districts that are disproportionately ticketing African American and Hispanic students at a much higher rate than districts included in this study.

Within offense types, in districts that were able to disaggregate data by race or ethnicity and offense, African American students and Hispanic students disproportionately receive Class C misdemeanor tickets for specific offenses. For example, in San Angelo ISD (where Hispanic students make up 50 percent of the student body), though Hispanic students were overrepresented in ticketing generally, they were most overrepresented in two types of offenses: Student Code of Conduct violations (80 percent) and Controlled Substance violations (89 percent).

In Corpus Christi ISD, Hispanic students, who make up about 76 percent of the student body, were overrepresented in the following offenses:

- Daytime Curfew—83 percent
- Disorderly Conduct (Language)—84 percent
- Gang/Secret Society Membership—100 percent

Similarly, in Austin ISD, where African American students make up about 12 percent of the student body, they were highly overrepresented in ticketing for the following:

- Disruption of Class or Transportation—35 percent
- Disorderly Conduct-Language—38 percent
- Disorderly Conduct-Fighting—31 percent

### **Racial Profiling for “Gang Membership” in Some Districts**

Another study of a large, urban Texas school district found that, while ticketing of Hispanic students for most Class C misdemeanors mirrored their 58 percent representation among all public school students in Texas, Hispanic students received 93 percent of all tickets issued for gang membership.<sup>317</sup>

Gang membership is another Class C offense that is found only in the Texas Education Code. According to the statute, a person commits this offense if he or she “is a member of, pledges to become a member of, (or) joins or solicits another person to join or pledge to become a member of a public school fraternity, sorority, secret society, or gang.”<sup>318</sup> While it would be highly unusual for a student to receive a Class C misdemeanor for joining a “secret society” or fraternity or sorority, minority students are often given tickets for gang membership.

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<sup>317</sup> Asestine, *supra* note 118, at 100-103.

<sup>318</sup> TEX. EDU. CODE §37.121.

In practice, probable cause for issuing a ticket for “gang membership” appears to consist of little more than wearing clothing of certain colors to school. Though schools must guard against problems associated with gang membership, the difficulty of using dress or other behavior as an indicator of “gang membership” can present problems.<sup>319</sup>

## CASE STUDY

### Class C Ticketing for Possession of Gang Paraphernalia

*A campus police officer was told by the 7th grade Assistant Principal that “Paul” was wearing red and white tennis shoes. Both were aware that “Paul” was a documented gang member of the gang “Bloods.” [The officer] was also aware that “Paul” was warned in the presence of his mother by the school administration that “Paul” was not allowed to wear red clothing of any sort while on AISD school grounds due to “Paul’s” gang involvement. The office informed “Paul” that it was apparent he was attempting to show his gang affiliation by wearing red and white tennis shoes. The officer checked “Paul’s” person and also found a red bandana. “Paul” received a Class C ticket for possession of gang paraphernalia.<sup>320</sup>*

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Though the officer issued a citation in this case for “possession of gang paraphernalia,” there is no offense in the Texas Penal Code or the Texas Education Code that allows a student to be ticketed for “possession of gang paraphernalia.”<sup>321</sup> Further, the determination that a particular color of clothing represents “gang paraphernalia” often seems to depend not on an objective determination about the clothing, but instead on a subjective determination about the motives of the person wearing the clothing. While we might be comfortable with this subjective determination if the student’s gang membership has been proven in a prior delinquency adjudication or through the student’s own admission, are we comfortable in cases where the student’s affiliation is not “documented” through objective means but is simply suspected? Similarly—what if the “documentation” consists of nothing more than another Class C misdemeanor ticket issued for the same offense?

Texas Appleseed was contacted by a parent in another school district whose child was issued a ticket for “gang membership” after a search by the SRO revealed a blue bandana in the student’s pocket. The bandana was not visible, and the SRO did not find it until the student was searched. Some Texas districts have attempted to ban the wearing of rosary beads because of law enforcement reports that gangs use them to symbolize membership.<sup>322</sup> This caused an outcry when students were either told they could not wear their rosaries,

319 Aseltine, *supra* note 118, at 101 (“The most common indicators were making a gang-related gesture...or wearing colored clothing...Ten students were cited for possessing a colored bandana and eight students were cited for some other indicator. These include: a bracelet, shaved eyebrow, colored hair ribbon, wearing a hat facing to the right, rosary beads, a tattoo, or a verbal expression.”)

320 *Id.* at 102.

321 The Texas Education Code prohibits membership in a gang, while the Texas Penal Code simply prohibits soliciting membership in a gang if commission of a criminal offense is required for initiation into the gang. *See* TEX. PENAL CODE §71.022.

322 *See* Rucks Russell, *Texas City Student Banned from Wearing Cross Necklace*, KHOU.com, May 14, 2010; Fox News, *Texas High School Student Told Rosary is “Gang Symbol*, Foxnews.com, September 16, 2008.

or were disciplined for wearing them.<sup>323</sup> While common, everyday items have become a proxy for criminal behavior, it is not clear that this is sound policy upon which to base law enforcement decisions.

Similarly, student's hand gestures may also serve as probable cause of this offense.<sup>324</sup>

## CASE STUDY

### Class C Ticketing for Possession of Gang Membership

*An officer was on foot patrol of a Texas middle school. Because a fight broke out the prior week between members of two rival gangs, the officer was looking for signs of gang affiliation at school. Well versed in the area of criminal street gang, the officer observed two students, "Juan" and "Geraldo," dressed in Royal blue shirts [and] denim jean pants. The officer observed the boys approach each other and shake hands. The officer identified the handshake as ending in a hand signal forming a letter "C." Both students were detained until the halls were cleared and then escorted to the police office. "Geraldo" was released to school administration and received a three-day suspension. "Juan" and "Geraldo" were both ticketed for gang membership, but were not documented through the county juvenile detention facility as having prior gang involvement.<sup>325</sup>*

It is difficult, if not impossible, to know whether the students' hand gestures truly identified—or were meant to identify—a student as a gang member. In this case, the students were not "documented" gang members. In situations where a police officer is not objectively aware of a student's affiliation with a gang, using clothing or hand signals as a proxy for determining gang membership raises concerns about the subjective biases that may play into those decisions. Obviously, not every student who wears red—or uses unique hand signals—receives a ticket for "gang membership."

As is evident from the probable cause affidavits and data discussed above, the possibility that such statutes may become fodder for racial profiling should be considered. While the statute specifies that students can receive a ticket for being in a fraternity or sorority or secret society, Texas Applesseed has not come across any examples of students ticketed for fraternity membership, and it is hard to imagine what behavior would serve as "evidence" of sorority membership.<sup>326</sup>

These incidents can also have much more serious implications. In some school districts, the ISD police department has created a district-wide gang intelligence database that can be used by local law enforcement.<sup>327</sup> As of 2001, at least 31 Texas districts maintained a gang database. Of those, 29 reported sharing that information with local police, and 25 shared the information with juvenile probation.<sup>328</sup>

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<sup>323</sup> *Id.*

<sup>324</sup> Aseltine, *supra* note 118, at 101.

<sup>325</sup> *Id.* at 102-03.

<sup>326</sup> It is possible that the difficulty of determining the behavior that would allow a police officer to ticket a student for "gang membership" makes the statute subject to attack as unconstitutionally vague. See *Comm'n for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex. 1998).

<sup>327</sup> Aseltine, *supra* note 118, at 96.

<sup>328</sup> *Id.*

Similar statutes and database entries have been the subject of legal challenges in other states. In California, a school district was sued by the mother of a special education student who had been labeled as a gang member and placed in a gang database by a School Resource Officer.<sup>329</sup> The student was placed in the gang database after the SRO had seen him “hanging out with presumed gang members” and “wearing red clothes.”<sup>330</sup>

The “anti-gang behavior” contracts required of some students by another California district came under fire after a local newspaper discovered that, of the 154 students that had signed contracts, only five were not Latino.<sup>331</sup> These student records were shared with police and probation departments.<sup>332</sup> The newspaper article described one student’s experience:

*One young man in Salinas says he signed an anti-gang behavior contract five years ago when he was 13. He remembers there was a rumor of a fight at his middle school that day.*

*The assistant principal reacted by pulling aside students suspected of being “southerners” or affiliated with Sureno street gangs. All of them, said the young man, were asked to sign the contract... The young man said he was “threatened” with a three-day suspension if he didn’t sign the contract.*<sup>333</sup>

Texas students may not even be aware that they have been included in a gang database.<sup>334</sup> While local law enforcement agencies that collect gang information *may* notify a parent or guardian whose child has been entered into a database, they are not required to do so, nor are they required to notify the youth.<sup>335</sup>

### Class C Misdemeanor Ticketing of Young Students

Perhaps one of the most surprising findings is that it is not unusual for students as young as 10 years old to be issued Class C Misdemeanor tickets at school. In fact, ***the data provided to Texas Appleseed shows that students as young as six years old have received tickets in more than one Texas school district.***<sup>336</sup>

Of the 15 school districts or municipal courts that were able to provide ticketing data broken down by students’ age, only five were able to identify the specific ages of students receiving Class C tickets. The remaining 10 districts or courts could break the data out only by school level—elementary, middle school, or high school. The majority of tickets issued in these 15 jurisdictions are given to middle and high school students.

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329 George B. Sanchez, *A Special Education Student Gets Gang Label Removed in Santa Cruz County*, MONTEREY COUNTY HERALD, March 13, 2006.

330 *Id.*

331 George B. Sanchez, *Students who Agree to Anti-Gang Contracts Might be Unfairly Labeled as Criminals*, MONTEREY COUNTY HERALD, March 12, 2006.

332 *Id.*

333 George B. Sanchez, *Teenagers, Adults Talk Gang Contracts and Student Behavior*, MONTEREY COUNTY HERALD, March 13, 2006.

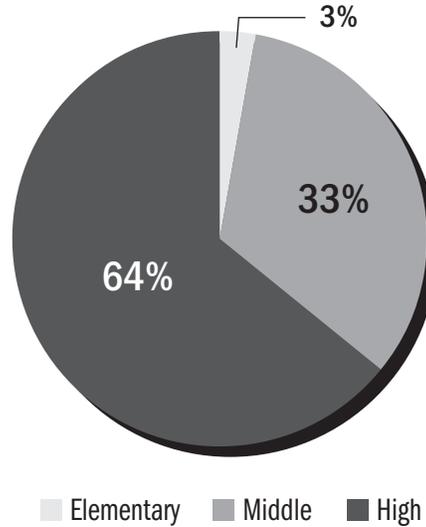
334 Aseltine, *supra* note 118, at 97.

335 TEX. CODE CRIM. PROC. §61.04.

336 The youngest student our data documents as having received a ticket was four years old; Texas Appleseed holds out hope that this was a data error. However, the same district indicated having ticketed five-year-old children.

### Breakdown of Tickets by School Level for 15 Texas School Districts

2006-07



Of the five districts that were able to report the age of the ticketed student, three districts reported tickets being issued to children six years old or younger during one of the six years for which we have data.

#### School Districts Issuing Tickets to Children Under 10 Years Old, 2001-07

School District	Age Range	Number of Tickets
Dallas ISD	6-9	14
Huntsville ISD	6-9	3
Katy ISD	4-9	34

Dallas ISD is the only district included in this report that could break its ticketing data down by both age and offense. Dallas' data shows that **10 of the 14 tickets issued to young children were written for Disorderly Conduct offenses or Disruption of Class.** The remaining four tickets were issued for Simple Assault. *This data also shows that 10 of the 14 children ticketed were African American.*

While young children are not ticketed every year, and the above data only represents three Texas school districts, *the reality is that we simply do not know how often this occurs in Texas because so little ticketing data is being kept disaggregated by age.* Houston ISD, the largest school district in the state, could not provide data disaggregated by age, nor could the district break their data down by school level. In order to truly understand

the extent to which very young children are being issued Class C tickets, ISD Police Departments must be required to keep and report better data.

Of the districts that could break the data out by school level, the data indicates a significant number of elementary school children are receiving tickets for Class C misdemeanors.

**School Districts Issuing Tickets to Elementary School Students, 2001-07**

School District	Number of Tickets
Alief ISD <sup>337</sup>	355
Austin ISD	91
Castleberry ISD	21
Dallas ISD	1,248
Edgewood ISD	64
Humble ISD <sup>338</sup>	75
Pasadena ISD	43
Somerville Municipal Court	1
United ISD	48
White Settlement ISD	5
Wichita Falls ISD	99

Only three of the districts listed in the above table were able to break out their data by both school level and offense. Within those three districts, *the most common ticketing offense for elementary school children was Disorderly Conduct or Disruption of Class.*

**Special Education Students May Be Overrepresented in Ticketing**

Only two of the districts providing data to Texas Appleseed were able to break it down by the student’s special education status. In both of these districts, special education students were ticketed at rates exceeding their overall representation within the student body of those districts.

School District	Representation in Student Body	Representation in Ticketing
Midland ISD	8%	19%
San Angelo ISD	12%	29%

Attorneys who represent special education students told Texas Appleseed that it is not uncommon for a student with a disability to receive a ticket—and that special education students receive tickets for behavior directly related to their disabilities.

337 Alief only provided data for two years—2006 and 2007.

338 Humble ISD provided data for 2004 forward, so this number does not cover the entire six year period.

### CASE STUDIES

*A 17-year-old girl with autism became frustrated [in class]. The teacher who best understood how to manage her behaviors was off work that day. The substitute did not know how to respond and accidentally escalated the situation by talking loudly and getting close to the student. The young lady left the classroom without permission, cursed and then sat in the hallway rocking back and forth to calm herself. When the assistant principal heard what happened, he asked a police officer to write a citation for Disruption of Class. The young lady's single, low-income mother came to the school to talk to the vice principal, explaining that her daughter did not have full control of her behavior and was not able to understand the citation. She also explained she could not pay for citations. The vice principal told the mom that if she did not want her daughter to get more citations, she should withdraw the daughter from school because she was old enough to drop out.*

\* \* \* \* \*

*“Levander,” a special education student, was not allowed to attend his other classes because he had “poor performance and behavior” in his special education classroom. “Levander” then became upset at [his teacher] and took his anger out on an old dictionary book which had no value and ripped it. He started yelling profanity directed toward [his teacher]... “Levander” was disciplined by the school administrator and then referred to the School Resource Officer. “Levander” refused to sign the citation.<sup>339</sup>*

During interviews with parents and attorneys for special education students, Texas Appleseed learned of special education students with Tourette Syndrome receiving tickets for profanity, and students with a mental illness receiving tickets for trespassing when they were described as being in the school bathroom “having a meltdown.” It is hard to imagine that these tickets serve any disciplinary—or law enforcement—purpose.

### Conclusion

Texas students are being issued large numbers of Class C Misdemeanor tickets for minor offenses that, in the past, would have been handled through the school discipline process. This phenomenon should concern communities given the stigma and financial consequences of ticketing that could flow to families and children alike. African American, Hispanic and special education students are receiving a disproportionate number of tickets, and even children as young as four have been ticketed. Reevaluating the role that Class C Misdemeanor tickets play in disciplining students must be a priority for all stakeholders in the education system.

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339 Aeltine, *supra* note 118, at 123.





## ARREST OF STUDENTS AT SCHOOL

*If the teachers and ISD officials can effect change positively and help that family, with them never coming to us and giving that kid a juvenile record, please, please, please dear God, let that happen. I just don't want them to have to deal with the system if they don't have to. If you don't, you know, put on handcuffs and get in a green outfit and wear somebody else's underwear, I think that's a good thing. [W]e don't want to lock them up.*

– Chief Juvenile Probation Officer  
interviewed for this report

School-based police officers not only issue Class C misdemeanor tickets to students—as licensed peace officers, they also have the authority to arrest students and take them into custody if they are suspected of committing criminal offenses.<sup>340</sup> While students are issued tickets far more often than they are taken into custody, thousands of students are being arrested for low-level misbehavior including property offenses and “disorderly conduct” on school campuses across the state.

This finding presents serious implications for policymakers. ***Research shows that a first-time referral to the juvenile system during high school significantly increases the odds of dropout.*** In fact, “first-time official intervention during high school, particularly court appearance, increases the odds of high school dropout by at least a factor of three.”<sup>341</sup> This is true even when controlling for parental income, minority status, or urban versus rural location.<sup>342</sup> Another study concluded that juvenile justice involvement “merit[s] inclusion among the probable and important causes of the ‘graduation crisis’ in urban education...

340 TEX. EDU. CODE §37.081(B)(3).

341 Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, JUSTICE QUARTERLY, Vol. 23, Issue 4 (2006); see also Paul Hirschfield, *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*, 82 SOCIOLOGY OF EDU. 368 (2010).

342 *Id.*

court referrals...often have the counterproductive consequence of foreclosing educational opportunity...*[[Juvenile justice intervention is a frequent pathway to school dropout.]*<sup>343</sup>

Unfortunately, few school districts keep data on school-based arrests—or can access it in a way that can inform decision-making about campus-based discipline of students. In fact, fewer districts were able to provide this data to Texas Appleseed than provided data for school-based Class C citations. Of the 24 school district police departments that provided data to Texas Appleseed, only 17 were able to provide data for school-based arrests. *Houston and Dallas ISD Police Departments—the two largest school district police forces in the state—were not able to provide any data related to school-based arrests.*

Still, the data we obtained is useful. In analyzing the school-based arrest data that was collected, Texas Appleseed observed many of the same trends seen in school-based ticketing:

- The number of school-based arrests increased with the increased presence of police on campuses.
- School-based arrest is not unusual, with some districts showing a surprisingly high arrest rate when compared to other districts.
- Most students are arrested for non-violent offenses involving drugs or alcohol, property crimes or disorderly conduct.
- Few students are arrested for violent or weapons-related offenses.
- Of students arrested for violent or weapons-related offenses, the overwhelming majority are arrested for misdemeanor assault.
- African American students are disproportionately represented in school-based arrests.
- Very young children are being arrested on school campuses.

Though none of the school districts was able to provide data on the special education status of students arrested, Texas Appleseed's interviews with stakeholders suggest this occurs with some frequency, often for behavior related to the student's disability.

### **More School Police Officers, More Student Arrests**

Similar to trends in Class C ticketing of students, the number of students arrested at school increased or held steady in all but one of the districts for which Texas Appleseed has data disaggregated by year. Of the 12 school districts that were able to disaggregate data by year, the arrest numbers for nine of those districts increased anywhere from 20 percent to more than 100 percent over the time period for which the districts provided data.<sup>344</sup> While their student enrollment also may have grown, the increase in school-based arrests was not proportionate to the increase in enrollment.

<sup>343</sup> Hirschfield, *supra* note 341, at 384, 387.

<sup>344</sup> Castleberry ISD also showed an increase (from zero to five) in student arrests at school between 2001 and 2007. White Settlement ISD showed an increase in school-based arrests between 2002-03 (the first year for which they provided data to Appleseed) and 2006-07, from two arrests to 12.

School-based arrests decreased in only one school district and remained relatively consistent in two others. The overall decrease in Wichita Falls ISD's annual student arrest numbers was dramatic, from 105 in 2001-02 to 30 school-based arrests in 2006-07. Austin ISD reported a fairly constant number of annual school-based arrests between 2001 and 2007, but showed a significant decrease in arrests during the 2007-08 school year. In Midland ISD, school-based arrests were relatively consistent across the six years.

In districts for which Texas Applesseed received data disaggregated by year for police staff size and number of arrests, there appears to be a correlation between an increase in police presence at school and an increase in the number of arrests. The following table shows the growth in school police presence over several years and the corresponding increase in the number of arrests for six of the districts providing data for this study.

**Growth in School District Police Department Staff & Increase/  
Decrease in Number of Students Arrested During Same Period**

School District	Percentage Growth of Police Department Staff	Increase/Decrease in Arrest
Austin ISD	31%	19%
Brownsville ISD	5%	30%
El Paso ISD	37%	35%
Humble ISD	92%	42%
Katy ISD	30%	50%
Midland ISD	0%	-12%
United ISD	71%	49%

In each of the districts that experienced an increase in school district police staff, there was a corresponding increase in the number of students arrested. In one of these districts, Katy ISD, while citations over the same period of time decreased (see previous chapter), the number of arrests increased. The only district that showed a decrease in arrests, Midland ISD, did not show any growth in its school district police department staff.

This upward trend in the number of school-based arrests runs counter to a reported decline in overall arrests and juvenile justice referrals during the same period. Data from the Texas Juvenile Probation Commission shows that, between 2001 and 2007, law enforcement arrests and formal referrals to the juvenile system decreased statewide.<sup>345</sup> Compared to a total of 141,836 arrests of juveniles in Texas by law enforcement in 2001, there were only 135,685 arrests of juveniles statewide in 2007.<sup>346</sup> Between 2000 and 2008, formal referrals to the

345 TEXAS JUVENILE PROBATION COMMISSION, THE STATE OF JUVENILE PROBATION ACTIVITY IN TEXAS 8 (2007)(showing reduction in referrals between 2001 & 2007).

346 Texas Applesseed based this analysis on data included in the Texas Juvenile Probation Commission's annual reports. TEXAS JUVENILE PROBATION COMMISSION, THE STATE OF JUVENILE PROBATION ACTIVITY IN TEXAS CALENDAR YEAR 2001; TEXAS JUVENILE PROBATION COMMISSION, THE STATE OF JUVENILE PROBATION ACTIVITY IN TEXAS CALENDAR YEAR 2007, both available at [www.tjpc.state.tx.us](http://www.tjpc.state.tx.us).

Texas juvenile system decreased 14 percent, despite an increase in the total population of children ages 10 to 17.<sup>347</sup>

Thus, the increase in school-based referrals is contrary to law enforcement referrals from the community. What is even more striking is that, for seven out of 10 school districts for which Texas Applesseed has school-based arrest data disaggregated by year, school-based arrests account for a significant percentage of these counties' total juvenile referrals—and in most cases, that percentage share increases over time.<sup>348</sup> This trend is interesting, given that school is in session only 180 days during the calendar year.<sup>349</sup>

### **Increase in School-Based Arrests as a Percentage of Juvenile Justice Referrals, 2001-07**

<b>School District</b>	<b>School-Based Arrests as a Percentage of County's Juvenile Justice Referrals 2001</b>	<b>School-Based Arrests as a Percentage of County's Juvenile Justice Referrals 2007</b>
Austin ISD	30%	27%
Brownsville ISD	14%	15%
Corpus Christi ISD	15%	39%
East Central ISD	4% <sup>350</sup>	4%
El Paso ISD	9%	15%
Humble ISD	8% <sup>351</sup>	13%
Katy ISD	2%	3%
Midland ISD	18% <sup>352</sup>	14%
United ISD	6% <sup>353</sup>	9%
Wichita ISD	10%	4%

<sup>347</sup> TEXAS JUVENILE PROBATION COMMISSION, 81<sup>ST</sup> LEGISLATIVE SESSION INFORMATION PACKET 13 (2009).

<sup>348</sup> Castleberry ISD and White Settlement ISD, both in Tarrant County, each show an increase in school-based arrests, but their numbers are so small that they do not represent a significant percentage of Tarrant County's total juvenile referrals.

<sup>349</sup> TEX. EDU. CODE §25.081.

<sup>350</sup> The first year for which East Central provided data was 2004; consequently, this reflects the percentage of referrals for 2004.

<sup>351</sup> The first year for which Humble ISD provided data was 2005; this figure represents the percentage of referrals for that year.

<sup>352</sup> The first year for which Midland provided data was 2003; this figure represents the percentage of referrals for that year.

<sup>353</sup> The first year for which United ISD provided data was 2002; this figure represents the percentage of referrals for that year.

Assuming each school-based arrest resulted in a formal referral to the juvenile system,<sup>354</sup> and given that most counties include multiple school districts, it is quite possible that school-based law enforcement referrals make up a much larger percentage of all referrals to the juvenile system in these counties.

### **Texas Juvenile Probation Commission Data**

The Texas Juvenile Probation Commission (TJPC) asks counties to include school-based referrals in the data that they report to TJPC. However, the Juvenile Probation Commission acknowledges that this data element is not being used to report all school-based offenses that are referred to the juvenile system.<sup>355</sup>

Even so, in some counties, the TJPC data shows a relatively large percentage of referrals to the juvenile system coming from arrests made at schools. For example, during 2007, Bexar County reported 3,281 referrals out of 10,795 (30 percent) as school-based.<sup>356</sup>

If schools and counties used this data reporting mechanism more consistently—and included referrals made by school-based law enforcement—it would provide stakeholders with a good method of determining the percentage of the county’s juvenile justice system referrals that are school-based. Some states, like Florida, appear to use this type of data reporting system to more clearly determine the role of school-based arrests in driving overall referrals to their juvenile justice system.<sup>357</sup> Better reporting of data would not only give schools more information about what is happening on their campuses—it would also give policymakers information that may be needed for juvenile justice planning.

***Juvenile justice officials told Texas Appleseed that a large percentage of their referrals result from school-based arrests.*** A Chief Juvenile Probation Officer noted that his office saw an “increase in cases during the school year and fewer when school is out.” Similarly, a Bexar County official told Texas Appleseed that they instituted a Children’s Crisis Intervention Training program for school-based law enforcement officers after discovering that about 70 percent of children referred to the county’s juvenile system were there as a result of an incident at school.<sup>358</sup> Another probation official indicated he approached a local school district after determining that 40 percent of the referrals to probation came from

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354 Officers could release the juvenile without pursuing charges or could informally dispose of the case, if the county in which the district is located has adopted guidelines pursuant to section 52.032 of the Texas Family Code. A child could also be diverted prior to formal referral through a first offender program, if the county has created one. *See* TEX. FAM. CODE §52.031. Note, however, that Harris County does not allow police officers to informally dispose of cases and does not have a first offender program. TEXAS PUBLIC POLICY FOUNDATION, *GETTING MORE FOR LESS IN JUVENILE JUSTICE* 14 (2010).

355 In many counties, referrals from school police are coded as a law enforcement referral rather than a school referral.

356 This is likely a low estimate of the number of actual school-based arrests for Bexar County, since it is likely that a number of referrals were reported in a different category.

357 *See* FLORIDA DEPARTMENT OF JUVENILE JUSTICE, *DELINQUENCY IN FLORIDA’S SCHOOLS: A FIVE-YEAR STUDY* (2009).

358 TEXAS APPLESEED, *CREATING FLEXIBILITY FROM THE BENCH: MEETING THE NEEDS OF JUVENILES WITH MENTAL IMPAIRMENTS* 25 (2009).

this district's school-based law enforcement officers. This trend is consistent with studies of school-based referrals to the juvenile system in other states.<sup>359</sup>

### Student Arrest Rates Depend on Where a Student Attends School

As is true of school-based ticketing, a review of the arrest data shows that school police arrest students at varying rates—making where a child attends school, and not the nature of the offense, the greater determining factor in whether an arrest will occur at school.

#### School-Based Arrests and Arrest Rates for 17 Texas School Districts, 2006-07

School District (Enrollment)	Number of Arrests	Arrest Rate
Austin ISD (81,917)	1,310	16 arrests for every 1,000 students
Brownsville ISD (48,284)	399	8 arrests for every 1,000 students
Castleberry ISD (3,322)	5	1.5 arrests for every 1,000 students
Corpus Christi ISD (38,785)	1,001	26 arrests for every 1,000 students
East Central ISD (8,470)	429	51 arrests for every 1,000 students
Edgewood ISD (11,906)	206 <sup>360</sup>	17 arrests for every 1,000 students
El Paso ISD (62,635)	401	6 arrests for every 1,000 students
Humble ISD (31,144)	187	6 arrests for every 1,000 students
Katy ISD (50,725)	512	10 arrests for every 1,000 students
McAllen ISD (24,558)	111	4.5 arrests for every 1,000 students
Midland ISD (20,827)	126	6 arrests for every 1,000 students
Pasadena ISD (49,630)	1,288 <sup>361</sup>	26 arrests for every 1,000 students

<sup>359</sup> Michael P. Krezmien et al., *Juvenile Court Referrals and the Public Schools: Nature and Extent of the Practice in Five States*, J. CONTEMPORARY CRIMINAL JUSTICE, Vol. 26, No. 3 (2010) (of the five states studied, in three of the states, more than 10 percent of referrals to the juvenile system were attributable to schools despite the fact that schools do not operate during the summer months when juvenile delinquency referrals are at their highest); see also AMERICAN CIVIL LIBERTIES UNION OF CONNECTICUT, *HARD LESSONS SCHOOL RESOURCE OFFICER PROGRAMS AND SCHOOL-BASED ARRESTS IN THREE CONNECTICUT TOWNS* (2008); BLUE RIBBON COMMISSION ON SCHOOL DISCIPLINE, *A WRITTEN REPORT PRESENTED TO THE SUPERINTENDENT AND BOARD OF EDUCATION CLAYTON COUNTY PUBLIC SCHOOLS* (2007).

<sup>360</sup> Edgewood ISD did not disaggregate data by year. This number was determined by dividing the total number of arrests by the number of years covered by the data.

<sup>361</sup> Pasadena ISD did not disaggregate data by school year. The total number of arrests during the six-year period for which they provided data was 8,054. Texas Appleseed divided 8,054 by the number of months for which we have data, then multiplied by 12 to come up with a yearly average. Thus, the number included in the chart could be higher or lower than the actual number of arrests in 2006-07. In addition, the only arrests included were those reported to the Texas Department of Public Safety (DPS) for inclusion in the Uniform Crime Report (UCR). Since not all school districts report arrests to DPS for inclusion in the UCR, this number may be conservative.

School District (Enrollment)	Number of Arrests	Arrest Rate
San Antonio ISD (55,322)	553 <sup>362</sup>	10 arrests for every 1,000 students
Spring Branch ISD (32,098)	298 <sup>363</sup>	9 arrests for every 1,000 students
United ISD (37,671)	237 <sup>364</sup>	6 arrests for every 1,000 students
White Settlement ISD (5,405)	12	2 arrests for every 1,000 students
Wichita Falls ISD (14,675)	30	2 arrests for every 1,000 students

While arrest rates—like ticketing rates—vary between districts, these numbers clearly show that a significant number of students are arrested by school district police statewide. *In these 17 school districts—which accounted for 13 percent of the state’s total student enrollment for 2006-07—7,100 students were arrested.* With such a small percentage of the states’ school districts represented in this sample, it stands to reason that the actual number of school-based arrests is much higher.

The previous table also documents a trend that is consistent with findings in suspension, expulsion, alternative school placement, and Class C ticketing of Texas students: *arrest rates vary widely from district to district, with little predictability based on district size or demographics.* A similar trend has been reported in other states.<sup>365</sup> This tends to indicate that the climate and policies of both the district and school law enforcement play a role in determining the number of students arrested for school-based behavior.

### IN THEIR WORDS

A juvenile probation officer interviewed by Texas Appleseed attempted to explain the variation in student arrest rates among school districts:

*The issue that we got into is differences in philosophies with school boards and with the administrations. We’ve got two ISDs that...anything that can be handled in-house, anything they can handle there on campus, they will... But we have one ISD—our largest ISD...[that] call[s] law enforcement on every little thing and criminalize[s] every act.*

362 San Antonio ISD did not disaggregate their data by year. Texas Appleseed divided the total number of arrests—21,618—by the total number of months for which we have data, and then multiplied by 12 to get a yearly average.

363 As noted in the last chapter, Spring Branch ISD did not break out citations from arrests in their data. Texas Appleseed subtracted all incidents for which students are generally issued Class C misdemeanor citations in lieu of being taken into custody. Thus, the actual number of arrests for 2006-07 may have been higher or lower than this number.

364 The most recent year for which United ISD provided data was 2005-06.

365 ACLU, *supra* note 359, at 25.

This emphasizes the discretion that school districts exercise in determining when and whether to involve the juvenile justice system in misbehavior that occurs at school. The probation officer quoted above also noted:

*My concern is...when they are making referrals to law enforcement, "they" being the schools, I would hope that they are consistent in their approach. Whether those schools handle offenses on campus, or whether they call law enforcement, oftentimes they have the discretion to make that decision. I just want them to be fair in their approach, fair in their decision-making process to all the kids.*

According to one study, considerable variation exists between school districts in the rate at which school-based offenses result in a juvenile justice referral, concluding "[T]he severity of the offense and deciding how to proceed seem to be more a reflection of culture and values within a community than of strict interpretation of law or policy."<sup>366</sup> Another study found:

*The line between misbehavior that can be addressed through traditional school disciplinary measures and an arrestable offense is murky. The factors that determine the final characterization of the conduct are often defined by an officer's personality, a youth's demeanor, the extent of administrative pressure, and the availability of alternatives for dealing with the youth. It became clear that these decisions were far too subjective, based on the experience and temperament of the officers more than on any guidance or protocols they had received.<sup>367</sup>*

### **Few Arrests for Violent or Weapons-Related Offenses**

A small percentage of arrests on Texas public school campuses involve violence or weapons. Instead, many Texas students are being taken into law enforcement custody for non-violent misbehavior that was likely handled by school administrators prior to the advent of a law enforcement presence in schools. Academic research confirms that this is the result of "overzealous disciplinary interventions [that] have reduced the gap between normal school disciplinary affairs and criminal prosecution."<sup>368</sup> Police familiar with school-based law enforcement recognize this trend:

*Most school issues always have been criminal, if they wanted to make them that. Fights are criminal, stealing is criminal, but they never used to have the police involved. If you realize, before police were in schools, principals never called the police for fights, for even marijuana and drugs.<sup>369</sup>*

366 Mario S. Torrest Jr. & Jacqueline A. Stefkovich, *Demographics and Police Involvement Implications for Student Civil Liberties and Just Leadership*, *EDU. ADMIN. QUARTERLY*, Vol. 45, No. 3, at 468 (2009).

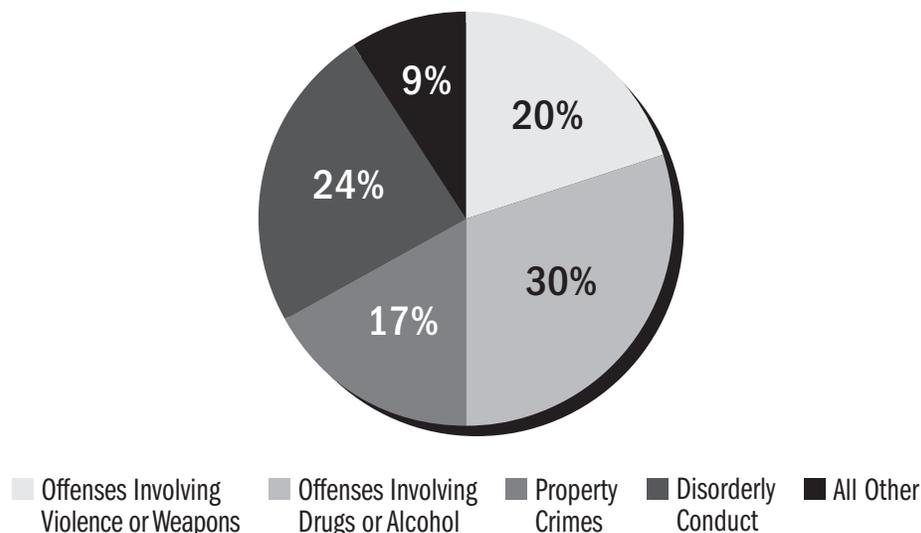
367 Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 *N.Y. L. REV.* 977, 1016 (2010).

368 *Id.*

369 *Id.* at 1003 (2010).

In the 11 school districts that could provide 2006-07 arrest data disaggregated by offense type (Brownsville ISD, Castleberry ISD, East Central ISD, El Paso ISD, Humble ISD, Katy ISD, McAllen ISD, Pasadena ISD, San Antonio ISD, White Settlement ISD, and Wichita Falls ISD), only 20 percent of the more than 3,500 arrests involved violence or weapons. The 703 students arrested for these offenses represent well under 1 percent of the total student enrollment for these 11 districts.

### Arrest Offenses by Category for 11 Texas School Districts 2006-07



Disorderly Conduct—one of the offenses resulting in the largest numbers of Class C misdemeanor tickets—is also one of the offenses for which students were most often arrested. Drug and alcohol offenses make up 30 percent of all arrests. Many of these arrests were for possession of marijuana. Within the “all other” category, evading or resisting arrest represented a large percentage of the arrests, along with curfew or loitering violations.

#### CASE STUDY

Texas Zero Tolerance reported the following incident:

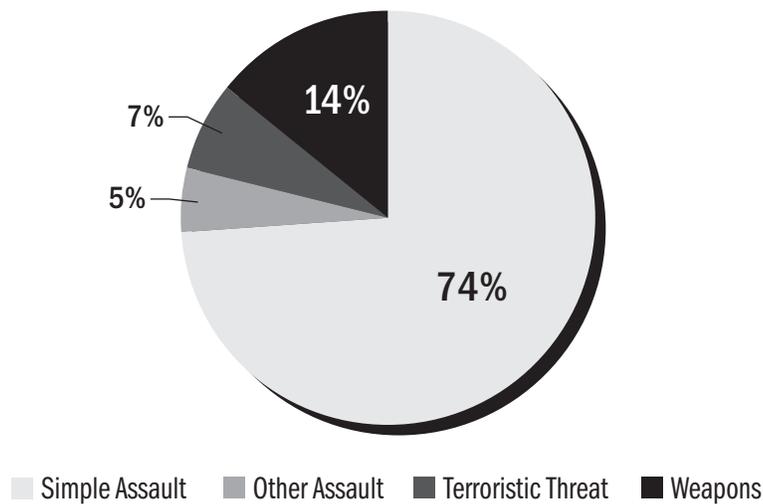
*A 15-year-old boy purchased a belt and a designer belt buckle from a kiosk at the Katy Mills Mall. The ornate buckle resembled a pair of brass knuckles though its thickness was no more than a millimeter. Thinking it was cool, the boy wore the belt and buckle to school. He did not draw attention to himself nor threaten to use this belt buckle as a weapon. A teacher saw him walking down the hallway and reported him to a vice principal...The student was arrested and booked into a juvenile facility...He was there [for two days] before he was arraigned.<sup>370</sup>*

<sup>370</sup> Texas Zero Tolerance, Katy ISD March 2, 2010 Incident, *available at* <http://www.texaszerotolerance.com/reportedcases/Katy/brass-knuckles.html>.

The majority of the “violent” offenses that Texas students are arrested for at school fall within the range of behavior classified as an “assault.” The statute that sets out what constitutes an assault is broad, allowing a charge if a person causes injury to someone else, but also where someone merely threatens bodily injury or touches someone in a way that is deemed “offensive.”<sup>371</sup> “Bodily injury” does not have to consist of anything more than physical pain.<sup>372</sup> When “bodily injury” results, the crime is typically a Class A misdemeanor, unless the injured party is a “public servant” in which case the crime is elevated to a felony.<sup>373</sup>

### Violent or Weapons-Related Offenses by Type for 11 Texas School Districts

2006–07



While any kind of assault in a school setting should not be tolerated, the broad range of behavior that the statute covers sometimes means that students are arrested when common sense might dictate otherwise:

371 TEX. PENAL CODE §22.01.

372 TEX. PENAL CODE §1.07(a)(8).

373 TEX. PENAL CODE §22.01.

## CASE STUDIES

Parents provided the following accounts to Texas Appleseed:

*My 11-year-old daughter who has autism has been charged with criminal assault by her 6th grade social studies teacher for the crime of throwing a book at her. This is the second time in less than a year this has happened. The first time the teacher stated in her police report that she was not hurt but offended. (I am not sure how she could be hurt as...the "book" was actually a bunch of papers stapled together.) Due to very clear evidence that the school had seriously violated her BIP [Behavior Intervention Plan] and punished and restrained her for being autistic, they had the teacher drop the charges.*

*This year it was a hard-back book. The school SRO (Student Resource Officer) filed the complaint under the most serious offense he could without actually lying. She was charged with Criminal Assault of a Civil Servant. Her case was referred to a probation officer who forwarded it to the DA [District Attorney] who is pursuing charges, and we have been served. So far we (owe) in excess of \$5,000 in lawyer fees for our criminal defense lawyer and our special education lawyer.*

*The week after the incident this year, I kept my daughter home for a week. Her behavior was "classic" autism given the circumstances. She would still be autistic the next day and may still do the same thing. How can I send her to school to face criminal punishment for manifestations of her autism? The school administrator...informed me that they would be pursuing truancy charges against me. My daughter is back in that school (as we cannot afford lawyers and private school). I live in terror every day all day long when she is in their school.*

\* \* \* \* \*

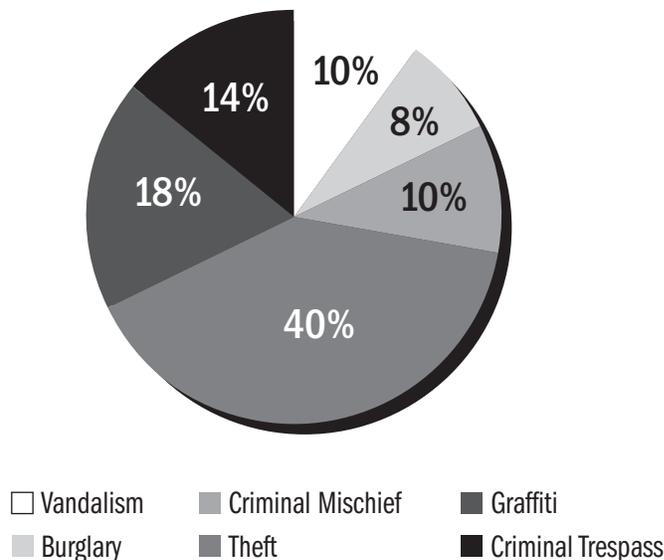
*My daughter with Asperger's (a form of autism) was arrested and put in jail for striking her teacher's aide. She turned 17 years old in March so they classified her as an adult, handcuffed her from behind and led her out the front door of the school. She was charged with felony assault of a public servant. Her bail was \$5,000. I got her out at 1:00 a.m. and learned that she soiled herself while in there.*

*I have retained a defense lawyer that I can barely afford...My daughter is five feet tall and barely weighs 95 pounds. There was no injury to the aide (her words). I make no excuse for the action, but feel that having to pay thousands of dollars to fight this only punishes her mom and me.*

## Property Offenses Resulting in Arrest

Seventeen percent of student arrests are for property offenses. These include lower level offenses like theft, graffiti and vandalism, and criminal mischief. The same offenses that policymakers listed as the biggest school crime problems 30 years ago top the list today.

### Property Offenses by Type for 11 Texas School Districts 2006–07



#### CASE STUDY

The following is an account of Arnold Middle School students being charged with felonies for graffiti as reported on KHOU.com, January 7, 2009:

*At Houston-area schools, it's not unusual for principals to discipline students. But some say what happened to two eighth-graders at Arnold Middle School was out of line. "I don't think a felony is really necessary for this," student Chelsea Mathieu said.*

*Mathieu and Briauna Rivers claim they were both charged with felonies after they admitted to scribbling a line of graffiti on a restroom wall at their school. For Rivers, the discipline didn't stop there. "They said, 'put your hands behind your back' and took us in that car," Rivers said.*

*She was arrested, put in a constable's car and taken to a holding room. It's the same kind of punishment that's given to kids who fight, make terroristic threats or are caught with drugs. "My biggest problem here is that the punishment doesn't fit the crime. We need to teach our kids equality, and this just doesn't seem fair," Rivers' mother, Noelle Jackson, said.*

## Disproportionate Representation of African American Students in School Arrests

Of the 17 school districts that provided data to Texas Appleseed for school-based arrests, only 10 were able to disaggregate the data according to the race and ethnicity of the students arrested. Of these 10 districts, seven showed an overrepresentation of African American students in arrests.

### Representation of African American Students in School-Based Arrests in Seven Texas Districts, 2006-07

School District (Enrollment)	African American Percentage in Student Body	African American Percentage in School-Based Arrests
Corpus Christi ISD	5%	9%
East Central ISD	11%	21%
El Paso ISD	5%	7%
Katy ISD	9%	17%
Midland ISD	10%	19%
Pasadena ISD	8%	13%
San Antonio ISD	8%	25%

One study of a large, urban Texas school district found that campuses with a higher percentage of minority students had more police officers assigned to that campus than schools with a lower representation of minority students.<sup>374</sup> While this may be attributable to decisions that are not associated with the racial composition of the student body, research suggests that “crime rates are determined not by the amount of crime in an area, but by police activities.”<sup>375</sup>

Other research suggests that school campuses with a higher percentage of minority enrollment tend to use harsh discipline as a result of what is referred to as “racial threat,” or the theory that as the proportion of African Americans increases in relation to whites, “intensified measures of control will proliferate in response to the perceived growing threat derived from closer proximity to minorities.”<sup>376</sup> This study found, “Schools with a greater percentage of black students are more likely to respond even more harshly to misbehavior, such as automatically suspending students for various violations, expelling students, or even calling the police and charging students with crimes.”<sup>377</sup> In fact, the results of that study suggest that the percentage of African American students in the student population was a *stronger* predictor of harsh discipline in schools with *lower* levels of delinquency and drug use—in other words, “in schools where students engage in less delinquency and drug use, it appears that schools may be more likely to respond harshly and extremely harshly to

374 Aseltine, *supra* note 118, at 66.

375 Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, J. CRIM. JUST., Vol. 34, p. 591, 596 (2006).

376 Kelly Welch & Allison Ann Payne, *Racial Threat and Punitive School Discipline*, SOCIAL PROBLEMS, Vol. 57, Issue 1, pp.25-48 (2010).

377 *Id.* at 36.

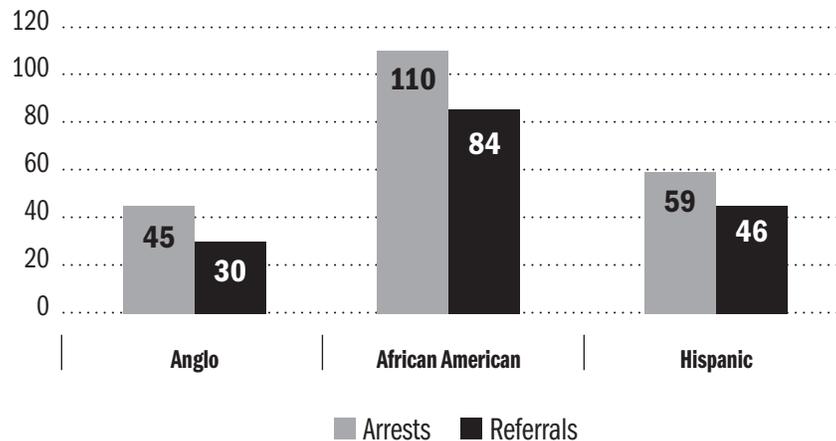
misbehavior...because of the racial composition of the student body.”<sup>378</sup> This is true even when controlling for the socioeconomic status of the students.<sup>379</sup>

Whatever the cause of disproportionate representation of African American students in arrests, this trend is consistent with studies of school-based arrests in other states, with Florida reporting that African American male students accounted for 34 percent of their school-based arrests and a Connecticut study finding that African American students were disproportionately represented in school-based arrests.<sup>380</sup>

The overrepresentation of African American students in school-based arrest is consistent with the disproportionate contact of minority youth with the juvenile justice system nationwide.<sup>381</sup>

***In Texas, African American youth are arrested at more than twice the rate of Anglo youth, and receive a formal referral to the juvenile system at almost three times the rate of Anglo youth.***<sup>382</sup>

### Texas Juvenile Arrest and Referral Rates by Race/Ethnicity, 2006 (per 1,000 juvenile population)



Requiring school districts to keep track of this data is imperative to better understanding this issue, which has important implications for revising policies and procedures to prevent the escalation of students into the “school-to-prison pipeline.”

<sup>378</sup> *Id.* at 40.

<sup>379</sup> *Id.*

<sup>380</sup> FLORIDA DEPARTMENT OF JUVENILE JUSTICE, *supra* note 357, at 7; ACLU OF CONNECTICUT, *supra* note 359, at 35.

<sup>381</sup> See TEXAS JUVENILE PROBATION COMMISSION & TEXAS YOUTH COMMISSION, COORDINATED STRATEGIC PLAN FISCAL YEAR 2010 14-15, available at [http://www.tyc.state.tx.us/about/TJPC\\_TYC\\_Coordinated\\_Strategic\\_Plan\\_FY2010.pdf](http://www.tyc.state.tx.us/about/TJPC_TYC_Coordinated_Strategic_Plan_FY2010.pdf).

<sup>382</sup> TEXAS YOUTH COMMISSION & TEXAS JUVENILE PROBATION COMMISSION, TYC-TJPC COORDINATED STRATEGIC PLAN PLANNING COMMITTEE MEETING, EXECUTIVE PACKET 8 (2009)(on file with author).

## Special Education Students and Arrest

In many Texas school districts, special education students are disproportionately represented in disciplinary suspensions, expulsions and referrals to alternative education programs, in some cases at rates double their representation in the district's overall student body. None of the districts providing arrest data to Texas Appleseed could break out the number of special education students who were arrested for school-based offenses. However, *our interviews with attorneys who represent special education students indicate that arrest of students with special needs often occurs for behavior directly related to the student's disability.* This is also clear from the case studies discussed above. A Pennsylvania study documented this trend in school-based referrals to that state's juvenile system.<sup>383</sup>

Texas Youth Commission (TYC) and Texas Juvenile Probation Commission (TJPC) demographics show that a large number of youth with disabilities enter the juvenile system each year. For example, TYC reports that 36 percent of the youth who entered their system in 2009 were identified as eligible for special education services.<sup>384</sup>

In addition, data obtained by Texas Appleseed from the Texas Juvenile Probation Commission shows that youth identified as special education students make up a significant percentage of those initially referred to the juvenile system. Unfortunately, as is true of the school-based referral data, this data is not always accurately reported to TJPC. In many counties, a very high number of referrals report special education status as "unknown." However, *even with incomplete data, several counties reported that in 2007, special education students were overrepresented in referrals to the juvenile system compared to their 11 percent representation in the Texas student body.*

### Counties Reporting a Significant Overrepresentation of Special Education Students in Referrals to the Juvenile System, 2007

County	Percentage of Referrals Identified as Special Ed	County	Percentage of Referrals Identified as Special Ed
Bell	19%	Nueces	15%
Bexar	20%	Smith	16%
Cameron	17%	Taylor	23%
Lubbock	21%	Travis	17%
McLennan	19%	Wichita	24%
Montgomery	20%		

This data is by no means comprehensive.<sup>385</sup> It is impossible to assess definitively the overrepresentation of special education students statewide in school-based arrests and juvenile justice system referrals, because so few counties report this data accurately to the Texas Juvenile Probation Commission.

383 PENNSYLVANIA PROTECTION & ADVOCACY, INC., *ARRESTED DEVELOPMENT: STUDENTS WITH DISABILITIES AND SCHOOL REFERRALS TO LAW ENFORCEMENT IN PENNSYLVANIA* (2004).

384 Texas Youth Commission, *Who are TYC Offenders?*, available at [http://www.tyc.state.tx.us/research/youth\\_stats.html](http://www.tyc.state.tx.us/research/youth_stats.html).

385 Even in the counties included in the chart, a high number of referrals listed special education status as "unknown."

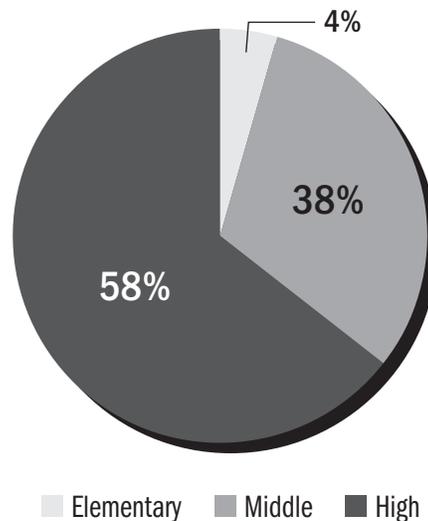
### School-Based Arrest of Young Students

Of the 17 school districts that produced data for school-based arrests, only nine districts (Austin ISD, East Central ISD, Edgewood ISD, El Paso ISD, Humble ISD, Katy ISD, McAllen ISD, White Settlement ISD, and Wichita Falls ISD) were able to disaggregate the data according to the age of student arrested, or the level of school (elementary, middle school, high school) that the student attended. Not surprisingly, the majority of students who were arrested were in high school.

However, the data does show a surprising number of arrests of elementary school students.

### School-based Arrests by School Level for Nine Reporting Texas School Districts

2006–07



While four percent is a very small portion of the close to 5,900 arrests for these nine districts, 225 elementary school children were arrested. This small data sample represents the tip of a much larger issue—better access to more complete data would confirm the extent to which this practice exists in other parts of the state. *At the very least, the arrest of 225 elementary school children in a single school year raises concerns about whether more meaningful and age appropriate disciplinary interventions might have been used in place of arrest.*

Of the nine districts that were able to disaggregate their data by school level or age, six reported arrests of elementary school children in 2006-07, the most recent year for which we have data.

**Number of Elementary School Students Arrested in Six Texas School Districts, 2006-07**

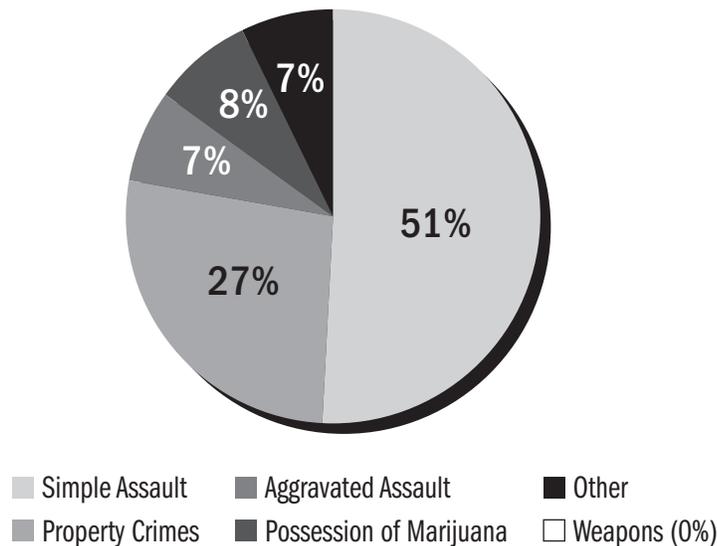
School District	Number of Elementary School Students Arrested
Austin ISD	96
East Central ISD	63
El Paso ISD	38
Humble ISD	10
Katy ISD	13
McAllen ISD	5

Only a few of the districts that provided data broken down by the student’s age or school level were also able to report the offense for which these students were arrested. In Humble ISD, the majority of students were arrested for non-violent offenses. Of the 10 students arrested in 2006-07, six were arrested for a property offense: four for burglary, and one each for theft and trespass. Of the remaining four students, two were arrested for marijuana possession, and two for assault.

From 2001-2006, United ISD arrested 11 elementary school students. Of those, seven were for non-violent offenses: three each for burglary and criminal mischief, and one for having a fake ID. The remaining four arrests were for assault.

El Paso ISD could only provided data disaggregated by student age for four years—2001 through 2005. In those four years, **307 students ages 10 to 12 were arrested**. Most of the arrests were made for the Class A misdemeanor of assault.

**Arrests of 10- to 12-Year-Olds in El Paso ISD by Type of Offense, 2001-05**



## CASE STUDY

A former liaison to a Texas Justice of the Peace court describes the arrest of a second grade student:

*I recall one case where I was called out to an elementary school...when I arrived a second grader was in hand cuffs in an isolated room while the principal and assistant principal tried to reach his mother. Apparently, the student had in his possession a book of checks that did not appear to belong to anyone in his family. The child was scribbling and drawing on the checks, because of course he did not know the proper way to fill one out. However, he was being treated as an adult criminal...After threatening the child with jail, the officer eventually wrote the student a citation for a Class C misdemeanor theft, but contemplated trying to charge him with some sort of check fraud. Apparently, the checkbook had either been erroneously placed in his family's mailbox or someone had taken the checks from the actual owner's mail. It was the most absurd situation being blown considerably out of proportion.*

A national study of preteen crime found that the majority of arrests of children under the age of 13 took place on a school day, and that children this age were more likely than older children to be arrested at school.<sup>386</sup> The report also found that while preteen arrests for most crimes declined sharply between 1980 and 2006, arrests of children under the age of 13 increased dramatically for simple assault—one of the “violent crimes” for which our data showed children are often arrested at school.<sup>387</sup> The study's findings tend to support Texas Appleseed's conclusion that the increased presence of school-based law enforcement resulted in an increase in school-based arrests.<sup>388</sup> The educational consequences of a school-based arrest can be devastating to a student.<sup>389</sup> If a student's behavior poses a threat to the safety of the school community, this behavior must be addressed. But arresting young students for school-based misbehavior should be considered a last resort to be used only in the most extreme cases.

Some districts were able to disaggregate their data by the age of the student arrested. Two districts reported the number of students under the age of 10 who had had been arrested at some point over the six-year period for which Texas Appleseed has data: El Paso ISD, 11 students under age 10; and Katy ISD, three students younger than 10.

In Katy ISD, a seven-year-old child was arrested in two out of six years for which they provided data, and an eight-year-old was arrested as recently as the 2005-06 school year. One or more 10-year-olds were arrested in all but one year for which we have data for Katy ISD. In El Paso ISD, nine students under the age of 10 years old were arrested in 2004; eight of those nine arrests were for assault. Unfortunately, El Paso ISD could not provide more up-to-date data for the age of the students arrested.

386 CHAPIN HALL CENTER FOR CHILDREN, ARRESTING CHILDREN: EXAMINING RECENT TRENDS IN PRETEEN CRIME 14 (2008).

387 *Id.* at 6.

388 *Id.* at 18 (“This analysis suggests that to the extent preteen crime has increased, a substantial portion of the increase is concentrated in those offenses more likely to occur... at school. It may be that the juvenile justice system today is asked to deal with far more... school behavioral problems than it was 20 or 30 years ago and that this could explain the commonly reported perception of a rising number of preteen offenders.”).

389 See Sweeten, *supra* note 341; Hirschfield, *supra* note 341.

Since a child under the age of 10 cannot go through delinquency proceedings, these cases—once referred to the juvenile system—would have been dismissed. It is difficult to understand the utility of a custodial arrest for a child this young. While these numbers are low, they are still alarming. What is even more alarming is that such a small number of districts could provide data disaggregated by age. Understanding the extent to which children under the age of 10 are being subjected to custodial arrest requires better data collection.

## Conclusion

Though far fewer students are arrested at school, compared to the thousands receiving Class C misdemeanor citations each year in Texas, the data gathered by Texas Appleseed shows a surprising number of students are being arrested on Texas campuses for low-level offenses. The increase in school-based arrests over time is contrary to the overall reduction in arrests and formal referrals to the juvenile justice system by other areas of law enforcement. If Texas' largest school districts reported school-based arrests, we would likely see that arrests at school make up a large percentage of overall referrals to the juvenile justice system. Overrepresentation of African American students—along with stories from parents of special education students arrested for behavior associated with their disability—are of particular concern, as is data indicating that young students are being arrested. If Texas is going to reduce its dropout rate and put an end to the “school-to-prison pipeline,” it must reevaluate the use of arrest as school discipline. Arrest should be a last resort, reserved for extreme cases that present a threat to school safety.



## USE OF FORCE, INTERROGATION AND SEARCHES BY SCHOOL POLICE OFFICERS

*“When he first approached us, I thought, ‘He’s a cop, so everything’s OK...but when he pulled out his baton and started swinging it with no explanation—it was really scary. I don’t think a cop should ever do that unless someone’s threatening him, and we weren’t.”*

—**Bianca Perez**

former Texas high school student who was knocked unconscious by a campus police officer when her boyfriend refused to stop talking on his cell phone<sup>390</sup>

The use of force by school police—in the form of physical restraints, non-lethal weapons, or firearms—is another example of traditional police methods migrating into school settings. The broad discretion given to school police officers to use force—and the total lack of transparency around these issues—points to another policy disconnect between the worlds of educators and law enforcement officers.

Media headlines indicate that school police officers use “non-lethal” or “less lethal” weapons like pepper spray and Tasers on students in school settings across the state:

- *Student Hit with Stun Gun in School Cafeteria*, **CBS 11 News**, September 22, 2010 (Grand Prairie)
- *Chemical Agent Used in Disturbance at Cushing Graduation*, Erin McKeon, **The Daily Sentinel**, June 1, 2010 (Cushing ISD)
- *Texas Teacher Uses Pepper Spray to Break Up School Fight*, **KWTX News**, October 1, 2009 (Fort Worth Charter School)

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<sup>390</sup> Emily Ramshaw, *Texas Schools Rarely Track Force Against Students*, **TEXAS TRIBUNE**, November 25, 2009.

- *Pepper Spray Prompts Evacuation of Hillcrest High*, Tawnell D. Hobbs, **Dallas Morning News**, April 21, 2009 (Dallas ISD)
- *Deputies: Westwood Student Hit with Taser*, **KVUE News**, February 17, 2009 (Austin ISD)
- *Pepper Spray Used During Food Fight*, **Click2Houston.com**, February 6, 2009 (Spring ISD)
- *Police Use Pepper Spray on Students*, **The Daily News**, January 22, 2009 (Galveston ISD)
- *Texas High School Student Tased by School Police*, Kevin Quinn, **Katy Times**, October 27, 2008 (Katy ISD)
- *Student Shocked by School Officer's Taser*, **KTRK News**, October 12, 2007 (Houston ISD)
- *Schools Pick Weapons to Battle Brawling*, Rhiannon Meyers, **KHOU.com**, October 1, 2007 (Houston area schools)
- *50 Ball Students Treated for Pepper Spray*, Rhiannon Meyers, **The Daily News**, September 21, 2007 (Galveston ISD)
- *Duncanville School Officer Used Pepper Spray on Teen, Aunt Says*, Stella M. Chavez, **Dallas Morning News**, September 5, 2007 (Duncanville ISD)

Physical force or restraint of Texas students by school police officers has also been documented by the media:

- *DA Will Review Videotape of Officer-Student Incident: Bus Camera Reportedly Shows HISD Officer Assaulting Teen*, **Houston Chronicle**, September 11, 2010 (students jaw broken by Houston ISD police officer)
- *Texas Senate Examining Schools' Use of Discipline*, Mike Morris, **Houston Chronicle**, April 28, 2010 (14-year-old Klein ISD student was handcuffed to a bench after being arrested for writing on a bathroom wall)
- *Mom: 11-Year-Old Found Handcuffed and Bleeding in School Classroom*, **WOAI News**, May 5, 2009 (San Antonio ISD)
- *Edinburg CISD Guard Videotaped in Excessive Force Case Keeps Job*, Ryan Wolf, **ValleyCentral.com**, February 27, 2009 (school security guard pulls student down hall by handcuffs)
- *Mother Finds Autistic Son in Handcuffs at School*, **KSAT News**, November 12, 2002 (Spring ISD)

### **Need for Transparency in Campus Police Use of Force**

After research for this report revealed media headlines documenting use of pepper spray and Tasers on students by ISD police officers, Texas Appleseed sent open records requests to 24 school districts seeking information on these practices. Appleseed included districts that had been able to provide arrest or ticketing data, assuming that these were the districts that were most likely to keep data related to use of force. The open records requests asked for data related

to the use of force by ISD police officers on students for a five-year period, and also requested a copy of the ISD police department’s policy manual, including their use of force policy.

**Only four school districts—Austin ISD, Edinburg ISD, El Paso ISD, and Houston ISD—were able to provide data related to use of force by their ISD police officers on students.**<sup>391</sup> Dallas ISD—one of the largest school district police departments in the state (with a very active police department, as evidenced by their ticketing data)—could not produce any data related to use of force. This is of grave concern, particularly since one of the media-reported incidents of pepper spray (listed above) occurred in a Dallas ISD high school. In that instance, several students were taken to the hospital after the pepper spray made its way into the school’s ventilation system.<sup>392</sup>

The quality of the data Texas Appleseed received from the four districts varied greatly. All were able to disaggregate data by the race or ethnicity of the student who was the subject of the use of force, but none were able to provide accurate data related to the student’s special education status.

According to the Texas Police Chiefs Association (TPCA), keeping data related to use of force is a “best practice” that all departments should strive for:

*Law enforcement agencies are the only function of government authorized to use force against a citizen. Officers are sworn to intervene in circumstances to keep the peace in their jurisdiction and in doing so must sometimes resort to the use of force when other means fail. This authority to use force is granted by the people of the community with the full expectation that it will be used appropriately. It is therefore the obligation that professional police organizations review and examine their use of force to ensure that it is utilized only in conformance with the law, departmental policies and community expectations.*<sup>393</sup>

In fact, the TPCA recommends that agencies compile an annual use of force report for the agency director, which should “identify any trends in the use of force by agency personnel, training needs, equipment needs, or policy revisions.”<sup>394</sup> The TPCA discussion of this standard clarifies:

*The intent of this standard is to attempt to reduce the overall use of force exercised by an agency when appropriate. While it is clear that officers must sometimes resort to the use of physical force to accomplish their objective, each use of force places the officer as well as the subject at risk of injury. This report, therefore, should be an analysis, not just a counting and sorting of incidents. The report should lead to conclusions about the agency’s use of force and whether any policies need revision, any additional training is needed or any changes made in equipment or methods of operation or response.*<sup>395</sup>

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391 Two other districts—Edgewood ISD and White Settlement ISD—told us they keep data related to use of force incidents, but did not have any incidents for the five-year period for which we requested data.

392 Tawnell D. Hobbs, *Pepper Spray Prompts Evacuation of Hillcrest High*, DALLAS MORNING NEWS, April 21, 2009.

393 TEXAS POLICE CHIEFS ASSOCIATION, TEXAS LAW ENFORCEMENT PROGRAM BEST PRACTICES AND GLOSSARY 40 (2009).

394 *Id.* at 43.

395 *Id.*

Fortunately, whether they are keeping data or not, it does appear that most of the ISD police departments participating in this study have written directives related to use of force, another “best practice” according to TPCA.<sup>396</sup> Texas Appleseed received 15 policy manuals that included the department’s use of force policy. In addition to the policies Texas Appleseed received through open records requests, several school districts make their policies available online—including Cedar Hill ISD, Conroe ISD, Pasadena ISD, and Lubbock ISD.<sup>397</sup>

***While most school districts readily provided their use of force policies, three districts—Galveston ISD, San Antonio ISD, and Spring Branch ISD—refused to produce their policies, and instead sought an Attorney General opinion to exempt these policies from disclosure.***<sup>398</sup> These districts argued that producing their use of force policy would allow students to outwit school district police by anticipating the type of force police might use.<sup>399</sup> The Attorney General agreed in an opinion letter that the school district’s use of force policies fell under the law enforcement exemption to the Texas Public Information Act and allowed the districts to withhold the policy.<sup>400</sup> Texas Appleseed subsequently filed suit against San Antonio ISD and Spring Branch ISD to protect parents’ right to know and to compel disclosure of ISD use of force policies.<sup>401</sup>

The Attorney General’s decision to allow school district police departments to withhold their use of force policy from the public is completely at odds with the policy expressed in the Texas Education Code, which favors giving parents full access to information that may have an impact on their child’s educational experience.<sup>402</sup> It also is at odds with the decision of Texas’ juvenile justice agencies to publish their use of force policies. Both the Texas Youth Commission and the Texas Juvenile Probation Commission (charged with overseeing all juvenile probation departments in Texas) include their use of force policies in their administrative rules. Both agencies encourage stakeholder input when these policies are reviewed or amended. ***Ultimately, this lack of transparency in how force is used in school policing means that a parent whose child is adjudicated delinquent (or awaiting adjudication) and placed in a juvenile facility will have more knowledge and information about the type of force that may be used on his or her child than the parent of a student who attends a Texas public school.***

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<sup>396</sup> *Id.* at 40.

<sup>397</sup> Cedar Hill ISD, Conroe ISD, and Pasadena ISD police manuals are posted on the Texas School District Police Chiefs’ Association website at [www.texasisdchiefs.com/documents.html](http://www.texasisdchiefs.com/documents.html); Lubbock ISD’s police manual is available on the Texas Association of School District Police website at [http://tasdp.com/rules\\_n\\_proc.html](http://tasdp.com/rules_n_proc.html).

<sup>398</sup> For copies of the districts’ letters to the Attorney General, Appleseed’s responses, and the Attorney General’s opinion letters for each district, see Texas Appleseed’s website, at [http://www.texasappleseed.net/index.php?option=com\\_content&view=article&id=113:project-timeline&catid=27:texas-school-to-prison-pipeline&Itemid=265](http://www.texasappleseed.net/index.php?option=com_content&view=article&id=113:project-timeline&catid=27:texas-school-to-prison-pipeline&Itemid=265).

<sup>399</sup> *Id.*

<sup>400</sup> *Id.*

<sup>401</sup> For the Complaints filed by Texas Appleseed against San Antonio and Spring Branch ISDs, see our website, at [http://www.texasappleseed.net/index.php?option=com\\_content&view=article&id=113:project-timeline&catid=27:texas-school-to-prison-pipeline&Itemid=265](http://www.texasappleseed.net/index.php?option=com_content&view=article&id=113:project-timeline&catid=27:texas-school-to-prison-pipeline&Itemid=265).

<sup>402</sup> TEX. EDU. CODE §26.001 *et seq.*

## Risks Associated with Use of Force on Children

Risks associated with pepper spray, Tasers and physical restraints make it necessary that school districts carefully consider the types of force they authorize their school police to use. The use of force on children involves known health risks that include short- and long-term psychological harm.

In adults, pepper spray use has been linked to bronchial spasms, respiratory arrest, and pulmonary edema, as well as serious respiratory and cardiovascular effects, blistering of the skin, and permanent damage to the sensory nervous system.<sup>403</sup> ***Children may face greater risks when they are exposed to pepper spray because a child's airways are more fragile than those of an adult.***<sup>404</sup> Many juvenile justice and medical or mental health experts have noted that differences in children's physical and psychological development may contraindicate the use of pepper spray as an appropriate method of control.<sup>405</sup> Children with asthma are at particularly high risk for severe respiratory problems as a result of being exposed to pepper spray.<sup>406</sup> The use of pepper spray is recognized as a form of restraint and has been the basis of excessive force litigation filed against law enforcement personnel.<sup>407</sup>

Because pepper spray commonly spreads beyond the child who was the cause of the disruption, innocent children often suffer the effects of pepper spray as mere bystanders. This is clear from press reports of pepper spray use in Texas schools. According to one media account, several students had to be taken to the hospital after pepper spray got into the school ventilation system when used to break up a fight between two students in the hallway.<sup>408</sup> Given the almost impossible task of ensuring that an asthmatic child or a child with other fragile health conditions is not exposed to pepper spray, there is simply no safe way to use pepper spray in a school setting.

The consequences of using Tasers on children can be even more devastating. ***Deaths following Taser use and studies of their safety call into question the appropriateness of the use of Tasers on children.***<sup>409</sup> In fall of 2009, Taser issued a training bulletin changing the "preferred target" from the chest to the back, abdomen or thigh—citing concerns that shooting the Taser in the chest could result in an "adverse cardiac event."<sup>410</sup> ***Neither the Texas Juvenile Probation Commission nor the Texas Youth Commission allows the use of Tasers in their facilities.***

403 TEXAS YOUTH COMMISSION, OFFICE OF THE INDEPENDENT OMBUDSMAN, OC PEPPER SPRAY: RESEARCH OVERVIEW AND POLICY RECOMMENDATIONS (2008), available at [http://www.tyc.state.tx.us/ombudsman/rept\\_prairie\\_ocspray.html](http://www.tyc.state.tx.us/ombudsman/rept_prairie_ocspray.html).

404 TEXAS CRIMINAL JUSTICE COALITION, PEPPER SPRAY IN THE TEXAS YOUTH COMMISSION: RESEARCH REVIEW AND POLICY RECOMMENDATIONS 5 (2007).

405 *Id.*

406 *Id.*

407 *Treats v. Morgan*, 308 F.3d 868, 874 (8<sup>th</sup> Cir. 2002).

408 Tawnell D. Hobbs, *Pepper Spray Prompts Evacuation of Hillcrest High*, DALLAS MORNING NEWS, April 21, 2009.

409 See Glenn Greenwald, *Let's Talk About Tasers*, SALON.COM, August 10, 2009; Abigail Goldman, *Cops Raise Taser Safety Claims*, LAS VEGAS SUN, November 23, 2008; Alex Berenson, *Claims Over Taser Safety are Challenged*, N.Y. TIMES, November 26, 2004.

410 USA Today, *Taser Advice: Don't Aim at Target's Chest*, October 21, 2009.

Physical restraints also carry dangers. There are risks associated with commonly used physical restraints or holds, especially the use of prone restraints.<sup>411</sup> ***Many of the deaths reported by the Government Accountability Office in its recent report on abusive restraints in schools were the result of prone restraints that caused “positional asphyxia,” including a restraint on a youth in Texas.***<sup>412</sup> The risk of death associated with prone restraints led Texas juvenile justice agencies to prohibit use of restraints likely to cause positional asphyxia.<sup>413</sup> ***Yet, none of the ISD police use of force policies reviewed by Texas Appleseed restricts use of prone restraints or caution officers about the potential for positional asphyxia.***

Texas school districts must do a better job of ensuring that their police are operating under use of force policies that take these risks to children into account.

### Use of Physical Restraints in School Settings

For some time, the use of physical restraints on students with behavioral issues—most often special education students—has been a common method of subduing students considered out of control.<sup>414</sup> This practice migrated to schools from use of physical restraints in treatment settings.<sup>415</sup>

In residential treatment settings, the use of physical restraints on children or adults with special needs is viewed as a treatment failure, and is used only as an emergency intervention to avoid physical danger.<sup>416</sup> Mainstreaming of special education students led to use of physical restraints with students in school settings.<sup>417</sup> While these procedures were originally used in the context of special education programming, they are now used more broadly.<sup>418</sup>

The use of physical restraint in school settings has garnered national attention as the result of reports documenting widespread problems with abusive physical restraints.<sup>419</sup> The Government Accountability Office (GAO) published a report on abusive use of restraints in school settings,

411 See Jonathon Osborne & Mike Ward, *When Discipline Turns Fatal*, AUSTIN AM. STATESMAN, May 18, 2003 (prone restraint used by camp counselors causes death of 17-year-old at therapeutic wilderness program).

412 GOVERNMENT ACCOUNTABILITY OFFICE, SECLUSIONS AND RESTRAINTS: SELECTED CASES OF DEATH AND ABUSE AND PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS (2009).

413 37 TEX. ADMIN. CODE §343.804 (Texas Juvenile Probation Commission prohibits restraints that place a resident in a prone or supine position with sustained or excessive pressure on back, chest, or torso); 37 TEX. ADMIN. CODE §97.23 (Texas Youth Commission prohibits use of restraints that place a youth in a position that is capable of causing positional asphyxia).

414 See Joseph B. Ryan & Reece L. Peterson, *Physical Restraint in School*, available at <http://www.unl.edu/srs/pdfs/restmanu.pdf>.

415 *Id.* at 7.

416 See Dave Ziegler, *Is There a Therapeutic Value to Physical Restraint?*, CHILDREN'S VOICE (Child Welfare League of Am.), April 2007, available at <http://www.cwla.org/articles/cv0407myturn.htm>; American Academy of Pediatrics, *The Use of Restraint Interventions for Children and Adolescents in the Acute Care Setting*, PEDIATRICS, Vol. 99, No. 3 (1997).

417 COUNCIL FOR CHILDREN WITH BEHAVIORAL DISORDERS, THE USE OF PHYSICAL RESTRAINT PROCEDURES IN SCHOOL SETTINGS 6 (2009).

418 *Id.* at 4; see also Safe & Responsive Schools, *Physical Restraint* (2002), available at <http://www.unl.edu/srs/pdfs/physrest.pdf>.

419 NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT: INVESTIGATIVE REPORT ON ABUSIVE RESTRAINT AND SECLUSION IN SCHOOLS (2009); THE COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC., UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (2009).

which led to Congressional hearings on the subject.<sup>420</sup> While the GAO report was not focused specifically on special education students, the majority of its documented cases involved use of restraints on students with disabilities.<sup>421</sup> The GAO findings included the following:

*Children, especially those with disabilities, are reportedly being restrained and secluded in public and private schools and other facilities, sometimes resulting in injury and death. The 10 closed cases we examined illustrate the following themes: (1) children with disabilities were sometimes restrained and secluded even when they did not appear to be physically aggressive and their parents did not give consent; (2) facedown or other restraints that block air to the lungs can be deadly; (3) teachers and staff in these cases were often not trained in the use of restraints and techniques; and (4) teachers and staff from these cases continue to be employed as educators. In addition to the 10 cases we identified for this testimony, three cases from our previous testimonies on residential treatment programs for disabled youth also show that face down restraints, or those than can impede respiration, can be deadly.*<sup>422</sup>

This report praised Texas as one of the few states that has a statute requiring reporting of the use of restraints and seclusion in school.<sup>423</sup> Texas' statute defines restraint as "the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body," but the statute applies only to special education students.<sup>424</sup>

***The statute requires TEA to adopt an administrative rule setting out the procedures districts must follow in restraint and seclusion of a special education student.***<sup>425</sup>

The administrative rule adopted by TEA requires each campus to have a "core team of personnel...trained in the use of restraint" which includes a campus administrator.<sup>426</sup> It also requires documentation of the use of a restraint, as well as reporting of data on the use of restraint to the Texas Education Agency.<sup>427</sup> ***Again, all of these provisions relate only to the use of restraints and seclusion with special education students.***<sup>428</sup>

***Unfortunately, the Education Code's reporting requirement specifically excludes data for peace officers restraining a student "while performing law enforcement duties."***<sup>429</sup>

Thus, while Texas is ahead of other states in collecting data around the use of seclusion and restraint, the data reported to TEA likely represents a vast underreport of the actual number of restraints that are being used in Texas public schools.

Anecdotally, Texas Appleseed was told that many school districts ask school police officers to carry out physical restraints on special education students as a method of avoiding reporting restraints. In some cases, the restraint used by the officer was precisely the kind of prone

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420 GOVERNMENT ACCOUNTABILITY OFFICE, SECLUSIONS AND RESTRAINTS: SELECTED CASES OF DEATH AND ABUSE AND PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS (2009).

421 *Id.*

422 *Id.* at 7.

423 *Id.* at

424 TEX. EDU. CODE §37.0021.

425 *Id.*

426 19 TEX. ADMIN. CODE §89.1053.

427 *Id.* at §89.1053(k).

428 *Id.*

429 TEX. EDU. CODE §37.0021(g)(1).

restraint that has caused so many deaths—the same type of restraint that Texas law strictly limits in a range of settings, including juvenile justice facilities.<sup>430</sup>

In at least one school district, police are trained in the district’s restraint methods because “officers are sometimes called upon to assist special education teachers and staff in managing a student’s aggressive behavior.”<sup>431</sup> When this occurs, the school does not have to report the restraints used by the school police officer. In contrast, another ISD police department forbids its officers from assisting in the *seclusion* of a special education student, but appears to allow assistance with *restraint*. The district’s policy states, “Officers...will NOT confine a student in a ‘Time Out’ room. Officers may stand by and protect teachers and councilors [sic] as they perform this function and may even assist them as necessary to prevent injury to any person involved.”<sup>432</sup>

### CASE STUDY

One attorney Texas Appleseed interviewed described a case involving a client who was repeatedly restrained by a school police officer:

*My client, a special education student with Down’s syndrome, had difficulty communicating with others. We became involved because the school district was refusing to provide adequate speech services or assistive technology that would help him communicate. In middle school, he began having behavior problems at school because his difficulty communicating was so frustrating to him. When he got frustrated or angry, he would run out of class. In response to his behavior, staff began using restraints and locked seclusion with my client. When he would not voluntarily enter into seclusion, they would physically force him into the locked seclusion room. Both my client’s parents and two outside consultants hired by the district asked the school to stop using restraints and seclusion with my client. After the schools were asked to stop using restraints, the school district police officers began using physical restraints and handcuffs on my client. One day, my client’s father arrived at the school to find the school police officer sitting on top of my client, who was face down on the ground with his arms behind his back. My client was gasping and choking for air. Finally, my client’s parents were forced to file a legal action to stop the dangerous restraints.*

### Use of Force v. Physical Restraint: When No Real Distinction Can Be Drawn

While school police officers might argue that they are exempt from reporting of restraints because an incident requiring a law enforcement officer to intervene differs from an incident requiring a teacher or administrator to restrain a special education student, the standards set out in TEA’s administrative rules describing when a use of restraint is appropriate are very similar to the use of force standard used by many school law enforcement agencies. According to the rule, a school employee may only use restraint “in an emergency,” which

430 TEX. HEALTH & SAFETY CODE §322.051.

431 Austin Independent School District Police Department, *Officers Learn SAMA Techniques to Redirect Aggressive Behavior*, THE DISPATCH (AISD), Fall 2009.

432 PASADENA ISD POLICE DEPARTMENT, PATROL PROCEDURE NO. 09(D)(2).

is defined as “a situation in which a student’s behavior poses a threat of imminent, serious physical harm to the student or others...or imminent, serious property destruction.”<sup>433</sup>

By way of comparison, Houston ISD’s police department authorizes officers to use force when “reasonably necessary to protect themselves or others, to make an arrest, or to bring an incident under control.”<sup>434</sup> Pasadena ISD police department policy allows “only force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officers and others” and notes that “the decision to use force should be based on the danger posed by an individual confronted by the police.”<sup>435</sup> These standards would likely lead school police to make the decision to use force in “emergency” situations, much like teachers and administrators—making it difficult to understand why teachers and administrators should be required to report restraints while school law enforcement are exempt from such reporting. Furthermore, any incident described as an “emergency” that poses a threat of “serious bodily harm” or “serious property destruction” is arguably an incident in which school law enforcement would become involved.

Force or physical restraint on children must also be documented and reported when used in other settings.<sup>436</sup> The use of restraint and seclusion in residential treatment facilities and juvenile justice settings also has received a fair amount of interest and attention, likely because there is a high risk for abuse in those settings as well.<sup>437</sup> During the 2005 Texas legislative session, Senate Bill 325 was passed adding language to the Health and Safety Code limiting use of restraint and seclusion in residential treatment centers, child-care institutions, and mental health facilities.<sup>438</sup> This bill was passed to emphasize alternatives to restraint and seclusion, and to ensure that restraint and seclusion are used only as a last resort.<sup>439</sup> The bill was also regarded as a vehicle for gaining better insight into the use of restraints through data collection:

*Injuries and deaths following a personal restraint have gained media attention throughout the country. Death involving the use of emergency interventions, particularly a personal or mechanical restraint, has occurred on airplanes, in schools, and in residential facilities. Although the use of behavioral interventions are sometimes necessary and appropriate to protect an individual or someone else, considering the possible unintended consequences to staff as well as residents, it is appropriate for the state to make an effort to better understand the context in which these interventions are used, and to assist providers in using less restrictive alternatives whenever possible.*

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433 19 TEX. ADMIN. CODE §89.1053.

434 Houston ISD Police Dep’t, Use of Force Policy (on file with author).

435 Pasadena ISD Police Dep’t, Use of Force Policy (on file with author).

436 Juvenile correctional officers in TYC facilities are required to document any use of force on a youth, to videotape planned team restraints, and to weigh pepper spray canisters before and after use. See 37 Tex. Admin. Code §97.23. TJPC also sets out its documentation requirements for use of restraints in its administrative rules. 37 Tex. Admin. Code §343.806. Both agencies make data available on use of force in the facilities they oversee.

437 See HOGG FOUNDATION FOR MENTAL HEALTH, SAFE AND APPROPRIATE BEHAVIORAL INTERVENTIONS: CHANGING THE CULTURE OF CARE (2006).

438 TEX. S.B. 325, 79<sup>th</sup> R.S. (2005).

439 TEX. S.B. 325, 79<sup>th</sup> R.S., BILL ANALYSIS (2005).

*While state agencies all indicate an investment in the reduction of the use of restraints and seclusions, few have systems by which to collect and analyze data on the frequency of the usage. The development of a data collection system that can be used across agencies and over time requires a common language, common data collection techniques, and uniform minimum standards. The purpose of this legislation is to begin the dialogue that could lead to that type of system being developed.*<sup>440</sup>

The bill created an interagency workgroup consisting of residential service providers, TEA, TYC, and TJPC, whose purpose was to “make recommendations related to uniform definitions, data collection, and minimum standards on the use of behavioral interventions.”<sup>441</sup>

More recently, the use of restraints has been part of the ongoing discussion around Texas Youth Commission reform, with Texas Appleseed joining Advocacy, Inc. in filing a lawsuit against TYC in 2007 that challenged the agency’s increased use of pepper spray in its residential facilities.<sup>442</sup> In response to the lawsuit, TYC amended its use of force rule.<sup>443</sup> Today, TYC has severely limited the use of pepper spray and has adopted very carefully delineated rules relating to use of force in its facilities.<sup>444</sup> The Texas Juvenile Probation Commission has also devoted time to determining the appropriate use of force in local juvenile facilities, and recently amended its use of force rule to further restrict use of pepper spray.<sup>445</sup>

While these developments touch on issues that are clearly relevant to the use of force by school law enforcement, for some reason school police organizations have not been part of the ongoing dialogue between policymakers and stakeholders around the appropriate use of physical restraints. The exclusion of peace officers from the Education Code’s required reporting of physical restraint of special education students suggests a policy decision to treat restraints used in a “law enforcement” context differently from restraints used by educators or treatment providers. It is hard to imagine the justification for doing so, given that *the same risk for abuse exists* regardless of the context. Indeed, the state’s recognition that limits should be placed on use of force in juvenile justice settings shows that policymakers are aware that limits should be placed on use of force with youth even in cases in which the youth themselves may have behavioral problems that place them at odds with law enforcement.

Ultimately, the exclusion of “peace officers” from the Education Code’s reporting requirements for physical restraints, coupled with the Attorney General’s decision allowing districts to withhold their use of force policy (discussed earlier in this chapter), results in a total lack of transparency around the use of force by school police on Texas’ students. This should be of grave concern to policymakers and parents alike.

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<sup>440</sup> *Id.*

<sup>441</sup> *Id.* Interestingly, leaders in the movement to reduce the reliance on restraint and seclusion note that TEA is the only agency involved in the workgroup that has been reluctant to participate or sign off on materials calling for measures that would encourage a reduction in use of restraints.

<sup>442</sup> For a copy of the complaints and settlement agreement, visit the Texas Appleseed website, at [http://www.texasappleseed.net/index.php?option=com\\_content&view=article&id=12:texas-youth-commission-reform&catid=32:texas-youth-commission-reform&Itemid=276](http://www.texasappleseed.net/index.php?option=com_content&view=article&id=12:texas-youth-commission-reform&catid=32:texas-youth-commission-reform&Itemid=276).

<sup>443</sup> 37 TEX. ADMIN. CODE §97.23.

<sup>444</sup> *Id.*

<sup>445</sup> 37 TEX. ADMIN. CODE §343.816.

## Pepper Spray, Tasers and Guns

Though few school districts appear to be keeping data on use of force, almost all of the district police departments that responded to Texas Appleseed did have a written policy related to use of force. The policy provisions varied greatly in both substance and detail. In addition to firearms, some school districts arm their officers with “less lethal” or “non-lethal” weapons like Tasers, pepper spray, or both. Other districts prohibit carrying pepper spray or Tasers. Some districts have detailed policies that span several pages; others are cursory, limited to a few paragraphs.

As with Student Codes of Conduct, it is likely that some school police policy manuals serve as “models” to be used by other districts when they are drafting their own manuals. Of the 15 districts from which Texas Appleseed received a police manual, several districts appeared to have used the same “model” in formulating their policy manuals. However, this did not guarantee that these districts included identical use of force provisions. *For example, though the Houston ISD and Dallas ISD manuals follow a similar structure, Dallas ISD allows use of pepper spray but not Tasers, and Houston ISD authorizes Tasers but not pepper spray.*

### A Closer Look at Pepper Spray Restrictions

Juvenile justice agencies have been part of the ongoing dialogue around the appropriate use of restraint and seclusion with juveniles. Both the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) make their use of force policies or restraint policies public by including them in their administrative rules. The public is given an opportunity to weigh in on these policies via the rulemaking process.

Both TYC and TJPC have rules that speak with specificity to the type of force that can be used on youth in their care, and when that type of force may be used. Use of pepper spray is closely restricted by both agencies. For example, TJPC’s administrative rules state that “chemical restraints” (i.e. pepper spray) can only be used in secure facilities in riots, and even then, the facility administrator has to authorize its use.<sup>446</sup> The rule also requires that any resident exposed to a chemical restraint must be visually or physically examined by a health care professional immediately following the restraint.<sup>447</sup> The rule requires decontamination following use of a chemical restraint.<sup>448</sup>

TYC’s administrative rule states, “Unless reasonably believed necessary to prevent loss of life or serious bodily injury, authorization to use OC spray must be obtained from the facility administrator, assistant superintendent, or administrative duty officer prior to each use.”<sup>449</sup> For incidents falling short of those involving potential loss of life or serious bodily injury, TYC authorizes pepper spray only in case of riots or hostage situations; to remove a youth from behind a barricade in a riot or self-harm situation; to secure an object being used as a weapon that is capable of serious bodily injury; to protect youth, staff or others

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446 37 TEX. ADMIN. CODE §343.816.

447 *Id.*

448 *Id.*

449 37 TEX. ADMIN. CODE §97.23.

from imminent serious bodily injury; or to prevent escape.<sup>450</sup> Perhaps most importantly, pepper spray is not allowed to be used on a youth diagnosed with a serious respiratory problem or other serious health condition.<sup>451</sup> A youth must be decontaminated with cool water and seen by medical staff immediately after being exposed to pepper spray.<sup>452</sup>

The specificity found in TJPC and TYC rules relating to use of pepper spray is almost completely lacking in most of the school police policies reviewed by Texas Appleseed.<sup>453</sup> Many of the use of force rules in districts that allow or require officers to carry pepper spray speak more to how pepper spray should be used, rather than defining the circumstances when the spray can be used.<sup>454</sup> The most detailed policy Texas Appleseed found for use of pepper spray authorized an officer to use it *when necessary to defend himself or others, to make an arrest, to prevent the commission of a public offense, and when lower levels of force are deemed ineffective.*<sup>455</sup>

This policy also suggests that officers “should, but [are] not required to, issue a verbal warning to bystanders...that OC (pepper spray) is about to be used by yelling ‘OC’ prior to the use of the product.”<sup>456</sup> This policy only requires medical treatment if symptoms persist beyond “the normal recovery period” of 15 to 45 minutes.<sup>457</sup>

The most restrictive standard Texas Appleseed found in a school district police department policy for use of pepper spray allowed it to be used only when “the officer’s presence and verbal commands have been unsuccessful in gaining compliance from an aggressive or combative violator, or when the use of verbal commands would be clearly ineffective under a particular circumstance.”<sup>458</sup> The “guidelines” for use further specify that it is “not recommended when and to the degree the force would be deemed excessive and unnecessary.”<sup>459</sup>

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450 *Id.*

451 *Id.*

452 *Id.*

453 For example, El Paso ISD’s use of force policy only states that officers are to use pepper spray “only to the extent necessary to overcome the resistance of the subject within the current departmental training standards.” El Paso ISD Police Dep’t, Use of Force Policy 8.21 (on file with author).

454 For example, Humble ISD’s policy specifies that pepper spray should be administered “from a range of two to eight feet” because “less than eighteen inches increases the chance of the officer being contaminated.” Humble ISD Police Dep’t, Use of Force Policy (on file with author). Similarly, Austin ISD instructs officers to “direct a one-second burst into the face of the suspect” and immediately “subdue and handcuff the suspect.” Austin ISD Police Dep’t, Use of Force Policy (on file with author).

455 Conroe ISD Police Department, General Order No. 600-09 (2000), *available at* <http://texasisdchiefs.com/images/ConroeISDPD-GeneralOrders.pdf>.

456 *Id.*

457 *Id.*

458 Houston ISD Police Department, Directive No. 422-140 (2007) (on file with author).

459 *Id.*

## Lack of Guidance on Use of Force

Very little guidance seems to exist for school police departments regarding the types of force that are appropriate to a school setting. An article published by the School Resources & Training Institute, an entity that provides “integrated resources and training for law enforcement, SROs, school administrators and teachers,” offers a review of case law restricting the use of force in school settings.<sup>460</sup> The only other articles that Texas Appleseed’s research revealed were not focused on appropriate uses of force in a school setting, but on the type of weaponry that school law enforcement officers should be authorized to carry.<sup>461</sup> The primary concern of these articles appears to be advising school districts on risk management, rather than determining what is an appropriate practice in a school setting.

## Spectrum of Use of Force Options

Approved use of force options—based on the school policing policy manuals and data Texas Appleseed reviewed—include a baton or “impact weapon,” pepper spray, Tasers or Taser-like devices including “stun bags,” canines (who may be released to chase and bite a fleeing suspect), and firearms. The following table outlines the type of force authorized by each of the ISD Police Departments for which we have the use of force policy.<sup>462</sup>

School District	Baton/Impact Weapon	Pepper Spray/Taser	Canines	Firearm
Alief ISD	Yes	Neither	Not mentioned	Yes
Austin ISD	Yes	Both, also allows use of “stun bags”	Yes—may also be used in conjunction with stun bags in a “bag and bite” option	Yes
Brownsville ISD	Optional	“Chemical Irritant” mandatory equipment for officers	Not mentioned in use of force section	Officers carry handguns; shotguns carried in patrol cars.
Cedar Hill ISD	Yes	Pepper Spray; officers also allowed to carry a “utility knife.”	Not mentioned	Yes
Conroe ISD	Yes	Pepper Spray	Not mentioned	Yes
Dallas ISD	Yes	Pepper Spray	Not mentioned	Yes

460 Jack Ryan, *Use of Force in Schools* (2007), available at [www.school-training.com/newsletter/articles/school-use-of-force-07.shtml](http://www.school-training.com/newsletter/articles/school-use-of-force-07.shtml).

461 Kenneth S. Trump, *Keeping the Peace: What you should know about staffing a school security department*, AM. SCHOOL BOARD J., Vol. 185, No. 3, pp. 31-35 (discusses debate regarding arming school police with guns); Willis, *Risk Control Bulletin: The Use of Pepper Spray in Schools* (2008), available at [http://www.willis.com/documents/publications/services/Pooling/Pooling\\_Bulletin\\_Pepper\\_Spray.pdf](http://www.willis.com/documents/publications/services/Pooling/Pooling_Bulletin_Pepper_Spray.pdf); National School Safety and Security Service, *Tasers & Police in Schools*, available at [www.schoolsecurity.org/trends/tasers/html](http://www.schoolsecurity.org/trends/tasers/html).

462 This list includes districts that post their policy manuals online.

<b>School District</b>	<b>Baton/Impact Weapon</b>	<b>Pepper Spray/Taser</b>	<b>Canines</b>	<b>Firearm</b>
East Central ISD	Yes	“Chemical agents” included in use of force continuum but not mentioned elsewhere	Not mentioned	No duty weapons issued, but officers authorized to carry weapons registered with chief. Unloaded shotguns may be carried in vehicles.
Edgewood ISD	Yes	Pepper Spray; officers also authorized to carry a “utility knife.”	Not mentioned	Handguns, no shotguns
Edinburg CISD	Refers to “authorized non-deadly weapons,” but does not identify them.	Not mentioned	Not mentioned	No
El Paso ISD	Yes	Pepper Spray	Yes	Yes
Houston ISD	Yes	Pepper Spray/fog only authorized for Special Response Team; pepper foam authorized for other officers. Tasers can only be used by specially trained personnel.	Yes	Yes
Humble ISD	Yes	Both	Not mentioned	Yes
Laredo ISD	Yes	No	Not mentioned	Handguns; shotguns/rifles carried by certified officers.
Lubbock-Cooper ISD	Yes	No	Not mentioned	Handguns; no shotguns.
Pasadena ISD	Yes	Pepper Spray	Yes	Handgun and patrol rifles
Wichita Falls ISD	Yes	Pepper Spray; also includes “bicycle” in intermediate weapons.	Not mentioned	Handguns authorized but not provided; patrol rifles provided.

Texas Applesseed was surprised by the number of districts that authorized use of pepper spray. Only three districts did not include pepper spray in their use of force continuum. This suggests that pepper spray is widely available for use by school police officers. Authorized use of Tasers is less common, with only three districts expressly authorizing use of Tasers as part of their use of force weaponry.

The data that Texas Appleseed received confirms that pepper spray and Tasers are being used on students, although the numbers do not suggest that this type of force is commonly used. Physical force is the most commonly used type of force for the four districts that provided data to Texas Appleseed.

### **A Sample: Use of Force in Reporting School Districts**

**Austin ISD's** police department provided the most complete use of force data of the four responding districts. The data covered a five-year period, from 2004 through 2008. During that five-year period, force was used 403 times. The type of force used ranged from "empty hand control" techniques to display of a firearm. Pepper spray was used 32 times, a baton or "impact weapon" was used eight, and a Taser was used seven times. A canine was used to deliver force four times. Officers displayed their weapons 34 times.

**Edinburg CISD** police department produced use of force data for a five-year period, from 2004 through 2008. During that five-year period, force was used 80 times. The type of force was noted as "physical," but no more information was given beyond that about the type of force used. Edinburg did provide detailed information about the reason for force being used. In the majority of cases, physical force was used to separate students who were fighting, or to prevent a fight.

**El Paso ISD** police department could only provide use of force data from 2006 through 2008. During that three-year period, the district recorded 36 incidents in which force was used. Pepper spray was only used once, as was a baton. The remaining incidents involved physical force, though the type is not specified. Thirty of these were in response to students who were "resisting arrest."

**Houston ISD** police department provided the least data, which is of grave concern given the size of the district and the size of its police force. The department could only provide one year's worth of data. During the 2007-08 school year, force was used on 46 students, though some incidents involved multiple types of force. Physical force included 25 uses of "open hand" tactics, seven uses of "closed hand" tactics, 27 "take downs," four "gang tacticals," and two "other weaponless." "Armed tactics" included eight displays of a baton, seven instances of a baton strike, and five instances involving the display of a firearm.

While these numbers are not high, Texas Applesseed has grave concerns about use of pepper spray or Tasers in any school setting. *Given the health risks posed to children by force tactics meant to subdue adult criminals, schools should very carefully consider, not only what warrants using these weapons, but whether it is ever appropriate to use them on students.* If schools believe that officers must carry pepper spray or Tasers, districts should adopt policies that severely restrict when these weapons may be used.

Concern for the risks posed to youth has caused some states to ban the use of pepper spray in juvenile correctional facilities.<sup>463</sup> In Texas, while pepper spray may be used in Texas Youth Commission facilities (housing the most serious felony juvenile offenders), administrative rules severely restrict its use. Use of pepper spray is even more severely restricted in county-level pre- and post-adjudication facilities.<sup>464</sup>

### **Disproportionate Use of Force on African American Students**

Of equal concern is the disproportionate use of force on minority—particularly African American—students. In two of the four sample reporting school districts, minority students are disproportionately represented in reports of force used on students by school police.

For example, in Austin ISD, of the 403 uses of force over the five-year period from 2004 through 2008, *36 percent involved African American students, though they only make up about 12 percent of the Austin ISD student body.* African American students were involved in 31 percent of the incidents involving pepper spray, 75 percent of the incidents involving a baton or impact weapon, and 29 percent of Taser incidents. Hispanic students, who represent approximately 58 percent of Austin ISD's student body, were involved in 65 percent of pepper spray incidents. Both African American and Hispanic students were overrepresented in incidents in which officers displayed their guns—at 24 percent and 65 percent, respectively. *In Houston ISD, 36 of the 46 students (78 percent) who were subjected to use of force in 2006-07 were African American, though they only comprised about 29 percent of the student body that year.*

### **Age of Students Restrained by Police Officers**

Each of the four school districts that provided data on use of force was able to break it down according to the age or the school level of the students who were restrained. While the majority of restraints were of middle or high school students, school police reported using force on young students.

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<sup>463</sup> TEXAS YOUTH COMMISSION, OFFICE OF THE INDEPENDENT OMBUDSMAN, *supra* note 403 (several states have banned use of pepper spray in juvenile facilities with New Jersey, Virginia and California among those banning it most recently).

<sup>464</sup> 37 TEX. ADMIN. CODE §97.23; 37 TEX. ADMIN. CODE §343.816.

## IN THEIR WORDS

A mother of an 11-year-old special education student describes what it was like to see her child handcuffed to a chair by a Texas school police officer:<sup>465</sup>

*Seeing my child handcuffed like an animal to a chair was wrong...His hand was red, and I could see the bleeding on the sides.*

The following charts document the number of use of force incidents, by age, for school districts supplying data for this study:

### Austin ISD Use of Force Incidents, 2004–2008

Age	Number of Incidents
10 or younger	8
11 to 14	184
15 to 17	156
18 or older	54

### Edinburg CISD Use of Force Incidents, 2004–2008

Age	Number of Incidents
13 or younger	7
14 to 16	45
17 or older	28

### El Paso ISD Use of Force Incidents, 2006–2008

School Level	Number of Incidents
Elementary	4
Middle	13
High	17

### Houston ISD Use of Force Incidents, 2007–2008

Age	Number of Incidents
13 or younger	9
14 to 16	29
17 or older	8

<sup>465</sup> WOAI, *Mom: 11-year-old found handcuffed and bleeding school classroom*, WOAI.COM, May 5, 2009.

Though the data reflects that force is rarely used on young students, it is used. What is lacking is any indication of the type of force that was used on young students. ***Because force is being used on young students by school police officers, stakeholders should be encouraged to consider safety issues inherent to use of force on younger children and the type of force that is appropriate.*** Texas Appleseed has been told of circumstances involving both physical restraint and handcuffing of young students. It is hard to imagine the circumstances that would warrant this practice.

### CASE STUDY

A mother of an eight-year-old autistic student described seeing her son handcuffed by a Texas school police officer after he had a tantrum at school:

*It felt like some kind of freak show...I could hear him begging. He was saying, "please take these off," and he was crying. When I saw him on the floor he was soaked in sweat...I heard the cop tell him, "Boy when you calm down, I'll take these off of you."<sup>466</sup>*

### Student Searches & Interrogation

Concerns have also been raised about circumstances and tactics surrounding police searches and interrogation of students at school—particularly given the legal ambiguities that exist when school administrators, who have greater leeway to search and question students, do so to assist police purposes.<sup>467</sup> In 1985, in *New Jersey v. T.L.O.*, the U.S. Supreme Court ruled that school staff do not have to meet the same “probable cause” standard that a police officer must meet before a student can be searched.<sup>468</sup> Similarly, when a child is questioned at school by an administrator, none of the protections that apply to a custodial interrogation by law enforcement apply during an interrogation at school.

Yet, because a police presence is common in schools, the lines can become blurred between administrators and staff acting in an educational context and their acting in a policing capacity.<sup>469</sup> Similarly, standards for searches and interrogations that would normally apply to law enforcement officers are blurred in the campus setting by the lower standard that exists for school administrators.<sup>470</sup> In multiple instances, students in Texas public schools were searched by a school official after the school police officer left the room, or by a school police officer at the *behest* of a school official.<sup>471</sup> Case law is not entirely consistent in determining which standard should apply—the lower standard articulated by the Supreme Court for school officials, or the higher “probable cause” standard that must be met by police officers.<sup>472</sup> This confusion in the law was created by the appearance of law enforcement as a regular presence on school campuses.<sup>473</sup>

466 KSAT, *Mother Finds Autistic Son in Handcuffs at School*, KSAT.COM, November 12, 2002.

467 See TORIN MONAHAN & RODOLFO D. TORRES, *SCHOOLS UNDER SURVEILLANCE* (2010).

468 *New Jersey v. TLO*, 469 U.S. 325 (1985).

469 See Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y. L. REV. 977, 982-86 (2010).

470 *Id.*

471 See *In re V.P.*, 55 S.W.3d 25 (Tex. App.—Austin 2001); *In re D.A.R.*, 73 S.W.3d 505 (Tex. App.—El Paso 2002); *Russell v. State*, 74 S.W.3d 887 (Tex. App.—Waco 2002).

472 See JIM WALSH ET AL., *THE EDUCATOR'S GUIDE TO TEXAS SCHOOL LAW* 361-67 (6th Ed. 2007).

473 Lisa H. Thureau & Johanna Wald, *supra* note 469, at 983.

## CASE STUDY

**Texas Zero Tolerance** describes an interrogation by police officers of two students:

*A...law enforcement officer appeared on...campus and questioned two girls in connection with a claim of criminal mischief. The officer came on campus without permission of school personnel. Both girls were questioned without the right to counsel and/or an advocate. No rights were read.*

*The officer requested school personnel remove both children from class and bring them into a room for interrogation. No school official was allowed to be present when the officer questioned the girls.*

*The officer claimed that one girl was responsible for driving a vehicle involved with the allegations while the other was a participant...As a matter of record, the vehicle in question was in the shop having repairs done and both girls were in the presence of adults at the time that the alleged incident occurred.*<sup>474</sup>

The behavior of school officials also seems to be increasingly influenced by the presence of police officers on campus. In other words, just as schools have adopted policies and procedures that seem more like those you would find in the penal code or a juvenile justice setting, the behavior of school administrators has, in some cases, increasingly begun to resemble police behavior. An example: the National Association of School Resource Officers strongly recommends that school principals take an interview and interrogation skills class offered by the organization.<sup>475</sup> Legal scholars have describe the “blurring of the lines” between law enforcement and school administrators’ duties:

*With the passage of the Gun Free School Zones Act of 1990, the merging of school administrators and police as forces of law and order within schools led to complex arrangements, including the delegation and division of authority and labor. The result has been confusion among police and administrators that continues to this day. This confusion focuses on where administrators’ disciplinary roles stop and police powers begin, what conduct should be handled exclusively by school disciplinarians, and what conduct becomes an arrestable offense. Students, parents, teachers, the courts, and legislatures experience this confusion.*<sup>476</sup>

Possibly the most extreme example of this “blurring of the lines” came in a case recently decided by the U.S. Supreme Court involving a 13-year-old girl who was strip searched by school officials in Arizona because they believed she might have prescription-strength ibuprofen in her possession—an act that may not have been law-breaking, but would have violated school rules. As absurd as it seems, the U.S. Supreme Court had to step in to rule that strip searching a 13-year-old child suspected of having ibuprofen was unconstitutional:

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474 Texas Zero Tolerance, Lewisville ISD May 20, 2010 Incident, *available at* [http://www.texaszerotolerance.com/reportedcases/Lewisville/rights\\_violation.html](http://www.texaszerotolerance.com/reportedcases/Lewisville/rights_violation.html).

475 Lisa H. Thureau & Johanna Wald, *supra* note 469, at 998.

476 *Id.* at 983.

*Savana's subjective expectation of privacy against such a search is inherent in her account of it as embarrassing, frightening, and humiliating. The reasonableness of her expectation...is indicated by the consistent experiences of other young people similarly searched, whose adolescent vulnerability intensifies the patent intrusiveness of the exposure...The common reaction of these adolescents simply registers the obviously different meaning of a search exposing the body from the experiences of nakedness or near undress in other school circumstances. Changing for gym is getting ready for play; exposing for a search is responding to an accusation reserved for suspected wrongdoers and fairly understood as so degrading that a number of communities have decided that strip searches in school are never reasonable and have banned them no matter what the facts may be.*<sup>477</sup>

Another example of school officials using police tactics involves a student who took home a school computer, only to find that he was being monitored by school officials through the computer's camera while he was at home.<sup>478</sup> Texas-based examples include a rural district that voted to allow teachers to carry concealed firearms into the classroom<sup>479</sup> and, more pertinent to the issues raised in this report, teachers' requests that school police issue tickets to students for misbehavior in class. ***Texas Appleseed also has heard from parents that school officials have not only questioned a student suspected of law-breaking behavior, but have asked him or her to sign written confessions that are then used in court proceedings against the student.*** This kind of behavior has become so common that youth advocates have begun arming students with "know your rights at school" brochures, in an effort to ensure that they do not unwittingly sign confessions that will later be used to convict them.<sup>480</sup> Searches, interrogations and intrusive monitoring—tools generally associated with policing—are increasingly being used by school administrators.

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477 *Safford v. Redding*, 129 S. Ct. 2633 (2009).

478 CNN.com, *FBI Investigates Allegations Webcam Used to Monitor Student*, February 22, 2010.

479 Editorial Board, *No Guns in the Classroom*, DALLAS MORNING NEWS, August 21, 2008 (discusses the decision by the school district in Harrold, Texas to allow teachers to carry concealed handguns into the classroom to protect against school violence).

480 NEW YORK CIVIL LIBERTIES UNION, KNOW YOUR RIGHTS WITH POLICE IN SCHOOLS, available at [http://www.nyclu.org/files/publications/nyclu\\_pub\\_kyr\\_police\\_in\\_schools.pdf](http://www.nyclu.org/files/publications/nyclu_pub_kyr_police_in_schools.pdf).

## CASE STUDY

A study of a Texas school district's policing practices included the following example of a student searched by a school administrator while a police officer waited:

*The officer stood by while administration conducted a search on three male students. As they conducted the search on the first student, an administrator reported smelling smoke coming off the student's clothing. After asking which one had been smoking, "Cedrick" said he had. The officer asked him if he had any cigarettes on him. "Cedrick" replied he had a piece of a cigarette on him. The officer conducted a search of "Cedrick's" clothing and found a ¼ piece of a Black Mall cigarette and a green lighter in his left front pant pocket.<sup>481</sup>*

What is perhaps most interesting about the relaxed standards that the Supreme Court set out in *T.L.O.* and its progeny is the assumption that a lower standard for searches and questioning of students by school officials should apply because schools administrators must be granted some leeway in order to "maintain order" in schools. In *T.L.O.*, the Supreme Court said:

*How, then, should we strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools... The school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search. Ordinarily, a search—even one that may permissibly be carried out without a warrant—must be based upon "probable cause" to believe that a violation of the law has occurred... However, "probable cause" is not an irreducible requirement of a valid search... We join the majority of courts that have examined this issue in concluding that the accommodation of privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.<sup>482</sup>*

The Court's finding rests on the assumption that law enforcement officers are not a regular presence on campus, and that the task of maintaining order will be left to administrators and teachers. When *T.L.O.* was decided, school administrators were in the position of having to "maintain order" without easy access to police officers. Times have changed, and the standard that was set out in *T.L.O.* should be revisited. In schools where law enforcement officers are a daily presence, there should be no ability to skirt the constitutional standards for searches and interrogations that would apply the moment the student steps foot out of the schoolhouse doors.

481 Aseltine, *supra* note 118, at 126.

482 *T.L.O.*, 469 U.S. at 340.

## **Conclusion**

Police practices that have migrated into school settings include use of force—even force deemed inappropriate in juvenile justice settings, as well search and interrogation. While extreme behavior may sometimes justify these tactics, more transparency is needed to assure that students are not placed at risk. It is critical that policing policies on use of force not only be publicly available, but be subject to public review and debate. It is important that school districts maintain detailed records on use of force, disaggregated by race, age, type of force, and circumstance necessitating a response with force. This data should be shared with parents, the public—and centrally collected and reviewed by the Texas Education Agency—and used in regular reviews of disciplinary policies to determine if schools are doing all they can to responsibly keep students safe in all circumstances.

If we assume that schools are unique places where relaxed legal standards should apply, students should benefit from this assumption in the form of well-trained school law enforcement officers whose tactics match the unique environment and vulnerable population with whom they interact. Rather than allowing school administrators to become more like police, we should be cognizant of ensuring that schools remain child-centered environments conducive to learning.





## THE END OF THE PIPELINE: JUVENILE DETENTION, TYC AND BEYOND

*These kids are not the dregs of society, these kids have been drug through society.*

– Teacher  
Texas Youth Commission

Texas Appleseed has issued a series of three reports examining the impact of a continuum of school discipline on students—beginning with in-school and out-of-school suspension and expulsion, through removal to alternative schools for students with behavior problems, and escalating to a trip to court resulting from a ticket or an arrest made at school. Our research found that, in the vast majority of cases, a school’s disciplinary decisions are subjective, not consequences mandated under the Texas Education Code. As a result, where a student attends school, and not the nature of the misbehavior, is the greater predictor of whether a student will be suspended, expelled or sent to court. Minority students and special education students are overrepresented in all forms of student discipline. Low-level violations are increasingly subject to overly harsh consequences that place students on a path to academic failure and court involvement.

Certainly, not all students progress all the way through the pipeline, from in-school suspension to court involvement, but too many do. Our interviews with juveniles incarcerated in Texas Youth Commission facilities provide a window into the far reaches of the “school-to-prison” pipeline.

### **Surveys & Focus Groups with TYC Youth**

In summer 2009, Texas Appleseed surveyed more than 330 youth in TYC facilities and conducted focus groups with youth and teachers at two of TYC’s secure facilities about these young people’s history of being disciplined at school prior to their being sent to TYC.

Appleseed also surveyed and spoke to youth who were not juvenile justice involved to gain a sense of their experiences with school discipline.<sup>483</sup>

While almost every student that Texas Appleseed surveyed acknowledged having been disciplined at school,<sup>484</sup> the youth at TYC had far more disciplinary encounters. For example:

- ***Sixty percent of surveyed TYC youth reported having gotten in trouble more than most kids at school.*** This contrasts sharply with the non-juvenile justice involved youth, 55 percent of whom reported the opposite.
- ***Most of the surveyed TYC youth reported having received repeated disciplinary or law enforcement referrals of almost every type:***
  - 56 percent reported 10 or more in-school suspensions, compared to 24 percent of non-TYC youth;
  - 46 percent reported 10 or more out-of-school suspensions, compared to 15 percent of non-TYC youth;
  - 73 percent reported having been sent to a Disciplinary Alternative Education Program, compared to 42 percent of non-TYC youth;
  - 52 percent reported at least one expulsion, compared to 34 percent of non-TYC youth;
  - 70 percent reported having received a ticket, compared to 35 percent of non-TYC youth; and
  - 47 percent reported having been arrested at school, compared to 34 percent of non-TYC youth.

Each one of these early disciplinary encounters presented an opportunity for meaningful, positive intervention, with a focus on the “teachable moment” and appropriate interventions for youth whose circumstances outside of school might be affecting their educational experience. Yet, few youth reported having had this type of intervention offered by teachers or administrators. One youth, who acknowledged having been in trouble at school repeatedly, spoke of problems at home and how this contributed to problems at school. The youth reported his parents were never home, and he had no supervision or structure when he was away from school. Yet, when Appleseed asked him whether any of his teachers tried to talk to him about problems at home, or why he was misbehaving in school so much, the youth said, “No, they never asked me about anything, until one day I came to school with a bruise on my hand. They asked me if my parents hurt me, if they caused the bruise. I told them my parents weren’t even home enough to hit me.” Even this response failed to elicit any action on the part of the school to look into whether the youth or his family might benefit from social service referrals.

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<sup>483</sup> Texas Appleseed surveyed youth in two of TYC’s secure facilities. Appleseed also surveyed youth participating in two summer programs—one for “at risk” youth, and another for youth who had shown leadership qualities and were chosen for the program based on those skills. Appleseed wanted to compare survey results of youth in TYC with those who had never been committed to TYC. Appleseed collected a total of 400 surveys.

<sup>484</sup> Only one student surveyed indicated never having been disciplined at school.

During our focus groups, youth reported feeling disconnected from school. They did not feel it was relevant to their lives, and many of them did not feel they were “smart” or that they belonged in school. One youth described feeling ostracized at school by teachers and other students as the result of a pregnancy. The youth described teachers who seemed to have given up on them and a lack of support from counselors who often “didn’t have time” to talk to students. Some of the youth described being labeled by teachers at a young age. One student remembered being in kindergarten and raising her hand when her teacher asked who wanted a free book. When the student complained after being passed over for the book, the teacher responded that the student “wouldn’t have a use for it.” Ironically, this student was recognized as being an achiever at TYC, and was taking college courses.

The youth we spoke to reported they were often in trouble in their mainstream schools, but some of the students were also bullied. In some cases, their response to bullying led to discipline. One student was bullied so often that she stopped going to school, and said the other students “treated me like I was an ‘it.’” In some cases, the students reported that they started fighting to defend themselves against bullies.

All of the youth we spoke to reported that the disciplinary methods—which included in-school and out-of-school suspension, alternative education programs, and ticketing—did not work to deter their misbehavior. When asked what might have helped, the students suggested having someone they felt cared about them would have been more important than the discipline that was imposed. One youth suggested that having more social workers at school would help—this was the same youth who reported that the problems that she had at home, coupled with problems at school, became so overwhelming that she finally ran away. Each of the youth we spoke to in the focus groups reported that the adults they most remembered at school were the few who expressed a desire to see them succeed, or who tried to help them in some way.

### **“Matt’s” Story**<sup>485</sup>

“Matt’s” first encounter with the juvenile justice system was the result of a problem at school. “Matt,” who had been in special education since kindergarten, was touch averse. His Behavioral Intervention Plan (BIP) noted this and required other methods of addressing “Matt” when his behavior was not compliant. One day, “Matt’s” teacher grabbed him by the shoulder when he was refusing to obey her, and “Matt”—who was 10 years old—kicked his teacher. Matt was arrested for assault on a public servant, a felony, and was placed on probation.

“Matt” had several probation violations for truancy after his first contact. His mother reported that when a teacher told him “not to come to school without his homework,” he took this quite literally. School officials would find him hiding in the school bathroom, and he would be disciplined or would be reported as having a truancy violation. Matt’s mother said, “He got in trouble so often he spent most of his time in in-school suspension. I would have to throw a fit to get his teachers to send class work for him to do.”

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485 Matt’s mother contacted Texas Appleseed and shared his story after her son was committed to TYC. She gave Appleseed permission to share her son’s story.

“Matt’s” mother eventually began to suspect that he might have mental health problems, and repeatedly asked the school to re-assess him. The school refused to do so. “I begged the school to help him, I begged his pediatrician to help him,” “Matt’s” mother reports. “The pediatrician prescribed medication for his ADHD, but this did nothing to address his mood swings.” “Matt” was not on Medicaid, and could not receive services from the local mental health authority (MHMR) without a referral.

“Matt’s” parents divorced when he was in junior high, and his mother noticed his behavior getting worse. She finally sent him to live with his father, who had moved to a neighboring town in another school district. When “Matt” started school in the new district, he was re-assessed for special education services. Finally, as a result of this assessment, the school referred him to the local MHMR. Unfortunately, just after he was referred, he was arrested for shoplifting and—because of his prior contact with the juvenile system—was committed to TYC. “Matt” spent a year in TYC and did not earn any high school class credits during that time. Today, “Matt” is 17. He is in 9th grade, but reads at a 3rd grade level. His mother hopes to find an alternative school where “Matt” can complete his high school education.

### **Education in Juvenile Facilities**

Once a youth becomes juvenile justice involved, the type and quality of programming provided has a substantial impact on whether that young person will experience a good outcome educationally and otherwise.<sup>486</sup> Ensuring youth remain engaged in education—or become re-engaged—should be a central piece of programming. Unfortunately, education is often substandard, or even non-existent, in secure juvenile facilities.<sup>487</sup> Commonly cited problems with educational programming in juvenile facilities include:<sup>488</sup>

- Mobility of youth within the system, which can disrupt educational programming.
- Delay in transfer of school records.
- Problems with special education services, or lack of services.
- Lack of collaboration between education and juvenile justice agencies.
- Lack of advocacy for youth’s educational needs.
- Lack of collaboration and communication between educational and corrections staff.
- Overuse of disciplinary confinement for youth with disabilities.
- Programs that fail to meet the standards set by the state for programming in mainstream schools.

486 JUVENILE JUSTICE EDUCATIONAL ENHANCEMENT PROGRAM, 2006 ANNUAL REPORT TO THE FLORIDA DEPARTMENT OF EDUCATION 55-64 (2006).

487 See PETER LEONE & LOIS WEINBERG, ADDRESSING THE UNMET EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN THE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS 7 (Center for Juvenile Justice Reform 2010).7; THE JUVENILE JUSTICE NO CHILD LEFT BEHIND COLLABORATION PROJECT, A NATIONAL EFFORT TO IMPROVE EDUCATION FOR INCARCERATED YOUTH FINAL REPORT 1-4 (2008).

488 PETER LEONE & LOIS WEINBERG, *supra* note 487, at 15-22.

In Texas, there are 50 county-run pre-adjudication facilities, where youth are held while charges are pending against them.<sup>489</sup> During 2008, there were 49,735 placements made in a pre-adjudication facility, and the average length of stay was 12.5 days.<sup>490</sup> There are 34 county-run post-adjudication facilities, where youth have an average length of stay of about four months.<sup>491</sup> The state-run TYC system has 10 secure facilities, and the average length of stay is about 17 months.<sup>492</sup>

In Texas, TEA oversees educational programming in all juvenile facilities. This includes pre- and post-adjudication facilities run by county juvenile boards, as well as TYC facilities. The Texas Administrative Code lays out the standards that apply to these facilities.<sup>493</sup> Under the Code, students in pre-adjudication facilities remain enrolled in the school district they were attending prior to placement in the facility; these districts are responsible for ensuring that students receive educational services while they are in the pre-adjudication facility.<sup>494</sup>

Educational services in post-adjudication facilities are generally provided by the school district in which the facility is located.<sup>495</sup> However, TYC opts to run its own educational programs, with principals and teachers hired directly by the agency.<sup>496</sup> TEA requires post-adjudication and TYC educational programs to:

- Administer a pre-assessment evaluating reading and math skills within 10 days of a student's enrollment in the district.
- Provide a curriculum that "enables the student the opportunity" to complete the minimum high school program.
- Ensure that the curriculum is aligned with the Texas Essential Knowledge and Skills (TEKS).
- Provide "students...identified as appropriate candidates" the opportunity and resources to prepare for the five general educational development examinations.
- Grant credits for completed courses.
- Provide a seven-hour school day that consists of at least 5.5 hours of required secondary curriculum.
- Provide at least 180 days of instruction for students; and
- Ensure students with disabilities are provided instructional days commensurate with those provided to students without disabilities.<sup>497</sup>

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489 Texas Juvenile Probation Commission, Registered Juvenile Facilities in Texas, *available at* [http://www.tjpc.state.tx.us/publications/other/searchfacilityregistry\\_results.asp?SelectedFacilityType=1&SortBy=CountyName](http://www.tjpc.state.tx.us/publications/other/searchfacilityregistry_results.asp?SelectedFacilityType=1&SortBy=CountyName).

490 TEXAS JUVENILE PROBATION COMMISSION, THE STATE OF JUVENILE PROBATION ACTIVITY IN TEXAS CALENDAR YEAR 2008 21 (2010).

491 Texas Juvenile Probation Commission, *supra* note 489; *Id.*

492 TEXAS YOUTH COMMISSION, STRATEGIC PLAN 2011-15 55, 92 (2010), *available at* [http://www.tyc.state.tx.us/about/TYC\\_Strategic\\_Plan\\_2011\\_to\\_2015.pdf](http://www.tyc.state.tx.us/about/TYC_Strategic_Plan_2011_to_2015.pdf).

493 19 TEX. ADMIN. CODE §89.1801.

494 *Id.*

495 The exceptions to this rule are Harris and Dallas Counties, which have created their own charter schools to serve youth in their detention facilities.

496 Texas Youth Commission, *Educational Programs*, *available at* [http://www.tyc.state.tx.us/programs/educ\\_intro.html](http://www.tyc.state.tx.us/programs/educ_intro.html).

497 19 TEX. ADMIN. CODE §89.1801.

Juvenile facilities are also held to standards required by the No Child Left Behind Act (NCLB).<sup>498</sup> NCLB requirements related to teacher qualifications, testing and accountability, and evidence-based practices apply to juvenile justice facilities.<sup>499</sup> However, a study published in 2008 found that few states' juvenile facilities were in compliance—or even attempting to comply—with NCLB mandates.<sup>500</sup> This is true despite federal funding, made available through NCLB, specifically for educational programs in juvenile facilities.<sup>501</sup>

In Texas, guidance from TEA indicates that, in order to receive funding through NCLB for programs in juvenile facilities, districts must:

- Ensure educational programs are coordinated with the student's home school, particularly for special education students;
- Notify the child's mainstream school if the youth is identified as special education eligible while at the facility;
- Provide transition assistance to help the youth stay in school, including coordination of services for the family, counseling, assistance in accessing drug and alcohol abuse prevention programs, tutoring, and family counseling;
- Provide support programs that encourage youth who dropped out of school prior to being committed to the juvenile facility to reenter school upon leaving the facility;
- Work to ensure that the correctional facility is staffed with teachers and other qualified staff who are trained to work with youth who have disabilities;
- Ensure that educational programs in the facility are related to assisting students to meet high academic achievement standards;
- Use, to the extent possible, technology to assist in coordinating educational programs between the facility and the community school; and
- Involve parents in efforts to improve the educational achievement of their children and to prevent further involvement of such children in delinquent activities.<sup>502</sup>

TEA also clarifies that while educational programs must measure “adequate yearly progress” (AYP) under NCLB, districts do not have to use the state-mandated testing instrument to do so.<sup>503</sup> The Texas Education Code exempts juvenile facilities from districts' accountability measures—where AYP is being measured for these facilities, it is being measured specifically for that facility and is not included in the district's test scores for accountability purposes.<sup>504</sup>

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498 See THE JUVENILE JUSTICE NO CHILD LEFT BEHIND COLLABORATION PROJECT, *supra* note 487, at 4.

499 *Id.*

500 *Id.*

501 Title I, Part D, Subpart 2 of NCLB allows the state to award subgrants to districts that operate programs in residential facilities for neglected or delinquent youth. No Child Left Behind Act, Title I, Part D, Subpart 2, 20 USC §§ 6451-56.

502 TEXAS EDUCATION AGENCY, TITLE I, PART D, SUBPART 2: PREVENTION AND INTERVENTION PROGRAMS FOR CHILDREN AND YOUTH WHO ARE NEGLECTED, DELINQUENT, OR AT-RISK (N OR D) 7(2006).

503 *Id.*

504 TEX. EDU. CODE §39.055.

Despite efforts by the federal government to attempt to improve the quality of juvenile justice educational programming through NCLB, there is very little information about the quality or type of programming provided to youth in Texas' county-run detention facilities. Texas Appleseed could not find any comprehensive review of education in juvenile detention facilities. However, during our interviews, we heard anecdotally of problems with these programs, including:

- Districts that send their worst teachers to teach in juvenile detention facilities.
- Districts that fail to enroll youth who are in juvenile detention facilities until they absolutely have to—which is generally 10 days into their stay at the facility. This practice results in dropout, because youth (who were simply counted as absent during that time period by their home schools) are so far behind in classes and/or credits by the time they are released that they lose hope of being able to catch up.
- Poor educational programming and lack of resources.

TYC has long had problems with educational programming in its facilities. In 2008, the Office of the Independent Ombudsman published a report detailing a range of problems, including:<sup>505</sup>

- Problems with educational assessments.
- Problems with consistency in curriculum and practice between facilities.
- Numerous problems with special education programming.
- Overuse of security as a disciplinary placement, which denied access to educational programming.

This report prompted a number of policy and programmatic changes within TYC, however recent visits to facilities revealed that many of the problems discussed in the report persist.<sup>506</sup>

### **A Promising Practice—Advocacy, Inc.'s Project for Dually Managed Youth**

Lack of access to advocates has been noted as a barrier to receiving adequate educational services for incarcerated youth.<sup>507</sup> One program in Texas is attempting to remove that barrier for some of the most vulnerable in the juvenile system: foster care youth who have been committed to TYC.

Youth in the care of Child Protective Services but committed to TYC often lack legal representation while caught in and between two systems. To address this problem, the Texas Supreme Court Permanent Judicial Commission for Children, Youth and Families, Rees-Jones Foundation, and the Meadows Foundation provided Advocacy, Inc. with grant support to provide legal representation to foster youth committed to TYC.

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505 MICHAEL P. KREZMIEN & OFFICE OF THE INDEPENDENT OMBUDSMAN FOR THE TEXAS YOUTH COMMISSION, *A REVIEW OF EDUCATION PROGRAMS FOR STUDENTS IN THE TEXAS YOUTH COMMISSION STATE SCHOOLS* (2008).

506 See Letter from Texas Appleseed et al, to Judy Preston, Chief, Special Litigation Section, United State Dept of Justice 11-14 (Aug. 24, 2010), *available at* [http://www.texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=441&Itemid=](http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=441&Itemid=).

507 PETER LEONE & LOIS WEINBERG, *supra* note 487, at 20.

The attorneys provide legal representation aimed at ensuring the safety, well being, health, mental health, and educational needs of youth are met. Frequently, the attorneys are involved in special education meetings and treatment team meetings to advocate for youth receiving the services they need to prepare for release and their future. Attorneys help ensure that the youth receive wrap-around transition planning so that when discharged, their placements are more likely to be successful and stable. States that have created similar programs, implemented on a larger scale, have seen a positive impact on outcomes for youth.<sup>508</sup>

Project attorneys not only advocate for better educational services for youth who are in TYC facilities, they have worked with TYC to ensure that educational surrogates are always appointed for youth whose parents are not able to make educational decisions. They also have worked to ensure that youth transferred to county jails for misbehavior at TYC continue to receive educational services from the local school district. Once a young person is released from TYC, attorneys work to ensure his or her smooth transition into the mainstream school. Here is just one example from this successful program:

*“B.W.” was a 17-year-old foster youth with mental illness and borderline mental retardation who was discharged from a TYC facility without having received any transitional educational services. He wanted to apply for a job, but was not able to fill out a job application. Advocacy, Inc. filed a complaint with the Texas Education Agency and secured additional “compensatory” educational services for “B.W.”—paid for by TYC—in his new local school district to make up for what he did not receive in TYC. TYC also agreed to pay for someone to help him apply for jobs and learn on-the-job skills. “B.W.” is currently working in his first job as a park ranger intern at a state park.*

### **Transition Back into Mainstream Schools**

Transition back into mainstream schools after time in a secure facility is also crucial to a youth’s success. Unfortunately, studies indicate that few youth return to school after incarceration.<sup>509</sup> More than half of the youth released from custody do not return to school, and only about 21 percent stay in school more than six months.<sup>510</sup> Yet, returning to school significantly reduces recidivism.<sup>511</sup> If youth become engaged in school immediately after returning to the community, the likelihood that they will stay in school increases.<sup>512</sup>

Research has also tied the importance of quality educational programming in secure facilities to a student’s successful transition back into mainstream schools upon release. Youth who experience academic achievement during confinement tend to be more likely to return to school upon release.<sup>513</sup>

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508 PETER LEONE & LOIS WEINBERG, *supra* note 487, at 43-45.

509 JUVENILE JUSTICE EDUCATIONAL ENHANCEMENT PROGRAM, 2008-2009 ANNUAL REPORT TO THE FLORIDA DEPARTMENT OF EDUCATION 59, 61 (2009); *see also* Pat Arthur, Issues Faced by Juveniles Leaving Custody: Breaking Down the Barriers (2007) (powerpoint presentation), available at [www.youthlaw.org/.../Issues\\_Faced\\_by\\_Juveniles\\_Leaving\\_Custody.ppt](http://www.youthlaw.org/.../Issues_Faced_by_Juveniles_Leaving_Custody.ppt).

510 JUVENILE JUSTICE EDUCATIONAL ENHANCEMENT PROGRAM, *supra* note 509, at 59, 61.

511 *Id.*

512 *Id.*

513 *Id.* at 61.

Stakeholders have identified several common barriers to smooth transition back into mainstream schools:<sup>514</sup>

- Issues related to a student’s special education needs are not always addressed;
- Schools are often reluctant to welcome youth back;
- Release from custody may occur mid-semester;
- Poor coordination between systems and a lack of clarity concerning roles;
- Some schools may not accept credits earned in juvenile facilities.

In Texas, advocates and juvenile probation officers reported that the school’s reluctance to readmit youth released from TYC is one of the biggest obstacles they often see in reintegrating these young people into the mainstream educational system. School districts often attempt to place the youth in a Disciplinary Alternative Education Program, even after the youth has been deemed “rehabilitated” by the state. This makes it more difficult for youth to gain access to quality educational services and may stigmatize youth as they are attempting to transition back into their communities. DAEPs—as Texas Appleseed discussed in its first two reports—often do not have the resources needed to provide quality programming, and many are not able to appropriately serve special education students. Schools also may try to expel a student and place him or her in the Juvenile Justice Alternative Education Program (JJAEP).

Unfortunately, Chapter 37 of the Texas Education Code does allow, and in some cases requires, school districts to expel or place some returning youth in a DAEP or JJAEP under certain circumstances. For example:

- Youth who were adjudicated delinquent for a violent felony offenses may be expelled if the board determines the youth’s presence threatens the safety of other students, will be detrimental to the educational process, or is not in the best interest of the district’s students. These students may be placed in a DAEP or JJAEP until they graduate.<sup>515</sup>
- Students who are required to register as a sex offender, and are under court supervision, are required to be placed in either the DAEP or JJAEP.<sup>516</sup>
- Students who are required to register as a sex offender, but are not under court supervision, must be placed in a DAEP or JJAEP if the school board determines the student is a threat to the safety of other students or teachers, or if the student’s return to the mainstream campus will be detrimental to the educational process, or it is not in the best interests of the district’s students.<sup>517</sup>

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514 JUVENILE JUSTICE EDUCATIONAL ENHANCEMENT PROGRAM, *supra* note 509; Pat Arthur, *supra* note 509; Jessica Feierman et al, *The School-to-Prison Pipeline...and Back: Obstacles and Remedies for the Re-Enrollment of Adjudicated Youth*, 54 N.Y. L. SCH. L. REV. 1115, 1116-17 (2010); PETER LEONE & LOIS WEINBERG, *supra* note 487, at 18.

515 TEX. EDU. CODE §37.0081(a)(1)(B).

516 TEX. EDU. CODE §37.304.

517 TEX. EDU. CODE §37.305.

Transferring a young person from juvenile detention or TYC to a DAEP or JJAEP before allowing them to return to their home campus raises concerns about the impact of these frequent moves. For children and youth in general, frequent changes in school are often associated with dropout and academic failure.<sup>518</sup>

## **Conclusion**

Texas Appleseed's research reveals the risks associated with continuing to use a disciplinary system that, in too many cases, does not address either school safety issues or children's behavioral needs.

Rather than using children's earliest misbehavior as a "teachable moment" and an opportunity to assess and employ early interventions and child and family supports to keep the child engaged positively in school, all too often the response is to escalate the severity of discipline and to simply keep moving youth further down the "pipeline." What begins as low-level, relatively common childhood misbehavior—or perhaps behavior related to a disability, trauma or problems in the youth's home—is characterized at school, by administrators or school police officers, as a criminal offense, and the youth is labeled "delinquent." The "teachable moment" is lost, along with the opportunity to connect the child with meaningful interventions, and the child's likelihood of academic failure escalates drastically. One study describes this destructive cycle:

*At their worst, schools and classrooms contribute to negative outcomes...For example, poorly managed schools are risk-prone contexts where children and youth with behavioral problems experience punitive reactions from teachers and peers, where antisocial behavior is reinforced by inappropriate school responses, and where students at risk for behavioral problems can get caught up in a self-sustaining cycle of classroom disruption and negative consequences... This cycle includes academic failure, because teachers ignore or are unable to address the academic needs of students with behavioral problems, and school disorder, because students react to poor conditions for learning with higher levels of negative risk-taking behaviors and disengagement from school.<sup>519</sup>*

School disciplinary policies, as they exist today, were put into place as a response to exaggerated and unsubstantiated fears of juvenile crime. Though the goal of Texas' "zero tolerance" statutes was to make schools safer places and to keep youth in school, Texas Appleseed's research and reporting has documented the systemic failure of school disciplinary policies to meet these objectives in many Texas school districts. What is needed are early interventions and research-based programming to meaningfully address behavior problems before they escalate into major disciplinary challenges that can undermine school climate, feed school disorder, and push students out of school and into dropout or the juvenile justice system.

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518 PETER LEONE & LOIS WEINBERG, *supra* note 487, at 16.

519 PETER LEONE & LOIS WEINBERG, ADDRESSING THE UNMET EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN THE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS 2 (Center for Juvenile Justice Reform 2010).





## POLICY RECOMMENDATIONS

### School-wide Positive Behavior Supports (PBS)

**1) Texas schools should adopt school-wide Positive Behavior Supports (PBS) proven to reduce student misbehavior and keep schools safer—resulting in fewer disciplinary referrals and reducing the need for law enforcement interventions.<sup>520</sup>**

When implemented with integrity, PBS has been proven effective in addressing behavioral issues in a proactive, positive way, seeing disciplinary interventions as an opportunity for a “teachable moment.” It has also been shown to reduce overrepresentation of minority and special education students in disciplinary referrals.

**2) When schools adopt PBS, they must include school police in training and use PBS as a framework for evaluating and fine-tuning campus policing policies.**

Failure to do so results in a potential inconsistency and conflict between school-based law enforcement methods and procedures and PBS.

### Training

**3) School-based law enforcement personnel should be required to receive post-certification training in issues specific to youth, including:**

- ♦ De-escalation and mediation techniques
- ♦ Soft-hand restraint techniques to be used when force cannot be avoided
- ♦ Signs and symptoms of trauma, abuse and neglect in children and youth, and appropriate responses
- ♦ Signs and symptoms of mental illness in children and youth, and appropriate responses

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<sup>520</sup> For more information about schoolwide PBS, see TEXAS APPLESEED, TEXAS’ SCHOOL TO PRISON PIPELINE: DROPOUT TO INCARCERATION 79-96; TEXAS APPLESEED, TEXAS’ SCHOOL TO PRISON PIPELINE: SCHOOL EXPULSION 22-23 (2010).

- ♦ Manifestations of other disabilities, such as autism, and appropriate responses
- ♦ Adolescent development
- ♦ Juvenile law
- ♦ Special education and applicable general education law

## Ticketing

### **4) The Education Code should be amended to clearly prohibit school districts from receiving any revenue from Class C ticketing for truancy or any other offense.**

Chapter 25 of the Texas Education Code currently requires fines collected in Class C “parent contributing to nonattendance” cases to be split between the school district issuing the ticket and the justice or municipal court. During our research, Texas Appleseed was told that this type of arrangement may exist for other Class C misdemeanor fines associated with school-based ticketing. The Education Code should be amended to prohibit the practice.

### **5) Chapter 37 of the Education Code should be amended to eliminate Disruption of Class and Disruption of Transportation as penal code offenses.**

These low-level offenses are channeling students into the criminal court system where they may face fines and possible jail time. This is not an effective method of encouraging students to behave, and places students on a path toward academic failure and further juvenile or adult criminal justice involvement.

### **6) Chapter 37 of the Education Code should be amended to prohibit ticketing of students under the age of 14.**

Young children are simply not equipped to understand a Class C misdemeanor ticket as a meaningful consequence of misbehavior, and the consequences of court involvement on academic success are too great to allow this practice to continue.

### **7) Chapter 37 of the Education Code should be amended to specify that ticketing of older students should be a last resort.**

Ticketing and arrest should be avoided in situations involving minor misbehavior (including a school yard fight that does not result in serious injury) that, in another era, would have simply resulted in a trip to the principal’s office. Offenses that should be targeted with this approach include Disorderly Conduct, campus-based curfew violations and trespass. The Code should require a graduated approach to ticketing whereby school-based law enforcement would warn students the first time they commit an offense, refer them to services or require in-school community service upon the second offense, and ticket *no sooner than the third offense*. School districts must be encouraged to find meaningful alternatives to using ticketing as a method of disciplining students for low-level misbehavior.

**8) Chapter 25 of the Education Code should be amended to eliminate Failure to Attend School as a criminal offense.**

The elements of this offense are identical to truancy, a CINS (Conduct In Need of Supervision) offense that is more appropriately handled by giving students and families access to services and resources that will assist in getting the student back on a path toward school success. Fining students for failing to go to school is an ineffective solution that places students on a path with a higher likelihood of academic failure.

**9) Schools should create or expand effective prevention and intervention programs, such as peer mediation and restorative justice practices, as alternatives to ticketing.**

These practices could be part of a comprehensive graduated sanctions approach, with school-based law enforcement referring youth to these programs rather than issuing a ticket.

**Arrest**

**10) Chapter 37 of the Education Code should be amended to specify that arrest of students for low-level, school-based misbehavior should be a last resort, and used only for behavior that includes weapons or threatens the safety of the campus, students or faculty.**

Steps should be taken to address behavior in a way that is proactive and positive rather than reactive and negative, given the extreme consequences that arrest can have on a young person's life.

**11) Juvenile justice stakeholders should determine what percentage of their referrals result from school-based arrests. If they make up a significant portion of referrals, juvenile justice stakeholders—including the local juvenile board and probation officials—should work with education stakeholders to create a plan to reduce school-based referrals.**

The consequences of a referral to the juvenile justice system are too serious to ignore the increasing percentage of youth referred by school-based law enforcement for behavior that in other settings might not merit a referral. Juvenile justice and education stakeholders must come together to explore solutions.

**Use of Force**

**12) Pepper spray and Tasers should be prohibited for use on students by school-based law enforcement, except in situations involving firearms or other weapons capable of causing serious bodily harm.**

These uses of force carry great risk for harm to youth, and should not be available to break up fights between students or to restore order in the absence of a threat of bodily harm to students or school staff.

**13) Prone restraints should be prohibited for use on students as a restraint technique by school-based law enforcement.**

This type of physical restraint carries great risk of harm to youth, has been prohibited in other institutional settings where youth are treated, and should not be used on students in Texas' schools.

Educational Programming & Juvenile Facilities

**14) The State should commission a comprehensive study on the quality of educational programming, including special education services, in juvenile detention facilities. The study should consider whether the programs comply with current law, should identify best practices, and determine where existing programs fall short.**

**15) Chapter 37 of the Texas Education Code should be amended to require the transition of all students, released from juvenile detention or TYC, back to their home school.**

Once a youth has been deemed rehabilitated, he or she should be allowed to reenter the mainstream school system, and not tracked to a DAEP or JJAEP.

**16) When making decisions about closure or location of new facilities, TYC should consider the availability of qualified administrative, teaching and special education staff for educational programs.**

Transparency

**17) School district police departments should be required to compile a searchable database that includes the number of citations issued, custodial arrests, and use of force incidents by school district officers or security guards on each campus.**

The database must be able to generate reports that will disaggregate data according to:

- ♦ Whether the subject of the citation, arrest, or use of force was a student or non-student.
- ♦ The campus where the incident occurred.
- ♦ The age, gender, and race/ethnicity of the subject of the citation, arrest, or use of force.
- ♦ Special education status, if the subject was a student.
- ♦ Nature of the offense.
- ♦ The type of force or restraint used, and the level of resistance (compliant, passive resistant, active resistant, aggressive) posed by the subject that justified the force employed by the officer.
- ♦ The name of the police officer who issued the citation, made the arrest, or used force.

**18) Section 37.109 of the Texas Education Code, which requires a “School Safety and Security Committee” in every school district, should be amended to require inclusion of a representative from a parent organization or a parent, if there is no parent organization in the district; a representative from a student leadership group, or a student; a representative from an organization that advocates for youth who have disabilities; representatives from local social service agencies; and a representative from the local juvenile probation department. In addition to the existing information that the committee is required to develop and review, the statute should be amended to require that the committee:**

- ♦ Review and assist in determining the appropriate role for school district police officers.
- ♦ Participate with the school district’s police department in reviewing ticketing, arrest and use of force and restraint data and developing the school district law enforcement’s annual report.
- ♦ If the district does not have a stand-alone police department, the committee should participate in reviewing and, if need be, amending the MOU with local law enforcement to reflect the data collection and reporting, training and transparency practices discussed in other recommendations.
- ♦ Work with school law enforcement to develop an appropriate use of force continuum that will be posted for public comment on the district’s website before being considered by the school board.
- ♦ Review school law enforcement’s use of force reports each school year, and determine whether the way force is being used by school law enforcement is appropriate.
- ♦ Periodically review ticketing and arrest data, and make recommendations to the district regarding preventative methods (including additional training for school law enforcement) that could reduce the number of youth referred to courts or the juvenile system.

**19) School district police departments should compile an annual report for the school board, made available to the public through the district’s website, that includes an analysis of ticketing, arrest and use of force data. Annual reports should include:**

- ♦ The number of minority students (district-wide and by campus) who were ticketed, arrested or the subject of a use of force action, in relation to their percentage in the student body—and, if they are overrepresented, what measures have been identified by the Department, ISD police department and district and campus administrators to address any overrepresentation. The report should include any complaints or internal findings of racial profiling and corrective measures taken.
- ♦ The number of special education students ticketed, arrested, or who were the subject of a use of force district-wide and by school campus (in relation to their percentage in the student body) and, if they are overrepresented, what measures have been identified by the ISD police department, district and campus administrators, and special education staff to address those issues, with particular attention paid to whether a gap in resources, supports or services is related to the overrepresentation.

- ♦ An analysis of the number and rate of ticketing, arrests and use of force incidents by campus; a discussion of how the department can reduce such incidents in the future; and an assessment of whether school district police department resources are being appropriately utilized.
- ♦ How and with what frequency the ISD police department has used its data for the reporting year to inform its practices—including officer training, student mentoring, and teaching or providing information resources to students—on specific campuses and district-wide.
- ♦ How campus administrators have used police department data to inform and design preventative measures, disciplinary practices, and services to students to assist in addressing behavioral issues, and collaborative efforts between campus administrators and the school district police department to address issues revealed by their analysis of the data.
- ♦ An analysis of the types of offenses being committed broken down by campus, the places on the campus they are being committed, who (adults or students) is committing crimes by type of crime, the time of day when crimes are most likely to be committed, and any preventive measures taken to make particular areas of campus less prone to crime.

**20) For districts that contract with local law enforcement agencies for School Resource Officers, the district's Memorandum of Understanding (MOU) with the law enforcement agency should require the same data collection, analysis and reporting outlined above. The MOU also should include a schedule for the routine circulation of this information to inform their policies and practices around school discipline and preventative approaches to school crime.**

**21) Policymakers should determine an appropriate method of statewide collection and reporting of ticketing and arrest data for public school campuses to better inform educational and juvenile justice policy. Two options:**

- ♦ TEA could modify the PEIMS database to require school districts to report data related to student ticketing and arrest, and include it as part of the disciplinary data TEA posts. The data should be disaggregated by race/ethnicity, gender, age and special education status; or
- ♦ TJPC could modify the new Juvenile Case Management System that will be utilized by juvenile probation departments to allow for the collection of this data.

**22) Texas Education Code §37.0021, which requires reporting of restraint and seclusion, should be amended to require reporting for all students, not just special education students.**

Texas is currently under-reporting restraint and seclusion. To truly understand the extent to which these practices are used, we must require reporting for all students.

**23) Section 37.0021 should also be amended so that school-based law enforcement are no longer exempt from the reporting requirements for restraint and seclusion.**

There is no sound policy reason for excluding school-based law enforcement from reporting. The failure to include them encourages using school law enforcement to circumvent reporting requirements.

**24) School district police departments should be required to post unredacted copies of their policy manuals on the district's website.**

Parents and community members must be able to access information about directives determining how school law enforcement interacts with youth on school campuses.



# APPENDIX



## METHODOLOGY—DATA COLLECTION & ANALYSIS

For purposes of this study, Texas Appleseed contacted more than 900 municipal courts and more than 800 Justice of the Peace (JP) courts (via snail mail and/or email) requesting the following data on Class C misdemeanor ticketing of juveniles in Texas. Contact information for each of the state's lower courts was obtained from the Texas Office of Court Administration website: <http://dm.courts.state.tx.us/OCA/DirectorySearch.aspx>.

**Aggregate juvenile ticketing data for all years from 2001 through 2007 broken down according to the following:**

- Counts of juvenile cases broken down by offense type
- Counts of cases where a school district was ordered to place a juvenile in a Disciplinary Alternative Education Program (DAEP) or Juvenile Justice Alternative Education Program (JJAEP)

**Information on juvenile cases for all years from 2001 through 2007 by:**

- Reason for ticket/type of offense
- Location of the citation
- Characteristics of the juvenile:
  - ♦ Age (or date of birth)
  - ♦ Race/ethnicity
  - ♦ Gender
  - ♦ Student's school
- Court's ruling (dismissed, guilty, not guilty, deferment, failure to appear)
  - ♦ If deferred, the terms of the deferment
  - ♦ If deferral period has ended, the outcome of the deferment
  - ♦ Court fees and/or fine(s) charged
- Case referred to juvenile court (yes/no)

**Financial information on juvenile ticketing to include:**

- Total funds received from juvenile tickets for years 2001 through 2007
- Total revenues received from juvenile tickets for years 2001 through 2007, grouped as follows:

**Group 1:** Daytime curfew violations, Disruption of Class, Disorderly Conduct - fighting, Disorderly Conduct - abusive language, Gang-related behavior

**Group 2:** Possession of drug paraphernalia, tobacco, possession of alcohol

**Group 3:** All other offenses (e.g., nighttime curfew, gambling, etc.)

**General court information including:**

- Current schedule of fees charged per type of juvenile offense
- Current schedule of recommended deferment terms per type of juvenile offense

From this initial request, Texas Appleseed received data from Caddo Mills Municipal Court, Huntsville Municipal Court, Lewisville/Flower Mound Municipal Court, Midland Municipal Court, City of Somerville Municipal Court, South Lake Municipal Court, and Tioga Municipal Court.

Additional municipal and JP courts informed us that they did not have any juvenile cases on their dockets, that they did not wish to share their juvenile data with Texas Appleseed, or that this data was not computerized or in another easily accessible form.

The detail and specificity of the data we received varied from court to court. In some cases, aggregated data was received in electronic form; in others, Texas Appleseed received hardcopies of court dockets that required Appleseed staff to manually input the data into usable spreadsheets.

Texas Appleseed received a list of school districts that had commissioned their own police department from the Texas Commission on Law Enforcement Officer Standards and Education. Based on this list, Texas Appleseed requested the following data from all school districts identified as having their own police department:

**Data on school-based citations including:**

- Number (count) of students receiving a ticket for conduct at school from ISD police department officers for all school years from 2001-2002 through 2006-2007 by:
  - ♦ Grade level
  - ♦ Race/ethnicity, grouped into the following racial/ethnic groups: White, Black, Hispanic/Latino, Other
  - ♦ Gender
  - ♦ Special education status
  - ♦ Eligibility for free and/or reduced lunch
- Student's offense/reason for being given a ticket

**Data on school-based arrests including:**

- Number (count) of students receiving a ticket for conduct at school from ISD police department officers for all school years from 2001-2002 through 2006-2007 by:
  - ♦ Grade level
  - ♦ Race/ethnicity, grouped into the following racial/ethnic groups:  
White, Black, Hispanic/Latino, Other
  - ♦ Gender
  - ♦ Special education status
  - ♦ Eligibility for free and/or reduced lunch
- Reason for arrest

**Use of force policies & incidents including:**

- ISD police department operations manual, general orders manual, or handbook for ISD police officers including the use of force policy.
- Any existing records on the use of force by ISD police for school years 2006-07 and 2007-08 disaggregated by the following:
  - ♦ Type of force used
  - ♦ Reason for use of force
  - ♦ Campus/location where use of force took place
  - ♦ The year in which the incident occurred
  - ♦ Student's age, grade, gender, race/ethnicity and special education status

**School ISD police department information including:**

- ISD police department staffing for each of the school years from 2001-2002 through 2006-2007 by:
  - ♦ Count of police officers employed by the school district
  - ♦ Count of non-police security officers employed by the school district
  - ♦ Count of police officers contracted through outside law enforcement agencies (i.e., local police department, sheriffs, etc.)
  - ♦ Count of ISD police department support staff employed by school district
  - ♦ Information on ISD police department finances for each of the school years between 2001-2002 and 2006-2007
- Total revenues of the ISD police department
- Total expenditures of the ISD police department

The following chart lists each of the ISD police departments furnishing all or part of the requested data to Texas Appleseed:

## Data Received from Texas ISD Police Departments

Type of Data				Student Characteristics			
Data Source	Arrest	Ticketing	Use of Force	Special Ed Status	Race/Ethnicity	Gender	Age or Grade
Alief ISD PD	✓	✓	No Data	No Data	No Data	No Data	✓
Austin ISD PD	✓	✓	✓	No Data	✓	✓	✓
Brownsville ISD PD	✓	No Data	No Data	No Data	No Data	No Data	No Data
Castleberry ISD PD	✓	✓	No Data	No Data	✓	✓	✓
Corpus Christi ISD PD	✓	✓	No Data	No Data	✓	No Data	No Data
Dallas ISD PD	No Data	✓	No Data	No Data	✓	✓	✓
East Central ISD PD	✓	✓	No Data	No Data	✓	✓	✓
Edgewood ISD PD	✓	✓	No Data	No Data	✓	✓	✓
El Paso ISD PD	✓	✓	✓	No Data	✓	✓	✓
Galveston ISD PD	No Data	✓	No Data	No Data	No Data	No Data	✓
Houston ISD PD	No Data	✓	✓	No Data	No Data	No Data	✓
Humble ISD PD	✓	✓	No Data	No Data	✓	No Data	✓
Katy ISD PD	✓	No Data	No Data	No Data	✓	✓	✓
Lubbock—Cooper ISD PD	✓	✓	✓	No Data	✓	✓	✓
McAllen ISD PD	✓	No Data	No Data	No Data	✓	✓	✓
Midland ISD PD	✓	No Data	No Data	✓	✓	✓	✓
Pasadena ISD PD	✓	✓	No Data	No Data	✓	✓	✓
San Angelo ISD PD	✓	✓	No Data	✓	✓	✓	✓
San Antonio ISD PD	✓	✓	No Data	No Data	✓	✓	No Data
Spring Branch ISD PD	✓	✓	No Data	No Data	✓	✓	✓
United ISD PD	✓	✓	No Data	No Data	No Data	✓	✓
Waco ISD PD	No Data	✓	No Data	No Data	No Data	No Data	No Data
White Settlement ISD PD	✓	✓	No Data	No Data	✓	✓	✓
Wichita Falls ISD PD	✓	✓	No Data	No Data	No Data	No Data	No Data

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School district specific data used in this report, such as student enrollment figures, were obtained from the Texas Education Agency’s (TEA) Public Education Information Management System (PEIMS) unless otherwise noted.

## **Organizing the Data**

Data received from the lower courts and the ISD police departments varied in quantity and quality. Data inconsistencies between (or within) courts or school districts have been noted throughout the report’s footnotes as appropriate.

Texas Applesseed adopted several strategies in order to organize the diverse forms of data we received from courts and ISD police departments across Texas. The first strategy was to create a series of “offense groups.” Two types of offenses were left ungrouped: daytime curfew and fraternities, sororities, secret societies, and gangs. When referenced in the report, these categories are referred to as “Daytime Curfew” and “Gangs.”

All types of disorderly conduct charges—fighting, abusive language, noxious odor, etc.—were collapsed into a larger “Disorderly Conduct” category. Disruption of Classes, Disruption of Transportation, and disruption of school activities were collapsed into a larger “Disruption” or “Disruption of Class or Transportation” category.

As of 2007, school districts are not legally authorized to charge students with criminal offenses for violating local Codes of Student Conduct; however, some school districts continue to do so. In districts where this is the case, such offenses are referenced as “Local Code of Conduct.” All remaining offenses for which a juvenile was ticketed or arrested were grouped into a larger category of offenses. The following chart includes the category name and the most common offenses included within the category:

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Category Name	Offenses Involving Violence or Weapons	Offenses Involving Drugs or Alcohol	Property	All Other
Common Offenses Included in Category	Aggravated Assault Simple Assault Sexual Assault Terroristic Threat Robbery Harassment Firearms, Dangerous Weapon (Il)legal Knife Bomb Threat	Alcohol consumption, sales or possession Minor In Possession of Alcohol Public Intoxication Possession of Drug Paraphernalia Possession of Marijuana Possession of a Dangerous Drug or Controlled Substance Delivery or Sales of Illegal Drug	Theft Criminal Mischief Graffiti Burglary of a building, coin machine or vehicle Vandalism	Gambling Nighttime Curfew Panhandling Trespassing Loitering Fireworks Littering Fraud Evasion Obstruction Failure to Identify Tampering with Evidence False reports/ Abuse of 911 Resisting Arrest Offense not specified

One challenge with data received from the JP or municipal courts is that it is not always possible to determine if the citation that brought a juvenile to court was issued at school and/or by a school police officer. There are, however, two exceptions: disruption citations and tickets issued for gang activity. Both categories of tickets are school-specific and would be issued in a school rather than in a community context.

*Information on Calculations and Disproportionate Representation Percentages*

Depending on the detail of the data furnished by the ISD police department, staff counts may include the total number of police officers, the total number of non-police security officers, and the total number of ISD PD support staff. The following formula was used to calculate the growth in staff size:

$$[(\text{Staff size at Time 1} - \text{Staff Size at Time 2}) / \text{Staff Size at Time 1}] \times 100$$

A similar formula was used to calculate growth in ISD PD budgets:

$$[(\text{ISD PD Budget at Time 1} - \text{ISD PD Budget at Time 2}) / \text{ISD PD Budget at Time 1}] \times 100$$

This report highlights districts which appear to be ticketing or arresting African American or Hispanic students at disproportionate rates. School districts included on this list are school districts in which the percentage of ticketing (or arrest) by race/ethnicity was higher than the specified population's enrollment percentage, i.e., African Americans comprise a higher percentage of those ticketed than their representation in the total student population of a particular school district. In previous Appleseed school-to-prison pipeline reports, we have been able to perform statistical tests of overrepresentation. Because of the variation in quality and quantity of data received from Texas' lower courts and ISD police departments, such statistical tests were not feasible for this report. However, it is possible from available data to identify trends.

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## THE GENESIS OF THE MYTH OF THE BLACKBOARD JUNGLE

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*This is the garbage can of the educational system...And you want to know what our job is? Our job is to sit on the lid of the garbage can and see that none of the filth overflows into the streets. That's our job... We're just combinations of garbage men and cops, that's all.*

—Evan Hunter

The Blackboard Jungle 86-7 (1953)

Any level of violence in our public schools should concern all of us, and should not be tolerated. However, the debate around school crime has left many with the impression that our schools are exceedingly dangerous places. Across the nation, schools have responded by creating a police force with budgets and manpower rivaling small city police departments. Yet, data consistently shows America's schools to be safe places—safer, in fact, than the communities surrounding them. Why, then, has there been so much focus and debate over what many claim to be a “crisis” of school crime and violence?

Some claim that this debate and a “zero tolerance” response to school discipline is the result of the fears provoked by the 1999 Columbine High School shootings in Colorado.<sup>1</sup> One year after Columbine, the Pew Research Center conducted a poll showing that 71 percent of parents felt the Columbine shooting had changed their view of how safe their child was at school; fewer than half those parents felt that their child was “very safe” at school, and only 50 percent described their child as “somewhat safe.”<sup>2</sup> Yet, school districts in Texas began to beef up school law enforcement *well before* Columbine took place.

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1 DEWEY G. CORNELL, *SCHOOL VIOLENCE: FEARS VERSUS FACTS* viii (2006).

2 *Id.* at 27.

Others blame it on media hype surrounding juvenile crime and rare acts of school violence.<sup>3</sup> For example, though the homicide rate dropped by 13 percent between 1990 and 1995, the coverage of homicides on evening news programs increased by 240 percent.<sup>4</sup> A study of local television news broadcasts conducted in 2005 showed that the proportion of stories in newscasts about juvenile homicides was 500 times higher than the proportion of homicide arrests for juveniles or adults.<sup>5</sup>

Still others blame it on outright misrepresentation or poorly executed studies of school crime or delinquency.<sup>6</sup> This poses an interesting question: if the data itself does not support the theory that crime and violence in schools is “out of control,” is it possible that the rhetoric, rooted in anecdotal evidence or media misrepresentation, has framed the policy debate?

An example of this phenomenon comes from a comparison of two teacher surveys, first discussed in *Harper’s Magazine* in 1985.<sup>7</sup> In this report, the author claimed that a 1940 survey of school teachers listed the “top problems” confronting public schools as: (1) talking, (2) gum chewing, (3) making noise, (4) running in the halls, (5) butting in line, (6) wearing improper clothing, and (7) not putting paper in wastebaskets.<sup>8</sup> This was compared to the current list of teacher concerns: (1) drugs, (2) alcohol, (3) pregnancy, (4) suicide, (5) rape, and (6) robbery.<sup>9</sup> These surveys were eventually cited in 400 articles or news reports after the author released them, and after they were cited in *Harper’s*.<sup>10</sup>

In 1994, a Yale professor became suspicious of the surveys and began tracking down references to the study. What he found was that they were concocted by a wealthy Texas businessman who lobbied against sex education and teaching of evolution in Fort Worth schools.<sup>11</sup> This businessman constructed the lists as part of his campaign—the “surveys” were never conducted.<sup>12</sup> As media cited and quoted the surveys, the lists became shorter and more compelling.<sup>13</sup> Eventually, the surveys were read during a Senate hearing by Senators John Glenn and Christopher Dodd and were included in an article in the *Congressional Quarterly*.<sup>14</sup> Thus, fiction became fact.

3 Robert E. Shepherd, Jr., *How the Media Misrepresents Juvenile Policies*, American Bar Association Juvenile Justice Articles, available at <http://www.abanet.org/crimjust/juvjus/12-4hmmjp.html>.

4 JUSTICE POLICY INSTITUTE, *SCHOOL HOUSE HYPE: SCHOOL SHOOTINGS AND THE REAL RISKS KIDS FACE IN AMERICA* 6 (1998).

5 CENTER FOR COMMUNITY RESEARCH & SERVICE, *KIDS, CRIME & LOCAL TV NEWS* 33 (2005).

6 Oft cited examples include the John DiIulio article and congressional testimony warning of juvenile “superpredators” and a 1994 article in *School Administrator* which claimed to compare teacher’s concerns circa 1940 (talking out of turn, gum chewing, running in the hall) with teachers’ concerns in 1990 (drug abuse, rape, robbery, assault). See CORNELL, *supra* note 1, at 12-17.

7 CORNELL, *supra* note 1, at 17.

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

*Ideals of what constitutes good discipline are subject to change. They have, indeed, changed very radically within the last two or three decades. The intelligent observer of 50 years ago, applying to our present-day schools the ideal of discipline then current, would criticize them as badly disciplined; and the observer of today, looking in an old-time school, would have his attention attracted by various phenomena of discipline that our grandfathers would have overlooked as quite normal.*

– William Chandler Bagley  
School Discipline 1 (1926)

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Another example comes from the oft-cited figure regarding the number of guns in schools—that every day, there are 135,000 guns in America’s schools.<sup>15</sup> This statistic appeared as early as 1990 and continues to be cited today—but it has been attributed to various sources without any explanation as to how the source arrived at this figure.<sup>16</sup> In 2005, the director of the National School Safety Center acknowledged that this figure “was based on an extrapolated estimate benchmarked against other studies” and that “there is no definitive study to affirm this statistic.”<sup>17</sup> While he claimed to have told media the same thing whenever they called to inquire, “[f]or some reason, that quote would never appear in the articles. It’s almost as though someone wanted to keep the information alive.”<sup>18</sup>

A look back at early references to school crime shows that much of this rhetoric has been in circulation for decades.<sup>19</sup> Whether the media and policymakers simply reflect the fears of the American public, or whether they instead shape those fears, it is clear that these fears are not new.

## World War II America and Juvenile Crime

Juvenile crime became a subject of public debate during World War II, particularly as the Zoot Suit riots broke out in Los Angeles.<sup>20</sup> The riots were preceded by a high-profile murder—dubbed the “Sleepy Lagoon Murder” by the press—of a young Latino man who

15 See William Celis, *Schools Getting Tough on Guns in the Classroom*, NY TIMES, August 31, 1994; National Crime Prevention Council, *Strategy: Gun-Free School Zones*, available at <http://www.ncpc.org>; SENATOR DIANNE FEINSTEIN, THE GUN FREE SCHOOLS ACT OF 1994 (1994).

16 CORNELL, *supra* note 1, at 57-60.

17 *Id.* at 59.

18 *Id.* at 59-60.

19 See ROBERT J. RUBEL, THE UNRULY SCHOOL DISORDERS, DISRUPTIONS, AND CRIMES 121 (1977) (listing articles appearing in U.S. News and World Report during the late 1960s and early 1970s regarding crime in schools).

20 JAMES GILBERT, A CYCLE OF OUTRAGE: AMERICA’S REACTION TO THE JUVENILE DELINQUENT IN THE 1950S 31-32 (1986). These early hearings already show a clash between law enforcement and rehabilitation ideologies, with the FBI and the Children’s Bureau at odds over issues surrounding delinquency. Eliot Ness (who was the director of the Social Protective Division of the FBI at the time), felt “the FBI and the Children’s Bureau represented two different ideological camps and two different constituencies. The FBI tended to treat delinquents as young, potential criminals,” a stance Ness felt to be at odds with the “social workers” in the Children’s Bureau. *Id.* at 35. The Children’s Bureau fundamentally disagreed with the FBI’s tendency to treat juvenile delinquents the same as adult offenders, and felt the delinquency was a complex social problem demanding expert treatment. *Id.* at 38-39. This tension continued for years to come—and represents one of the fundamental clashes between children’s advocates and law enforcement today.

was days away from reporting to the Army when he was killed.<sup>21</sup> Authorities responded to the murders by rounding up more than 600 youth—most of them Latino.<sup>22</sup> More than 20 of these youth were indicted and tried for the murder, with press and authorities blaming the crime on a Latino gang.<sup>23</sup> The high-profile trials stoked racial tension between white servicemen and minorities; eventually, tensions erupted into the Zoot Suit Riots:

*For the better part of a week, sailors and other servicemen dragged kids off streetcars, from restaurants, and out of movie theaters. The boys were beaten and often stripped of their zoot suits. Thousands of white civilians cheered them on and helped the sailors. As the riot progressed, Mexican American boys moved to defend their neighborhoods, setting traps for sailors and assaulting them in their cars. The L.A.P.D. let the riot continue for the better part of a week. After the riot ended, the Los Angeles City Council banned the wearing of zoot suits in Los Angeles streets.<sup>24</sup>*

The press blamed the riots, which resulted in 10 days of fighting during which more than 100 people were treated for injury, on gangs of young zoot-suiters.<sup>25</sup> The zoot suit, a “cultural badge” of Mexican Americans and blacks, became a symbol of juvenile delinquency.<sup>26</sup> The press tended to downplay the role of race in its characterization of the riots, painting a picture, instead, of delinquent and unpatriotic youth.<sup>27</sup>

While crime in schools was not at the forefront of the public’s concerns, the Senate Education and Labor Committee, chaired by Senator Claude Pepper, devoted much time to the subject of juvenile delinquency during its 1943 hearings though there was no reliable evidence supporting claims that delinquency was on the rise.<sup>28</sup> Publicly, many blamed juvenile delinquency on the absence of parents as a result of the war—with fathers away from home, and mothers in the workplace.<sup>29</sup> Time Life produced a newsreel, “Youth in Crisis,” that focused on juvenile delinquency and played at theaters nationwide:

*The film shows the lack of emotional security in homes robbed of their parents by war plants and rocked by the immeasurable restiveness created by the war itself. Babies wake screaming in siren-haunted blackouts. Boys just below draft age go on alcohol, marijuana and obscene-book jags, shrug off the discipline of parents who earn no more than they do. Mothers find it next to impossible to advise teen-age daughters who, erotically, are almost as experienced as Mother.<sup>30</sup>*

Another film, “Children of Mars,” released around the same time “concentrat[es] on a white-collar

21 See American Experience, *The Zoot Suit Riots*, available at [http://www.pbs.org/wgbh/amex/zoot/eng\\_peopleevents/e\\_murder.html](http://www.pbs.org/wgbh/amex/zoot/eng_peopleevents/e_murder.html).

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.* at 31.

26 *Id.* at 30; for more discussion of the riots, see Stuart Cosgrove, *The Zoot-Suit and Style Warfare*, HISTORY WORKSHOP JOURNAL, Vol. 18, pp. 77-91 (1984).

27 Cosgrove, *supra* note 26.

28 GILBERT, *supra* note 20, at 32-34; the Children’s Bureau of the Department of Labor blamed increased fears surrounding juvenile delinquency on media hype. *Id.* at 34.

29 *Id.* at 33 (national legislative representative for the American Federation of Labor says delinquency was the responsibility of “women who have gone away and neglected the home”).

30 *Cinema: The New Pictures*, Time Magazine, Nov. 15, 1943.

family...mak[ing] clear that wartime delinquency far exceeds the chronic economic-slum sickness of peacetime.”<sup>31</sup> Despite the focus on wartime family disruption as a cause of delinquency in the public debate, the final report issued by Senator Pepper’s committee concluded “that delinquency could not be reduced to a single cause and certainly not to a ‘general laxity in morals’ or to ‘neglect by working mothers,’ which Pepper called a ‘dangerous fallacy.’”<sup>32</sup> The public’s exposure to concern around juvenile delinquency, however, led to a sense that “young Americans were running wild in the streets.”<sup>33</sup>

This concern continued in the immediate aftermath of the war. In January 1948, President Truman issued a proclamation attempting to enlist local efforts to combat juvenile delinquency.<sup>34</sup> The same year, the Interdepartmental Committee on Children and Youth established a subcommittee charged with finding ways to improve delinquency statistics.<sup>35</sup>

*There is Teen-Age Trouble ahead. Plenty of it! We have just won a world war against the Axis enemies. Now we face a new critical war against a powerful enemy from within our very gates. That enemy is juvenile delinquency...[Juvenile delinquency] is an ever growing evil, a shocking reality. It is a real and alarming menace to every city, borough, and township. It is a disease eating at the heart of America and gnawing at the vitals of democracy.*

– **Juvenile Judge Henry Ellenbogen** (1946)  
*quoted in* Juvenile Violent Offenders—the  
Concept of the Juvenile Super Predator,  
*available at* [http://law.jrank.org/pages/1546/  
Juvenile-Violent-Offenders-concept-juvenile-  
super-predator.html](http://law.jrank.org/pages/1546/Juvenile-Violent-Offenders-concept-juvenile-super-predator.html)

At the same time, public education was under intense scrutiny, with progressive education coming under fire for its failure to produce results and fear that it might act as a method of spreading socialist ideals in a country coming to grips with new Cold War realities.<sup>36</sup> The “war-induced fear” that crept into debates surrounding public school curricula also surfaced in discussions around juvenile delinquents, with some comparing delinquents to Nazis or communists, and even “embryonic Storm Trooper[s].”<sup>37</sup> Some predicted that

31 *Id.*

32 Gilbert, *supra* note 20, at 36.

33 *Id.* at 29.

34 *Id.* at 50.

35 *Id.* at 55.

36 Adam Benjamin Golub, *Into the Blackboard Jungle: Educational Debate and Cultural Change in 1950s America* (2004)(unpublished Ph.D. dissertation, University of Texas) (on file with author); JOHN L. RURY, *EDUCATION AND SOCIAL CHANGE: THEMES IN THE HISTORY OF AMERICAN SCHOOLING 192* (2<sup>nd</sup> Ed. 2005). Progressive education came into vogue in the late 19<sup>th</sup> and early 20<sup>th</sup> century, as policymakers began to look for a more “humane and child-friendly” alternative to traditional teaching methods that often included rote memorization and “educators who took pride in punishing the most inconsequential infractions.” *Id.* at 148-49.

37 GILBERT, *supra* note 20, at 40.

allowing juvenile delinquency to go unchecked would lead to fascism.<sup>38</sup> The attack on progressive education linked what many perceived to be a lack of discipline in American children to fears expressed about delinquency, sex and violence.<sup>39</sup> Progressives were seen as “soft” on children.<sup>40</sup> Thus, educators began to call for a return to the “basics” and more traditional methods of teaching.<sup>41</sup>

American schools also saw vast changes in student demographics in the years following the war. Not only were public schools becoming more diverse in the postwar years, they experienced explosive growth.<sup>42</sup> The increase in the student population caused problems with school finance, overcrowding and teacher shortages.<sup>43</sup> In 1947 there was a successful challenge to California’s segregated school system, with the 9th Circuit Court of Appeals ruling segregation of Mexican American students unconstitutional.<sup>44</sup> Public schools were entering a stressful period in American history, with a focus on large-scale reform of the public education system.<sup>45</sup>

### **Continuing Concern over Delinquency in the 1950s and the Link to School Crime**

The debate around juvenile delinquency, its causes and appropriate responses, continued into the 1950s. In the summer of 1950, J. Edgar Hoover—who was then director of the FBI—warned the American public of the “ungoverned activities of teenaged boys and girls who are responsible for a percentage of crime out of all proportion to their age group.”<sup>46</sup> He ended this speech by noting that the problem was “a serious indictment of parenthood.”<sup>47</sup>

Much of the concern focused on the emergence of a new “youth culture” that “looked aggressive, even if not all youngsters were on the way to becoming criminals.”<sup>48</sup> The public became concerned about the link between the media and youth violence, resulting in congressional hearings—often referred to as “the comic-book inquisitions”—called to consider the impact that comic books and popular media had on juvenile delinquency.<sup>49</sup> These hearings were televised.<sup>50</sup> The theory that comic books caused juvenile delinquency gained wide public support as a result of the investigation, with a Gallup poll conducted shortly after the hearings indicating that 70 percent of Americans believed that comic books were a cause of juvenile crime.<sup>51</sup>

38 *Id.* at 40-41.

39 RURY, *supra* note 36, at 192.

40 *Id.*

41 *Id.*

42 Golub, *supra* note 36, at 16, 73; RURY, *supra* note 36, at 184-85.

43 Golub, *supra* note 36, at 16.

44 *Mendez v. Westminster*, 161 F.2d 775 (9<sup>th</sup> Cir. 1947).

45 RURY, *supra* note 36, at 182.

46 Newsreel, *Decorated FBI Chief Honored for Boys Clubs Work*, August 1950, available at [www.newsplayer.com](http://www.newsplayer.com).

47 *Id.*

48 GILBERT, *supra* note 20, at 84.

49 Louis Menand, *The Horror*, THE NEW YORKER, March 31, 2008.

50 *Id.*

51 *Id.* at 4.

*The volume of delinquency among our young has been quite correctly called the shame of America. If the rising tide of juvenile delinquency continues, by 1960 more than one and a half million American youngsters from 10 through 17 years of age, will be in trouble with the law each year...[Our subcommittee is] examining the reason why more and more of our youngsters steal automobiles, turn to vandalism, commit holdups, or become narcotic addicts.*

– U.S. Senator Robert C. Hendrickson, Chairman  
Subcommittee of the Committee on the Judiciary  
to Investigate Juvenile Delinquency,  
Comic Book Hearings (April 21, 1954)

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As a result of fears surrounding the new “youth culture” and juvenile delinquency, the Fifties saw “juvenile delinquency films” become its own cinematic genre.<sup>52</sup> Some of these films—including *Rebel Without a Cause*, now viewed as a film classic—renewed the vigorous debate about the media’s influence on youth behavior.<sup>53</sup> There were many who remained convinced that the new “youth culture” was an underlying cause of delinquency. In an effort to respond to the call for films that emphasized wholesome values, the industry churned out films that demonized drugs, sex and “beatnik crime.”<sup>54</sup>

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One of the earliest cultural references to violence in schools comes from this era. In 1953, the novel *Blackboard Jungle* was published and became wildly popular.<sup>55</sup> The protagonist of the book was an idealistic young teacher who had just graduated from college, having taken advantage of the GI bill. The teacher was assigned to an integrated vocational school in New York. The book pits violent, chaotic students against teachers and administrators who describe the students as profanity-spewing “cockroaches,” “garbage,” and jungle animals. As part of his orientation to teaching at the school, the protagonist is instructed on dealing with “troublemakers.”

*Troublemakers? I want troublemakers squelched immediately! If a teacher can't handle a troublemaker, I want him sent to the department head...If that department head can't handle a troublemaker, I want that damned troublemaker sent to [me]...you can bet we'll know how to take care of him, you can bet your life on that. I don't want any troublemakers in my school. There are reform schools for troublemakers, and that's where I'll send them sure as I'm standing here...So on Monday morning we come here ready for trouble. If there's no trouble, fine and dandy. If there is, we step on it immediately. We step on it the way we would step on a cockroach. I want no cockroaches in my school, the same way I want no cockroaches in my kitchen.*

– Evan Hunter  
Blackboard Jungle 35 (1953)

52 GILBERT, *supra* note 20, at 178-95.

53 *Id.*

54 *Id.* at 179.

55 Golub, *supra* note 36, at 111.

During the course of the book, a teacher is sexually assaulted (the protagonist saves her from rape), the protagonist and a co-teacher are badly beaten by a group of students, students destroy another teacher's record collection, and a student threatens a teacher with a knife. Students use profanity, are constantly disruptive, and create an atmosphere of chaos. None of this reflects today's perception of schools in the Fifties as idyllic havens where a teacher's greatest concerns were gum chewing and running in the halls. Yet, after its publication, many seized upon the book as an accurate portrayal of the problems that existed in schools.<sup>56</sup> An excerpt of the novel was included in the October 1954 edition of *Ladies Home Journal*, which described the conditions depicted in the novel as something that "could happen" in many American cities.<sup>57</sup> *Time* magazine referred to the novel as "nightmarish but authentic" and said it should "scare the curls off mothers' heads and drive the most carpet-slipped father to vigilant attendance at the P.T.A."<sup>58</sup>

The book was made into a movie that was released in 1955, to wide acclaim. The film itself embraced the new "youth culture," with filmmakers choosing to include rock and roll music in the soundtrack for the first time in film history, much to the horror of some social commentators of the time.<sup>59</sup> Ads for the film referred directly to the theme of juvenile violence, with captions that included: "They Turned a School into a Jungle!"<sup>60</sup> The film opened with a police officer explaining that the students at the vocational high school "were six years old in the last war. Father in the army. Mother in a defense plant. No home life. No church life. No place to go. They form street gangs....Gang leaders have taken the place of parents."<sup>61</sup> The industry used American fears surrounding juvenile delinquency as a marketing strategy for the movie, even going so far as to hire a promotional float to drive around New York City to advertise the new film, with a "menacing-looking young man" sitting on the float cleaning his fingernails with a switchblade.<sup>62</sup>

In 1956, the National Education Association (NEA) conducted a teacher survey focused on student misbehavior.<sup>63</sup> This analysis was spurred by public concern over juvenile delinquency, with the NEA citing "[n]ewspaper accounts of juvenile gangsterism, armed assault, and even murder" becoming a growing concern.<sup>64</sup> Among their findings, the survey revealed that "[m]ost public school teachers said the situation in their school neighborhoods and communities was not nearly as bad as the impression presented by mass mediums of communication."<sup>65</sup>

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<sup>56</sup> *Id.* at 115.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 116.

<sup>59</sup> Rock and Roll was often portrayed as the instigator of juvenile delinquency and sexual promiscuity. When Elvis made his first appearance on the Ed Sullivan show in 1956, there had been so much concern expressed about his sensual hip gyrations that the appearance was filmed from the waist up.

<sup>60</sup> Golub, *supra* note 36, at 124.

<sup>61</sup> GILBERT, *supra* note 20, at 184.

<sup>62</sup> *Id.* at 123.

<sup>63</sup> RUBEL, *supra* note 19, at 18.

<sup>64</sup> *Id.* at 18.

<sup>65</sup> *Id.*

## Discussion of School Violence in the Aftermath of *Brown v. Board*

Though *Brown v. Board of Education* was decided in 1954, it took much longer for America to commit to desegregation of its schools.<sup>66</sup> Southern schools resisted desegregation even after federal civil rights legislation, passed in 1964, threatened to withhold federal funding for segregated schools.<sup>67</sup> But segregation was not confined to the South. When African Americans moved to the North and West during and after World War II, cities in those parts of the country became racially segregated.<sup>68</sup> At the same time, whites began migrating to the suburbs.<sup>69</sup>

As a result, public school enrollment in the nation's major cities became highly segregated.<sup>70</sup> Schools in African American neighborhoods tended to be overcrowded, with larger classes and fewer experienced teachers.<sup>71</sup> In 1964, as a result of the passage of the Civil Rights Act, the government commissioned a study of the public school system to determine the extent of segregation and educational equality.<sup>72</sup> The report, published in 1966, concluded that the majority of American schoolchildren still attended segregated schools, more than 10 years after *Brown v. Board* was decided.<sup>73</sup>

School desegregation became a contentious subject and a "flash point of political conflict."<sup>74</sup> Schools became focal points for demonstrations and boycotts.<sup>75</sup> In Texas, Hispanic students and teachers organized boycotts and protest marches, demanding reform.<sup>76</sup>

Thus, the 1960s saw a new element added to fears surrounding juvenile delinquency and unruly students: student demonstrations.<sup>77</sup> Though the 1950s saw protests at school related to the *Brown v. Board* decision, these were largely parent-led.<sup>78</sup> Many of the student-led demonstrations of the Sixties protested political issues, but they also became a means of protesting dress codes, unfair disciplinary practices, and student freedoms within the school.<sup>79</sup> This era saw what has been described as a phase of "dramatic expansion of student constitutional rights,"<sup>80</sup> with the U.S. Supreme Court declaration that "it can hardly be argued that...students...shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."<sup>81</sup> Demonstrations often preceded the court cases.<sup>82</sup>

As the media and government focused on and reported school disruptions and violence, the public began to react. In effect, media "coverage encouraged closer inspection of local

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66 RURY, *supra* note 36, at 191.

67 *Id.*; SOUTHERN REGIONAL COUNCIL AND ROBERT F. KENNEDY MEMORIAL, THE STUDENT PUSHOUT: VICTIM OF CONTINUED RESISTANCE TO DESEGREGATION viii (1973).

68 *Id.* at 194.

69 *Id.* at 195.

70 *Id.* at 194.

71 *Id.*

72 DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY (1966).

73 *Id.* at 3.

74 RURY, *supra* note 36, at 191.

75 *Id.* at 197.

76 *Id.*

77 See RUBEL, *supra* note 19, at 83-104.

78 *Id.* at 92.

79 *Id.* at 85-86.

80 JIM WALSH ET AL., THE EDUCATOR'S GUIDE TO TEXAS SCHOOL LAW 239 (6<sup>th</sup> ed. 2005).

81 *Tinker v. Des Moines*, 393 U.S. 503, 506 (1969).

82 *Id.*

school problems, which in turn contributed to greater media coverage, which ultimately became translated into even greater public concern.”<sup>83</sup> Headlines in *U.S. News and World Report* between 1968 and 1972 included:

- *Violence in Schools—the Outlook Now* (September 2, 1968)
- *Now It’s High-School Students on a Rampage* (March 24, 1969)
- *High Schools: Next Target for Unrest* (September 22, 1969)
- *Youth Rebellion—Why* (April 27, 1970)
- *An Uneasy Truce in Troubled High Schools* (February 21, 1972)

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*America’s high schools—from the ghettos to the suburbs—today are like boiling cauldrons.*

*No one can predict when the pot will boil over, but already violence, vandalism and noisy protest are common.*

*In February alone, a government survey showed, there were 43 incidents at high schools resulting in police being called 19 times to make 257 arrests – and many incidents go unreported.*

– *Long Frustration Linked to Student Unrest*  
Associated Press, April 29, 1970

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All of this came during a time when the public continued to focus on questions surrounding juvenile crime, and crime in general. In 1961, the Kennedy Administration decided delinquency prevention should be a priority issue, and the Senate Subcommittee to Investigate Juvenile Delinquency held hearings investigating the connection between television violence and juvenile crime.<sup>84</sup> The Juvenile Delinquency and Youth Offenses Control Act of 1961 was signed into law.<sup>85</sup> Hearings were conducted again in 1964, with the same focus on television as an underlying cause of juvenile crime.<sup>86</sup> In 1968, President Johnson created the National Commission on the Causes and Prevention of Violence.<sup>87</sup> That year, Congress passed the Juvenile Delinquency Prevention and Control Act of 1968.<sup>88</sup>

For the first time, Congress began to consider issues surrounding school violence as an outgrowth of its look at juvenile crime. Several studies of student disruptions were published in the late 1960s and early 1970s. One study, undertaken by Syracuse University at the behest of the U.S. Department of Health, Education, and Welfare, characterized the problem as follows:

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83 ROBERT J. RUBEL, TRENDS IN STUDENT VIOLENCE AND CRIME IN SECONDARY SCHOOLS FROM 1950 TO 1975: A HISTORICAL VIEW 15 (1978).

84 RUBEL, THE UNRULY SCHOOL, *supra* note 19, at 174; NANCY SIGNORIELLI, VIOLENCE IN THE MEDIA: A REFERENCE HANDBOOK 6 (2005).

85 RUBEL, *supra* note 19, at 174. In signing the act, President Kennedy remarked that juvenile delinquency had been on the rise for 11 years. President Kennedy, Remarks Upon Signing the Juvenile Delinquency and Youth Control Act, September 22, 1961.

86 *Id.* at 7.

87 *Id.*

88 RUBEL, *supra* note 19, at 174.

*This is an unsettling story of an unsettling reality. It is a story of aggravated assault upon the rules and decorum of America's urban public high schools. It is an often unpleasant story as all stories must be where leading themes are fear, prejudice, poverty, arrogance, insensitivity, and brutality. It is a continuing story. For its basic plot is created and recreated daily in the pathologies of current urban tensions. Furthermore, many of the cures for the perceived troubles are ineffable except in terms of the moral regeneration of an entire nation—an unlikely possibility...In the Spring of 1970, we were asked to investigate the causes of violent unrest and educational disruption in a fair sample of the nation's urban high schools, and to identify strategies that appeared to be successful in mitigating the worst of the troubles. This request stemmed from an accumulation of evidence in the hands of the U.S. Commissioner of Education to the effect that recent deportment in an increasing number of urban high schools had deteriorated to a point where the educative capacity of the high schools was seriously if not mortally, threatened. And the turbulence seemed to be spreading.<sup>89</sup>*

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This study found student disruptions were the result of societal influences, as well as “in-school” causes.<sup>90</sup> Societal factors included: 1) violence in America, 2) the success of the civil rights protests, 3) visibility and apparent success of college protests, 4) the expression of racial/ethnic pride, 5) participatory democracy; 6) slum life styles, 7) black revenge, 8) racism—black and white, 9) the television generation, and 10) “situation ethics” and the new permissiveness.<sup>91</sup> In-school factors: 1) student involvement in policy, 2) facilities, 3) restrictions on behavior, 4) cross cultural clashes, 5) classification of students and career counseling, and 6) the increasing politicalization of schools.<sup>92</sup>

When the authors spoke of “American violence” as a cause of school disruptions, they cited the 1969 report from the National Commission on the Causes and Prevention of Violence, which “delivered a ghastly prediction for American central cities...The Commission warned that center cities would be almost ghost towns after dark except for high-powered and ubiquitous police surveillance. The Commission predicted a fortress mentality and climate in which, during the day, millions of adolescents would be going to school.”<sup>93</sup> The report

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89 SYRACUSE UNIVERSITY RESEARCH CORP., *DISRUPTION IN URBAN PUBLIC SECONDARY SCHOOLS FINAL REPORT 1* (1970).

90 *Id.*

91 *Id.*

92 *Id.*

93 *Id.* at 23. All of these findings also should be understood in the context of the historical events of this time period—beginning with the assassination of President Kennedy in 1963 and ending with the assassinations of Martin Luther King, Jr. and Robert Kennedy in 1968, with the violence that accompanied the civil rights movement beginning in the 1950s and continuing through the 1960s. The 1960s saw riots sparked by racial tension in cities across the United States, including Philadelphia, Los Angeles, Detroit, and Newark. In 1967, President Johnson created the National Advisory Commission on Civil Disorders (often referred to as the Kerner Commission) to investigate the causes of the riots. The Commission's report, issued in March of 1968, blamed white racism for creating the conditions that led to the riots. The Kerner Commission report was the subject of a great deal of criticism, with many conservatives arguing that the Commission, which recommended a host of social programs meant to combat racism and poverty, failed to hold rioters responsible for their behavior. See Bill Moyers, *The Kerner Commission—40 Years Later*, Bill Moyers's Journal, March 28, 2008, available at <http://www.pbs.org/moyers/journal/03282008/profile.html>.

also noted that “[p]oor urban youth, age 15 to 24, are the most crime-prone segment of the population, and they will increase disproportionately at least until 1975.”<sup>94</sup>

The report also included the impact of popular media on juvenile violence—in this case, television. The family was again named as a primary culprit in the crisis, along with racial tension.<sup>95</sup> Of the “slum life style,” the report notes:

*In several of the cities we visited, such neighborhoods often defy description. Broken glass and other debris is everywhere; predators in the form of drunks, junkies, fairies, and pimps abound amidst many fatherless children, surly fourteen year olds, and the vacant, tired stares of old men and old women who have long since given up the fight for simple decency against these monstrous odds.*<sup>96</sup>

The report also spoke of “black revenge:”

*We found it sad but psychologically understandable when numbers of Black high school students told us one way or another that “it’s Whitey’s turn to take some heat.”... We found that much of the physical fighting, the extortion, the bullying in and around schools had a clear racial basis. This was particularly apparent where the student mix was predominately but not wholly Black. White students are hesitant to express their fears on this subject, but those fears are very real and run very deep. Some were finally willing to tell us that they traveled only in large white groups, studiously avoiding physical proximity to black groups, and “getting the hell out of there as fast as we can.”*<sup>97</sup>

In 1969, Gallup began to survey the public about attitudes toward public education.<sup>98</sup> In every year except 1971, discipline was found to be the public’s top concern.<sup>99</sup> The term “discipline” was not defined for purposes of this survey, and was used generally to refer to any misbehavior.<sup>100</sup> As the government and media began to hone in on reports of vandalism, Gallup added school vandalism as a separate poll question.<sup>101</sup>

### **The Seventies & the First “Safe Schools Act”**

Congress’ concern surrounding juvenile delinquency and school violence continued into the 1970s. As Congress tweaked the newly created laws related to juvenile delinquency and states worked to comply with the U.S. Supreme Court’s ruling in *Gault v. Arizona*,<sup>102</sup> the landmark case holding that juveniles have procedural due process rights in juvenile delinquency proceedings, schools struggled to comply with the U.S. Supreme Court’s ruling that they

<sup>94</sup> *Id.* (noting this figure came from a *Time* magazine article published earlier that year).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 29.

<sup>97</sup> *Id.* at 30-31.

<sup>98</sup> *Id.* at 13.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 14.

<sup>102</sup> *Gault v. Arizona*, 387 U.S. 1 (1967).

implement desegregation plans “at once.”<sup>103</sup> In 1971, Congress introduced the first piece of legislation aimed at school crime—the Safe Schools Act—that did not pass.<sup>104</sup> The bill would have provided financial assistance to schools for security services.<sup>105</sup> The draft of the bill included the following findings:<sup>106</sup>

*(c) that elementary and secondary schools and the students and employees therein are particularly vulnerable to crime;*

*(d) that the incidence of crimes against children, employees, and property in elementary and secondary schools, particularly in urban areas of the Nation, is such that in many schools the educational process is seriously jeopardized and the right of students to pursue learning is severely contravened;*

*(e) that a significant portion of the Nation’s educational resources are being diverted from direct educational purposes to the problem of combating crime and maintaining security in the schools; and*

*(f) that security in the schools poses special problems and requires special techniques, training, and materials which are often not available to local educational, community service, or law enforcement agencies.*

During the hearing on the bill, the President of the New York City American Federation of Teachers testified:<sup>107</sup>

*Certainly no problem our school faces is greater than violence and crime—especially during the last seven or eight years. If we were to meet with our teachers and ask—what is the one thing you want your organization to do for you more than anything else—I don’t think the first thing would be higher salaries, and I don’t think the first thing would be smaller class size.*

*But our teachers’ first concern is the problem of general violence and disorder within the schools. I think this statement can be easily checked. Thousands of teachers have left urban school districts to teach in other areas, sometimes at a lesser salary and with fewer pension and job rights, because of the extreme difficulties that they faced in their districts.*

During the hearings on the Safe Schools Act, speakers and Congress members touched on issues related to busing, racial tension and riots, and overcrowded, understaffed schools.<sup>108</sup> However, the primary focus was on school crime and the need for greater security in school settings.<sup>109</sup>

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103 *Brown v. Board of Education*, 347 U.S. 483 (1954).

104 RUBEL, *supra* note 19, at 175.

105 Safe Schools Act, H.R. 3101, 92d Cong., First Sess. (1971).

106 Safe Schools Act of 1971, H.R. 3101, 92d Cong., First Sess. (1971).

107 *Safe Schools Act of 1971: Hearing on H.R. 3101*, 92<sup>nd</sup> Cong., First Sess. (1971)

(statement from Albert Shanker, President, New York City American Federal of Teachers).

108 *See Id.*

109 *Id.*

*There has always been a certain level of violence and vandalism in our nation's public school system... Today, however, the situation has changed and the level of violence and vandalism is rapidly increasing in both intensity and frequency... The major concern confronting secondary schools today is the climate of fear where the majority of students are afraid for their safety... [O]ur schools are experiencing serious crimes of a felonious nature including brutal assaults on teachers and students, as well as rapes, extortions, burglaries, thefts and an unprecedented wave of wanton destruction and vandalism. Moreover our preliminary study of the situation has produced compelling evidence that this level of violence and vandalism is reaching crisis proportions which seriously threatens the ability of our educational system to carry out its primary function.*

– U.S. Senator Birch Bayh, *Chairman*  
Committee on the Judiciary  
Our Nation's Schools – A Report Card: "A" In  
School Violence and Vandalism 7 (1975)

Congress continued to consider crime in schools, despite the failure of the Safe Schools Act. In April 1975, Senator Birch Bayh, Chairman to the Committee on the Judiciary, issued a preliminary report of the Subcommittee to Investigate Juvenile Delinquency, the same subcommittee that commissioned the 1971 survey of 110 school districts discussed above. This preliminary report, *Our Nation's Schools—A Report Card: 'A' in School Violence and Vandalism*, analyzed the results of yet another survey—conducted in 1973.<sup>110</sup> This survey focused on the increase in school crime between 1970 and 1973:

- Homicides increased by 18.5 percent.
- Rapes and attempted rapes increased by 40.1 percent.
- Robberies increased by 36.7 percent.
- Assaults on students increased by 85.3 percent.
- Assaults on teachers increased by 77.4 percent.
- Burglaries of school buildings increased by 11.8 percent.
- Drug and alcohol offenses on school property increased by 37.5 percent.
- Dropout increased by 11.7 percent.
- The number of weapons confiscated rose 54.4 percent and included knives, clubs, pistols and sawed-off shotguns.
- 14.7 percent of teachers reported having been assaulted at school in 1964, but by 1973, 37 percent of teachers reported having been assaulted. (The report indicates that during the 1972-73 school year, 69,000 teachers were "physically attacked.")<sup>111</sup>

<sup>110</sup> SENATOR BIRCH BAYH, CHAIRMAN, COMMITTEE ON THE JUDICIARY, *OUR NATION'S SCHOOLS—A REPORT CARD: "A" IN SCHOOL VIOLENCE AND VANDALISM, PRELIMINARY REPORT OF THE SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY* (1975).

<sup>111</sup> *Id.*

This report draws a direct connection between juvenile delinquency in general and crime in schools:<sup>112</sup>

*Not surprisingly, the underlying causes for this wave of violence and vandalism in our schools is a subject of intense debate and disagreement. In a certain sense, the school system may be viewed as merely a convenient battleground for the pervasive societal problem of juvenile crime. As this Subcommittee pointed out in its recent Annual Report, violent juvenile crime has increased by 246.5 percent in the last thirteen years. Over the same period crimes directed against property by youths increased 104.6 percent. Today persons under 25 years old are committing 50 percent of all violent crimes and 80 percent of all property crimes. Since our school systems are charged with the care and custody of a large percentage of our young people, it is reasonable to assume that the incidents of violence and vandalism within our educational institutions would follow patterns similar to those developing in the society at large. A study conducted in 1973 by Paul Ritterbrand and Richard Silberstein concluded that the roots of school problems could be traced to problems existing in the general American society rather than to conditions or failures within the school system itself.*

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Just before this report was published, two reports were released that suggested African American students were being “pushed out” of schools resisting desegregation through suspension and expulsion practices. In 1973 the Southern Regional Council and the Robert F. Kennedy Memorial published, *The Student Pushout: Victim of Continued Resistance to Desegregation*.<sup>113</sup> This report looked at data across several states to determine whether schools responded to desegregation by suspending and expelling a disproportionate number of minority students. They concluded:

*For the past several years, extraordinarily large and disproportionate numbers of minority students have been suspended, expelled, and induced to drop out of many recently desegregated school systems...The pushout problem appears to be related to major desegregation, especially in those school districts where desegregation is poorly handled and educators are still committed to resistance to it...Suspensions are often imposed for reasons that do not warrant such extreme action...a substantial cause and effect relationship does appear to exist between students who are suspended or expelled, on the one hand, and students who become labeled as dropouts on the other.*

– Southern Regional Council &  
The Student Pushout: Victim of Continued  
Resistance to Desegregation 11 (1973)

In 1974 the Children’s Defense Fund (CDF) published a report, *Children Out of School in America*, that discussed the overwhelming number of children excluded from school through disciplinary practices and the effect this had not only on educational success, but

112 SEN. BIRCH BAYH, *supra* note 110, at 12.

113 SOUTHERN REGIONAL COUNCIL AND ROBERT F. KENNEDY MEMORIAL, *THE STUDENT PUSHOUT: VICTIM OF CONTINUED RESISTANCE TO DESEGREGATION* (1973).

on the communities where the children live. The CDF report also discussed the problem of racial discrimination in disciplinary practices.

As a result of these reports, the Senate Committee's Preliminary Report included discussion of the "pushout" phenomenon and its relationship to school violence:

*Another facet of the pushout problem which may operate as a contributing factor to school disorders was revealed in a report recently released by the Department of Health, Education, and Welfare. In statistics gathered at the end of the 1973 school year it was demonstrated that while Blacks represented only 27 percent of the total student enrollment in the 3,000 districts surveyed, they accounted for 37 percent of expulsions and 42 percent of suspensions from those districts. The disparity among these figures raises serious questions concerning possible wide-scale bias in the administration of suspension and expulsion. Such policies can only result in anger and hostility on the part of students.*

*...At first glance it might appear that the expulsion, suspension, pushout, force out and truancy phenomenon, although certainly tragic for those involved, might at least create a somewhat more orderly atmosphere for those remaining in school as a result of the absence of youngsters evidently experiencing problems adjusting to the school environment. The opposite, however, appears to be the case. The Syracuse study, for instance, found that in schools where the average daily attendance was lower, the disruptions, violence and vandalism rates were higher. This may be explained by the fact that the vast majority of students who are voluntarily or compulsively excluded from schools do, in time, return to those schools. In many instances their frustrations and inadequacies which caused their absence in the first place have only been heightened by their exclusion and the school community will likely find itself a convenient and meaningful object of revenge.*

The Preliminary Report also spoke of the presence of gangs on school campuses, racial tensions and the perception that disciplinary practices were not fairly administered.<sup>114</sup> The report called for increased due process for disciplinary procedures<sup>115</sup>—a call that had been answered by the U.S. Supreme Court just before the report was published, in their decision in *Goss v. Lopez*.<sup>116</sup>

In 1975 the CDF published, *School Suspensions: Are They Helping Children? A Report* as a follow-up to its 1974 report. This report came on the heels of the publication of the Senate Committee's Preliminary report, and included a direct look at school violence:<sup>117</sup>

*The vast majority of suspensions in CDF's survey were for nondangerous, nonviolent offenses which do not have a seriously disruptive effect on the educational process...less than 3 percent of the suspensions were for destruction of property, the*

114 SEN. BIRCH BAYH, *supra* note 110, at 13-14.

115 *Id.* at 15.

116 *Goss v. Lopez*, 95 S. Ct. 729 (1975)(student disciplinary proceedings must be governed by at least minimal standards of due process).

117 CHILDREN'S DEFENSE FUND, *SCHOOL SUSPENSIONS: ARE THEY HELPING CHILDREN? A REPORT* 9-10 (1975).

*use of drugs or alcohol, or other criminal activity...While the largest numbers of suspended children are white, proportionately suspensions hurt more children who are black, poor, older and male. Most striking is the disparate suspension of black school children, they are suspended at twice the rate of any other group...The use of suspensions, the grounds for suspensions, the procedures for suspensions, and the lengths of suspensions vary widely between school districts and, indeed, between schools in a single district...Perhaps most importantly, the great majority of suspensions do not serve any demonstrated valid interests of children or school. Instead, they harm the children involved and jeopardize their prospects for securing a decent education. Suspension pushes children and their problems into the street, thereby causing more problems for them and for the rest of us.*

This report addressed the woeful lack of reliable data surrounding school violence, pointing out the flawed methodology used for the Senate reports that discussed increases in the rate of crime without reporting the actual number of incidents.<sup>118</sup> The report notes:<sup>119</sup>

*Some studies, including the recent Senate Judiciary Committee-Bayh Committee, report only the percentage increase in the rates of disciplinary incidents in schools without reporting the counts or rates of the incidents themselves. As a result, the public learns that murders in school have increased without also learning that the murder rate per 1,000 enrolled students is .005 murders per year which makes school about the safest place for a child to be other than home...Most school violence studies incorporate vandalism. But most vandalism occurs when school is closed, after school hours, on weekends, during vacations, and not while children are in school...All of the studies indicate that major acts of vandalism are committed by intruders and strangers.*

*But we all hear so much about the violence among young people whether or not it takes place in school. And we all hear stories about how afraid teachers are in schools and how intimidated they are to deal with groups of milling students who violate school rules....[F]inding suitable remedies will require thoughtful, accurate and sensible analysis rather than the wave of fear and overstatement that characterizes much of the current debate about school violence.*

In 1977 the Senate Subcommittee published its final report on school violence.<sup>120</sup> The final report covered the same data examined in the preliminary report published two years earlier, and many of the same “causes” for the increase in school crime, but added lengthy sections focused on vandalism, as well as a section discussing the “resurgence” of youth gangs.<sup>121</sup>

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118 *Id.* 18-19.

119 *Id.* at 19.

120 SENATOR BIRCH BAYH, CHAIRMAN, COMMITTEE ON THE JUDICIARY, CHALLENGE FOR THE THIRD CENTURY: EDUCATION IN A SAFE ENVIRONMENT—FINAL REPORT ON THE NATURE AND PREVENTION OF SCHOOL VIOLENCE AND VANDALISM (1977).

121 *Id.* at 37-48.

*Only a decade ago violence and vandalism in schools were considered troublesome but hardly critical problems in our educational system. Virtually every school in America had experienced problems involving an occasional fight or a broken window. Such occurrences have been viewed as more or less a fixture of school life from the beginning of organized educational activities. Recently, however, the situation has changed and what was once regarded as an unfortunate but tolerable fact of life for teachers and students has become a source of growing concern and even alarm for many members of the educational community.*

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- U.S. Senator Birch Bayh, *Chairman*  
Committee on the Judiciary  
Report of the Subcommittee to Investigate  
Juvenile Delinquency—Challenge for the Third  
Century: Education in a Safe Environment—  
Final Report on the Nature and Prevention of  
School Violence and Vandalism 11 (1977)

The Committee named several strategies for improvement, including alternative education programs in lieu of suspension.<sup>122</sup> According to the Committee, the attributes that such a program would have to possess to successfully address behavioral issues—a dedicated staff familiar with the problems of disruptive students, a low teacher-student ratio, an emphasis on improving basic academics, individualized instruction and counseling, parental involvement, coordination with other social service agencies, flexibility, and a goal of returning the student to the mainstream school—were critical to ensuring that these programs did not “become warehouses for disruptive youngsters.”<sup>123</sup> Where these things were missing, the Committee noted the danger that such programs would “simply become another level of frustration and resentment that will do little to discourage chronic truancy or other suspendable conduct.”<sup>124</sup> The report also discussed other strategies including behavior contracts, a “cool off” room for students, availability of counseling services, increased parental and student involvement, provision of a “code of rights and responsibilities” for students, better teacher training, and heightened school security.<sup>125</sup>

In 1978—just one year later—the National Institute of Education (NIE) issued a report in response to a Congressional mandate that required the U.S. Department of Health, Education, and Welfare (HEW) to conduct a study of the incidence and seriousness of school crime, the number and location of schools affected, the costs, existing means of prevention, and the effectiveness of those means.<sup>126</sup>

<sup>122</sup> *Id.* at 52-55.

<sup>123</sup> *Id.* at 55.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> THE NATIONAL INSTITUTE OF EDUCATION, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, *VIOLENT SCHOOLS—SAFE SCHOOLS: THE SAFE SCHOOL STUDY REPORT TO THE CONGRESS 1* (1978).

The data reported by the NIE paints a very different picture than that reported to Congress in the preliminary and final Bayh reports. Rather than focus on the increase in the rate of school crime, which can distort understanding of the problem, the NIE reported:<sup>127</sup>

- Theft was the most widespread of the offenses measured, with 11 percent of students reporting they'd had more than \$1 stolen from them in a month. Most of the reported thefts involved small amounts of money, sweaters, books, notebooks, and other items commonly included in lockers.
- About 1.3 percent of secondary students reported having been attacked at school; and one half of 1 percent of students (.5 percent) reported having had something stolen by force.
- An estimated 12 percent of secondary teachers reported having had something stolen from them worth more than a dollar.
- One half of 1 percent (.5 percent) of teachers reported being physically attacked at school; and about 19 percent of those attacks resulted in an injury that required treatment.
- A little more than one half of 1 percent of teachers reported having something stolen from them by force.

However, the report also notes that “while acts of violence and property destruction in schools increased from the early Sixties to the Seventies, both increases leveled off after the early 1970s.”<sup>128</sup> All of this data was collected as part of a three-part study that included two rounds of surveys—one conducted by mail, and another on site—and a more intensive, qualitative study of 10 schools.<sup>129</sup> Unlike the more recent reports on school crime, the NIE concluded that “the risk of violence to teenage youngsters is greater in school than elsewhere, when the amount of time spent at school is taken into account.”<sup>130</sup> The 10 factors that the NIE found to be associated with violence were:<sup>131</sup>

- The crime rate and the presence or absence of fighting gangs in the schools' attendance area....the more crime and violence students are exposed to outside of school, the greater the violence in the school.
- The proportion of students who are male—schools with higher proportions of males had more violence.
- The grade level in secondary school and the age of the students—younger students are more likely to be victimized.
- The size of the school—larger schools have a higher risk of violence.
- The principal's firmness in enforcing rules and the amount of control in the classroom.
- Fairness in the enforcement of rules.
- The size of classes and the number of different students taught by a teacher in a week. Teachers have better control over smaller classes, and more continuous contact with the same students seemed to help reduce violence.

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127 *Id.* at 3-4; *but see* NATIONAL COUNCIL ON CRIME & DELINQUENCY, SAFE SCHOOL STUDY REPORT TO THE CONGRESS—EVALUATION AND RECOMMENDATIONS (1978)(criticizing methodology in data analysis, but noting agreement with essential findings).

128 *Id.* at 2.

129 *Id.* at 1.

130 *Id.* at 2.

131 *Id.* at 8.

- The relevance of academic courses.
- The importance of grades to students.
- The students' feelings of control over their lives—when students feel they have little control, there seemed to be more violence.

The report makes recommendations focused on improving school climate, school size, teacher training, and school security systems.<sup>132</sup>

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*In recent years the press and other media have carried an increasing number of reports about crime and violence in the nation's schools. Vivid descriptions are presented of assaults, robberies, and sometimes murders in our schools. We hear of fighting gangs establishing and warring over "turf," nonstudents entering schools to prey upon pupils, classrooms, and even whole schools being destroyed. One Los Angeles high school principal described the situation by saying that "for teachers and students alike the issue is no longer learning but survival." Moreover, the problem is pictured not only as bad, but getting worse.*

– The National Institute of Education  
Violent Schools-Safe Schools 17 (1978)

In 1979, the Department of Justice published a resource for schools discussing the data outlined in the Safe Schools Study and some approaches schools have taken to address violence.<sup>133</sup> The resource cautions:<sup>134</sup>

*When "Blackboard Jungle" was published in 1955, the public was shocked. Was it a forecast of a coming tidal wave of school crime? Or was it the beginning of an attempt to acknowledge and address a problem that has long existed in the schools?*

*Contrary to popular beliefs about crime, a recent...study, Myths and Realities About Crime, indicates that the increase in crime, nationally, does not significantly exceed the population increase; most people feel safe in their neighborhoods even at night; and youth victimization rates are much higher than those of the elderly. While this report does not comment specifically on the extent of school crime, its conclusions seem to suggest that our current concern about crime in general may be exaggerated.*

*...In-depth longitudinal studies of vandalism and school crime must be based on long-term hard data, and few school systems have kept long-term data on vandalism and school crime. After surveying 15 school systems in 1975, Bernard C. Watson of Temple University stated, "While the incidence of vandalism has been fluctuating over the past five years, the overall trend in the cities for which long-term data are available has been downward."*

<sup>132</sup> *Id.* at 12-14.

<sup>133</sup> NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, U.S. DEP'T OF JUSTICE, SCHOOL CRIME: THE PROBLEM AND SOME ATTEMPTED SOLUTIONS (1979).

<sup>134</sup> *Id.* at 1-2.

The dearth of available data was highlighted in a 1986 report published by the U.S. Department of Justice.<sup>135</sup> This report again emphasized that most school crime was non-violent:<sup>136</sup>

*[M]ost school-based crime, like most crime committed outside school, is non-violent in nature...It is important to note that criminal acts are far less prevalent on campus than disciplinary infractions. Properly defining these different categories of misbehavior is essential to the development of firm and fair standards of conduct.*

The same report noted, “A relatively small percentage of school offenses involve weapons.”<sup>137</sup> The authors emphasized the importance of data collection, noting that it would not only assist policymakers in understanding the breadth of the problem, but would also allow school administrators to develop a plan to address problems occurring in their schools.<sup>138</sup>

This report also called for school administrators to use their judgment in determining whether a student’s behavior rose to the level of a “crime:”

*Another issue in determining criminal activity is whether the offender acted with “criminal intent.” For example, some “thefts” of student property by students may not really be criminal. A student who “borrows” a school camera without permission, intending to return it, displays poor judgment and should be disciplined by school officials. But the student who intentionally steals the camera with no thought of returning it has committed a crime.*

*Determining “criminal intent” is particularly important when an offender is learning disabled. These youths may commit what first appear to be criminal acts out of frustration, rather than with the intent to commit a crime. While some judgment is required, it is important to separate violations of the law from violations of school rules.<sup>139</sup>*

The report called for administrators to be guided by these considerations in determining appropriate sanctions:

*Differentiating between criminal and non-criminal conduct is the first step in classifying such actions according to their level of seriousness. With such a distinction in force, a fight involving several students (e.g. a playground “scrap”) would be considered an infraction of the school’s discipline code and treated accordingly, while an assault, where an offender intends to inflict bodily harm on a victim, would constitute a criminal violation potentially chargeable in the juvenile justice system.<sup>140</sup>*

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135 NATIONAL INSTITUTE OF JUSTICE, U.S. DEP’T OF JUSTICE, REDUCING SCHOOL CRIME AND STUDENT MISBEHAVIOR: A PROBLEM SOLVING STRATEGY 12 (1986)(question of how much crime and misbehavior exists in schools difficult to answer because of dearth of follow-up to Safe School Study).

136 *Id.* at 14.

137 *Id.* at 16.

138 *Id.* at 4, 29-31.

139 *Id.* at 40.

140 *Id.*

The report went on to suggest that traditional disciplinary sanctions, such as suspension and expulsion, might not be the most beneficial method of dealing with problem behavior.<sup>141</sup> The authors suggested alternatives including non-punitive programs like mediation, conflict resolution, stress management, and referral to a community mental health agency.<sup>142</sup>

### Neoliberalism & Scaling Back Student Rights—the 1980s

In the 1980s, fears surrounding juvenile crime resurfaced. These fears coincided with the increasing popularity of “neoliberalism,” a political and economic philosophy that emphasizes minimizing government intrusion in the marketplace.<sup>143</sup> Neoliberalism extols competition and enterprise and criticizes an intrusive and burdensome “big government.”<sup>144</sup> Proponents of this philosophy argue in favor of dismantling social services, recasting welfare supports as “outdated social entitlements.”<sup>145</sup> Neoliberalists emphasize individual responsibility—an emphasis that came into play in criminal justice policy, with “law and order” rhetoric emphasizing punitive sanctions rather than rehabilitation.<sup>146</sup>

The 1980s also saw a panic over what was framed as an epidemic of drug use and trafficking, with youth gangs blamed as the primary culprits in the sale and trafficking of drugs. In fact, the term “zero tolerance” was first used in connection with drug trafficking.<sup>147</sup> Much of the “law and order” rhetoric of the 1980’s focused on the “war on drugs.”<sup>148</sup> During this time period, a number of “get tough” laws were passed targeting drug use and drug trafficking.<sup>149</sup> This was coupled with public and media attention surrounding what was considered to be fallout from the drug crisis—“crack babies.”

A researcher described the physical ailments that resulted from being exposed to crack in utero as untreatable—“no amount of special attention or educational programs will ever be able to turn these cocaine-exposed infants into well-functioning or adjusted children.”<sup>150</sup> Government officials claimed that 375,000 crack babies—about one out of every 10 births—were born in the United States in the late 1980s.<sup>151</sup> Later, media outlets began reporting on the impact “crack babies” were having on educational environments, with one educator describing them as “little Jekylls and Hydes.”<sup>152</sup> Information compiled in the 1990s largely discredited the claim that there was an epidemic of crack use, and in 1994, the National Institute on Drug Abuse asserted that the predictions of a lost generation of cocaine-exposed babies were “overstated.”<sup>153</sup>

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141 *Id.* at 42.

142 *Id.* at 43.

143 Elyshia Aseltine, *Juvenile Justice in the Shadows: Texas Municipal Courts and the Criminalization of Student Misbehavior 11-13* (2010)(unpublished Ph.D. dissertation, University of Texas)(on file with author).

144 *Id.*

145 *Id.*

146 *Id.*

147 TEXAS APPLESEED, *TEXAS’ SCHOOL TO PRISON PIPELINE: DROPOUT TO INCARCERATION* 128 (2007).

148 *Id.*

149 *Id.*

150 Aseltine, *supra* note 143, at 22.

151 *Id.*

152 *Id.*

153 *Id.* at 23.

Very little policy was made at the national level that was directly related to school crime during the 1980s and early 1990s, though the “get tough” approach to juvenile and adult crime resulted in a number of legislative initiatives—like determinate sentencing for juveniles—that became the model for the “zero tolerance” school discipline policies of the 1990s. However, the 1980s did see an end to the expansion of student rights that began in the 1960s.<sup>154</sup> Case law issued during this time period included the Supreme Court’s ruling in *New Jersey v. T.L.O.*, which held that schools did not need a warrant or probable cause to search a student.<sup>155</sup>

## The 1990s & “Zero Tolerance”

The lack of reliable, accurate data measuring school crime makes it clear that the public policy changes that led to “zero tolerance” and law enforcement in schools were not rooted in clear knowledge surrounding need, but instead were driven by fears stoked by media coverage of juvenile crime and “out of control” youth. The connection made between rhetoric surrounding juvenile delinquency and school crime led to a conflation of law enforcement policy, juvenile justice policy and educational policy. The “tough on crime” rhetoric that was a part of juvenile and criminal justice reform of the 1980s and 1990s slowly made its way into educational policy, with “zero tolerance” initiatives.<sup>156</sup>

APPENDIX

*The Genesis of  
the Myth of the  
Blackboard Jungle*

195

*During the 1990s, America’s youth set an all-time record in one telling crime category. No, not school violence. Not drug dealing or delinquency, either. Rather, the all-time record was in negative media attention.*

– Richard A. Mendel  
Less Hype, More Help: Reducing Juvenile Crime,  
What Works – And What Doesn’t (2000)

While the rise in juvenile crime rates was real in the 1980s through 1991, after 1991 those rates began to decline.<sup>157</sup> Yet, the rhetoric persisted. In the early 1990s, several national news stories stoked fears surrounding juvenile crime and school violence:

- *Kids and Guns: A Report from America’s Classroom Killing Grounds*, **Newsweek Magazine**, March 9, 1992
- *Children without Pity*, **Time**, October 26, 1992
- *Reading, Writing, and Murder: A Survey of Death in America’s Public Schools*, **People Weekly**, June 14, 1993
- *Big Shots: An Inside Look at the Deadly Love Affair Between America’s Kids and Their Guns*, **Time**, August 2, 1993
- *Teen Violence: Wild in the Streets*, **Newsweek**, August 2, 1993

154 JIM WALSH ET AL., THE EDUCATOR’S GUIDE TO TEXAS SCHOOL LAW 239 (6<sup>th</sup> ed. 2005).

155 *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

156 TEXAS APPLESEED, *supra* note 147, at 128 -133 (2007)(discussing history of “zero tolerance” legislation); *see also* CORNELL, *supra* note 1, at 7 (“The fear of violence is important because fear has driven schools to make radical changes in how schools function and how students are disciplined. Anxious school administrators have responded with strict zero tolerance policies that dictate severe punishment for even accidental violations of school rules.”).

157 *Id.*

- *Girls Will Be Girls*, **Newsweek**, August 2, 1993 (discussing teenage girls who “carry small guns in their purses and razor blades in their mouths, in case they...find a victim ripe for the taking.”)
- *Guns in the Schools: When Killers Come to Class—Even Suburban Parents Now Fear the Rising Tide of Violence*, **U.S. News & World Report**, November 8, 1993
- *America’s Schools Confront Violence*, **U.S.A. Today Magazine** (1994)

In 1995, John J. Dilulio published his now-famous article, *The Coming of the Super-Predators*, which referred to “elementary school youngsters who pack guns instead of lunches” and “some evidence” of juveniles “doing homicidal violence in ‘wolf packs.’”<sup>158</sup> Dilulio predicted that “trouble [would] be greatest in black inner-city neighborhood” but said “other places are also certain to have burgeoning youth-crime problems that will spill over into upscale central-city districts.”<sup>159</sup> Dilulio blamed “moral poverty” for the problem.<sup>160</sup> Similar rhetoric made its way into media articles that followed:

- *Now for the Bad News: Teenage Time Bombs*, *Time*, January 15, 1996 (the four- and five-year-olds of that day were “already making criminologists nervous”)
- *Heartbreaking Crimes: Kids Without a Conscience*, *People Weekly*, June 1997

The anxiety around “super-predators” included a great deal of fear about gangs. In 1994, President Clinton named gangs “one of the most profound problems we have ever faced in the U.S.”<sup>161</sup> Media perpetuated the view that anyone could become a target of gang violence at any time.<sup>162</sup> During a hearing focused on gangs in 1997, Senator Harry Reid stated, “Our current laws dealing with gangs date back to the days of *West Side Story*, but instead of the Sharks and Jets wielding knives and stealing candy, we have got sophisticated crime syndicates turning our cities and towns into war zones.”<sup>163</sup> These fears lead to state and federal legislative initiatives that included harsher penalties for crimes deemed to be gang-related.<sup>164</sup>

*When I began teaching in 1983, it was at Brown Junior High School in McAllen, Texas... Brown was considered a rough school....there was definitely foul language in our schools, but it was much different than it is today. Students down the hall would occasionally slip and utter a four-letter word, but they would immediately apologize to any adult within earshot...My, how things have changed since those days. Conditions inside schools across the nation today definitely tell a very different story... The use of foul language has escalated to unbelievable heights...In most schools, defiance and disrespect are the norm... Each year there is a little less respect, a little more bending of the rules, a much stronger feeling that teachers and administrators are no longer in control of our schools.*

– **Chris Ardis**

School Violence from the Classroom Teacher’s Perspective,  
in *School Crime and Policing* 131, 134-37 (2004)

<sup>158</sup> John J. Dilulio, *The Coming of the Super-Predators*, *THE WEEKLY STANDARD*, November 27, 1995.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> Asletine, *supra* note 143, at 25.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

Policymakers soon brought this “get tough” approach to schools. In 1994, the Gun Free Schools Act was passed, which required schools receiving federal funding to expel students caught with weapons on campus or risk losing federal funding.<sup>165</sup> The same year, the federal government passed the Goals 2000: Educate America Act, which included a goal that by the year 2000, “[e]very school in the United States [would] be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.”<sup>166</sup> Even after juvenile crime began a dramatic decrease, media attention, particularly to high-profile school shootings, continued to focus the American public on juvenile crime.<sup>167</sup>

*Recent shootings by students of peers and teachers in school settings, where such events were markedly unexpected, have provoked fear and outrage in America. For many, the “youth-gun problem” seems to be spreading beyond inner cities to suburbs and small towns and from “bad boy” cultures (i.e. those characterized by relatively high poverty, crime, unemployment, and school dropout rates) to “good boy” cultures (characterized by fewer such social ills).*

– Joseph F. Sheley & James D. Wright  
High School Youths, Weapons, and Violence:  
A National Survey 1 (1998)

The 1990s saw increased funding for School Resource Officer programs through several federal funding sources, with the Clinton administration including SRO funding in the Community Oriented Policing Services (COPS) program.<sup>168</sup> Money allocated to schools in formula grants under the Safe and Drug Free Schools Act also was used to fund school policing programs,<sup>169</sup> and additional funds were available through the federal Byrne formula grant program.<sup>170</sup> This resulted in the explosive growth of school law enforcement programs nationwide. The growth of school law enforcement programs, and expansive use of policing methods in school, led to a predictable rise in litigation around student privacy issues, culminating in the 2009 Supreme Court ruling that it was unconstitutional to strip-search a student simply because she was suspected of having brought ibuprofen to school.<sup>171</sup>

Texas responded with its own policy initiatives, discussed at length in Texas Appleseed’s first report.<sup>172</sup> In 1995, as part of an omnibus education bill, the Texas legislature enacted Texas’ “zero tolerance” statutes, listing mandated responses to address a list of student behavior

165 TEXAS APPLESEED, *supra* note 147, at 128.

166 *Id.*

167 U.S. DEP’T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, REPORT TO CONGRESS ON JUVENILE VIOLENCE RESEARCH iii (1999); Robert E. Shepherd, Jr., *How the Media Misrepresents Juvenile Policies*, CRIMINAL JUSTICE, Vol. 12, No. 4 (American Bar Association 1998).

168 SCHOOL VIOLENCE RESOURCE CENTER, BRIEFING PAPER: SCHOOL RESOURCE OFFICERS (2001).

169 Peter Finn, *School Resource Officer Programs: Finding the Funding, Reaping the Benefits*, FBI LAW BULLETINE, August 2006.

170 *Id.* The Byrne grant program was created through the Anti-Drug Abuse Act of 1988—grants are awarded by the U.S. Dep’t of Justice’s Bureau of Justice Assistance for the purpose of enabling efforts to apprehend and prosecute people who violate federal and state drug laws. See <http://www.ojp.usdoj.gov/BJA/grant/byrne.html>.

171 *Safford v. Redding*, 129 S. Ct. 2633 (2009).

172 TEXAS APPLESEED, *supra* note 147.

problems. The change in law included drug possession or use and gang involvement (or suspected gang involvement) in the list of behaviors for which schools were mandated to act—not a surprise given the fears related to drugs and gangs leading up to the changes.<sup>173</sup> Though many speak of the 1995 legislation as having been spurred by Columbine, the school shooting at Columbine and the earlier shooting in Pearl, Mississippi, did not occur for several years after the legislation was passed.

### Post 9-11 Fear of Terrorist Attacks on Schools

After the terrorist attacks of September 11th, the dialogue around school safety expanded to include the suggestion that public schools were “soft targets” for terrorists. Media joined the frenzy, noting that “there were reports in October 2004 that U.S. troops in Iraq had discovered two computer disks containing photographs, an evacuation plan and other crisis-management-related information regarding eight school districts in six U.S. states.”<sup>174</sup> A U.S. Attorney publication claimed, “Video tapes have been found in Afghanistan showing al-Qaeda’s ‘right’ to kill 2 million American children in retaliation for Muslim civilian deaths in the war on terror.”<sup>175</sup>

A survey published by the National Association of School Resource Officers (NASRO) in 2002 focused on the threat of terrorism:

*Our nation today faces threats to public safety that are greater than ever before in modern history. Our schools, as reflections of their broader communities, also face increasing threats to the safety of their students and staff. These threats include internal threats originating from sources within the schoolyard itself, and external threats from forces often originating far outside of schoolyard grounds.*<sup>176</sup>

This report noted that 95 percent of school-based police officers surveyed “feel that their schools are vulnerable to terrorist attack.”<sup>177</sup> The danger of a terrorist attack has been raised in each of NASRO’s school safety surveys since 2002. In 2009, 94 percent of surveyed school resource officers indicated that they felt that the Department of Homeland Security should provide funding to schools for school safety programs.<sup>178</sup>

In 2007, the School Safety and Improvement Act was introduced in Congress, but did not pass. The background section of the Judiciary Committee’s report on the bill included discussion of the threat of terrorism:<sup>179</sup>

173 TEX. EDU. CODE §37.121.

174 Clark Kent Ervin, *Terrorism’s Soft Targets*, THE WASHINGTON POST, May 7, 2006.

175 United States Attorney General, Eastern District of Wisconsin, *Soft Targets, Hard Lessons: Why Terrorists Valued Your School as a Target and What You Can Do*, available at [http://www.justice.gov/usao/wie/LECC/atac/publications/Soft\\_Targets\\_Schools.pdf](http://www.justice.gov/usao/wie/LECC/atac/publications/Soft_Targets_Schools.pdf).

176 NATIONAL ASSOCIATION OF SCHOOL RESOURCE OFFICERS, 2002 NASRO SCHOOL RESOURCE OFFICER SURVEY 1 (2002).

177 *Id.* at 4.

178 NATIONAL ASSOCIATION OF SCHOOL RESOURCE OFFICERS, 2009 SURVEY RESULTS.

179 COMMITTEE ON THE JUDICIARY, COMMITTEE REPORT: SCHOOL SAFETY AND LAW ENFORCEMENT IMPROVEMENT ACT OF 2007, Sept. 21, 2007.

...[S]chools are soft targets for criminals and for would-be terrorists. In most cases they employ only a small number of security personnel and have only basic security measures in place to guard against deadly attacks... The Virginia Tech incident cast light on how vulnerable our campuses are to attack by a person or group of people intent on inflicting mass casualties... Students attending our elementary and secondary schools face many of the same dangers as those attending institutions of higher education, and there are an additional 55 million students enrolled in elementary and secondary schools nationwide.

The Texas School Safety Center responded by creating a School Based Law Enforcement Officer Training Program that includes a focus on responding in cases of terrorist attack:<sup>180</sup>

*The SBLE Officer Training Program is a force multiplier capable of mitigating, deterring, responding, and recovering from any conceivable threat based on a holistic and all hazards approach and methodology. The primary and secondary school systems in the United States present an inviting and unprotected target to domestic active shooting, terrorist cells, drugs, gangs, and other violent activities.*

The Texas School Safety Center also makes available a guide to assist school districts in knowing the basic steps to take to reduce the likelihood that their school would be targeted.<sup>181</sup> According to this guide, terrorists “can be broken down into three types or categories of the 3-C’s: Criminals, Crazyes, Crusaders.”<sup>182</sup> It goes on to say, “[W]e are in fact a moralistic world today, except for the extremist and crazyes, but we must consider there are those countries in our world that do not share our value system.”<sup>183</sup>

Whether these fears will produce significant changes to school safety, school law enforcement, or public policy surrounding school crime remains to be seen.

## Conclusion

Congressional hearings almost always follow high-profile school shootings, and yet—with all this attention—we are in no better position today to discern the reality of school crime than we were in the 1950s. Nor have the “get tough” sanctions enacted in the 1990’s helped to address the problems that lead to school crime and violence. A true understanding of school crime is rooted in reliable data leading to research-based, field tested solutions.

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180 TEXAS SCHOOL SAFETY CENTER, PROJECT SBLE OFFICER CERTIFICATION TRAINING PROGRAM (2009).

181 TEXAS STATE UNIVERSITY INSTITUTE FOR CRIMINAL JUSTICE STUDIES, CRIME PREVENTION: SOFT-TARGETS, OUR SCHOOLS, AND TERRORISM, available at [http://www.txssc.txstate.edu/media/LE/downloads/resources/Soft-Targets\\_Our\\_Schools\\_Terrorism.pdf](http://www.txssc.txstate.edu/media/LE/downloads/resources/Soft-Targets_Our_Schools_Terrorism.pdf); See also Russ Rosenberg, *Soft Targets, Hard Lessons*, August 1, 2007, available at <http://assetcontrol.blogspot.com/2007/08/soft-targets-hard-lessons.html>.

182 TEXAS STATE UNIVERSITY, *supra* note 181, at 2.

183 *Id.* at 6.



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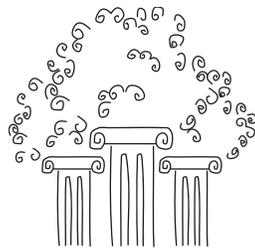
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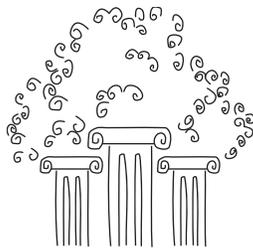




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