

Student Note

Ending the School-to-Prison Pipeline in South Carolina through Legislative Reform

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I. INTRODUCTION

The school-to-prison pipeline is a real and prevalent issue in the United States in general, but especially in South Carolina. Zero-tolerance policies that take disciplining discretion away from teachers and put it in the hands of the state fuels the pipeline. As a result, thousands of students are disciplined every year for minor harms, and the discipline is divided on race-based lines. This trend does not need to continue. South Carolina should end its zero-tolerance policy approach and, instead, adopt a restorative justice approach. In doing so, South Carolina should pass the Restorative Juvenile Practices and Approaches Act which has been stalled in the legislature. Other states have passed similar legislation, and they are seeing positive results.

II. THE SCHOOL-TO-PRISON PIPELINE IS A PREVALENT PROBLEM IN THE UNITED STATES

In October 2014, a pre-kindergarten child at Nathanael Green Primary School in Virginia had a temper tantrum while in class.¹ The teacher and principal claimed the child was throwing blocks and climbing on his desk.² The sheriff's department responded by handcuffing the four-year-old child and transporting him in a police car to the sheriff's office.³ Tracy Wood, the child's mother, was not called until after her son was already at the sheriff's office.⁴ When Ms. Wood

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1. Hawes Spencer, *Child Handcuffed and School Policies Questioned*, VIRGINIA PUBLIC RADIO (Dec. 9, 2014), <https://www.wvtf.org/post/child-handcuffed-and-school-policies-questioned#stream/0>.

2. *Id.*

3. *Id.*

4. *Id.*

arrived at the sheriff's office, she found her son in leg shackles.⁵ Not only was Ms. Wood horrified by the incident, but her son suffers nightmares from the event.⁶ He was also indefinitely suspended from the school.⁷

This horrifying example of the use of police force on a child is just one example of the school-to-prison pipeline in action. The school-to-prison pipeline is a “metaphor encompassing the various issues in our education system that result in students leaving school and becoming involved in the criminal justice system.”⁸ More specifically, the term refers to the

continuing failures in the education system where certain groups of students—for example, students of color, with disabilities, or LGBTQ—are disproportionately over- or incorrectly categorized in special education, are disciplined more harshly, including referral to law enforcement for minimal misbehavior, achieve at lower levels, and eventually drop or are pushed out of school, often into juvenile justice facilities and prisons.⁹

The school-to-prison pipeline is a serious issue in the United States that must be addressed.

A. Statistics Support the Existence of the School-to-Prison Pipeline

This Note will highlight some of the shocking statistics about the school-to-prison pipeline in the United States; however, Jason P. Nance succinctly summarizes the crisis of the school to prison pipeline:

[T]he most alarming aspect of these recent negative disciplinary and achievement trends is that some student racial groups are disproportionately affected. National,

5. *Id.*

6. *Id.*

7. *Id.*

8. Sarah E. Redfield & Jason P. Nance, *American Bar Association: Joint Task Force on Reversing the School-To-Prison Pipeline*, 47 U. MEM. L. REV. 1, 7 (2016).

9. *Id.* at 4-5.

state, and local data across all settings and at all school levels clearly demonstrate that school administrators and teachers discipline minority students, particularly African-American students, more harshly and more frequently than similarly-situated white students. Further, empirical data manifest the substantial achievement gaps that exist between minority students and white students at every grade level. Moreover, schools that serve primarily disadvantaged and underachieving minority students typically have access to fewer resources to educate students. Those same schools more often rely on extreme forms of discipline, punishment, and control, pushing disproportionately high numbers of minority students out of school and into the juvenile justice system.¹⁰

A U.S. Department of Education study revealed shocking statistics about the school-to-prison pipeline across the United States; the study reported that students of color perform and are treated differently than their peers.¹¹ In fact, “[s]tudents of color are disproportionately”:

- lower achievers and unable to read at basic or above
- damaged by lower expectations and lack of engagement
- retained in grade or excluded because of high stakes testing
- subject to more frequent and harsher punishment
- placed in alternative disciplinary schools or settings
- referred to law enforcement or subject to school-related arrest
- pushed or dropping out of school
- failing to graduate from high school
- feel threatened at school and suffer consequences as victims.¹²

10. Jason P. Nance, *Dismantling the School-to-Prison Pipeline: Tools for Change*, 48 ARIZ. ST. L.J. 313, 318 (2016) (footnotes omitted).

11. Redfield & Nance, *supra* note 8, at 7-8.

12. *Id.* at 8.

Data on students with disabilities reveals the same shocking pattern, and the data reveals the same pattern of issues regarding race, ethnicity, and gender.¹³ “Students with disabilities . . . are disproportionately”:

- students of color, especially in discretionary categories under the Individuals with Disabilities Education Act (IDEA)
- less likely to be academically proficient
- disciplined, and more harshly so
- retained in grade, but still dropping out or failing to graduate
- more likely to be placed in alternative disciplinary schools or settings or otherwise
- more likely to spend time out of the regular classroom, to be secluded or restrained
- referred to law enforcement or subject to school-related arrest and incarceration.¹⁴

Also, data about LGBTQ students follows the same trend, especially when compounded with race, ethnicity, and gender.¹⁵

B. Statistics Support that the School-to-Prison Pipeline Is a Problem in South Carolina

The school-to-prison pipeline is a major concern in South Carolina, too. South Carolina’s suspension rates are some of the highest in the nation.¹⁶ Further, the suspension rates are racially disproportionate.¹⁷ In South Carolina, during the 2009-2010 school year, 103,000 suspensions were issued and 3,900 students were expelled from school.¹⁸ Once a student is suspended, he or she is four times more likely to drop out of

13. *Id.*

14. *Id.*

15. *Id.*

16. Amanda Adler, *South Carolina Needs to Shut Down the School-To-Prison Pipeline*, S.C. APPLESEED LEGAL JUST. CTR. (Apr. 14, 2014), <http://www.scjustice.org/shut-down-school-to-prison-pipeline/>.

17. *Id.*

18. *Id.*

school.¹⁹ Worse yet, students that drop out are eight times as likely to be incarcerated as students who stay in school.²⁰

South Carolina also has a concerning problem of students dropping out of school before graduation. According to the South Carolina Department of Education's "2018-2019 State Dropout Report," 4,850 students dropped out of high school in 2018-2019, and the state's overall dropout rate was 2.2%.²¹ The dropout rate varies based on socioeconomic status, gender, and race. 3,558 students labeled by the Department as being "economically disadvantaged" dropped out, which is a rate of 2.9%.²² The overall rate varied by ethnicity and gender: males were more likely to dropout than females and nonwhite students were more likely to dropout than white students.²³ Nonwhite males dropped out at the highest rate: 3.1%.²⁴

Updated data from 2019-2020 still demonstrates concerning, but slightly improved, statistics.²⁵ These more recent statistics show that dropout rates are improving, but are still correlated with race, gender, and economic status.²⁶ For instance, from the 2018-2019 school year to the 2019-2020 school year, the dropout rate for nonwhite females decreased while nonwhite males dropped out at the highest rate.²⁷ Further, while the dropout rate for all students from the 2019-2020 school year was 1.7%, the rate was much higher when broken down: 3.1% for American Indians or Alaska Natives, 1.9% for Blacks, 2/6% for Hispanics, 5.0% for students with disabilities, 2.4% for economically disadvantaged, and 9.5% for homeless students.²⁸

A 2020 report by the National Center for Education Statistics compared the percentage of high school dropouts among persons sixteen through twenty-four years old by state for the years 2013-

19. *Id.*

20. *Id.*

21. *2018-2019 State Dropout Rate*, S.C. DEP'T OF EDUC., <https://www.ed.sc.gov/districts-schools/school-safety/discipline-related-reports/dropout-data/2018-2019-state-dropout-report/> (last visited Aug. 15, 2021).

22. *Id.*

23. *Id.*

24. *Id.*

25. *See 2018-2020 State Dropout Data*, S.C. DEP'T OF EDUC., <https://www.ed.sc.gov/districts-schools/school-safety/discipline-related-reports/dropout-data/2018-2020-state-dropout-data/>.

26. *Id.*

27. *Id.*

28. *Id.*

2017.²⁹ In effect, this is a measure of the status dropout rate, which are dropouts by “16- to 24-year-olds who are not enrolled in school and who have not completed a high school program, regardless of when they left school.”³⁰ For this time period, the United States’ rate was 6%.³¹ South Carolina ranked higher than the United States’ average with a rate of 6.8%.³² Noticeably, the states that scored higher than the United States’ rate (meaning they had the highest dropout rates) primarily consisted of southern states, such as North Carolina (6.4%), South Carolina (6.8%), Georgia (7.3%), Florida (7.0%), Alabama (7.4%), Mississippi (7.5%), Louisiana (9.6%), Arkansas (6.7%), Texas (7.1%), Oklahoma (8.1%), New Mexico (8.6%), and Arizona (8.5%).³³

C. The School-to-Prison Pipeline Has Lifelong Impacts on Affected Students

The school-to-prison pipeline is more than just scary statistics on paper, these are real children experiencing the adverse effects of our legal system. There is no doubt that incarceration of juveniles leads to detrimental consequences.³⁴ For instance, “Empirical research demonstrates that incarceration produces long-term detrimental effects on youth, including reinforcement of violent attitudes and behaviors; more limited educational, employment, military, and housing opportunities; an increased likelihood of not graduating from high school; mental health concerns; and increased future involvement in the criminal justice system.”³⁵ Further, the biggest predictor of recidivism in youths is prior incarceration.³⁶

Additionally, juvenile detention is extremely expensive, with an average cost of \$148,767 per juvenile per year.³⁷ Meanwhile, the cost

29. *New Report Highlights Progress and Challenges in U.S. High School Dropout and Completion Rates*, NCES BLOG (Jan. 14, 2020), <https://nces.ed.gov/blogs/nces/post/new-report-highlights-progress-and-challenges-in-u-s-high-school-dropout-and-completion-rates>.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Nance, *supra* note 10, at 319.

35. *Id.* at 319-20 (citations omitted).

36. *Id.* at 320.

37. *Id.*

of education averages at \$10,700 per juvenile per year.³⁸ Other costs associated with juvenile detention include the long term costs of recidivism, which is predicted to cost society somewhere between \$7.9 billion and \$21.47 billion a year.³⁹ Further, incarceration does not even have the satisfactory effect of deterring crime; instead, a study of juvenile detention recognized that “it actually increased delinquency and future involvement in the justice system.”⁴⁰

Also, even if a student is not convicted, an arrest alone can have extremely negative effects.⁴¹ Schools can refuse to readmit students after they are arrested.⁴² If a student is readmitted, “that student often suffers from emotional trauma, stigma, and embarrassment and may be monitored more closely by school resource officers, school officials, and teachers.”⁴³ Also, arrested students are more likely to have lower test scores and higher chances of dropping out and being involved in the criminal justice system.⁴⁴

Other forms of punishment besides arrest, such as suspension and expulsion, can also have extremely negative effects.⁴⁵ Students who miss out on time in the classroom are more likely to have lower grades, lower graduation rates, and lower enrollment in higher education.⁴⁶ One study found that “each suspension decreased the odds that a student would graduate from high school by 20% and decreased the odds of a student attending a postsecondary institution by 12%.”⁴⁷ Another study that looked at the correlation between suspension and dropout rates reported that “46% of African-American male students, 42% of Hispanic male students, and 36% of white male students who had been suspended did not obtain a high school diploma by their late twenties.”⁴⁸

38. *Id.*

39. *Id.*

40. *Id.* at 320.

41. *Id.* at 321.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* at 322.

48. *Id.*

III. THE SCHOOL-TO-PRISON PIPELINE IS ROOTED IN THE UNITED STATES' LEGAL SYSTEM

A. Federal Legislation Helped to Create the Pipeline

Unfortunately, the school-to-prison pipeline is a product of our legal system. Up until the late 1900s, school discipline was handled by school teachers and principals.⁴⁹ This concept of vast discretion is known as *in loco parentis*, “which asserts that educators act ‘in place of the parent’ when students are under their charge, teachers and principals were assumed to have a child’s best interest in mind when they imposed discipline – even if a child’s *actual* parents disagreed.”⁵⁰ Over time, the balance of discretion shifted from the hands of teachers to the state.⁵¹

Some scholars hypothesize that part of the shift in discretion occurred due to civil rights decisions in the 1960s and 1970s that required school systems to develop formal policies, rather than informal student-teacher relationships, to govern school discipline.⁵² Other scholars suggest that discipline power shifted to the states because of the uptick in “rates of student aggression, crime, and violence in the late 1960s and 1970s – especially in urban schools populated predominantly by poor [B]lack and Latino youth.”⁵³ Both theories share a common ground in that centralized disciplinary structures were created in response to changes in culture.⁵⁴

In the 1980s, zero-tolerance policies became the norm for school discipline and punishment.⁵⁵ Zero-tolerance policies are “formalized, centralized, disciplinary” policies “designed to be both inflexible and extremely punitive.”⁵⁶ These policies are the opposite of the idea of *in*

49. JUDITH KAFKA, THE HISTORY OF “ZERO TOLERANCE” IN AMERICAN PUBLIC SCHOOLING 6 (2011).

50. *Id.*

51. *See id.*

52. *Id.* at 7.

53. *Id.* at 8.

54. *Id.*

55. Jacob Kang-Brown et al., *A Generation Later: What We’ve Learned About Zero Tolerance in Schools*, VERA INST. OF JUST. 1 (Dec. 2013), https://www.vera.org/downloads/Publications/a-generation-later-what-weve-learned-about-zero-tolerance-in-schools/legacy_downloads/zero-tolerance-in-schools-policy-brief.pdf.

56. Lydia Nussbaum, *Realizing Restorative Justice: Legal Rules and Standards for School Discipline Reform*, 69 HASTINGS L.J. 583, 589 (2018).

loco parentis that were popular in the early twentieth century.⁵⁷ Instead, “zero tolerance policies are explicitly intended to *limit* teachers’ and principals’ individual discretion.”⁵⁸ “The policies are supposed to prohibit educators from ‘tolerating’ certain kinds of misconduct, and they grant increasing disciplinary control to direct supervisors, centralized boards of education, and state legislatures.”⁵⁹

Zero-tolerance policies were passed due to politicians wanting to show that they were addressing rising crime rates. As juvenile crime rates rose in the 1980s, Congress responded by passing “tough-on-crime” laws within the school environment.⁶⁰ One of these laws, the Gun-Free Schools Act of 1994, required states to pass laws “requiring all local school districts to expel any student, for at least one year, who brings a weapon to school.”⁶¹ If states did not pass these laws, then they would be denied federal funding for their schools.⁶² Even as juvenile crime rates decreased in the 1990s, public fear of super-predators and the 1999 Columbine High School shooting created a climate in which school discipline seemed essential.⁶³

Thus, by the 1996-1997 school year, almost 80% of schools had adopted zero-tolerance policies that went well-beyond the federal government’s mandates in the Gun-Free Schools Act.⁶⁴ The federal government and states began installing metal detectors and security guards in schools.⁶⁵ By the 2007-2008 school year, the number of law enforcement officers in schools throughout the United States tripled.⁶⁶ Today, somewhere between 14,000 and 20,000 officers are employed in schools; however, evidence does not support that police officer presence makes schools safer.⁶⁷ As a result of the increase in zero-tolerance policies, more and more students were being suspended and

57. KAFKA, *supra* note 49, at 6.

58. *Id.*

59. *Id.* at 6-7.

60. Kang-Brown et al., *supra* note 55, at 1.

61. *Id.* at 1-2.

62. *Id.* at 2.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. Cheryl Corley, *Do Police Officers in Schools Really Make Them Safer?*, NPR (Mar. 8, 2018), <https://www.npr.org/2018/03/08/591753884/do-police-officers-in-schools-really-make-them-safer#:~:text=Every%20day%20when%20you%20put%20on%20your%20uniform,in%20about%2030%20percent%20of%20the%20country%27s%20schools.>

expelled.⁶⁸ These suspensions and expulsions go well beyond the requirement in the Gun-Free Schools Act: “Nationally, only 5 percent of expulsions and out-of-school suspensions lasting a week or longer involve possession of a weapon while 43 percent are for insubordination.”⁶⁹

B. Like the United States, South Carolina Law Promotes the School-to-Prison Pipeline

South Carolina’s statute that contributes to the school-to-prison pipeline is known as the “Disturbing Schools Statute.” The statute provides that “[i]t is unlawful for a person who is not a student to willfully interfere with, disrupt, or disturb the normal operations of a school or college in this State.”⁷⁰ Next, the statute provides a list of ways that a person can disrupt a school, such as entering the school without permission, loitering on school grounds, threatening or initiating a physical assault or fighting on school property, and being loud or boisterous on school grounds.⁷¹ Punishment for violating the law is a misdemeanor charge punishable by a maximum fine of \$2,000 and/or one year in prison.⁷²

The above statutory language is new. In 2018, the statute was amended to add the “person who is not a student” language.⁷³ The unamended, original version read much differently. The previous statute was broader and applied to “any person” not “a person who is not a student.”⁷⁴ Additionally, the previous law did not list off six specific ways that schools could be disturbed.⁷⁵ Instead, it broadly provided that it is unlawful for any person to “interfere with or to disturb” a school or college by loitering about the school or acting in an obnoxious

68. Kang-Brown et al., *supra* note 55, at 2.

69. *Id.* at 4.

70. S.C. CODE ANN. § 16-17-420(A) (2018).

71. § 16-17-420(A)(1)-(5).

72. § 16-17-420(C).

73. § 16-17-420 (amended 2018).

74. § 16-17-420(A) (2017) (current version at S.C. CODE ANN. § 16-17-420(A)).

75. *See* § 16-17-420(A)(1)-(6).

manner.⁷⁶ The term “disturb” was vague and had to be defined by the courts.⁷⁷

Like so many other antiquated laws in South Carolina, the legislative history of the Disturbing Schools statute reveals that the law is rooted in sexism and racism. In 1919, John Ratchford Hart, a South Carolina lawmaker, proposed a law to prohibit “‘obnoxious’ behavior or ‘loiter[ing]’ at any girls’ school or college in the state.”⁷⁸ What was Mr. Hart’s motivation for proposing the law? He was concerned by reports of men flirting with students at an all-white, all-female college in his district.⁷⁹

Nearly fifty years later, in response to Black students organizing nonviolent marches in Orangeburg, South Carolina, a teacher named F. Hall Yarborough suggested that the Disturbing Schools bill be expanded to include criminalization of obnoxious behavior at all schools across the state.⁸⁰ Mr. Yarborough’s bill “sailed through the statehouse. No hearings were held.”⁸¹ Shortly thereafter, Black students at South Carolina State organized a protest against segregation at an Orangeburg bowling alley.⁸² The protestors returned to campus that night where a night of violence ensued: the Orangeburg Massacre.⁸³ The police shot thirty unarmed students and killed three Black teenagers.⁸⁴ Promptly thereafter, South Carolina’s Disturbing Schools statute was signed into law.⁸⁵

At the same time, South Carolina was finally beginning to integrate schools.⁸⁶ The irony is not lost on Jenny Egan, a Maryland public defender who represents children accused of disturbing schools, who

76. § 16-17-420(A) (2017).

77. Because the law has been changed, the full scope of the interpretation issues regarding the words “obnoxious” and “disturbing” are outside of the scope of this note. For an informative analysis of the courts’ prior interpretations of these words, please read Kristen Coble’s piece, *Disturbing Schools Law in South Carolina*, published in 2018 in the South Carolina Law Review. See Coble, *infra* note 96.

78. Amanda Ripley, *How America Outlawed Adolescence*, THE ATLANTIC (Nov. 2016), <https://www.theatlantic.com/magazine/archive/2016/11/how-america-outlawed-adolescence/501149/>.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

commented that, “As soon as we started introducing [B]lack bodies into white schools, we got these laws . . . That’s not a coincidence.”⁸⁷

While little data exists regarding enforcement of the newly amended Disturbing Schools law, data about the enforcement of the unamended version strongly supports that the law contributed to the school-to-prison pipeline in South Carolina. Students of all ages are frequently charged and convicted under the law. Charges for violating the law have been brought against children as young as seven-years-old.⁸⁸ In 2015, “disturbing school was the second-most-common accusation leveled against juveniles in South Carolina, after misdemeanor assault. An average of seven kids were charged every day that schools were in session.”⁸⁹ Data from 2000 to 2016 shows that students were charged under the law 33,304 times.⁹⁰ Since 2016, every year in South Carolina about 1,200 school children are charged with violating this statute and disturbing schools.⁹¹ The law allows punishment to be inflicted frequently, even for behaviors that are relatively normal for teenagers. For instance, 24% of public school students in South Carolina have been suspended at least once, which is much higher than the 13% suspension rate across the country.⁹² Charges under the law are divided on racial lines. Black students in general are four times more likely than white students to be arrested under the law, and in Charleston specifically, Black students are six times more likely to be charged.⁹³

It is worth noting that South Carolina is not the only state with this issue. Other states have disturbing schools laws, but some choose not to enforce them.⁹⁴ However, *The Atlantic* reports that across the United States, 10,000 students a year are charged under disturbing schools

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. Richard Fausset, Richard Perez-Pena & Alan Blinder, *Race and Discipline in Spotlight After South Carolina Officer Drags Student*, N.Y. TIMES (Oct. 17, 2015), <https://www.nytimes.com/2015/10/28/us/spring-valley-high-school-sc-officer-arrest.html>.

93. AM. CIV. LIBERTIES UNION, *A South Carolina Student Was Arrested for ‘Disturbing a School’ When She Challenged Police Abuse, So We Sued*, (Aug. 11, 2016), <https://www.aclu.org/blog/racial-justice/race-and-inequality-education/south-carolina-student-was-arrested-disturbing> [hereinafter *So We Sued*].

94. Ripley, *supra* note 78.

laws, and this number does not include teenagers who can be charged in some states as adults.⁹⁵

Aside from these devastating statistics, South Carolina's Disturbing Schools law and its school-to-prison pipeline were propelled into the national news and attention of people across the United States following an incident at Spring Valley High School in 2015.⁹⁶ In October 2015, Officer Ben Fields, known by students as "Officer Slam" for his history of aggression towards students, was caught on camera slamming a 16-year-old Black female student to the floor.⁹⁷ A teacher called Fields to the classroom because the student refused to leave her math class after being caught with her cellphone.⁹⁸ In addition to the student, Fields arrested 18-year-old Niya Kenny who had recorded the incident and shouted, "Isn't anyone going to help her? . . . Ya'll cannot do this!"⁹⁹ Kenny was arrested under South Carolina's Disturbing Schools law.¹⁰⁰

The incident caught the eyes of the nation not only for the shock of the incident, but for how alarming it was when coupled with other facts about the school district. At the time of the incident, Richland School District Two, in which Spring Valley is located, was made of 59% Black students and 26% white students.¹⁰¹ However, 77% of students suspended at least once were Black.¹⁰² Also, in the few years prior to the Spring Valley incident, District 2 suspended 5,800 of its 26,000 students.¹⁰³ Even worse, more than 10,000 suspensions were given out that year, indicating the same students were suspended multiple times.¹⁰⁴ In response to the incident and other similar incidents across the state, the American Civil Liberties Union filed a federal lawsuit challenging the law as a violation of due process and being unnecessarily vague.¹⁰⁵

95. *Id.*

96. Kristen Coble, *Disturbing Schools Law in South Carolina*, 69 S.C. L. REV. 859, 881 (2018).

97. *So We Sued*, *supra* note 93.

98. Fausset, Perez-Pena, & Blinder, *supra* note 92.

99. *So We Sued*, *supra* note 93.

100. *Id.*

101. Fausset, Perez-Pena, & Blinder, *supra* note 92.

102. *Id.*

103. *Id.*

104. *Id.*

105. *See Kenny v. Wilson*, 885 F.3d 280, 284, 286 (2018); AM. CIV. LIBERTIES UNION, *Kenny v. Wilson*, (Mar. 8, 2021), <https://www.aclu.org/cases/kenny-v-wilson>.

IV. SOUTH CAROLINA SHOULD ADOPT A RESTORATIVE JUSTICE APPROACH TO END THE SCHOOL-TO-PRISON PIPELINE.

Incidents like the one that happened at Spring Valley High School should never happen again. While the harm caused by South Carolina's Disturbing Schools law has already been done, there is still time to fix it and prevent the continuation of harms. The school-to-prison pipeline is a massive problem made-up of many different issues that compound on each other. Thus, a solution to the school-to-prison pipeline will require many different approaches. One approach that South Carolina should take to end the pipeline is to adopt the recommendations in the American Bar Association's (ABA) resolution addressing the school-to-prison pipeline. After reviewing the school-to-prison pipeline across the United States, the ABA proposed a collection of solutions and proposals on how to end the pipeline.¹⁰⁶ The ABA explains that:

At their core, solutions should focus on ways to (a) improve academic achievement and increase the likelihood that students will remain in school, graduate, and prepare to become positive, contributing members of our society, (b) decrease the number of suspensions, expulsions, and referrals to law enforcement; and (c) decrease disparities along racial and other lines relating to discipline and academic achievement.¹⁰⁷

One of the proposed solutions is to "support demonstrated alternative strategies to address student misbehavior, including Restorative Justice."¹⁰⁸ South Carolina should follow the ABA's advice and adopt a restorative justice approach to school discipline.

106. Redfield & Nance, *supra* note 8, at 10.

107. *Id.*

108. *Id.* at 11.

A. Defining Restorative Justice

Restorative justice is considered an alternative to the United States' and South Carolina's current retributive justice system.¹⁰⁹ Restorative justice stems from Native American, African, Maori, and other indigenous practices from around the world.¹¹⁰ It emerged in the 1970s as a way to resolve some of the weaknesses and concerns in the legal system common to the western world.¹¹¹ For instance, restorative justice aimed to add more emphasis to the needs of victims because the western legal system largely focuses on offenders.¹¹² Additionally, the western system inadequately focuses on punishment, whereas restorative justice focuses on accountability.¹¹³ In terms of restorative justice, accountability means "helping offenders to recognize the harm they have caused and encouraging them to repair the harm, to the extent possible."¹¹⁴ Thus, restorative justice is more focused on repairing the harm rather than punishing the person that caused the harm.¹¹⁵

While there are many different types and models for restorative justice, "all these restorative practices emphasize 'the resolution of conflict, restoration of order and harmony within the community, and healing for the victim, offender, and community.'"¹¹⁶ Instead of the often dehumanizing system of retributive justice, restorative justice emphasizes that all humans have worth and nobody is a "throw away."¹¹⁷ Restorative justice depends on the community to hold others accountable and "promote the well-being of its members."¹¹⁸ Unlike the retributive system, restorative justice seeks to have "the stakeholders – the victims, offenders, and communities – directly participate in the decision making that will affect them."¹¹⁹ As the Zehr Institute explains, the definition of restorative justice and examples of restorative justice

109. See Cheryl M. Graves, Donyelle L. Gray & Ora Schub, *Restorative Justice: Making the Case for Restorative Justice*, 39 CLEARINGHOUSE REV. 219, 219 (2005).

110. *Id.* at 220.

111. Howard Zehr, *Restorative Justice? What's That?*, ZEHK INST. FOR RESTORATIVE JUST., <https://zehr-institute.org/what-is-rj> (last visited Aug. 14, 2021).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. Graves, Gray & Schub, *supra* note 109, at 220.

117. *Id.*

118. *Id.*

119. *Id.*

vary greatly among practitioners.¹²⁰ For many people, restorative justice implies some kind of a meeting between the person who was harmed and the person that caused the harm.¹²¹ For example, this meeting could be between parents whose daughter was murdered and the man that murdered their daughter.¹²²

Perhaps the best way to explain restorative justice is with an example. Since 2007, the Oakland Unified School District (OUSD) in California has been practicing restorative justice in many of its schools.¹²³ OUSD defines restorative justice as a “set of principles and practices inspired by indigenous values used to build community, respond to harm/conflict and provide individual circles of support for students.”¹²⁴ OUSD believes restorative justice can help students thrive by “building, maintaining and restoring relationships between members of the entire school community . . .”¹²⁵

The District’s program uses a three-tier approach.¹²⁶ Tier 1, known as “Community Building (Prevention/Relate),” involves 100% of the school population and “is characterized by the use of social emotional skills and practice (classroom circles) to build relationships, create shared values and guidelines, and promote restorative conversations following behavioral disruption. The goal is to build a caring, intentional, and equitable community with conditions conducive to learning.”¹²⁷

Tier 2, known as “Restorative Processes (Intervention/Repair),” utilizes 15% of the student population.¹²⁸ This tier focuses on non-punitive responses to harm and conflict by using harm circles, mediation, and family-group conferencing instead of traditional disciplinary practices.¹²⁹ OUSD explains, “This process addresses the root causes of the harm, supports accountability for the offender, and

120. Zehr, *supra* note 111.

121. *Id.*

122. *Id.*

123. See *Restorative Justice*, OAKLAND UNIFIED SCH. DIST.,

<https://www.ousd.org/restorativejustice> (last updated Mar. 26, 2021 at 9:08 am).

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

promotes healing for the victim(s), the offender, and the school community.”¹³⁰

The final tier is Tier 3, which is known as “Supported Re-Entry (Individualized/Re-Integrate).”¹³¹ This is the most focused tier involving only 5% of students.¹³² The goal is to use one-on-one support so that students experiencing suspension, truancy, expulsion, or incarceration can re-integrate into the school in a way that promotes student accountability and achievement.¹³³ The program as a whole has been successful, with data showing that truancy and suspension rates have sharply decreased while test scores and graduation rates increased as much as 60%.¹³⁴ By 2014, nearly half the schools in the district were using restorative justice programs.¹³⁵ The district plans to have all schools in the district practicing restorative justice by 2020.¹³⁶

B. South Carolina Should Adopt Legislation to Encourage Restorative Justice in Schools

South Carolina has a bill on the books that adopts the ABA’s goals of a restorative justice approach. However, the bill has been stalled in the legislature. The bill, known as the “Stop the School House to Jail House Pipeline Act” or the “Restorative Juvenile Practices and Approaches Act” was introduced in the South Carolina House of Representatives on January 10, 2017, and in the Senate on March 29, 2017.¹³⁷ The South Carolina Senate passed the bill without objection in a bipartisan effort: sixteen Democrats and twenty-six Republicans voted for the bill, with six Senators not voting.¹³⁸ Now, pressure must be put on the House of Representatives to pass the bill, too. As of the time this Note was written, the bill was last amended on May 10, 2018.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. Lara Bazelon, *Oakland Demonstrates Right Way to Use Restorative Justice with Teens*, JUV. JUST. INFO. EXCH. (Jan. 3, 2019), <https://jjie.org/2019/01/03/oakland-demonstrates-right-way-to-use-restorative-justice-with-teens/>.

136. *Id.*

137. H.R. 3055, 122nd Gen. Assemb., 2d Reg. Sess. (S.C. 2017).

138. Senate Roll Call Vote, H.R. 122-3055, Reg. Sess., (S.C. 2018).

The content of the bill is far from radical and merely proposes that a committee be created to study restorative practices in schools in South Carolina. The bill explains that the “South Carolina General Assembly finds that factors which contribute substantially to juvenile delinquency may be mitigated with restorative practices.”¹³⁹ Further, the General Assembly finds that “restorative practices should encompass all fields where justice is practiced to include, juvenile justice, schools, families, victims organizations, and workplaces.”¹⁴⁰ The policy behind the bill is that “a safe and well-educated population is fundamental to the stability and growth” of the State.¹⁴¹ Further, the “General Assembly finds that in our efforts to provide a safe and secure learning environment for all, we must be wary of creating unintended consequences that have a counterproductive impact on some students who need help the most.”¹⁴²

The goal of the bill is to create a “Juvenile Restorative Practices Study Committee” which would “review the juvenile justice laws of the State and determine the need to reform juvenile justice policies, practices, and programs in the State of South Carolina to improve outcomes for children who are at risk of entering, or who have entered, the juvenile justice system.”¹⁴³ The Committee will not be limited to a review of laws but will also study policies and practices of state administrative agencies, such as the Department of Juvenile Justice, Department of Social Services, and the Department of Mental Health.¹⁴⁴ Additionally, the Committee will review policies of schools, police departments, courts, and any other relevant public or private institutions.¹⁴⁵

During their review, the Committee is instructed to consider data and statistics involving a wide-range of information:

- (1) the range and frequency of disciplinary measures used by schools, law enforcement, and the courts;
- (2) any correlation between student demographics, including

139. S.C. H.R. 3055

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at § 2.

144. *Id.* at § 3(A).

145. *Id.*

gender, race, and age, with disciplinary measures used and the range and frequency of misconduct resulting in the use of discipline whether by a school, law enforcement, or the courts; (3) the prevalence of a history of child abuse or neglect, and of mental health evaluations, diagnoses, or treatment for children who are at risk of entering, or who have entered, the juvenile justice system; and (4) the range of services provided to children who are at risk of entering, or who have entered, the juvenile justice system by schools, the Department of Juvenile Justice, the Department of Social Services, the Department of Mental Health, law enforcement, the courts, and community organizations.¹⁴⁶

After their review, the Committee “shall make recommendations to the General Assembly concerning proposed changes to facilitate and encourage diversion of juveniles from the juvenile justice system to restorative approaches to include modification, expansion, or termination of existing programs and methods.”¹⁴⁷

Even without this Committee, it is clear that our current system is not working. “Two decades of research confirms that out-of-school punishments like suspension and expulsion do not work for low-level offenses.”¹⁴⁸ Often, they only make the problem worse because suspended and expelled students are more likely to come from homes where they are unsupervised.¹⁴⁹ Even worse, these same students are more likely to experience violence and other struggles at home.¹⁵⁰ However, implementing restorative justice practices can help reach these vulnerable students and end the school-to-prison pipeline.¹⁵¹ By enacting this law, South Carolina has a chance to end the harm caused by its zero-tolerance policies and pave the way to a better future through restorative justice.

146. *Id.* at §3(a)(1)-(4).

147. *Id.* at §3(b).

148. Adler, *supra* note 16.

149. *Id.*

150. *Id.*

151. *Id.*

V. SOUTH CAROLINA SHOULD FOLLOW THE APPROACH OF OTHER STATES AND PASS RESTORATIVE JUSTICE LEGISLATION.

South Carolina should adopt this restorative justice approach because other states that have adopted such practices are seeing successful outcomes. “Restorative practices in schools are increasingly popular in virtually all U.S. states, and it is regularly promoted as a viable disciplinary strategy in both justice and education arenas.”¹⁵² Colorado, California, Minnesota, and Pennsylvania are leading the push for restorative justice in schools.¹⁵³ A survey by Georgetown University Law Center of all fifty states’ approaches to school-based restorative justice showed that twenty-one states and Washington, D.C., have enacted some kind of legislation that supports using restorative justice in schools.¹⁵⁴ The twenty-one states include the following: California, Colorado, D.C., Delaware, Florida, Indiana, Illinois, Louisiana, Maine, Maryland, Michigan, Montana, Nebraska, Nevada, New Jersey, New Mexico, Pennsylvania, Tennessee, Texas, Utah, and Washington.¹⁵⁵ The study revealed an obvious trend that schools in the southeast (disregarding Tennessee and Florida) do not have laws that support restorative justice in schools.¹⁵⁶

Additionally, across these twenty-one states, thirty-eight laws have been passed that provide a range of support for different types of restorative justice programs to provide for restorative justice in schools.¹⁵⁷ Specifically, the survey revealed six categories of restorative justice requirements across the different states: (1) restorative justice as

152. Mara Schiff, *Can Restorative Justice Disrupt the ‘School-to-Prison Pipeline?’*, 21 CONTEMP. JUST. REV. 121, 126 (2018).

153. *Id.* at 127.

154. *School-Based Restorative Justice: State-by-State Analysis*, GEO. L. CTR. ON POVERTY & INEQ. (2020), <https://genderjusticeandopportunity.georgetown.edu/restorative-justice-practices/tj-trends/> [hereinafter *50 State Survey*]. For more information on the Georgetown study, please view their additional fact sheet. *School-Based Restorative Justice Legislative Trends*, GEO. L. CTR. ON POVERTY & INEQ., <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2021/04/School-Based-RJ-Legislative-Trends-1-1.pdf> (last visited Oct. 25, 2021) [hereinafter *Legislative Trends*].

155. *50 State Survey*, *supra* note 154, at Table 1.

156. *See id.*

157. *Id.*

a whole-school model; (2) restorative justice as an alternative to exclusionary school discipline; (3) culturally competent and trauma-informed restorative justice; (4) restorative justice in professional development; (5) funding for school-based restorative justice programs; and (6) data collection on school-based restorative justice practices.¹⁵⁸ Maryland is the only state to have legislation implementing all six of the requirements.¹⁵⁹

South Carolina's proposed legislation would likely fall into the sixth category of "data collection on school-based restorative justice practices." Two other states, Delaware and Maryland, adopted this approach.¹⁶⁰ In these programs, "data collection is required, including student participation and demographic data, program quality, and implementation of restorative justice programs."¹⁶¹ If South Carolina were to adopt the law and create the study committee, then in the future that committee may suggest that South Carolina adopt one of the five other approaches.

A. Delaware and Maryland Have Laws Similar to the One Proposed in South Carolina

The following is a deeper review of the Maryland and Delaware laws that are most similar to South Carolina's proposed law. By learning from states that have passed similar legislation, South Carolina can see what a successful model for their law should look like. The Delaware law requires the Department of Education to "compile and release an annual report on student discipline in schools."¹⁶² The report must adhere to the Family Educational Rights and Privacy Act (FERPA) and be posted on the Department's website.¹⁶³ Further, the report has specific requirements about what must be studied: "The report shall include both statewide totals and individual school data, for each of the school years in the report, on the issuance of out-of-school suspensions, expulsions, alternative school assignments, and in-school suspensions, disaggregated by race, ethnicity, gender, grade level, limited English

158. *Id.*

159. *Id.*

160. *Id.*

161. *Legislative Trends*, *supra* note 154.

162. DEL. CODE ANN. tit. 14, § 703(a) (West 2019).

163. § 703(a)(1)-(2).

proficiency, incident type, discipline duration, and if the student is identified as having a disability.”¹⁶⁴ Also, it must identify specific schools that meet certain thresholds for out-of-state suspensions.¹⁶⁵ Importantly, there is a threshold requirement for suspensions correlated with race and disability:

A school for which the out-of-school suspension gap between the lowest-suspended racial subgroup and the highest suspended racial subgroup, or the suspension gap between students with disabilities and students without disabilities, exceeds any of the following: (1) Twenty percent for the 2018 through 2019 school year; (2) Fifteen percent for the 2019 through 2020 school year; (3) Ten percent for the 2020 through 2021 school year and each school year thereafter.¹⁶⁶

Once a school is identified as meeting a threshold, the school is required to take remedial action, such as reviewing its policies and practices.¹⁶⁷ Further, “[i]f a school has already implemented restorative justice practices, the school must review the interventions being used to assure research-based quality, scope of training provided, and follow-up support to assure proper implementation. Restorative justice practices program improvements should be made based on this review.”¹⁶⁸ Finally, the school is required to submit a plan to the Department of Education identifying ways that the school will work to “reduce the use of exclusionary disciplinary practices or disproportionate use of exclusionary disciplinary practice with racial subgroups or students with disabilities, or both.”¹⁶⁹ In creating the plan, the school must address many different stakeholders, including,

164. § 703(a)(3).

165. § 703(a)(4)(b) (“The report must identify, for each school year in the report, schools that meet any of the following thresholds . . . (b) A school with an out-of-school suspension rate for all students or any 1 subgroup that exceeds any of the following: (1.) A rate of 20 suspensions per 100 students for the 2018 through 2019 school year. (2.) A rate of 15 suspensions per 100 students for the 2019 through 2020 school year and each school year thereafter”).

166. § 703(a)(4)(c).

167. § 703(b)(1).

168. § 703(b)(2).

169. § 703(b)(3).

students, parents, educators, administrators, and other community stakeholders, to “promote fairness and equity in discipline.”¹⁷⁰ Further, the plan “may include” provisions about improving professional development through “restorative practices, trauma informed care, implicit bias awareness, cultural competency, classroom management,” and other programs.¹⁷¹ Once the plan has been submitted to the department and approved at a school board meeting, the school must submit an annual progress report regarding implementation of the plan.¹⁷²

Maryland implements a whole school approach to restorative justice and implements all six of the main categories of restorative justice requirements.¹⁷³ Specifically, Maryland has two statutes that call for data collection on school-based restorative justice practices, which are similar to South Carolina’s proposed law.¹⁷⁴ The first of Maryland’s statutes requires that school climate surveys be implemented to collect data on student discipline and restorative practices.¹⁷⁵ The statute involves the education accountability program in which public schools are required to implement an accountability program concerning the school’s operation and management.¹⁷⁶ The law specifies that standardized testing is not the only measurement for evaluating a school’s educational accountability.¹⁷⁷ Instead, educational accountability is measured by three “school quality indicators” which aim to measure the “comparative opportunities provided to students or the level of student success in public schools.”¹⁷⁸ One mandatory school quality indicator is the use of school climate surveys that include “at least one question to educators regarding the receipt of critical instructional feedback.”¹⁷⁹ The statute then provides a list of other school quality indicators that schools may choose from, such as class size, case load, opportunities for advanced placement classes and dual

170. § 703(b)(3)(b).

171. § 703(b)(3)(c).

172. § 703(b)(3)(d)-(f).

173. *50 State Survey*, *supra* note 154, at Table 1; *see* discussion *infra* on Maryland’s whole school approach to restorative.

174. *Id.*

175. MD. CODE ANN., EDUC. § 7-203(c)(2)(iii)(5) (West 2019)

176. EDUC. § 7-203(a)(1).

177. EDUC. § 7-203(c)(1).

178. EDUC. § 7-203I(2)(i).

179. EDUC. § 7-203(c)(2)(ii).

enrollment, chronic absenteeism, and access to certified teachers.¹⁸⁰ Importantly, one of the options for school quality indicators is “data on discipline and restorative practices.”¹⁸¹ Therefore, the Maryland law promisingly considers restorative practices in their measure of the success of a school’s operation and management, which is a promising sign for eliminating the school-to-prison pipeline.

The second statute also calls for collection of data on student discipline and restorative practices but requires that the data be broken down by certain factors.¹⁸² The statute provides a provision for the disaggregation of data: “On or before October 1 each year, the Department shall submit to the Governor and . . . the General Assembly, a student discipline data report that includes a description of the uses of restorative approaches in the State and a review of disciplinary practices and policies in the State.”¹⁸³ Specifically, the information must be disaggregated by “race, ethnicity, gender, disability status, eligibility for free or reduced price meals or an equivalent measure of socioeconomic status, English language proficiency, and type of discipline.”¹⁸⁴ Further, data regarding special-education must also be disaggregated by race, ethnicity, and gender.¹⁸⁵

B. In the Future, South Carolina Should Strive to Adopt a More Involved Model of Restorative Justice in Its Schools, Such as a Whole School Approach

South Carolina’s proposed legislation is a good starting point for change, but it does not go far enough. The state must strive to adopt a more involved approach to restorative justice. Many different models of restorative justice in schools exist, including the “whole school” approach. The whole school approach is considered by experts as the most comprehensive form of restorative justice in schools.¹⁸⁶ “Whole school” means that the principles of “relationships, respect,

180. EDUC. § 7-203(c)(2)(iii).

181. EDUC. § 7-203(c)(2)(iii)(5).

182. MD. CODE ANN. EDUC. § 7-306(e)(1) (West 2019).

183. *Id.*

184. EDUC. § 7-306(e)(2).

185. EDUC. § 7-306(e)(3).

186. Nussbaum, *supra* note 56, at 586.

responsibility, repair, and reintegration” flow through the entire school, including teachers, parents, classrooms, and staff.¹⁸⁷ To achieve this goal, the approach “combines a proactive, conflict prevention pedagogy with specialized processes for addressing conflict when it arises” by using programs like circles, conferences, and mediations.¹⁸⁸ The focus is on repairing relationships so when “problems or conflicts do arise, students and adults confront the consequences of their actions, explore ways to make amends, and voluntarily agree to recompense.”¹⁸⁹ In the whole-school approach, “rule-breaking students, including the root of their behavior, are engaged directly rather than dismissed; held accountable rather than let off the hook; shown how their actions affect others; and taught that what they do matters to their community.”¹⁹⁰ Thus, the whole school approach is dramatically different than zero-tolerance policies.

C. Other States Serve as a Model of Laws that South Carolina Should Aspire to Pass in the Future

Two states follow the whole school approach: Maryland and Maine. As discussed above, Maryland requires data collection but goes even further by having a whole school approach to restorative justice. In 2017, the Maryland General Assembly created the “Maryland Commission on the School-to-Prison Pipeline and Restorative Practices” which reviewed discipline strategies used in schools and then created best practices to improve school discipline.¹⁹¹ These best practices included restorative approaches.¹⁹² The Commission studied literature, data, and testimony from many different stakeholder groups.¹⁹³ Ultimately, the Commission concluded that Maryland schools over-rely on zero-tolerance policies which was having a

187. *Id.* at 605-06

188. *Id.* at 586.

189. *Id.*

190. *Id.*

191. Maryland Commission on the School-to-Prison Pipeline and Restorative Practices, Final Report and Collaborative Action Plan, 7 (Dec. 20, 2018), <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/023600/023694/20190078e.pdf> (enacting the Commission was pursuant to House Bill 1287, Chapter 762, Acts of 2017) [hereinafter Maryland Commission].

192. *Id.* at 7.

193. *Id.*

negative impact on schools.¹⁹⁴ For instance, Maryland law at the time the Commission performed their study gave discretion over student discipline to the Maryland State Board of Education and school districts, rather than teachers.¹⁹⁵ Further, relying on zero-tolerance and other exclusionary discipline practices worsened the achievement gap and contributed to the school-to-prison pipeline in the state.¹⁹⁶ For instance 60% of the state's out-of-school suspensions were Black students, but only 35% of the state's school enrollment are Black students.¹⁹⁷

In developing their best practices, the Commission noted that many schools had already begun the move to including restorative practices.¹⁹⁸ As a result, the Commission encouraged schools to adopt “restorative approaches to building and sustaining positive learning environments.”¹⁹⁹ These restorative approaches should be primarily proactive and focus on building relationships, rather than reactive responses to harm.²⁰⁰ In making their recommendation, the Commission focused on five areas: “(1) the development of restorative schools; (2) teacher education; (3) discipline data transparency; (4) state support and evaluation and (5) leveraging of resources.”²⁰¹

In response to the Commission's findings, the legislature adopted laws to implement restorative practices in Maryland schools. The first of these statutes prohibits the suspension and expulsion of pre-kindergarten, kindergarten, first grade, and second grade students.²⁰² The only exceptions are that “these students may be expelled if required by federal law or if the suspension is for no more than five days at the suggestion of a mental health professional due to the threat of serious harm to the students or others.”²⁰³ Even still, the principal is required to contact the parent or guardian of an expelled or suspended child

194. *Id.*

195. *Id.* at 15 (The statute is codified at MD. CODE ANN. EDUC. § 7-305 (West 2019). Please note that subsequent laws and regulations have been passed changing this language).

196. *Id.* at 7.

197. *Id.* at 24.

198. *Id.* at 7.

199. *Id.*

200. *Id.* at 8.

201. *Id.*

202. MD. CODE ANN., EDUC. § 7-305.1(b)(1) (West 2019).

203. EDUC. § 7-305.1(b)(2)(i)-(ii).

immediately.²⁰⁴ Even in cases that align with this statutory exception, the school system will first attempt to use restorative practices to intervene in the situation.²⁰⁵

South Carolina would benefit from passing a similar statute because it would help eliminate the cycle of trauma that begins when students are punished at a young age. For example, consider the story from the beginning of this Note about the kindergartener arrested from his school and shackled at the sheriff's office. A statute prohibiting the suspension and expulsion of students this age would help prevent this kind of scenario from happening. As a result, young students would not be traumatized and experience the lasting effects of such episodes, which ultimately will make schools safer and more welcoming spaces for all students. In South Carolina, where students of all ages are frequently expelled or suspended, a law similar to Maryland's would immediately reduce the number of elementary school students who are eligible for suspension or expulsion. If students cannot be suspended or expelled, then at least one of the negative effects of the school-to-prison pipeline is stopped in its tracks.

Maryland's second statute focuses on specific student disciplinary methods and calls for the use of restorative approaches.²⁰⁶ Maryland law defines "restorative approaches" as

a relationship-focused student discipline model that: (i) Is preventive and proactive; (ii) Emphasizes building strong relationships and setting clear behavioral expectations that contribute to the well-being of the school community; (iii) In response to behavior that violates the clear behavioral expectations that contribute to the well-being of the school community, focuses on accountability for any harm done by the problem behavior; and (iv) Addresses ways to repair the relationships affected by the problem behavior with the voluntary participation of an individual who was harmed.²⁰⁷

204. EDUC. § 7-305.1(b)(3).

205. EDUC. § 7-305.1(d).

206. EDUC. § 7-306(a)(1).

207. EDUC. § 7-306(a)(1).

Then, the statute provides a list of potential restorative approaches, such as “conflict resolution, mediation, circle processes, and positive behavioral intervention supports.”²⁰⁸ The statute calls upon the State Board of Education to assist in the implementation of restorative approaches and to create guidelines on how the restorative approaches should be implemented.²⁰⁹

A statute requiring the use of restorative approaches would greatly benefit South Carolina because it sets out a new framework to replace the harmful zero-tolerance policies that the state currently utilizes. As explained above, Black students are suspended and expelled in South Carolina at alarming rates, which has severely harmed the relationship these students have with their school and their community. Utilizing the definition of “restorative approaches” in the Maryland law could help heal this harm by rebuilding these relationships through conflict resolution instead of punishment. For instance, a student that has been expelled or arrested while in school could participate in a conflict resolution process with the school to discuss the harm, its effect on the student, and how the parties can improve from here.

The International Institute for Restorative Practices studied the effects of Maryland’s whole school approach to implementing restorative practices in their schools.²¹⁰ The study found that schools that had implemented the Institute’s “Restorative Practices SaferSanerSchools Whole-School Change Program” saw many positive results.²¹¹ For instance, the schools saw a decrease in students misbehaving and punitive discipline.²¹² A review of Hampstead Hill, a pre-kindergarten through eighth-grade school in Baltimore, Maryland, showed a 61% decrease in student suspensions over the six years the program was implemented.²¹³ The same school saw a 91% decrease in office referrals over the same time period.²¹⁴ Further, Glenmount School, a Baltimore school for kindergarten through eighth-grade saw

208. EDUC. § 7-306(a)(2).

209. EDUC. § 7-306(c).

210. *Evidence from Schools Implementing Restorative Practices*, INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES GRADUATE SCHOOL, <https://www.iirp.edu/pdf/IIRP-Improving-School-Climate.pdf>.

211. *Id.* at 2.

212. *Id.*

213. *Id.* at 3.

214. *Id.*

similar results.²¹⁵ Suspensions decreased by 67% and the number of students with multiple suspensions was reduced by 77%.²¹⁶

Also, the schools reported improved student-teacher relationships.²¹⁷ Importantly, the improvement in relationships “tends to narrow the ‘racial-discipline’” gap.²¹⁸ The Institute reported that over the 2011-2012 school year, “the gap in the average number of misconduct/defiance referrals between Asian/White and Latino/African American students was narrower in classrooms” that had a high level of restorative practice compared to classrooms with a low level of restorative practices.²¹⁹ If South Carolina were to adopt a program similar to Maryland’s whole school approach, then hopefully the communities, students, and teachers in South Carolina would experience similar positive results.

Like Maryland, Maine has also implemented a whole-school approach to restorative justice. Maine’s attempt to implement restorative practices in schools was partially funded by a National Institute of Health and RAND corporation randomized controlled study.²²⁰ Schools in Maine had already been seeing positive results from implementing restorative practices, but this study was designed to record data and legitimize that process.²²¹ After the study, the Maine legislature enacted legislation incorporating restorative practices in schools. In laying out the duties of school boards, the Maine legislature tasked school boards with the duty of adopting a student code of conduct.²²² Then, when creating school disciplinary policies for violation of the student code of conduct, the school board is required to consider restorative interventions in lieu of zero-tolerance policies.²²³

215. *Id.*

216. *Id.*

217. *Id.* at 2.

218. *Id.*

219. *Id.* at 4.

220. Joshua Wachtel, *NIH to Fund First Randomized Controlled Trials for Restorative Practices in 14 Maine Schools*, (Sept. 19, 2013), ; see also Josie D. Acota et al., *A Cluster-Randomized Trial of Restorative Practices: An Illustration to Spur High-Quality Research and Evaluation*, (May 15, 2015), https://www.tandfonline.com/doi/full/10.1080/10474412.2016.1217488?casa_token=QCd_3eFs3ckAAAAA%3AtlIRVr-7feG9wcg9S_ZyO9aNioC-PgmfDCO-rA1SntbkeMktSS8ujYxCg9Iy5houUubVjaaUP1ESRQ

221. Wachtel, *supra* note 220.

222. ME. REV. STAT. ANN. tit. 20-A, § 1001(15) (West 2019).

223. § 1001(15-A)(B) (2019).

The statute defines restorative interventions as “school practices that are designed to strengthen relationships, improve the connection to school and promote a strong sense of accountability and that help students learn from their mistakes, understand the impact of their actions on others and find opportunities to repair the harm they have caused through their misbehavior.”²²⁴ The Maine statute goes further than the Maryland statute in that it specifically articulates that discretion for discipline belongs in the hands of administrators, not the state.²²⁵

South Carolina should adopt legislation calling for a student code of conduct focused on restorative approaches. A code of conduct based on restorative approaches would go a long way towards improving the relationship among marginalized students, their schools, and even their communities. The student code of conduct should be developed through collaboration among students, teachers, administration, and community stakeholders. Like Maine’s law, South Carolina’s code of conduct should focus on the dual goal of strengthening relationships and emphasizing accountability without the need for arrests. This approach will help students to learn how to right their wrongs without having to experience the trauma and negative effects of arrests, suspensions, and/or expulsion. Additionally, Maine’s statute puts the discretion for discipline in the hands of administrators, not the state, which is something South Carolina should do to more narrowly tailor discipline to the individual needs of the school. This helps eliminate the harm caused by state-wide zero-tolerance policies that are far too-broad and harmful. Ultimately, South Carolina should first pass legislation allowing the state to study restorative practices in schools, but the long-term goal should be enacting legislation, similar to Maryland’s and Maine’s laws, that actively applies a whole school restorative approach to school discipline.

224. § 1001(15-A)(B) (2019).

225. § 1001(15-A)(C) (2019).

VI. BEFORE PASSING NEW LEGISLATION, SOUTH CAROLINA SHOULD PREPARE FOR OBSTACLES THAT OTHER STATES HAVE FACED.

South Carolina should adopt a restorative justice approach, but in doing so, it must plan for obstacles. Without a doubt, South Carolina needs to take action to end the school-to-prison pipeline. While restorative programs have many positive attributes, implementing a program into South Carolina schools will come with obstacles. Luckily, South Carolina can learn from other states about how they addressed obstacles, such as operating within an imperfect system, political pushback, lack of training, and fear of change among stakeholders.

South Carolina needs to learn from the obstacles that other states faced when they switched from a system of retributive practices to a system of restorative practices. For instance, South Carolina can learn from the difficult implementation of restorative justice in Los Angeles, California.²²⁶ Much like South Carolina, Los Angeles employed a “zero-tolerance” discipline policy that mandated “automatic suspensions, expulsions, and arrests for a wide range of serious to not-so-serious infractions . . . such as ‘insubordination,’ ‘willful defiance,’ disrupting class, and violating school dress code.”²²⁷ The zero-tolerance policy was heavily criticized for contributing to the school-to-prison pipeline, so the Los Angeles school district aimed to remedy this harm by incorporating restorative justice.²²⁸ In implementing restorative practice, the Los Angeles Unified School District ran into an issue: their school district is gigantic.²²⁹ The district has more than 900 campuses and more than 700,000 students and employees.²³⁰ Teachers complained that they lacked training and time to engage with restorative practices.²³¹ Others thought that troublesome students were getting away with bad behavior by being allowed to stay in school.²³² By studying other states, South Carolina can prevent this issue of teacher

226. Nussbaum, *supra* note 56, at 584.

227. *Id.* at 585.

228. *Id.*

229. *Id.* at 586.

230. *Id.* at 586-87.

231. *Id.* at 587.

232. *Id.*

complaints by preparing for it in advance. The following is a brief list of obstacles that the state can plan to face.

Obstacle 1: Imperfect System. One challenge to implementing restorative justice practices in schools is that this new system must operate within our current system which is inherently flawed.²³³ As Schiff explains, “[T]he guiding values and principles of restorative justice (e.g. inclusion, respect, fairness, tolerance, acceptance, and so on) are contrary to prevailing accepted retributive values (e.g. punishment, isolation, deprivation, proportionate infliction of harm) which characterize exclusionary school disciplinary approaches, and reflect salient ‘tough on crime’ or ‘law and order’ narratives.”²³⁴ One way to combat this challenge is to have organized school district management that is capable and ready to implement these changes.²³⁵

Obstacle 2: Politics. Another obstacle is that school bureaucracies can add a wrinkle to implementing restorative practices.²³⁶ “Each school district is unique and most are structured as independent local government organizations with their own taxing powers and a great deal of local discretion.”²³⁷ “Successful implementation of new initiatives does not occur solely at the District level, but rather in individual schools where local actors may encourage or subvert restorative initiatives.”²³⁸ One benefit for South Carolina is that the current proposed legislation passed in the Senate through almost unanimous bipartisan efforts, which is a good sign for future political issues facing implementation of restorative practices.

Obstacle 3: Lack of Training. Teachers often lack the proper training to implement restorative practices in their schools:

Teachers and administrators often do not receive sufficient training in restorative justice, may not be comfortable with either the subject matter or the methods recommended by trainers or in curriculum materials, and may feel themselves working against an entrenched

233. Schiff, *supra* note 152, at 129.

234. *Id.*

235. *See id.* at 129-30.

236. *See id.* at 130.

237. *Id.*

238. *Id.*

culture where this is received as a ‘soft’ response to student misbehavior and rules violations.²³⁹

This issue is similar to the one Los Angeles faced. In implementing restorative justice programs, South Carolina would need to commit resources to adequately train teachers and administrators so that they are adequately prepared to participate in these programs. Investing resources means more than just funding one or two meetings.²⁴⁰ Instead, South Carolina must commit to funding the “complex multi-year process of redefining behavior, reestablishing culture, confronting long held responses to rules violations – or even to reconsidering the rules themselves.”²⁴¹

Obstacle 4: Fear of Change. In April 2016, the South Carolina General Assembly introduced a bill to repeal the Disturbing Schools law.²⁴² The proposal did not pass but was instead met with backlash.²⁴³ In testifying against the law, Barry Barnette, a solicitor and former teacher, argued, “There’s kids that will not obey the rules. And you’ve got to have discretion for that officer. I wish it was a perfect world where the students were always well behaved and everything. It’s not that way.”²⁴⁴ Additionally, a statement by the South Carolina Sheriffs’ Association in favor of keeping the Disturbing Schools law argued that “without it, officers might be forced to charge students with more-serious offenses – like disorderly conduct or assault and battery.”²⁴⁵ Even after the Spring Valley incident, changes were not made to policing in schools. As Adler explains, “[O]nce police are invited into the schoolhouse, they’re rarely asked to leave.”²⁴⁶ For instance, the Superintendent over the district where Spring Valley High School is located, Debbie Hamm, recommended that officers remain in the school.²⁴⁷ Sheriff Leon Lott supports Superintendent Hamm’s

239. *Id.*

240. *See id.*

241. *Id.*

242. Ripley, *supra* note 78.

243. *Id.*

244. *Id.*

245. *Id.*

246. Adler, *supra* note 16.

247. Ripley, *supra* note 78.

argument.²⁴⁸ He believes that officers in schools help resolve problems, even if resolution of a problem includes arresting the student.²⁴⁹

VII. CONCLUSION

In conclusion, the school-to-prison pipeline is a serious issue in South Carolina. The problem is rooted in our history of racism and segregation. However, South Carolina does not have to continue down this path. If the state adopts legislation to introduce restorative justice practices into schools, then South Carolina, at the very least, has a chance to prevent the furtherance of the school-to-prison pipeline and could even remedy some of its past harms.

248. *Id.*

249. *Id.*