



WHEN DID MAKING ADULTS MAD BECOME A CRIME?

# The Court's Role in Dismantling the School-to-Prison Pipeline

By Judge Steven C. Teske and Judge J. Brian Huff

**T**he juvenile justice system in America is a paradox when it comes to promoting the welfare of our nation's young people. We have come a long way from old English common law which treated children as adults under the "vicious will" doctrine,<sup>1</sup> to creating juvenile courts with the understanding that children, despite a willful act, still possess a formative mind and should be treated differently from adults. Despite this progression, decision-makers continue to promulgate laws and policies that treat children as adults in contradiction of the philosophy underlying the creation and role of juvenile courts. The zero tolerance policies of many school systems across the country are a prime example of this paradoxical treatment of children. In an attempt to address discipline, school systems have adopted a "get tough" approach using out-of-school suspension, expulsion, and arrests.

Many of these arrests resulting in court referrals are for misdemeanor offenses involving school fights, disorderly conduct, and the creative application of laws that include disruption on school grounds. For example, Georgia enacted a law against disrupting public schools to punish parents for disruptive conduct at school arising from custody battles. Ironically, this law quickly turned against students when police on campus began making arrests for small infractions.

A review of the literature generally recommends that courts can address this problem through better screening of referrals. Although true, the harmful effects of zero tolerance are felt at the moment the referral is made. A student arrested in school is twice as likely not to

graduate and four times as likely if he or she appears in court.<sup>2</sup>

Clayton County, Ga., and Jefferson County, Ala., like many counties across America, experienced significant increases in minor school arrests when police began to be placed on campuses in the early 1990s. However, school safety did not improve with the increased police presence, and graduation rates fell.<sup>3</sup> The authors, who preside on the juvenile court bench in these two counties, brought stakeholders together to develop a protocol to reverse this trend, relying on the Juvenile Detention Alternative Initiative (JDAI) model and NCJFCJ's Juvenile Delinquency Guidelines. Both counties subsequently experienced a significant decrease in school arrests. Clayton County,

the first to apply this approach several years ago, expanded its protocol to develop a system of care that includes alternatives to suspension and arrests such as functional family therapy, multi-systemic therapy, wrap-around services, peer court, and in-school responses. Consequently, graduation rates increased while serious juvenile crime in the schools and community decreased.

This experience has provided considerable insight into the essential role of the judge in system change to improve outcomes for youth. This article will discuss the harmful effects of zero tolerance policies and why they deserve judicial attention. We will show, absent major legislative changes, how the juvenile judge is crucial in system reform that can ameliorate these harmful effects.

### ZERO TOLERANCE: ITS ORIGIN, APPLICATION, AND EFFECTS

The background and etymology of the term “zero tolerance” can be traced back to the 1980s during State and Federal efforts related to the “war on drugs.” It has been suggested that the application of zero tolerance to minor offenses originated from the “broken windows” theory of crime, which analogizes the spread of crime to a building with broken windows that attracts vagrants and squatters, inviting more serious crime.<sup>4</sup> Thus, it makes sense to punish minor offense violators before major crimes occur.

By the early 1990s, school systems began to adopt zero tolerance policies for minor school infractions, which resulted in the near doubling of students suspended annually from 1.7 million in 1974 to 3.1 million in 2001.<sup>5</sup> The most illogical use of zero tolerance is for truancy. The suspension from school of a student who does not want to attend illustrates the inherent problems with zero tolerance policies, and has led some to refer to zero tolerance as “zero intelligence” or “zero evidence.”<sup>6</sup>

Within the context of school discipline, zero tolerance can best be defined as a “philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the seriousness of behavior, mitigating circumstances, or situational context.”<sup>7</sup> The severity and punitive nature of zero tolerance practices escalated when police were placed on campuses. Consequently, the number of students arrested and referred to juvenile court for infractions once handled by school administrators increased dramatically. The study of this phenomenon has been referred to as the “school-to-prison pipeline.”<sup>8</sup>

Zero tolerance policies operate under the “broken windows” assumption that removing disruptive students deters other students from similar conduct while simultaneously enhancing the classroom environment. On the contrary, some studies suggest that such strategies are harmful to students and may make schools and communities less safe.<sup>9</sup>

Zero tolerance strategies ignore the unrefined skills associated with an adolescent’s developmental capacity to manage emotions and conflicts. Recent adolescent brain research has found that the frontal lobe of the brain, which filters emotion into logical response, is not fully developed until about age 21.<sup>10</sup> Youth are biologically wired to exhibit risk-taking behaviors, impulsive responses, and poor judgment.

Disciplinary policies that result in the arrest of students for normal adolescent behavior can exacerbate the challenges already facing

youth. Because adolescents are still neurologically immature, they should be surrounded by positive influences to help them become responsible adults.<sup>11</sup> Schools are positive institutions and have been found to be a protective buffer against negative influences.<sup>12</sup> Zero tolerance policies that remove students who do not pose a serious threat to safety may very well be increasing the risk of negative outcomes for the student — especially if removed in handcuffs — as well as the school and the community.

It is not surprising that children with disabilities are more likely to be arrested under zero tolerance policies. For example, it is estimated that juvenile justice facilities are three to five times more likely to have youth with emotional disabilities than public schools.<sup>13</sup> If adolescents are neurologically wired to make poor decisions, adolescents with disabilities are at even greater risk to be arrested.

Finally, zero tolerance policies contribute to the existing racial and ethnic disparities in public education.<sup>14</sup> These inequalities more often than not produce lower graduation rates among minority youth, which contributes to higher rates of criminality among these youth.<sup>15</sup>

A study of the impact of zero tolerance policies shows that minority youth are disproportionately suspended and referred to court on school-related offenses. Black students are 2.6 times as likely to be suspended as White students.<sup>16</sup> For example, in 2000, Black students represented 17% of the nation’s student population yet represented 34% of the suspended population.<sup>17</sup> There is no evidence connecting this disparity to poverty or assumptions that youth of color are prone to disruptive and violent behavior.<sup>18</sup> On the contrary, studies indicate that this overrepresentation of Black students is related to referral bias on the part of school officials.<sup>19</sup>

Although many juvenile courts have acted to minimize these harmful effects through diversion, this effort is insufficient because the harm occurs at the point of arrest. Comprehensive system reform is needed, which cannot take place without a change agent. The following discussion defines the juvenile justice system and how the juvenile judge, as a stakeholder, holds a unique position to be that change agent.

### THE MULTI-SYSTEM INTEGRATED APPROACH: UNDERSTANDING THE JUVENILE JUSTICE SYSTEM

A system is commonly defined as “a set of interacting components, acting interdependently and sharing a common boundary separating the set of components from its environment.”<sup>20</sup> All systems have inputs in the form of demands, supports, and a desired outcome. This definition, however, is not readily applicable to a “juvenile justice system” because it does not have a “common boundary” as described below.

The desired outcome of any juvenile justice system is to reduce delinquency. This can only occur by using effective treatment modalities to address the causes of delinquent conduct. These causes, referred to as criminogenic needs, include lack of family support, poor performance in school, lack of pro-social activities, substance abuse, anti-social cognition, and anti-social associates.<sup>21</sup> These needs are served by various community agencies, including social services, mental health services, the school system, and the juvenile court. The desired outcome of reducing delinquency is dependent on many systems working together. These systems possess varying budgets and regulations that

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often impede communication among them, resulting in policies that contradict the desired outcomes of the larger juvenile justice system.

Zero tolerance is an example of a contrary policy. When police were placed on school campuses in Clayton County, Ga., in 1994, the number of referrals from the school system increased approximately 1,248%. Approximately 90% of these referrals were infractions previously addressed by administrators. Jefferson County, Ala., experienced a similar increase. During this time, school suspensions increased while graduation rates decreased to 58% by 2003. The data in both jurisdictions supported the research that increased suspensions and arrests were resulting in higher drop-out rates.

One should be careful not to place blame solely on the police and schools. The increase in referrals should be analyzed in a systems context, and the role of each system within the larger juvenile justice system. Police, for example, are trained to make arrests when they have probable cause that an offense has occurred. Without additional training for school police, we should not expect them to respond any differently than their role dictates.

Likewise, school administrators are responsible for the safety of schools. The primary role of schools is to educate—not provide mental health, social, or other services, which are the province of other agencies in the community. Schools, therefore, tend to rely on punitive measures such as suspension, expulsion, and now even arrest to address disruptive behavior. Unfortunately, many students are chronically disruptive because they have underlying issues at home or outside school that require services not accessible by the school system. It is essential that schools are linked to other community resources that can assess and provide interventions for the child and family to reduce the risk of disruptive behavior.

Using a systems model, it becomes evident that the juvenile justice system is not a single entity, but a system of multiple entities working together toward desired outcomes for youth. Within this larger system we call juvenile justice, the court is the common denominator. The court is the intersection of juvenile justice, and the juvenile judge is the traffic cop.<sup>22</sup> Juvenile court judges are incomparable agents for change within the juvenile justice system, and with the respect and authority accorded the bench, are in a unique position to bring together system stakeholders. How judges can effectuate this role is the key to success.

#### IMPROVING OUTCOMES FOR YOUTH: THE ROLE OF THE JUDGE

Judges often express legitimate concerns when asked about exercising a role off the bench. Obviously, judges must refer to their state's judicial ethics rules for guidance. Most states, however, do not prohibit judges from engaging the community if it will promote a better juvenile justice system.<sup>23</sup>

In Clayton and Jefferson counties, the judge's role was limited to bringing the relevant stakeholders together to discuss the problem and develop a solution. Judges give orders on the bench, but off the bench they forge and define relationships to improve outcomes for youth. Judicial leadership is 10% bringing people together to talk about the problem and solutions and 90% persuasion. They will come if asked by a judge. What they do after that depends on how they are persuaded.

The protocol process in Clayton and Jefferson counties has led to the following recommendations when forging protocols to reverse the school-to-prison pipeline:

It is essential that schools are linked to other community resources that can assess and provide interventions for the child and family to reduce the risk of disruptive behavior.

- **Identify Stakeholders:** It helps to identify the stakeholders and meet with them individually to present the problem using data and research on the ineffectiveness of school referrals. It is crucial to present only the problem and request their participation in a series of collaborative meetings with other stakeholders to develop solutions. Stakeholders feel threatened if told how to fix a problem, especially one they had a hand in creating. They are experts in their respective fields and have much to contribute toward a solution. These expert stakeholders should include, but are not limited to, school superintendent, chief law enforcement officer, chief prosecuting attorney, chief public defender, head of social services and mental health, chief court intake officer, and the administrative judge. Judges should also give serious consideration to including a parent and youth. Persons of color representative of the community should be included since they tend to be the most affected by zero tolerance policies and can offer insight into the problem and possible solutions.
- **Identify a Neutral Moderator:** The stakeholders should see the judge as an objective participant. The judge should make introductions at the first meeting, introduce the moderator, and explain the goals of the meetings and that the judge will be an equal participant. A solution grounded in personality is not sustainable. Because judges come and go, the next judge can reverse administrative decisions. Solutions developed by a community are more apt to become its culture, and less likely to be changed on the whim of a personality.
- **Provide Data and Research:** The first meeting, and others as needed, should include presentations by stakeholders or other experts about the problem that may suggest possible solutions as the group moves forward in discussions. It is important that the group understands the problem in order to develop solutions.
- **Get it in writing!** A written protocol increases the fidelity of the program as well as its sustainability. It is difficult to ensure quality control absent a document that provides reference for guidance.
- **Appoint a Monitor:** A watchdog is needed to ensure that referrals follow the protocol's guidelines. This may be an individual assigned this task or may be assigned when the referral is made provided all intake staff are trained in the protocol. In Clayton and Jefferson counties, questionable referrals are returned to the campus police or school for reconciliation.
- **Provide Cross-training:** All persons who will make the protocol operational must be trained together at the same time to minimize misunderstandings. This should occur before the start of each school year to ensure new personnel are familiar with the protocol. This also allows for feedback about the mechanics and application of the protocol. Each stakeholder agency should develop policy that directs their staff on its application.
- **Inform the Community:** The community should be informed of the protocol and its objective by using the media and other information outlets. Most citizens are concerned about the effects of zero tolerance policies. The political rhetoric we often hear to get tough on juveniles seldom spills over to minor school offenses. Clayton and Jefferson counties have experienced strong support from the community to prevent school arrests for minor infractions and find positive alternatives.



- **Collect the Data:** Accurate data is necessary for periodic review to measure the outcomes and determine if changes are needed.

Using this process, Clayton and Jefferson counties developed protocols that included a three-tier graduated response process that focused on certain misdemeanor offenses.<sup>24</sup> The first infraction requires a written warning to the student and copies to the school and parent. The second infraction requires a referral to a school conflict workshop or mediation. The third infraction may result in a referral to the court.

The protocol has resulted in a reduction of referrals by 67.4% in Clayton County and 50% in Jefferson County. Since its implementation in 2004, the Clayton County stakeholders have created a system of care to assess and treat disruptive students as an alternative to suspension, expulsion, and arrests. These alternatives resulted in a decrease in suspensions of 8%. The protocol, coupled with the system of care, has resulted in an increase of graduation rates by 20%, while felony rates fell 51% in the community. This supports the theory that keeping as many children as possible in school using alternative measures will increase graduation rates. It probably goes without saying that the more children we graduate, the less juvenile crime in the community.

We also experienced an improvement in school safety due to the cognitive shift of police toward how they relate to students. School police share that the significant reduction in referrals has increased their presence on campus—they are no longer leaving campus to transport students to juvenile intake. The students do not observe police making arrests, but instead engaging students. Students are now more inclined to share information with police about matters they hear on campus that could pose a threat. This is evident, in part, by the 73% reduction of serious weapons on campus. According to Sgt. Marc Richards, the supervisor of the school resource officers in Clayton County, “Schools are a microcosm of the community. If you want to know what is going on in the community, talk to the kids. But the kids must want to talk to you!” School safety can be enhanced if school policing focuses on intelligence gathering through student engagement using positive approaches.

When efforts are made to decrease referrals from schools, which are typically the largest feeder of court referrals, the number of youth of color referred is decreased. The considerable decrease in referrals in Clayton and Jefferson counties resulted in a decrease in racial and ethnic disparity by as much as 58% and a decrease in the detention rate of youth of color by 38%. These data suggest that efforts to reduce disproportionate minority contact (DMC) can be addressed with substantial results by focusing on zero tolerance policies and their adverse effects.

Finally, employing the processes we outline here can not only help mitigate the unintended, harmful outcomes associated with zero tolerance, but can also set the stage to develop alternatives to detention for truant behavior and avoid the use of the valid court order exception for this—and other—status offenses. Many of the underlying causes of disruptive behavior in school are the same for truant and incorrigible youth. These same youth can benefit from a system of care that connects all agencies serving youth.<sup>25</sup>

## CONCLUSION

Much has been said and written about how students should be treated once they are referred to the juvenile court. The more pertinent question is whether many of these students should be referred to the court in the first place. Many students are disruptive for reasons related to their normative immaturity or a disability. The beauty of the juvenile court is that the commission of a delinquent act does not necessarily make the child delinquent. Youth are wired to make poor

decisions and commit delinquent acts. The juvenile court should be reserved for children who “scare” us, not those who make us “mad.”

Because of the court’s stature in the juvenile justice system, judges are in a unique position to bring positive change to a system that feeds the court with unnecessary referrals. No one is better situated than the judge to stop the harmful effects of zero tolerance.

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## END NOTES

<sup>1</sup> Blackstone, W. (1765-69). *Commentaries on the Laws of England*, Book IV, Ch. 2.

<sup>2</sup> Sweeten, G. (December 2006). Who will graduate? Disruption of high school education by arrest and court involvement, *Justice Quarterly*, 24(4), 462-480.

<sup>3</sup> School offense data provided by John Barrett, Juvenile Court Automated System, Canyon Services, Phoenix, Ariz.; graduation rates provided by Luvenia Jackson, Special Assistant to the Superintendent, Clayton County Public School System.

<sup>4</sup> Kelling, G., & Coles, C. (1997). *Fixing Broken Windows*. New York: Simon & Schuster.

<sup>5</sup> Poe-Yamagata, E., & Jones, M. (2000). *And Justice for Some*. Washington, DC: Building Blocks for Youth.

<sup>6</sup> Richardson, V. (2002, May 3). Zero Tolerance = Zero Intelligence. *The Washington Times*.

<sup>7</sup> Skiba, R., Reynolds, C.R., Graham, S., Sheras, P., Conoley, J.C., & Garcia-Vazquez, E. (2006). Are zero tolerance policies effective in the schools?: An evidentiary review and recommendations. *A Report by the American Psychological Associate Zero Tolerance Task Force*.

<sup>8</sup> Wald, J., & Losen, D. (2003). Defining and re-directing a school-to-prison pipeline. In J. Wald & D. Losen (Eds.), *New directions for youth development: Deconstructing the school-to-prison pipeline* (pp. 9-16). Hoboken, NJ: Wiley & Sons, Inc.

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

<sup>10</sup> Giedd, J. et al. (1999). Brain development during childhood and adolescence: A longitudinal MRI study. *Nature Neuroscience*, 2(10), 861-863.

<sup>11</sup> *Id.*

<sup>12</sup> U.S. Department of Health and Human Services. (2001). *Youth violence: A Report of the Surgeon General*. Washington, DC: Author.

<sup>13</sup> Leone, P.E., & Meisel, S. (1997). Improving education services for students in detention and confinement facilities, *Children’s Legal Rights Journals*, 71(2).

<sup>14</sup> Wald & Losen, *supra* note 8.

<sup>15</sup> Mendez, L. M. R. (2003). Predictors of suspension and negative school outcomes: A longitudinal investigation. In J. Wald & E. Losen (Eds.), *New directions for youth development: Deconstructing the school-to-prison pipeline* (pp. 17-34). Hoboken, NJ: Wiley & Sons, Inc.

<sup>16</sup> Wald & Losen, *supra* note 8.

<sup>17</sup> *Id.*

<sup>18</sup> Skiba et al., *supra* note 7.

<sup>19</sup> *Id.*

<sup>20</sup> Bozeman, B. (1979). *Public management and policy analysis*. New York: St. Martin’s Press.

<sup>21</sup> Andrews, D.A., Bonta, J., & Wormith, J. (2006). The recent past and near future of risk and/or needs assessment, *Crime & Delinquency*, 52(1).

<sup>22</sup> Teske, S., & Huff, B. (2010). The dichotomy of judicial leadership: Using collaboration to improve outcomes for status offenders. *Juvenile and Family Court Journal*, 61(2) 54-60.

<sup>23</sup> Georgia, for example, allows judges to testify and speak on issues that promote juvenile justice. Judges are also allowed to engage system stakeholders to develop written protocols to improve the delinquency system. O.C.G.A. 15-11-10.

<sup>24</sup> The Jefferson County protocol included more offenses than Clayton County’s. They both, however, focused on most of the minor referrals from the schools.

<sup>25</sup> The proposed re-authorization of the Juvenile Justice and Delinquency Prevention Act (JJDP), which includes elimination of the Valid Court Order (VCO) exception, and the recent resolution adopted by the National Council of Juvenile and Family Court Judges supporting the elimination of the VCO exception, heighten the importance of community efforts to address the lack of services for status youth.