
Boston Bar Journal

A Peer Reviewed Publication of the Boston Bar Association

Special Edition on the School-to-Prison Pipeline

Special Edition 2018 Volume 62, Number 4

<u>Foreword</u>	1
By BBA President Jon Albano	
<u>Legal Analysis</u>	2
School Discipline in Massachusetts Today	
By Marlies Spanjaard	
<u>Legal Analysis</u>	6
School Discipline Law, Ch. 222 of the Acts of 2012: Effective Application and Challenges with Ongoing Implementation	
By Liza Hirsch and Janine Solomon	
<u>Voice of the Judiciary</u>	9
Deconstructing the School-to-Prison Pipeline	
By Hon. Jay Blitzman	
<u>Viewpoints</u>	
Parent Perspective.....	12
By Deidre Dailey	
Student Viewpoint: Fighting a Suspension.....	14
By JMC	
Student Viewpoint: The World is not Peaches and Cream.....	16
By Schama	
<u>Case Focus</u>	19
<i>Goodwin v. Lee Public Schools</i>	
By Joseph N. Schneiderman	
<u>Practice Tips</u>	22
Trauma Informed Care: What Lawyers Representing Children and Teens Need to Know	
By Kirstie MacEwan	
<u>Viewpoint</u>	24
Transition H.O.P.E.: Boston Public Schools' Efforts to Assist System-Involved Youth	
By Janelle Ridley	
<u>Heads Up</u>	27
Successful Alternatives: Juvenile Diversion and Restorative Justice in Suffolk County	
By Daniel F. Conley, Michael V. Glennon and Erin Freeborn	

Special Edition Editorial Board Members

Boston Bar Journal Board of Editors Representatives

Guest Editor

Rachel Hershfang

U.S. Securities and Exchange Commission

Hon. Amy Blake

Massachusetts Appeals Court

Eric Haskell

Office of the Massachusetts Attorney General

Tad Heuer

Foley Hoag

Crystal L. Lyons

Middlesex County District Attorney's Office

Service Innovation Project Representatives

Chair

Vineesha Sow

Health Law Advocates

Jessica Kelly

Sherin and Lodgen

Andrea Knowles

Sugarman, Rogers, Barshak & Cohen

Jane Hill Lovins

United States District Court

Elizabeth McIntyre

Greater Boston Legal Services

Christina Miller

Suffolk University Law School

Tovah Miller

Al Wallis

Brown Rudnick

Special Edition Foreword
By BBA President Jon Albano

Earlier this year, the Boston Bar Association launched the pilot phase of its Service Innovation Project. Made possible by the Burnes Innovation in Service Fund of the Boston Bar Foundation, the project aims to identify ways for attorneys to disrupt the school-to-prison pipeline in our community.

As you will read in this special edition of the *Boston Bar Journal*, the factors that contribute to perpetuating the school-to-prison pipeline are numerous and complicated. At the BBA, we have been fortunate to be able to partner with longtime experts who have been on the front lines fighting for students' rights and school discipline reform for decades. Many of them have written the pieces that follow, and I would like to thank them for their continued efforts.

I also would like to thank the Service Innovation Project Steering Committee for their devotion to working toward better outcomes for children in Massachusetts and beyond. Finally, I would like to offer my sincere thanks to the students and parents who lent their voices to this publication and shared their stories firsthand.

If you are interested in getting involved in the Service Innovation Project, please consider attending our [pro bono training on representing students in school discipline cases on October 24.](#)

School Discipline in Massachusetts Today

By Marlies Spanjaard
Legal Analysis

Even if you haven't heard the term "school-to-prison pipeline," you probably know what it describes: The national trend by which students are funneled out of the public schools and into the juvenile and criminal justice systems. Instead of getting the education they need, generations of our state's most vulnerable children have been pushed out of the classroom and into jail by schools with inadequate educational programs and zero tolerance disciplinary policies and practices. Suspension or expulsion from school can play a major role in pushing students into this pipeline. Unfortunately, these types of exclusions have increased dramatically in the last fifty years across the country. Massachusetts is no exception. Since the 1970s, schools have experienced a massive shift in how they respond to misbehavior in the classroom. The suspension rate for all students has nearly doubled, with students of color and students with disabilities incurring exclusion at an even greater rate. In Massachusetts, 17% of all incidents involved low-income Black or Latino students receiving special education, a rate that is estimated to be 10 times greater than their enrollment. See http://lawyerscom.org/wp-content/uploads/2014/11/Not-Measuring-up_-The-State-of-School-Discipline-in-Massachusetts.pdf.

In 2012, the Legislature enacted G.L. c. 71, § 37H^{3/4}, the first law to address school discipline reform in almost twenty years. The legislature sought to address distressingly high rates of exclusions and provide education services for children who are excluded.

Unlike the preexisting §§ 37H and 37H^{1/2}, the new § 37H^{3/4} provides procedural protections for students receiving both short term and long term suspensions – short term being under 10 days and long term being 10 days or more. Reflecting current research and best practices demonstrating that school exclusion is harmful to children and should be a last resort, § 37H^{3/4}: (1) requires that the decision maker, typically the school principal, exercise discretion, consider ways to reengage the student, and avoid any long term exclusion until other non-exclusionary alternatives have been tried; (2) prohibits a student's exclusion for non-serious offenses from exceeding ninety days in a single school year; and (3) requires school districts to provide educational services to students who have been excluded from school for more than 10 days in order for them to make academic progress during the period of their exclusion. (Prior to the law, a non-special needs student excluded from school had no right to any educational services).

Now, four years into the implementation of § 37H^{3/4}, much still remains to be done to address the school to prison pipeline in Massachusetts. Massachusetts is heralded as having the best public schools in the nation, but access to this system is not equitable. Massachusetts schools continue to have high suspension and expulsion rates; racial disparities in exclusions continue to be higher than the national average; and the academic services offered to excluded students continue to vary greatly in quality. Massachusetts must do better, and this article suggests four ways that it can do so.

Provide Robust Procedural Protections for Students Facing Even Short Term Exclusions

First, § 37H¾ provides few procedural protections for students receiving short term suspension – defined as suspensions that are less than 10 days. Under the current law, students who are excluded for less than 10 days receive the opportunity to be heard, but there is no requirement that a parent be present. While the regulations require the principal to articulate the basis for the charge and to allow the student to present mitigating circumstances, this rarely happens. Often, a school official informs the student of his suspension while face-to-face, or by calling his parent. There is also no mechanism for appealing short term suspensions to the superintendent, so these determinations are often final.

Even a short term suspension can drastically impact the student’s achievement. Each day of exclusion is a missed day of instruction, and can lead students to fall behind. See <https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/suspended-education-in-massachusetts-using-days-of-lost-instruction-due-to-suspension-to-evaluate-our-schools>. Furthermore, a student who is excluded is left to spend his days out of school without any structure or support, which significantly increases his chances of engaging in delinquent behavior and finding himself in court. Given that students facing exclusion are often already struggling academically and emotionally, exclusion, even for a short duration, can have a tremendous impact. Providing robust procedural protections for students facing even short term exclusions would ensure that we are taking the opportunity to address student challenges at their root, rather than waiting until things have already progressed to the point where a student is facing a long term exclusion or expulsion.

Clarify The Robust Procedural Protections For Student Facing Exclusion Under Sections 37H And 37H½

Second, § 37H¾ regulates the school’s response to misbehavior that the state has defined as “non-serious exclusions.” Sections 37H and 37H½ in contrast, regulate the school’s response to misbehavior involving weapons, drugs, assault on educational staff, and any felony charges or convictions. Under the current statutory scheme, students who are being disciplined for allegations of non-serious behaviors under § 37H¾ have more robust protections delineated than students who are facing more serious allegations and consequences under §§ 37H and 37H½. The result in practice is that students facing the serious allegations are often not afforded the appropriate due process because it is not specifically delineated in the statute, although it is supported by the case law. This discrepancy in the statutory scheme is difficult to square with the research demonstrating that exclusion for both “non-serious” and “serious” offenses equally impacts student achievement. Requiring additional procedural protections does not prevent schools from implementing serious disciplinary consequences if the principal determines such consequences are warranted; they simply require the school to take steps to ensure that the offense occurred and was committed by the student being disciplined, and to hear the whole story including mitigating circumstances before imposing very serious and potentially life altering consequences. The law should be amended so that it is clear that students who are facing discipline under §§ 37H and 37H½ are entitled to all of the procedural protections received by students facing discipline under § 37H¾.

Limit The Authority Of Principals To Exclude Students For Out Of School Conduct

Third, the provisions of § 37H½ that allow exclusion of a student who has a pending felony charge or conviction upon the principal's determination that the student's continued presence would have a detrimental effect on the school's general welfare sweeps too broadly. Although the layperson thinks of "felonies" as charges such as murder or manslaughter, § 37H½ has been used to exclude students charged with felonies reflecting normal adolescent behavior, such as riding in the backseat of a car that turned out to be stolen, fighting, or stealing an iPhone. The law gives principals the discretion to exclude a student based solely on the existence of a criminal charge. Principals are educators, not judges. They are not trained to make these determinations, and are often being asked to decide a student's fate with limited information. In fact, the information a principal has is sometimes obtained in violation of student privacy protections as juvenile court proceedings are confidential.

Further, available data illuminate a serious problem with disparities in both race and disability status of the young people who face juvenile court charges. Massachusetts is one of the few states that allow this type of exclusion based solely on an allegation, despite the notion that one ought to be presumed innocent until proven guilty. Barring a complete removal of a principal's ability to exclude based on a mere allegation, the statute should be amended to reflect the Department of Elementary and Secondary Education's 1994 advisory, which said that § 37H½ should only be used for serious violent felonies. One approach could be to align § 37H½ with the Youthful Offender Statute.

The Youthful Offender statute, G.L. c. 119, § 54, allows prosecutors in circumstances where they feel a child has committed a serious offense to indict a child as a youthful offender, subjecting them to treatment as an adult. The statute applies to: youth who have previously been committed to DYS or are accused of causing or threatening serious bodily harm, or any charge involving a gun. If the statute focuses on the realistic threat to school safety, those who are alleged to have committed minor, non-violent crimes will be excluded at a lower rate. Furthermore, youthful offender cases are open to the public, which would allow everyone the opportunity to have the same information and wouldn't incentivize the disclosure of confidential information currently protected by the juvenile court.

Limit The Definitions Of "Assault" And "Weapon" Under Section 37H.

Finally, § 37H should more clearly define the terms "assault" and "weapon." Section 37H defines "weapon" in a way that explicitly includes guns and knives, but is otherwise vague. This has permitted principals to expand the definition of "weapon" to sometimes comical levels, such as a case in which a student was excluded under § 37H for possessing a paperclip. Similarly, "assault," which also is not definite under § 37H, has sometimes been applied to include a "menacing" look from a student, unintentional contact with a teacher, or contact made with a teacher by a kindergartener during a tantrum.

Changing § 37H to clarify that all the elements of an "assault" must be present before expulsion, including specific intent and imminent harm, would lower exclusions. Currently, a broad

spectrum of actions may be considered an “assault,” including unintentional acts or acts where there was no actual threat of harm. Further, the definition of “weapon” should be changed to match the federal definition of “dangerous weapon” under 18 U.S.C. § 930: A “device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.” A school could still short term suspend students under § 37H ¾ for any item banned in their student handbook, but this change would limit the amount of students permanently excluded. These simple changes will reduce exclusions and keep students in the educational environment they so desperately need.

Conclusion

Section 37H¾ has significantly improved school discipline practice in Massachusetts, but much remains to be done. Some schools are excluding upwards of 50 percent of their student body each year. Students of color are still suspended at much higher rates than their white counterparts. By adopting the changes suggested above, Massachusetts can continue to improve on the progress already made. Massachusetts has long been at the forefront of progressive approaches to student misconduct, recognizing students as individual children in need of compassion and support rather than bad apples that need to be pushed out. By amending our laws to reflect the above changes, Massachusetts can continue to play a role as a leader in the field.

Marlies Spanjaard, MSW, JD, is the Director of the EdLaw Project, a statewide education advocacy initiative housed within the Youth Advocacy Division of the Committee for Public Counsel Services. She is a recognized expert on education law and school-to-confinement pathways. A passionate and dedicated advocate for vulnerable youth in Massachusetts, her work focuses on increasing education advocacy among the juvenile and child welfare bars to ensure children are supported to succeed in school and stay out of the court system.

School Discipline Law, Ch. 222 of the Acts of 2012: Effective Application and Challenges with Ongoing Implementation

By Liza Hirsch and Janine Solomon
Legal Analysis

In Massachusetts and nationwide, one of the most commonly used responses to students who exhibit misbehavior is to exclude them from school, effectively depriving them of education. While out-of-school suspension has been used in schools as a form of discipline since the 1960s, it was not until the 1990s, during the era of “tough on crime” and zero tolerance policies, that out-of-school suspension became a widespread approach for addressing minor misbehavior. In keeping with this trend, the Massachusetts legislature enacted the Education Reform Act of 1993 which provided principals with broad authority to exclude students from school. Researchers began to express concern that exclusion from school not only did not improve children’s behavior, it actually made it more likely that those students would misbehave and accrue additional suspensions.¹ Moreover, research began to demonstrate that students of color and students with disabilities were more likely to be suspended from school.² Over time it has become increasingly clear that children who are repeatedly excluded from school face devastating consequences: they are less likely to reach learning milestones and more likely to fall behind, repeat grades, drop out of school and not graduate, and/or have contact with the criminal justice system, pushed into a trajectory known as the “school-to-prison pipeline.”

In response, Massachusetts Advocates for Children (MAC) joined with other concerned advocates to form the Education Law Task Force (ELTF)³. After years of advocacy by ELTF, State Representative Alice Wolf, and other advocates, An Act Relative to Student Access to Educational Services and Exclusion from School (Chapter 222 of the Acts of 2012)⁴ was enacted and took effect in 2014.⁵ The law created new due process and data reporting requirements for school districts regarding the exclusion of students from school for minor misbehavior. The underlying principle of the law is to make exclusion from school a last resort, especially for all but the most serious offenses. Districts are required to provide notice and a hearing prior to an out-of-school suspension, absent emergency circumstances. The law also requires all students who are excluded from school to have access to assignments, quizzes and

¹ Kirsten L. Allman, and John R. Slate. “School Discipline in Public Education: A Brief Review of Current Practices.” *International Journal of Educational Leadership Preparation* 6.2 (2011): n2 (citing, Hochman, S. R., & Worner, W. (1987). In-school suspension and group counseling: Helping at-risk students. *NASSP Bulletin*, 71, 93-97; Sauter, B. (2001). Rethinking the effectiveness of suspensions. *Reclaiming Children and Youth*, 9, 210-217; Ambrose, M., & Gibson, M. (1995). Does suspension work? *NEA Today*, 13, 39; & Costenbader, V. K., & Markson, S. (1998). School suspension: A survey of current policy and practices. *NASSP Bulletin*, 78, 103).

² Townsend, Brenda L. “The disproportionate discipline of African American learners: Reducing school suspensions and expulsions.” *Exceptional children* 66.3 (2000): 381-391; Krezmien, Michael P., Peter E. Leone, and Georgianna M. Achilles. “Suspension, race, and disability: Analysis of statewide practices and reporting.” *Journal of Emotional and Behavioral Disorders* 14.4 (2006): 217-226.

³ The ELTF is a statewide group of attorneys, advocates, young people, and organizers, convened by MAC, working to address educational issues facing low-income children in Massachusetts. The ELTF pays particular attention to school discipline, and successfully advocated for the passage of Chapter 222.

⁴ Mass. Gen. Laws ch. 71, §§ 37H, H ½ and H ¾ (2014).

⁵ For a more comprehensive summary of the history of the passage of Chapter 222, see, Tom Mela, “How We Won School Discipline Reform in Massachusetts,” *Schott Foundation for Public Education*, available at <http://schottfoundation.org/blog/2014/07/23/how-we-won-school-discipline-reform-massachusetts>.

tests, and for students who are long-term suspended or expelled to receive tutoring, online coursework or other alternative education services.⁶ The law and regulations additionally require the Massachusetts Department of Elementary and Secondary Education (DESE) to collect disaggregated school discipline data from school districts⁷, post the data, analyze the data, and provide support to schools that exclude high numbers of students or disproportionately suspend students of color or students with disabilities.

Current Implementation and Challenges

Advocacy by the ELTF and others was essential not only to the passage of the law, but to its implementation. The ELTF provided substantial input into the implementing regulations, by submitting draft regulations, commenting on the proposed regulations, and testifying to the Board of Elementary and Secondary Education.⁸ Today, four years into the implementation of Chapter 222, the ELTF, through its Chapter 222 Coalition, has grown and continues to collaborate with DESE regarding the implementation of the law. Since the law took effect, DESE has posted school discipline data disaggregated by district and school for the 2014-15, 2015-16 and 2016-17 school years. The data show some improvement in lowering the rates of suspension, especially in the first year of the law's implementation. Some schools and districts have made meaningful changes to lower the rates of suspension, while others have not demonstrated improvement. The data also show that while suspension rates have decreased for students of color and students with disabilities, both groups continue to be suspended at higher rates than their peers.

In adherence with the regulations, DESE has established a process for identifying schools and districts that demonstrate overreliance on suspension and/or disparate rates of suspension by race, ethnicity, or disability. These schools and districts participate in the Rethinking School Discipline Professional Learning Network (PLN), a forum in which educators and administrators can learn with and from each other, reflect on their own school discipline data, and draft action plans which aim to reduce reliance on exclusion as a form of discipline. The plans include approaches for promoting positive school climate and implementing positive behavioral supports and alternatives to suspension such as restorative justice. The ELTF has provided input into the action plan templates and offered feedback regarding the process through which schools and districts are selected for participation in the PLN.

In addition to efforts to implement Chapter 222, DESE is working to foster whole school culture change through implementing the statute titled, the Safe and Supportive Schools Framework,⁹ which offers guidance for districts to develop school cultures based on support rather than exclusion of students. As part of this law's implementation, DESE has worked in collaboration

⁶ Prior to the enactment of this law, children expelled from school were not legally entitled to receive an education from a public school in the Commonwealth.

⁷ Moreover, in April 2018, the Massachusetts Legislature enacted the statute, "An Act Relative to Criminal Justice Reform" which includes several provisions applicable to schools, including the requirement that school-based arrests, criminal citations, and court referrals be reported to DESE for publication in a "like manner" as school discipline (e.g. disaggregated by race, disability, and gender).

⁸ Mela, *supra*.

⁹ Mass. Gen. Laws ch. 69, § 1P (2014).

with MAC's Trauma and Learning Policy Initiative to provide PLN participants with professional development opportunities on how to create safe and supportive schools.

Although the initial years of implementation of Chapter 222 have yielded positive efforts by many schools and districts to reduce reliance on suspension and to address disparities by race, ethnicity, and disability, there continue to be implementation challenges. The integrity of data reporting by schools and districts is of utmost importance to ensure the fidelity of the law's implementation, yet attorneys representing parents and students continue to observe the underreporting of suspensions by many school districts. One common practice by school districts involves calling parents to ask them to pick up their child due to misbehavior, without adhering to due process requirements or documenting the exclusion as a suspension. This unlawful practice, often utilized repeatedly by schools, is a burden to parents, even to the point of causing job loss.

A further challenge is the lack of resources at both the state and local levels to implement the law. DESE has limited capacity to identify and provide support to all of the schools and districts in need, and while many schools and districts recognize the need to reduce reliance on suspension, they lack the resources, training, and in-classroom modeling needed to effectively implement alternative practices. Even when schools attempt to implement alternatives for managing challenging student behavior, without a cohesive and coordinated approach, these initiatives are often not sustainable. Reducing school exclusion in a meaningful way requires the implementation of alternatives (e.g., restorative justice) and whole school culture change to create an environment that is inclusive, equitable, safe, and supportive of all students. Effective models incorporate the role of trauma in learning, address the individual needs of students with disabilities, and account for the influence of institutional racism and racial bias in disciplinary practices.

The ELTF/Chapter 222 Coalition looks forward to continued collaboration with DESE to: (1) ensure meaningful oversight and accountability for all schools and districts that are not in compliance with the law; and (2) ensure teachers and school leaders have the training and support to reduce suspensions through alternative practices and whole school culture change. By virtue of Chapter 222, in conjunction with the Safe and Supportive Schools Framework, Massachusetts is well positioned to be a national leader in reducing reliance on school exclusion and keeping our most vulnerable students in school and engaged in learning.

Liza Hirsch is a staff attorney with Massachusetts Advocates for Children where she represents families in school discipline and special education matters.

Janine Solomon is Managing Attorney/Senior Project Director of Massachusetts Advocates for Children. She is a co-chair of the Education Law Task Force.

Deconstructing the School-to-Prison Pipeline

By Hon. Jay Blitzman

Voice of the Judiciary

The Supreme Court has abolished the juvenile death penalty, mandatory juvenile life without parole, and in acknowledging the reality of adolescent brain development, has outlined a regime of proportional accountability. Children are constitutionally different than adults. Research has demonstrated that reducing detention also reduces recidivism by promoting the socially connective tissue of family, school, and community that is vital to positive youth development. We can protect public safety at less cost. Youth who do not graduate from high school are eight times more likely to later be arrested and it costs three to five times more to incarcerate than to pay for public education.

The message of proportional accountability has implications in all contexts, including zero tolerance in schools, mandatory transfer and collateral consequences. However, in an era of dramatically declining juvenile arrest rates, this promising landscape has been complicated by a counterintuitive narrative – the recriminalization of status offense conduct that was decriminalized in the aftermath of *In Re Gault*, 387 U.S. 1 (1967). This has manifested itself in various forms, including treating status offenders as probation violators in some states and imposing conditions of supervision which are status offense-like in nature (e.g. attending school without incident), and commitments for probation violations not related to re-offending. This article focuses on another aspect of this process- the surge of school referrals to juvenile justice which, as discussed in *Arrested Futures*, a collaboration between the ACLU of Massachusetts and the Massachusetts Citizens for Juvenile Justice, has unfortunately involved many arrests for essentially non-violent normative adolescent behavior.

Nationally about 84% of youth in the juvenile justice system are there for non-violent conduct and over two-thirds of this number are youth of color. Although detention and commitment rates have declined, racial and ethnic disparities have increased. In 2017, the Sentencing Project reported that African-American youth are five times more likely to be held than whites, Latino youth are 65% more likely to be held, and Native American youth were three times more likely to be detained. LGBTQ- gender non-conforming youth comprise 5% of the nation's youth population, but 20% of those are detained and 85% of that number are youth of color. Over 75% of children who appear in juvenile sessions have mental health or clinical issues as courts have become default service providers.

Issues affecting children should be considered in the context of the larger systems that affect them. The multi-faceted factors that contribute to the school-to-prison pipeline implicate fundamental questions of race and class. As Marian Wright-Edelman has observed, the school-to-prison pipeline runs through economically depressed neighborhoods and failing schools. Over sixty years after *Brown v. Board of Education* held that separate in public education is per se unequal, our schools remain segregated. The issue is national in scope. New York City, for example, has perhaps the most segregated school system in the country. In a real sense we live in a world that is still separate and unequal. Access to adequate public education remains an access to juvenile justice issue. Professor Charles Ogletree has concluded that as regards

Brown's legacy, there is little left to celebrate. In *The Color of Law*, Richard Rosenstien attacks the premise of de facto segregation, arguing that geographical segregation is the result of race conscious de jure actions which have included zoning, housing, school siting, and urban renewal polices.

Where people live matters. The Boston Globe recently reported that the Brockton school system was only able to spend \$1.28 per student on classroom supplies during the 2016-2017 school year, while Weston allotted \$275.00 per student. The adverse impact of geographic segregation is reflected in the reality that we see the same children and families in the child welfare system as we do in the juvenile system, with the same rates of racial and ethnic disproportionality. Between 2010 and 2012, 72% of the children committed to the Massachusetts' Department of Youth Services had been involved with the Department of Children and Families (DCF.) and over half of that number's families had been involved with DCF before they were five. Every time a child's placement in foster care is changed it is estimated they lose six months of educational progress which compromises their ability to graduate. Marian Wright-Edelman and others now use the phrase cradle-to-prison pipeline.

Police have been in schools since the civil rights era, but after the 1999 school shooting in Columbine, police presence in schools accelerated exponentially as did the expanded use of "zero tolerance" formerly reserved for guns and drugs. Police were placed in schools without first considering their relationship with educators and the scope of their authority. Police officers were largely placed in schools serving students of color, schools which had never had a Columbine type of incident. New York City, for example, has over 5,400 school police officers. The unregulated deployment of police in schools, coupled with zero tolerance, has fueled the pipeline and adversely affected schools of color. While these practices may be rationalized as logical responses to protect children, National Center for Education data shows that reported incidents of school violence had peaked in 1994, well before Columbine, and that national juvenile arrest rates had reached their high point in 1994, and by 2016 had declined by 70%. The effects of these policies were apparent. In 2000, over three million students were suspended and over ninety-seven thousand arrested. African-American students have been three-to-five times more likely to be suspended than white students for comparable behavior, underlining the mythology of race-neutral zero tolerance.

The reality of the "pipeline" was demonstrated in 2012, when the Department of Justice accused the city of Meridian, Mississippi of operating a school-to-prison pipeline. Named defendants included the schools, police, judges, probation officers, and the state's Department of Human Services and Division of Youth Services. While the circumstances are rarely as overt. The pipeline exists and deconstructing it requires a multi-faceted response. The Juvenile Detention Alternative Initiative (JDAI), and the MacArthur Foundation's Models for Change are examples of data based initiatives that encourage cross-system dialogue and examine evidence based practices to better protect public safety while promoting positive youth development. Massachusetts features a robust partnership with JDAI by partnering with court professionals and practitioners in an effort to decrease unnecessary detention and address racial and ethnic disparities. Adopting more proportional and strength based models in engaging youth in lieu of zero tolerance regimes, as recommended by the American Psychological Association and the American Bar Association (ABA), coincides with the Supreme Court's message of proportional

accountability. Restorative justice, especially as applied in schools and communities in lieu of court referral, is an example of a public health oriented approach. Massachusetts juvenile justice reform, enacted this year, expanded diversion opportunities and allowed for the expungement of records for the first time, in certain circumstances. Of particular importance is the legislation's call for school districts to develop memoranda of understanding to inform the relationship of school resource officers and educators. This would provide a framework for conversation and exploration of alternative action. Given the school shooting in Parkland, FL, the need to capitalize on this legislative opportunity cannot be over-emphasized, unless we wish to revisit the unintended consequences that followed Columbine. Promulgation of memoranda of understanding is consistent with JDAI initiatives and resolutions adopted by the ABA.

We have made progress through systemic dialogue, use of data, and the development of memoranda of understanding. However, to truly deconstruct the pipeline we must tackle the underlying structural realities which fuel implicit bias and the school/cradle-to-prison pipeline. Equal Justice Initiative's Bryan Stevenson has stressed that in order to have truth and reconciliation we must address the realities of our history. Hopefully, the Boston Bar Association's focus on this important subject will prove to be a step in the right direction.

Judge Jay Blitzman is the First Justice of the Middlesex Division of the Massachusetts Juvenile Court. Prior to his appointment he was a co-founder and the first director of the Roxbury Youth Advocacy Project, a multi-disciplinary public defender's office, which was template for the creation of the statewide Youth Advocacy Division of C.P.C.S. Jay is also a co-founder of the Massachusetts Citizens for Juvenile Justice and Our RJ, diversionary restorative justice program. Jay writes and presents regularly at a variety of forums. His most recent publications are, Gault's Promise Revisited: The Search for Due Process (Juvenile and Family Law Journal, NCJFCJ June 2018), The State of Juvenile Justice (ABA Criminal Justice Section, June 2018), Realizing Gault's Promise (Arizona Attorney, May 2017) and Are We Criminalizing Adolescence? (ABA Criminal Justice, May 2015). Jay has held a variety of teaching positions. He currently teaches juvenile law at Northeastern University School of Law, and is a team leader at Harvard Law School's Trial Advocacy Workshop program. Judge Blitzman is a member of the S.J.C. Standing Committee on Eyewitness Identification and the S.J.C. Jury Advisory Committee.

Parent Perspective

By Deidre Dailey

Viewpoint

Deidre Dailey is the parent of a student who was repeatedly suspended from school during his sixth-grade year. Her son is referred to throughout as “John,” a pseudonym.

During the Spring of 2015, I found myself at juvenile court with my eleven year-old son. I was extremely frustrated because I could not believe that instead of helping my son, his school decided to subject him to excessive school discipline and then use the discipline as a basis to now subject him to the juvenile justice system. The housemaster responsible for discipline at John’s school said he filed the petition for Child Requiring Assistance (“CRA”) because my son was a habitual school offender. Over the course of the 6th grade year John was suspended twenty-six times, mostly for what the school termed as insubordination. Instead of providing him with appropriate supports to help John stay focused and motivated as required by his special education program, the school administrators made the conscious decision to keep him out of school.

John started at the local middle school in September, 2015. He was extremely excited and anxious to start his first day. He was most excited about meeting new friends and joining the school basketball team. His first day started out amazing, but shortly after starting school, the problems started. I would receive numerous phone calls throughout the day stating John was insubordinate and not listening to teachers. The housemaster who would make the calls spoke unprofessionally and belligerently to me on the phone. He refused to engage in collaborative conversations and made clear the only consequence for John’s misbehavior was exclusion. It was not until I obtained an attorney from the Children’s Law Center in Lynn that I realized that the housemaster had failed to follow school discipline law. He never provided suspension notices, never conducted suspension hearings, and most importantly, never allowed John or me to discuss the alleged with him considering John’s mental health challenges. In fact, when I attempted to engage in conversation, he said “the conversation is done” and hung up the phone. Each time an incident at school occurred, the housemaster would call me, give his account of what occurred and request that I immediately come to the school for pick up. By the spring of the school year, I received these calls about every other day. The housemaster during this time stated they were “pretty much babysitting” John.

The excessive school discipline and failure of the school to support John adversely impacted our home and his education. John would shut down after school suspensions. The issues at school caused friction in our relationship. John also missed a lot of instruction because he was so often out of class. During the suspensions, he was never provided with school work or tutoring as required by state law. At the end of sixth grade, I received documentation from the school indicating John had missed forty-seven tests and quizzes. Despite receiving F’s in most classes in middle school, John was promoted each year.

I thought things could not get worse than the CRA petition and twenty-six suspensions of sixth grade. Seventh grade was pretty much the same treatment as sixth, but eighth grade was the

worst. The same housemaster targeted my son throughout the year, resulting in eighteen out-of-school suspensions, threat upon threat of expulsion, and another CRA petition filed in Juvenile Court. The housemaster made it clear to me that he believed, “the next step for John is jail.” John missed out on year-end school activities such as attending a class trip to New York and school dances because school administrators stated that he engaged in multiple infractions. However none of the alleged infractions were violent or drug related. They were instead such infractions as having his cell phone out in class, walking in the hall without a pass, talking in class, and goofing around with friends. When John engaged in these behaviors he was sent out of class to the housemaster’s office and suspended immediately. He additionally had in-school suspension, where he would sit in seclusion throughout the day without instruction or school work.

One day while at work I received a very disturbing call from the housemaster. He had stated that John had been searched by the school police and his backpack seized. I asked what happened and he stated John was walking with two of his friends when staff heard him say he had a gun. I immediately went to the school. The housemaster said he was suspended for five days. In the meeting I read statements from both of John’s peers with whom he had been walking and talking. The statements corroborated with each other: John was talking about a Taser and a kid from our neighborhood (who was unrelated to the school or any student attending the school) possessed. When I asked the housemaster why would staff say something so scary,—something that John never said— he told me “unfortunately that’s the way the world works.” Nevertheless, John was suspended once again.

On the last day of John’s five -day suspension I received a phone call from the housemaster. He said to me that if I did not sign John’s IEP and agree to the school district’s proposal for an assessment of John at an out-of-district special education school, the district would expel him. I explained that they already gave John a five-day suspension and they were bullying me into signing something that I did not agree with or want to sign. Again, I involved an attorney who informed the school district that it was unlawful for them to exclude a student twice for the same offense and then advocated for John to continue with his placement at the middle school with more supports to assist him throughout the school day.

Dealing with the school district staff has been very difficult and uncomfortable. I would send my child to school every day with an uneasy feeling because I did not know what to expect that day. I feel as though additional training for staff would be a start towards improving the school environment, particularly for children requiring specialized learning. Schools need to develop ways for staff to work with children instead of just suspending or “babysitting” them.

John’s experience with school exclusion has adversely impacted him. His self-esteem has been diminished as he has fallen victim to the school’s insensitivity and ignorance. His spirit has been broken. No child should ever have to go through something like this, especially from people who they are supposed to trust and at a place where they should always feel safe and supported. Unfortunately, the middle school has failed John and has failed to provide a safe learning place for him.

Student Viewpoint: Fighting a Suspension

By JMC

Viewpoint

An alumnus of the Boston Public Schools, who has chosen to be referred to as “JMC,” shares an experience with school discipline that led to the student’s eventual suspension.

During my senior year of high school, I was a part of my school’s “Senior Committee.” We planned events for our senior class. I was very passionate about these events; I cared about my school. I had a class period where the Senior Committee would plan our senior events. This was one of my favorite classes, and always kept me on my toes.

In November of my senior year, my class had been discussing methods to raise money for the senior class. We’d been discussing ways to raise money for a long time, and frankly, we felt like things weren’t exactly going the way it did for the senior class last year. We felt like we weren’t getting as much help from the administration as the administration gave to the class last year. We were a very outspoken class, and admittedly, things had gotten pretty tense in our classroom. We really disagreed with administration about how to plan our senior year.

Our teacher had a school administrator come to our class to help with this tension, but it did not help. Instead, we immediately got into a very heated discussion with a few of the students and the administrator. I felt myself getting angrier and angrier. I knew that I needed to take a break and calm down, so I decided to step out of the classroom.

I walked out of class and decided that I wanted to call my mom, because my mom can always help me calm down. When I called my mom, we made a plan for me to go see one of my teachers. This teacher had helped me when issues came up before, and I thought she would help me come up with a plan for Senior Committee. I began to walk towards my teacher’s classroom to see if she had time to talk with me, or if I could schedule a time to talk with her.

As I was walking to her classroom, a hall monitor started to follow me and asked me where I was going. I told her that I was going to see one of my mentors in the school, one of my teachers, to help me calm down. She told me I couldn’t do that and that she was going to call for back up.

That’s the last thing I remember before being completely surrounded by three staff members and two police officers. Things seemed to be escalating by the second. I didn’t know what to do, and I didn’t know what was going to happen to me. I remember constantly asking for them to back up and give me space because I felt beyond uncomfortable and anxious. I kept trying not to cry, but eventually I couldn’t help it anymore. I started crying and asking them to please leave me alone. I was so scared. I didn’t understand what had happened. I just wanted to see a teacher.

Then my teacher saw me. She ran down the hallway towards me, stepped between me and the police officers, and helped pull me past the police officers surrounding me. A school administrator told me I had to leave school right then, and they would let me know when I could come back. Then, one of the staff members surrounding me got in contact with my mother after

they made me leave school. They told my mom that she had to come to school with me the next morning.

That next day I returned to school with my mother without knowing what is going on or what will happen. We were told to wait in the lobby, and that someone would be with us soon. I had never been in trouble like this before, and I had no idea what would happen. After a few minutes, we were sent to the Dean's Office. I kept trying to explain to the dean what was happening, but he said he didn't believe me. I asked to bring in my teacher who helped me get away from the police officers, but the dean wouldn't let me get her. He told me I was suspended for ten days.

None of it made any sense to me. I've never been suspended before throughout my high school career, and I was so worried about what it would do to my college applications.

I felt so disrespected and belittled. To this day I don't understand how one moment could lead to such a suspension. It all made me feel like they tried to make a show out of me. I knew this suspension wasn't right, so I decided to fight it. I appealed the suspension, but I lost that appeal. I still wouldn't give up, so I brought it to the state and Massachusetts agreed with me that my suspension was illegal. It was taken off my records before I graduated.

It felt so empowering, I'm happy I did my research, found a lawyer, and was able to fight this and win. I feel like our school systems take advantage of so many kids who just don't know what their rights are or how to stand up for themselves. I couldn't be one of those kids. I hope kids see this and know that if they aren't in the wrong, you can stand up for yourself. Never give up and know your rights.

Student Viewpoint: The World is not Peaches and Cream

By Schama

Viewpoint

Schama, who has chosen to be identified by only her first name, shares her experience appealing her expulsion from her Boston high school.

The world is not peaches and cream: we need to be aware of the warfare being waged against us by the prison system and the education system. Learn to love one another and make better choices.

According to President Obama, the United States has just five percent of the world's population, but 25 percent of the world's prisoners. As Van Jones said in Ava DuVernay's documentary 13th, "One out of four human beings with their hands on bars, shackled, in the world, are locked up here in the land of the free." I recently learned about the school to prison pipeline. It works like this: A student may get into a fight at school that they didn't start, but they still get suspended. And they go to a disciplinary school for a little while, and when they come back to their old school everything is different. Nobody believes that they didn't start the fight. Now everyone thinks they're a bad kid, so they start acting like a bad kid. They can no longer see the future they used to see, they get into another fight and this time they get arrested. This is how the pipeline works, I could have fallen into this pipeline.

Malcolm X wrote in his Autobiography, "Any person who claims to have deep feeling for other human beings should think a long, long time before he votes to have other men kept behind bars – caged. I am not saying there shouldn't be prisons, but there shouldn't be bars. Behind bars, a man never reforms. He will never forget. He never will get completely over the memory of the bars." (Malcolm X, The Autobiography of Malcolm X, 155).

They want you to be weak, and that my friend we will never be.

On October 30th I was coming out of class; it was a regular Monday. I was talking to my friends and we were messing around as friends do. A lady walked up next to us and asked, "Where do you need to be?" It bothered me because I was where I needed to be, so I ignored her, waved her off and walked away. The next thing I know, my dean came in to my class at the end of the day. He quietly walked over, and he almost sounded depressed when he said, "Schama, can I please talk to you outside?" I was thinking he was going to tell me he found out who stole my wallet earlier that week. We went to a different classroom, and he asked me if I knew why he brought me there. "No," I said. He told me that I had assaulted the assistant headmaster. "What!? What are you talking about!? Who?" I exclaimed. He told me her name, and I still didn't know who it was. I told him to check the cameras. I knew I hadn't done what he was saying, but he told me to go home.

I ended up having two hearings: a suspension hearing and then an expulsion hearing. But what I want to share is how I felt and my memories during those hearings. I remember walking to the conference room with my mom and the Dean. We walked past a white woman who looked kind of familiar. She was up against the wall as if I were a bully telling her to get out of my way. I

couldn't understand why she was so afraid and thought, "Wow, relax, I'm not an animal... I'm a human being." During the hearing I asked who the assistant headmaster was because I still didn't know. The Dean said I had just passed by her in the hall. And then everything started to become so clear. This woman didn't know me; we had only a thirty second interaction. Why is she scared of me? Why am I here? I became an emotional wreck. They said that they might press charges. The School Officer came in and read a police report. I was crying; I couldn't believe it, I started having a panic attack. The only other time I felt this way was when my grandmother had died.

When the assistant headmaster came in I should have handed her an Oscar she was so dramatic. She said that after this happened she wanted to talk to me but I ran away. But that didn't happen, I walked away, and if she had wanted to talk to me I would have. And if she had told me I touched her, even though I didn't think I had, I would have apologized. If she had talked to me I would have apologized, period! Later the Dean said it might have been an accident, but it still happened. I was so confused, in my head I was thinking, "she can't press charges if I didn't put my hands on her. If there's no proof she can't press charges. If this was an accident she can't press charges. If she was upset I would have gladly apologized, why is this happening, I'm a good kid, I have good grades, I'm about to get honor roll!"

While I was suspended, I spent five days at the Barron Center – a counseling and intervention center where kids go when they are suspended for something serious – but the counselor there told me I didn't need to be there. Later we had the expulsion hearing and they expelled me. After I was expelled I went to Community Academy. The first day, I started having a panic attack and was sent home. I went back and was okay, but the school hadn't sent any of my work and I was frustrated. I was a junior. My work mattered, and I couldn't do it.

I got a lawyer and appealed my expulsion. When I went to the hearing, I saw that the headmaster and the hearing officer knew each other, and I already knew my voice wasn't going to be heard. I almost gave up. I didn't think I could win this. Who is going to believe a child over a headmaster? No one is going to listen to me. Who is listening? My lawyer wanted to record the hearing, but the hearing officer refused. At the hearing I told my side of story. I became emotional. I said that I was a good kid, I worked hard, I am a Black queen and didn't understand why this was happening. If I hurt anyone I'm sorry, I just want to go back to school and finish. After I presented my case, the headmaster said that he expelled me because I had become an emotional wreck and was aggressive and flailed my arms dangerously. I couldn't believe he had said that, this didn't make sense. What was I really being expelled for? Was he saying because I'm black and I have an "attitude" I should be expelled? I'm very blunt and everyone at school knew that. But not anymore, my school was a turnaround school, which meant 60 percent of the staff and teachers had been replaced, and everyone who knew me had left. I lost the appeal.

My lawyer and I appealed to the state. The Department of Education overturned my expulsion, ordered BPS to fix my grades and give me extra help. I'm really glad I beat my case, but this experience still really affected me. During my suspension and my expulsion, I took the time and reflected on my life and how to go about things. I knew where I wanted to go, I wanted to finish school, but I couldn't see how I could get there. When I got to my new school I walked into my ELA class, Mr. Driscoll's class. I noticed that his room was covered in black history and Malcolm X. At first, I thought he was just another white guy trying to be black, but then I talked

to him. I wanted to figure out how to be me and he helped me. He had read my file and told me that he knew I wasn't a bad kid, that if I needed space he would give it to me, but if I wanted to talk to someone he was there. I didn't have to say anything to him for him to understand me and where I was coming from. And we read Malcolm X.

Malcolm's autobiography helped me see that it wasn't white people, it was how white people see black kids, it was about the system. "The white man is not inherently evil, but America's racist society influences him to act evilly. The society has produced and nourished a psychology which brings out the lowest, most base part of human beings." (Malcolm X, *The Autobiography of Malcolm X*, 378) This is why black kids are being sent out of school and sent to prison. The system makes white people bold.

I don't like to share my story and I don't want sympathy, but I need to share so it doesn't happen to others. I am sharing my story because I'm tired and I won't keep sitting around while my sisters and brothers are getting physically and verbally abused by the system. With the help of my family and some of my new teachers, I overcame my obstacles and I am going to be a senior with almost the grades that I wanted, and I'm going to apply to college in the fall. But not everybody is like me and can bounce back the way I did. So for anybody out there that has gone through what I've gone through, or is going through what I went through. I just want you to know that you aren't the only one. Forgive those who have done you wrong, keep building your future and show them how wrong they were about who you are and what you can be.

Goodwin v. Lee Public Schools
by Joseph N. Schneiderman
Case Focus

On August 23, 2016, the Supreme Judicial Court held that a student who was unlawfully suspended under the felony suspension statute, G.L. c.71, §37H1/2, did not need to seek review of her suspension to pursue the statutory tort of unlawful exclusion from public school, G.L. c.76, §16. *Goodwin v. Lee Public Schools*, 475 Mass. 280 (2016). This victory for students' rights offers an opportunity for the Legislature to take action to further stem the flow of children in the school to prison pipeline.

The Case and Holding

Katelynn Goodwin was a senior at Lee Middle and High School in the Berkshires. In late December 2011, the principal suspended Ms. Goodwin under the felony suspension statute because the Lee Police suspected her involvement in a weapons theft. There was one obvious problem, however: a felony complaint *never* issued against Ms. Goodwin. Indeed, the superintendent admitted that Ms. Goodwin “perhaps not been charged yet.” A misdemeanor complaint ultimately issued against her in April 2012 for receiving stolen property. The school offered to lift the suspension but refused to allow Ms. Goodwin to graduate with her class. Ms. Goodwin graduated alone through an online program in 2013.

In December 2014, Ms. Goodwin sued for damages. A judge of the Superior Court dismissed Ms. Goodwin's complaint on the grounds that she failed to appeal her suspension within five days pursuant to the felony suspension statute's administrative process. Ms. Goodwin timely appealed and the SJC allowed her application for direct appellate review.

A unanimous Court reinstated Ms. Goodwin's complaint and agreed that her right to tort recovery for unlawful exclusion constitutes a separate and distinct remedy from seeking reinstatement to school. The Court recalled that the statutory tort of unlawful exclusion has existed since 1845, although there have been relatively few recent cases analyzing the claims. The felony suspension statute, enacted in 1994, authorizes a principal to suspend when: (1) a student is charged with or convicted of a felony; and (2) the student's continued presence would have a substantial detrimental effect on the general welfare of the school. A student could appeal the suspension to the superintendent-but the school committee does not review suspensions under the felony suspension statute. 475 Mass. at 284-286, compare G.L. c. 76, §17.

The Court reasoned that the felony suspension statute was only “triggered “[u]pon the issuance of a criminal complaint charging a student with a felony.”” *Goodwin*, 475 Mass. at 287 (quoting §37H1/2). Because the principal suspended Ms. Goodwin without any felony complaint issuing against her, the suspension violated Section 37H1/2 and Ms. Goodwin did not need to pursue any administrative review before seeking damages. The Court also rejected the notion that the felony suspension statute precluded any recovery in tort. Instead, the statute simply provides an “additional, immediate, review of a decision to exclude them from school, with the goal of readmission.” *Id.* at 288. Ms. Goodwin thus deserved her day in court.

Take-Aways

Goodwin marks an overdue moment of accountability for schools in the crisis of juvenile delinquency based school suspensions. Some felony charges decidedly warrant suspension to preserve school safety. See *Doe v. Superintendent of Schools of Stoughton*, 437 Mass. 1 (2002) (principal properly suspended a high school freshman charged with the rape of a primary school student on the same campus). There are many “felony” crimes, however, that should never warrant a suspension, absent aggravating circumstances.

Specifically, a felony constitutes “*any* offense punishable by imprisonment in the State Prison,” G.L. c. 274, §1. Therefore, a student who has a fake driver’s license faces suspension if the principal believes that having a fake license poses substantial detrimental effect to the general welfare of the school. G.L. c. 90, §24B (punishable by five years in state prison.) The sheer breadth of offenses that may trigger suspension has grave potential to thwart a child’s education and the command that allegedly delinquent children “shall be treated not as criminals but as children needing aid, encouragement of guidance.” G.L. c. 119, §53.

Between 1997 and 2011, principals suspended an average of more than 100 students per year under the felony suspension statute. Melanie Riccobene Jarboe, “Expelled to Nowhere”: School Exclusion Laws in Massachusetts, 31 B.C. Third World L.J. 343, 376 (2011). Courts tended not to review suspensions critically, despite “ample indication that principals [suspended] indiscriminately and [did not] carefully consider each case”, as the Commissioner of Education urged. *Id.* at 352, 360. Those suspensions inevitably flushed students into the school to prison pipeline. *Id.* at 349–51, 357, 365–69.

The review process is messy at best. A student or parent must request review in writing within five days.. Goodwin, 475 Mass. at 282, n.4. There is also no guidepost to judicial review, and certiorari becomes the only (default) option, which does not account for the best rehabilitative interests of a child. *Doe*, 437 Mass. at 5. An unlawful suspension may deprive a student of their future. See *Commonwealth v. Mogelinski*, 466 Mass. 627, 647-648 (2013), S.C., 473 Mass. 164 (2015). (“futurelessness” may overcome a child who endures a prolonged delinquency case.)

Finally, there is no freestanding right to counsel in suspension proceedings. And, unfortunately, “many parents often do not have the mindset, time, or means to pursue redress against the educational system...and the parents who do have the resources are often ostracized, frustrated, and unsuccessful.” *Expelled to Nowhere*, 31 B.C. Third World L.J. at 352.

Where Do We Go After Goodwin?

The Legislature has three concrete ways to build on Goodwin to spur continued accountability. First, the Legislature should limit suspensions only to when a student stands indicted as a youthful offender for a felony offense that involves infliction or risk of serious bodily harm. G.L. c.119, §54.

Second, as the Court implicitly suggested, the Legislature should create flexibility in the administrative review process and expressly establish procedures for judicial review to the

Juvenile Court—which has a statutory mandate to further the best rehabilitative interests of children. G.L. c.119, §§1, 53.

Finally, the Legislature should create an independent right to appointed counsel in suspension hearings—with the right to commence the process for tort recovery for unlawful exclusion pursuant to the Massachusetts Tort Claims Act. These changes would ensure due process for students and further the goal of ending unlawful exclusions from education.

Joe Schneiderman has an appellate practice in Massachusetts and Connecticut with a particular affinity for and focus on juvenile delinquency and municipal law. Joe gratefully dedicates this article to: his mother Ro (who passed away three weeks after he filed Ms. Goodwin's brief), as well as his dear friend, mentor, and teacher, Robert Kyff.

Trauma Informed Care: What Lawyers Representing Children and Teens Need to Know

By Kirstie MacEwen, MSW, LCSW

Practice Tips

Introduction

Modern social work principles present trauma informed care (TIC) as the most effective and safe way to work with clients of any age. TIC is approaching every person you meet as though he or she has experienced some kind of trauma, and doing your best to be sensitive to whatever those traumatic experiences may have been. It is working with intentionality, being grounded in empathy and empathic responses. TIC is vital when working, in any capacity, with children and adolescents, because their brains are still growing and developing. An adolescent brain is malleable. This plasticity allows the brain to readily learn and adapt, which helps the adolescent develop strategies, skills, and habits. If a child is exposed to traumatic experiences, the habits and strategies he or she is taught can significantly influence his or her ability to cope with the trauma. It is therefore critical that adults provide the support children and adolescents need to develop positive habits and strategies instead of allowing negative ones to take root.

Research has proven that trauma and traumatic experiences significantly impact brain structure. Specifically, a brain that has experienced trauma has significantly diminished frontal lobe structure. The frontal lobe is the executive of our brain. This region is the command center that helps us control our impulses, regulate our emotions, and make thoughtful decisions. Because the frontal lobe plays such a key role in both behavior and functioning, children who have experienced trauma display a wide variety of symptoms. Not surprisingly, many children who exhibit trauma symptoms are misdiagnosed with attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), disruptive mood dysregulation disorder (DMDD), as well as many others. Discussing trauma and misdiagnosis, Bessel van der Kolk states,

Before they reach their twenties, many patients have been given four, five, six, or more of these impressive but meaningless labels. If they receive treatment at all, they get whatever is being promulgated as the method of management du jour: medications, behavioral modification, or exposure therapy. These rarely work and often cause more damage.

Bessel van der Kolk, M.D., *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* 159 (2014).

While the symptoms of trauma can present in a variety of ways that make proper diagnosis difficult, misdiagnosis can be very detrimental to a child's treatment. Take, for example, the distinction between hyperactivity and hypervigilance. Hyperactivity (e.g., the inability to sit still or focus) is more closely associated with ADHD. Hypervigilance (including enhanced sensory sensitivity, increased arousal, and high responsiveness to stimuli) can appear the same as hyperactivity but has an added component of anxiety and is more closely associated with post-traumatic stress disorder (PTSD). The symptoms of these disorders can look very similar, but it is important for a child to have access to a clinician who is careful and cognizant of nuances so the child can receive the most appropriate treatment and support.

Why, you may be asking, is this discussion pertinent to lawyers? Children with “behavioral” symptoms are often labeled as problem kids. Because of the punitive nature of our systems of school discipline, these students often receive suspensions or are arrested by school resource officers instead of receiving therapeutic interventions. This is true even when therapeutic interventions are laid out in a legal document such as an Individualized Education Plan or 504 Plan. Punishment for school related behavior is often the cause of a student’s first interaction with the juvenile justice system, but it most likely won’t be the last. Juvenile offenders are at much greater risk of becoming adult offenders. Even on an individual level, working to disrupt this pattern by providing therapeutic support over punishment can start a trend for changes in the larger system.

Tips for Lawyers Representing Children and Teens

1. Remember that trauma significantly impacts brain structures that are meant to help with impulse control, decision making, and emotional regulation.
2. Always approach clients using TIC practices.
3. Look for therapeutic supports that are trauma informed.
 - a. [Justice Resource Institute](#) (including SMART team, Trauma Center, Boston GLASS, My Life My Choice, and many other trauma informed programs)
 - b. [Diversion Program through Suffolk County District Attorney’s Office](#)
 - c. [ROCA](#)
 - d. [The Louis D. Brown Peace Institute](#)
4. Advocate for mental health support as opposed to punitive measures whenever possible.
5. Work collaboratively with mental health, physical health, school, and justice system providers.
6. Do some reading about trauma!
 - a. *The New Jim Crow*, Michelle Alexander
 - b. *Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others*, Laura van Dernoot Lipsky with Connie Burk
 - c. *The Boy Who was Raised as a Dog: And Other Stories from a Child Psychiatrist’s Notebook – What Traumatized Children Can Teach Us About Loss, Love, and Healing*, Bruce D. Perry, M.D., Ph.D., and Maia Szalavitz
 - d. *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*, Bessel van der Kolk, M.D.
 - e. *Trauma and Recovery: The Aftermath of Violence – From Domestic Abuse to Political Terror*, Judith Lewis Herman

Kirstie MacEwen is a graduate of Simmons College School of Social Work. She is an In Home Therapist for the Justice Resource Institute SMART Team. In this capacity, Ms. MacEwen serves children and families who are engaged in the juvenile justice system. She is passionate about juvenile justice reform and disrupting the school to prison pipeline.

**Transition H.O.P.E.: Boston Public Schools' Efforts to Assist System-Involved Youth
by Janelle Ridley
Viewpoint**

Janelle Ridley works for the Boston Public Schools (BPS) as the Coordinator for System-Involved Youth. She is an expert in identifying and implementing services to aid youth in transitioning from detention back to BPS, and seeks to intentionally foster educational equity and actively work to dismantle the school-to-prison pipeline.

No one can contest that Black and Brown boys are overrepresented in the juvenile and criminal justice systems. Boston is not an anomaly; this has been a national crisis since the 1980s when zero-tolerance policies were introduced by former President Ronald Reagan's administration at the onset of the "War on Drugs." Once Congress passed the Drug-Free Schools and Campuses Act of 1989, school districts across the nation implemented zero-tolerance policies that have since criminalized seemingly innocuous behavior that is often due to trauma, poverty, and a plethora of reasons that make it impossible for students to function in a traditional school setting. Thus, agencies and individuals alike must be intentional about our approach in working with our youth to address the root causes and not merely criminalize the symptoms. In light of the aforementioned, this article will explore the efforts of Boston Public Schools (BPS) and others are making to ensure EVERY student has access to equitable educational opportunities. First, I will outline my work in this area. Next, I will describe Transition H.O.P.E., a pilot program launched in Summer 2018 to assist youth who have been detained at DYS facilities. Finally, I will describe efforts BPS is making to develop an intentional approach to assist youth more generally.

Background

As the District Coordinator for System-Involved Youth at BPS, I have been pioneering new ground for academic and social integration for youth who have been exposed to systems including, but not limited to, the Department of Youth Services (DYS) and the Department of Children and Families. Through strategic transdisciplinary partnerships, I am ensuring that BPS is holding the fidelity of its mission to provide access to equitable educational opportunities to EVERY student. Concomitantly, I am working tirelessly to dismantle the cradle-to-prison pipeline while creating a path from prison-to-school. Ultimately, my objective is to disrupt the generational cycle of America's mass incarceration crisis on Boston's youth, and the debilitating effects of trauma on underrepresented communities. Prior to my work at the District, I devised Street Trauma, a transformative curriculum that empowered my former students at East Boston High to speak as experts of their lived experiences and enjoined educators to be more intentional about how they interacted with Black and Brown youth. Though I am no longer in the classroom, I have expanded my curriculum to colleges/universities where I serve as an adjunct professor to reach individuals seeking to work in urban settings.

BPS Office of Social Emotional Learning and Transition H.O.P.E

Transitioning back to BPS from the DYS is a nonlinear reorientation process that requires youth to sever ties with their former ways of life, both good and bad aspects, to embrace the new. Change is inevitable and a part of life, but the transition process for system-involved youth is complex and strenuous. Furthermore, the majority of the youth detained at DYS by the courts have experienced some amount of school failure and are often already behind in their educational attainment. Therefore, even short periods of detention may result in further isolation from their school communities and exacerbate opportunity gaps.

Determined to disrupt the odds stacked against the youth, I launched Transition H.O.P.E. in Summer 2018, a pilot program through BPS Office of Social Emotional Learning & Wellness with a holistic framework designed to ensure all system-involved youth have access to educational equity by: holding *High Expectations* for each and every young person; providing *Opportunities* that are realistic and within their perspective; helping the youth envision *Pathways* to Success by taking ownership of decisions for desired long-term outcomes; and providing *Encouragement* to help youth acknowledge that success is theirs to claim and define irrespective of the past. The pilot was launched at the DYS Metro Pre-Trial Detention unit with a total of 16 youth. After a successful summer, we plan on expanding Transition H.O.P.E. in the Fall of 2018 to additional DYS units and facilities serving youth assigned to BPS.

Transition H.O.P.E., powered by strategic partnerships with Lesley University, engages youth in college-level academic discourse and exposes them to pathways beyond high school. Lesley tutors worked diligently with youth to build higher order thinking skills and foster the ability to see beyond the limitations placed upon them. As a result, two of our youth enrolled at Benjamin Franklin Institute of Technology (BFIT) upon release and are exploring career options that they would otherwise not have imagined they could attain. Moreover, going on our mantra, “When you engage a youth, you reach the family,” one of the youth’s brother also enrolled at BFIT this summer and they are now attending classes together while serving as a strong support system for each other.

BPS is intentional about cultivating a culture of accountability to the success of these youth and pursuing transformational leadership to unearth the passion, purpose, and potential buried within all youth. It is also essential that the transitional process consists of positive affirmations and the presence of consistent adults in their lives. With the support and guidance of mentors (including former professional basketball players, Becoming a Man, Mass Mentors), youth are devising roadmaps to success in the academy and beyond. The H.O.P.E. team stresses accountability through periodic check-ins with both the youth and their mentors. As Frederick Douglass asserted, “It is easier to build strong children than to repair broken men.” Thus, BPS is intentional about integrating the following frameworks in its approach:

1. *Holistic Development*: Employ a whole-child framework to cultivate cognitive, cultural, emotional, physical, social, and spiritual development.
2. *Open-minded Attitude*: Employ a growth-mindset framework to teach our youth that their attitude, not aptitude, determines their altitude.

3. *Purpose Cultivation*: Employ a visualization framework to activate the subconscious mind to create new neural pathways for the manifestation of desired aspirations.
4. *Engaged Citizenship*: Employ a civic engagement and transformational leadership framework to build capacity for individual and collective responsibility.

The incorporation of youth voice is essential to each of these integrated components. BPS district leaders made several visits to DYS over the past year to listen to the needs of the youth and wrestle with tough questions like “How can teachers be better equipped to engage with youth who are subject to complex trauma?” It is impossible to narrow the opportunity gap and dismantle the prison pipeline without giving youth platforms to be heard.

The partners who are working with our inner-city youth are recognizing the harm caused by the school-to-prison pipeline, including collateral consequences in employment, education, housing, and beyond upon involvement in the justice system. Research has shown that concepts such as “trauma-informed learning” and “social emotional learning” have gained significant traction over the past few years as alternatives to exclusionary discipline practices. These constructs posit that the microsystems youth inhabit, like their communities, homes, and schools are critical to addressing their needs. At the recent Coalition for Juvenile Justice Youth Summit, youth from across eighteen states described their school experiences as “inhumane” and their communities as “unsafe” due to the high concentration of poverty and crime that stems from systemic inequality and policies from the “War on Drugs.”

Recognizing that isolation is the enemy of transformative progress, BPS is extending an invitation through Transition H.O.P.E., to partner with us and alongside Mass Mentors, William James College, Benjamin Franklin Institute of Technology, Timothy Smith Network, the Juvenile Detention Alternative Initiative, Northeastern Center for the Study of Sport and Society, Harvard University Transformative Justice Series (located in the Charles Hamilton Houston Institute for Race and Justice), Brandeis University, Suffolk County Sheriff Department Family Matters Program, Boston Police Department, STAR and most certainly Lesley University. If you have any interest in aligning work, please feel free to email me at <mailto:mjridley@bostonpublicschools.org>.

Successful Alternatives: Juvenile Diversion and Restorative Justice in Suffolk County
by Former Suffolk County District Attorney Daniel F. Conley, Assistant District Attorney Michael V. Glennon and Erin Freeborn, Executive Director of Communities for Restorative Justice
Heads Up

Since 2017 prosecutors in Suffolk County have made efforts to improve and modernize their approach to juvenile justice. These efforts include an ambitious juvenile diversion program and, more recently, a restorative justice initiative, in partnership with Communities for Restorative Justice to give victims of crime an opportunity to address the people who have harmed them. The diversion program seeks to identify the needs and risk factors that pre-date offense and arrest, and to address them outside the traditional juvenile justice system. The restorative justice initiative is a voluntary process by which offenders, victims, and members of the community come together to collectively identify and address the harms, needs, and obligations created by, and identified as a result of, a criminal act. The combined result is a model that may prove valuable for other prosecutors' offices nationwide.

Most juveniles who enter the justice system have a complex set of needs and risk factors that pre-date offense and arrest. Research shows that identifying and addressing these makes for effective rehabilitation efforts. For too many young people, however, the opportunities for this type of assessment are frequently missed until their conduct brings them into contact with the juvenile justice system, and is often delayed until after a juvenile has been charged, prosecuted, and adjudicated delinquent. In a busy, urban court system, where most juveniles are released to their parents, this process can take months or years – during which time those needs and risks may remain unaddressed.

Prosecutor-led diversion efforts, such as the Juvenile Alternative Resolution Program (“JAR”), can fill this gap meaningfully and effectively. Overseen through the DA’s Juvenile Unit, the Suffolk County JAR program seeks to support juveniles with a moderate or high risk assessment, while low-risk juveniles (those charged with first- or second-time misdemeanor offenses) are usually diverted informally with minimal supervision. Only the most serious offenses – sex offenses, gun crimes, and crimes causing serious injury to a victim – are automatically ineligible for diversion. Since the JAR program launched last year, it has accepted 70 juveniles charged with more than 100 separate offenses. Only three participants – less than 5% – have been removed from the program for violating the terms of participation. Thirty have successfully completed the program and the remaining 40 are on track to do so. Since the pilot phase ended, JAR has expanded to include more neighborhoods in Boston and is expected to nearly double in capacity, taking in close to 100 juveniles during the second year. Overall, about 65% of Suffolk County delinquency proceedings, or over 500 cases, are diverted informally or formally through JAR – 10 times more than are subject to youthful offender indictments

This success is particularly notable because the JAR program accepts juveniles who present with higher risk factors, which is possible because candidates complete a two-stage screening process to determine the level and nature of services appropriate to their circumstances. Courtroom prosecutors first assess the juvenile using the Ohio Youth Assessment System – Diversion (OYAS-DIV) tool to determine risk level and help the prosecutor determine whether informal diversion, formal diversion through JAR, or traditional juvenile proceedings are appropriate. For JAR-eligible candidates, the DA’s diversion coordinator meets with the juvenile and guardian

separately to perform a more extensive assessment interview, including completion of the Youth Level of Services/Case Management Inventory (YLS/CMI) 2.0 assessment, which determines the juvenile's criminogenic needs and strengths. Specific risk factors and needs that lead to criminal behavior are identified and categorized. Once the areas of highest risk are identified, the juvenile immediately enters programming tailored to their needs in order to mitigate them and lower the likelihood that they will re-offend. This has resulted in successes like "John," who entered the juvenile court essentially homeless after being charged with Receiving Stolen Property and Breaking and Entering. John was assigned to work with the Detention Diversion Advocacy Program (DDAP) where he received resources, including a mentor, therapist, and support leading to summer employment. He successfully completed JAR, received no criminal record, is doing well in school and has not recidivated.

Chronically underfunded district attorney's offices in Massachusetts do not have the financial resources, staff, or training to provide rehabilitation services. As a result, Suffolk prosecutors have built strong partnerships with community-based agencies who carry out the programming recommended through the screening process. Candid and collaborative alliances with non-profits, social service providers, and other agencies working directly with youth, families, and communities are essential in this regard. The majority of diverted juveniles complete three to nine months of individualized programming through the partner agencies, including therapy, job preparation and placement, educational support, mentorship, life skills training, substance abuse counseling, and more. To ensure honest participation at each stage, the juvenile is protected with a contract ensuring that nothing they disclose will be used to prosecute the underlying case.

Targeting the risk factors that have the greatest likelihood for recidivism advances the interests of public safety, offender accountability, rehabilitation, and satisfaction for both the victim and the community, all while reducing future barriers to success. Speed is important to the program's success, both in the rapid assessment of the juvenile's risk factors and needs and in following through with the recommendations as quickly as possible.

Because prosecutors direct most JAR participants into diversion prior to arraignment, the underlying charges do not appear on the juvenile's criminal record – a decision that prosecutors made for its significant long-term implications. Having a criminal record can complicate important, stabilizing life choices such as pursuing higher education, seeking stable employment, and applying for a loan. Despite these considerations, creation of a criminal record may be necessary given the seriousness of the offense and the risk the offender poses to their community. By reducing the number of juveniles who enter adulthood with a record, prosecutors are confident that they can balance public safety with the enduring public benefit of emphasizing diversion over traditional juvenile prosecution.

In addition to the more traditional diversion programs described above, a JAR assessment may recommend the use of restorative justice circles as a key process to give victims, communities, and the juvenile a voice, while also addressing any threats to public safety. Through this process, the offender accepts responsibility for their actions and takes steps to repair the harm they have caused to a victim and the community. A highly trained volunteer facilitates the meeting process over a period of months. The process is tailored to each participant and may involve regular group meetings, known as circles. Circles may involve the victim, other community participants,

law enforcement officials, and the offender. Undertaken appropriately, restorative justice leads to long-term healing for the offender and the community while lowering the likelihood of recidivism.

Communities for Restorative Justice (C4RJ) promotes and facilitates these circles to give victims of crime an opportunity, in a safe environment, to address the people who have harmed them and determine how the harm may be repaired. The offender is held meaningfully accountable, comes to understand the impact of their actions, and makes amends to those affected by the underlying offense.

C4RJ's restorative circles already operate in numerous jurisdictions. They have a recidivism rate of just 16% and a 98% participation satisfaction rate last year as measured by offenders and victims. Restorative justice works because the offender learns empathy and gains stronger connections to the people affected by their actions, while the victim and community become more engaged in the process and outcome.

The restorative justice collaboration among stakeholders inside and outside the criminal justice system has produced an outstanding result: reliable, validated assessment data matched with specific, individualized programming to place the right juveniles in the right programs to address their unique needs and cut short the cycle of recidivism.

The spread of C4RJ's effective programming and the proven successes of the Suffolk County District Attorney's JAR program should encourage all justice partners to look at evidence-based alternatives to "business as usual." Those engaging in restorative work across the Commonwealth should consider partnerships with their local criminal justice professionals, many of whom have proven themselves to be open and enthusiastic supporters of new and innovative ideas. The pieces are all on the board – together, we can keep moving them forward.

Getting Involved

The Suffolk County District Attorney's office is eager to partner with qualified individuals and agencies to improve diversionary outcomes. By enhancing the restorative justice component in an already effective diversion model, prosecutors believe they can achieve short-term benefits for individuals and long-term benefits to the community. Interested candidates for JAR partnerships should contact Juvenile Unit Deputy Chief Michael V. Glennon at Michael.V.Glennon@MassMail.State.MA.US.

Communities for Restorative Justice needs community volunteers who are interested in doing this work in Suffolk County. If you would like to help make a difference in your community, you can learn more at <http://www.C4RJ.org> or fill out a volunteer application at <https://bit.ly/2ya8z5K>.