

DISTURBING DISPARITIES: BLACK GIRLS AND THE SCHOOL-TO-PRISON PIPELINE

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INTRODUCTION

Recent scholarship on the school-to-prison pipeline¹ has zeroed in on the disturbing trajectory of black girls.² School officials impose harsh punishments on black girls, including suspension and expulsion from school, at alarming rates.³ The most recent data from the U.S. Department of Education Office for Civil Rights reveals that one of the harshest forms of discipline—out of school suspension—is imposed on black girls at seven times the rate of their white peers.⁴ In the juvenile justice system, black girls are the fastest growing demographic when it comes to arrest and incarceration.⁵ Explanations for the disproportionate disciplinary, arrest, and

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1. The school-to-prison pipeline

refers to structural factors within and outside of the United States public school system that push certain children out of school and into the criminal justice system. The pipeline “track” begins with laws, policies, and practices that are hyper-focused on enforcing discipline in public schools. These policies then become the vehicle for the implicit biases of school officials charged with enforcing disciplinary codes. As a result, students of low socioeconomic status, students of color, students with disabilities, and male students are disproportionately subjected to discipline and, thus, more likely to be placed on the pipeline track. Once singled out, these students tend to experience harsh disciplinary practices, such as suspension, expulsion, and sometimes even arrest. These students are then more likely to fall behind in their classes or to completely disengage from school. This, in turn, leads to their entry into the criminal justice system. Suspended—expelled—pushed out of school—arrested—enter the criminal justice system.

Leah Aileen Hill, *Disrupting the Trajectory: Representing Disabled African American Boys in a System Designed to Send Them to Prison*, 45 FORDHAM URB. L.J. 201, 203 (2017).

2. See generally KIMBERLÉ W. CRENSHAW ET AL., BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED, AND UNDERPROTECTED (2014).

3. *Id.* at 16–17.

4. MISHA N. INNISS-THOMPSON, THE NAT’L BLACK WOMEN’S JUSTICE INITIATIVE, SUMMARY OF DISCIPLINE DATA FOR GIRLS IN U.S. PUBLIC SCHOOLS: AN ANALYSIS FROM THE 2015–2016 U.S. DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS DATA COLLECTION 3 (2018), https://docs.wixstatic.com/ugd/0c71ee_9506b355e3734ba791248c0f681f6d03.pdf [<https://perma.cc/5ACK-TG2X>].

5. Sarah E. Redfield & Jason P. Nance, *American Bar Association: Joint Task Force on Reversing the School-to-Prison Pipeline*, 47 U. MEM. L. REV. 1, 20 (2016) (“[T]he data shows

incarceration rates for black girls range from implicit bias by school and law enforcement officials⁶ to structural risk factors, like poverty.⁷ Scholars point to disproportionate discipline, arrest, and incarceration rates as evidence of a system that fails black girls by pushing them out of school and into the juvenile justice system, thereby ultimately placing them at risk for a range of adverse life experiences.⁸

I. BLACK GIRLS AND SCHOOL DISCIPLINE

When school officials impose exclusionary discipline, defined as any disciplinary practice that removes a student from school, they place those students on a path to the school-to-prison pipeline.⁹ Several years of data from the U.S. Department of Education reveals that black girls suffer more frequent and more severe punishment than any other female demographic.¹⁰ The most recent data available indicates that black girls who attend public schools experience the harshest forms of punishment at disproportionate rates.¹¹ They are more likely to be suspended from school, more likely to suffer corporal punishment, and more likely to be physically restrained.¹² School officials impose more severe punishments on black girls as soon as they enter the public school system as preschoolers, where despite being 20 percent of the population, they represent 54 percent of female preschool students receiving one or more out of school suspensions.¹³ Discipline disparities for black girls persist in elementary, middle, and high school.¹⁴ Black girls are also more likely to be expelled from school, pushing them out of the education system for good. In one particularly stunning example, New

that the proportion of female youth arrested and entering the juvenile justice system for law violations has increased from 1980–2010 across the spectrum of crimes from less to most serious.”); see also Suniti Sharma, *Contesting Institutional Discourse to Create New Possibilities for Understanding Lived Experience: Life-Stories Young Women in Detention, Rehabilitation, and Education*, 13 RACE, ETHNIC & EDUC. 327, 329 (2010); Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584, 1617 (2012).

6. See CRENSHAW, *supra* note 2, at 24.

7. See generally Jalise Burt, Note, *From Zero-Tolerance to Compassion: Addressing the Needs of Girls Caught in the School-to-Prison Pipeline Through School-Based Mental Health Services*, 6 GEO. J.L. & MOD. CRITICAL RACE PERSP. 97 (2014).

8. See generally Redfield & Nance, *supra* note 5.

9. See, e.g., Hill, *supra* note 1, at 207–08.

10. See INNISS-THOMPSON, *supra* note 4, at 3 (discussing data collected in 2015 through 2016 evidencing that black schoolgirls receive disproportionately severe punishment); U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, 2013–2014 CIVIL RIGHTS DATA COLLECTION: A FIRST LOOK 3 (Oct. 28, 2016), <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf> [<https://perma.cc/C2DA-XVK7>] [hereinafter FIRST LOOK]; U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION SNAPSHOT: SCHOOL DISCIPLINE 2 (2014), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf> [<https://perma.cc/QR2N-SCWV>] (containing data collected in 2011 through 2012).

11. INNISS-THOMPSON, *supra* note 4, at 3.

12. *Id.*

13. FIRST LOOK, *supra* note 10, at 3; U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: EARLY CHILDHOOD EDUCATION 1 (2014), <https://ocrdata.ed.gov/Downloads/CRDC-Early-Childhood-Education-Snapshot.pdf> [<https://perma.cc/SRU2-5NLQ>].

14. See, e.g., INNISS-THOMPSON, *supra* note 4, at 4–6.

York City's public school data revealed that black girls constituted 90 percent of all girls expelled during the 2011–2012 school year, and that no white girls were expelled during that time.¹⁵

Disproportionate discipline is just one part of a longer story about black girls and the school-to-prison pipeline. Under zero tolerance policies in public schools, black girls are also more likely to be referred to law enforcement agencies and arrested.¹⁶ Given this data, it is easy to understand the increased presence of black girls in the juvenile justice system, and the recent revelation that black women represent the fastest growing prison population.¹⁷

II. HOW DO WE EXPLAIN WHY BLACK GIRLS ARE MORE VULNERABLE TO HARSH DISCIPLINE?

Several theories have emerged to explain these disturbing disciplinary disparities and they generally center around the role of bias and the normative preference for discretion among lawmakers. For example, under zero tolerance policies, introduced in 1994 through the Gun-Free Schools Act (GFSA),¹⁸ school districts have tremendous discretion to institute draconian disciplinary schemes under the guise of protecting students from gun violence.¹⁹ More recently, the Trump Administration rescinded Obama-era rules designed to address racial disparities in school discipline and doubled down on the preference for school district autonomy, stating that school districts need “flexibility” to enforce disciplinary rules and impose sanctions as they see fit.²⁰ Some school disciplinary codes also give school officials

15. CRENSHAW, *supra* note 2, at 21.

16. INNISS-THOMPSON, *supra* note 4, at 6 (demonstrating that, nationwide, black girls are four times more likely than their white peers to be arrested and three times more likely to be referred to law enforcement).

17. See Susan Buchanan, *Nation's Black Women are Jailed at Unfair Rates, Study Says*, LA. WKLY. (July 20, 2017), <http://www.louisianaweekly.com/nations-black-women-are-jailed-at-unfair-rates-study-says/> [<https://perma.cc/RT66-K6HX>].

18. Gun-Free Schools Act of 1994, Pub. L. No. 103-227, § 1031–32, 108 Stat. 270 (1994).

19. See, e.g., Hill, *supra* note 1, at 207–08 (explaining that because zero tolerance policies gave “school districts tremendous latitude” to decide when to impose strict punishments, some schools used their discretion to create inflexible standards that imposed harsh punishments for even the most minor infractions); Laura R. McNeal, *Managing our Blind Spot: The Role of Bias in the School-to-Prison Pipeline*, 48 ARIZ. ST. L.J. 285, 297, 304 (2016) (stating that “[a]lthough . . . federal and state law requires that students be expelled for specific actions that fall under zero tolerance policies, administrators still have wide discretion for all other behaviors” and thus “school disciplinary sanctions can range anywhere from a verbal warning to out of school suspension for the same behavior. It is within this sea of subjectivity where implicit bias abounds”).

20. BETSY DEVOS ET AL., FINAL REPORT OF THE FEDERAL COMMISSION ON SCHOOL SAFETY 71–72 (2018), <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf> [<https://perma.cc/P2J2-ZQ67>]. This report was prepared in response to the Parkland School shooting on February 14, 2018. *Id.* at 1. More than five pages of the report are spent discrediting the Obama Administration guidance on disciplinary policies issued in 2014 to address the growing disciplinary disparities for children of color, claiming that heightened scrutiny of school discipline policies led to an increased fear of investigation and resulted in a more dangerous environment. See *id.* at 67–72. The report goes on to recommend rescinding

great leeway to decide when behavior rises to a level deserving of punishment because they involve vague offenses like “willful defiance” or disrespect.²¹

Beyond giving local officials discretion to create policies that impose harsh discipline, scholars have argued that vague disciplinary codes offer individual decision-makers broad discretion and invite school officials to use bias in determining whether students have violated those code provisions.²² Indeed, many disciplinary codes, like those that prohibit certain hairstyles or clothing, lay the groundwork for school officials to apply stereotypes when interpreting the behavior of black girls.²³ As Janel George points out, educators view the behavior of black girls differently than their white counterparts, and disciplinary codes include “racially stereotypical” words like irate, insubordinate, disrespectful, uncooperative, and uncontrollable.²⁴ These words then fuel disciplinary decision-making that is largely unquestioned.²⁵ These standards are especially harmful for black girls who are victims of bullying or sexual harassment, who are then seen as aggressive when they are really just standing up for themselves.²⁶ Decisions about who to arrest are similarly subject to bias.²⁷ Black girls are also often arrested for

the Obama-era guidance and granting schools greater autonomy to discipline students. *Id.* at 72.

21. See, e.g., Valeria M. Pelet Del Toro, *Let Black Girls Learn: Perceptions of Black Femininity and Zero-Tolerance Policies in Schools*, 87 REV. JUR. U.P.R. 55, 63–64 (2018).

22. See Verna L. Williams, *Title IX and Discriminatory School Discipline*, 6 TENN. J. RACE, GENDER & SOC. JUST. 67, 77 (2017) (discussing how styles of dress and hairstyles that do not conform to white cultural norms are deemed inappropriate). When officials demand that black girls act more “ladylike,” they are ultimately “seek[ing] to eradicate behaviors that deviate from traditional—i.e., white femininity—from being too loud . . . to wearing an African-inspired head wrap or a hairstyle declared “a distraction.” *Id.*; see also MONIQUE W. MORRIS, RACE, GENDER AND THE SCHOOL-TO-PRISON PIPELINE: EXPANDING OUR DISCUSSION TO INCLUDE BLACK GIRLS 10–11 (2012); McNeal, *supra* note 19, at 289.

23. Dorothy Hines-Datiri & Dorinda J. Carter Andrews, *The Effects of Zero Tolerance Policies on Black Girls: Using Critical Race Feminism and Figured Worlds to Examine School Discipline*, 52 URB. EDUC. 1, 4 (2017) (“[D]isciplinary policies not only affect[] the racial and gender identity development of Black girls but also perpetuates anti-Black discipline, and represents behavioral responses to White femininity that may not align with how Black girls perceive their femininity or identification with school.”); see also Janel A. George, *Stereotype and School Pushout: Race, Gender and Discipline Disparities*, 68 ARK. L. REV. 101, 105 (2015).

24. George, *supra* note 23, at 112.

25. *Id.*; see also Bianca White, Note, *The Invisible Victims of the School-to-Prison Pipeline: Understanding Black Girls, School Push-Out, and the Impact of the Every Student Succeeds Act*, 24 WM. & MARY J. WOMEN & L. 641, 659–60 (2018).

26. Sonja C. Tonnesen, Commentary, “Hit It and Quit It”: Responses to Black Girls’ Victimization in School, 28 BERKELEY J. GENDER L. & JUST. 1, 5 (2013); see also Caitlin Miller, Note, *Punishing the Broken and Invisible: How We Have Failed Female Youth Who Are Waived to the Criminal Justice System*, 37 WOMEN’S RTS. L. REP. 27, 39 (2015) (describing “negative, preconceived gender stereotypes” such as the belief that black female students are “loud, defiant, and precocious”). One study showed that black girls are four times more likely to report that they were bullied on the basis of their race. INNISS-THOMPSON, *supra* note 4, at 12. Ironically, those same girls could be penalized for being aggressive or assertive for pushing back against this kind of bullying.

27. See Jason P. Nance, *Students, Police, and the School-To-Prison Pipeline*, 93 WASH. U. L. REV. 919, 957 (2016) (describing the stark racial disparity in referrals to law enforcement

relatively innocuous behavior like running away, underage drinking, and disorderly conduct.²⁸ The disparate treatment of black girls in school is compounded by the fact that they are more likely to face structural risks and, as a result, endure more adverse childhood experiences that can lead to trauma.²⁹ Black girls are more likely to experience poverty and all that comes along with it.³⁰ They witness or experience a high incidence of violence.³¹ They are more likely to experience sexual harassment and sexual assault,³² and they are less likely to be believed if they report it.³³

It is clear that these painful and highly stressful experiences can have a profound effect on behavior and learning.³⁴ And while a lot of attention has been paid to Black girls' traumatic experiences that occur outside of the

and school-based arrests, which “are not explained by more frequent or more serious misbehavior by minority students”).

28. See White, *supra* note 25, at 645; see also Nance, *supra* note 27, at 942 n.108 (noting that students in general are commonly referred to law enforcement for misdemeanor and other low level offenses, such as disorderly conduct); Jeremy Thompson & Chanelle Artiles, *Dismantling the Sexual Abuse-to-Prison Pipeline: Texas's Approach*, 41 T. MARSHALL L. REV. 239, 248 (2006) (stating that “[t]he most common crimes for which girls are arrested relate to substance abuse, running away, and truancy”).

29. See, e.g., CRENSHAW, *supra* note 2, at 36–37; see also Miller, *supra* note 26, at 33–34 (noting that, for example, these young Black women who end up in the justice system “usually tend to emerge from high-risk, impoverished backgrounds, with little education or vocational experience”). Miller further observes that

[m]ost are frequently exposed to maltreatment, neglect, instability, and violence Rates of post-traumatic stress disorder (PTSD) among female juvenile delinquents are far higher than rates reported among male juvenile delinquents. Many girls involved in the justice system are the children of incarcerated adults, and experience poverty, residential instability and abrupt changes in caregivers. Most such female youth lack stable, consistent, and safe homes.

Id.

30. Wendy S. Heipt, *Girls' Court: A Gender Responsive Juvenile Court Alternative*, 13 SEATTLE J. SOC. JUST. 803, 805 (2015) (finding that girls who end up in the juvenile justice system are “attempting to attend school even though they are parenting, struggling with mental health issues or substance abuse, or dealing with chaotic personal lives,” and noting that such burdens predominantly affect women of color).

31. See CRENSHAW, *supra* note 2, at 37.

32. Heipt, *supra* note 30, at 805 (finding that girls of color have “significantly higher rates of sexual victimization and trauma, rates that have been estimated to be as high as 90 percent”).

33. See Priscilla A. Ocen, *(E)racing Childhood: Examining the Radicalized Construction of Childhood*, 62 UCLA L. REV. 1586, 1630–32 (2015); see also Thompson & Artiles, *supra* note 28, at 246 (noting that “law enforcement in particular, have developed an implicit bias towards Black females as being sexual deviants” and, thus, “law enforcement officers often times use their discretion to arrest young Black girls for sexual offenses that they may not arrest a young White girl for under similar circumstances”).

34. Yasser Arafat Payne & Tara Marie Brown, “*It's Set Up for Failure . . . and They Know This!*”: *How the School-to-Prison Pipeline Impacts the Educational Experiences of Street Identified Black Youth and Young Adults*, 62 VILL. L. REV. 307, 312 (2017); Williams, *supra* note 22, at 79–80 (“One key finding was that in some instances the misbehavior of girls stemmed from unresolved trauma relating to sexual assault or other interpersonal violence. In some instances, girls acted out because of the pain they had experienced at home or at school.”).

school system—in the home and community environment—not enough attention is focused on acknowledging the adverse impact of racism inside and outside of school.³⁵

III. CONCLUSION: LOOKING TOWARDS THE FUTURE

The emerging body of research on the devastating discipline disparities for black girls has led to a groundswell of interest among scholars. Many have offered solutions, ranging from minimizing disciplinary discretion³⁶ to mentoring and teacher training.³⁷ The time is ripe for examining potential solutions to the school-to-prison pipeline for black girls and I look forward to contributing to this discourse in the near future.

35. Monique W. Morris, *Searching for Black Girls in the School-to-Prison Pipeline*, NAT'L COUNCIL ON CRIME & DELINQUENCY (Mar. 18, 2013), <https://www.nccdglobal.org/newsroom/nccd-blog/searching-black-girls-school-prison-pipeline> [https://perma.cc/ND5C-7P82] (“[T]he connections between school and confinement for Black girls has remained hidden to the public. Our challenge is to capture the authentic experiences of Black girls who are marginalized in their learning environments and then thrust toward life experiences that increase their risk of incarceration.”).

36. See, e.g., McNeal, *supra* note 19.

37. Margareth Etienne, *Education, Violence, and Re-Wiring Our Schools*, 2018 U. CHI. LEGAL F. 89, 105–11.