

The School-to-Prison Pipeline: Implications for North Carolina Schools and Students

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**For the Commission on Racial and Ethnic Disparities
in the Criminal Justice System**
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The North Carolina Advocates For Justice is a nonprofit, nonpartisan association dedicated to protecting people's rights through professional and community legal education, championing individual rights, and protecting the safety of North Carolina's families -- in the workplace, in the home, and in the environment.

The North Carolina Commission on Racial and Ethnic Disparities in the Criminal Justice System seeks to identify, document, and alleviate racial and ethnic disparities in the criminal and juvenile justice systems.

The Commission will achieve this goal by: 1) Identifying the extent to which minorities are disproportionately represented at various points on the criminal justice continuum; 2) Determining whether disproportionate representation is caused by disparate treatment; 3) Proposing policies, practices and legislation that will alleviate or mitigate disparate treatment; and 4) Collaborating with other criminal justice stakeholders, legislators, and government officials, as well as civic, religious, and civil rights organizations.

The Juvenile Justice Committee of the Commission has been directed to study the phenomenon known as the school-to-prison pipeline, and to determine what if any racial disparities exist within this phenomenon. Specifically, the Committee is charged with considering 1) the decision points of how school officials determine whether or not to file a delinquency complaint from a school disciplinary issue, 2) how court counselors determine whether or not to file a petition stemming from the complaint, and 3) what if any alternatives do court officials have to divert these cases from adjudication.

The following research was conducted to examine how school-based offenses are processed in North Carolina and determine if there are any disparities with regard to race/ethnicity in how these offenses are handled. This report builds upon the literature reviews and the School-to-Prison Primer developed first for the North Carolina Advocates for Justice.

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1) What is the “school-to-prison pipeline”?

The “school-to-prison pipeline” refers to policies and practices that “push” schoolchildren, notably at-risk children, out of classrooms and into the juvenile and criminal justice systems (American Civil Liberties Union). <http://www.aclu.org/racial-justice/what-school-prison-pipeline> Many factors contribute to the school-to-prison pipeline (See Figure 1). This report focuses primarily on students who are processed in the juvenile justice system for acts that occur on school property or are considered school-based offenses.

2) What are school-based offenses?

School-based offenses are incidents that occur on school property (including busses) and during school events (including athletic events) or in which the school is the victim (e.g., bomb threat). “School” usually refers to elementary (K-8), secondary (9-12), and post-secondary (college or trade) school but not to preschools, day cares, and home schools (Annie E. Casey Foundation, 2012). <http://datacenter.kidscount.org/data/bystate/Rankings.aspx?state=NC&ind=6891>

The North Carolina Department of Public Safety’s Division of Juvenile Justice defines a school based offense as “an offense that occurs on school grounds, school property (buses, etc.), at a school bus stop, or at an off-campus school-sanctioned event (field trips, athletic competitions, etc.) or whose victim is a school (such as a false bomb report). School includes any public or private institution providing elementary (K-8), secondary (9-12), or post-secondary (community college, trade school, college, etc.) education, but excludes home schools, preschools, and day cares.” http://www.ncdjdp.org/resources/pdf_documents/annual_report_2007.pdf

3) What factors contribute to the school-to-prison pipeline?

Figure 1 - Factors affecting the School-to-Prison Pipeline



4) What are zero-tolerance policies and how are they used?

Zero-tolerance policies are disciplinary policies set forth by the school to deliver a predetermined set of consequences, often punitive, which do not consider offense severity, mitigating circumstances, or context (American Psychological Association, 2008).

<http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>

For example, in accordance with the Gun-Free School Zones Act, many school districts have zero-tolerance policies regarding bringing a gun to school. The Gun-Free School Zones (GFSZ) Act of 1990 made it illegal to carry a firearm within 1000 feet of a school with a few exceptions (e.g., law enforcement, individuals attempting to gain access to a hunting ground). Adopted in 1990, the GFSZ Act was invalidated five years later as an unconstitutional use of Congressional power (challenging the Second Amendment) and then was re-enacted by Congress again in 1996. The original intent of the law was to address the perceived rise of gun violence perpetrated by adults and students on campuses nationwide and Congress cited high profile school violence incidents. The GFSZ Act continues to receive scrutiny, as there is no empirical evidence of a negative correlation between the Act and school violence (which has been declining steadily for several years) (Hetzner, 2011). <http://scholarship.law.marquette.edu/mulr/vol95/iss1/1>

In North Carolina, the local board of education is required to suspend a student for 365 days if a student brings a weapon to school or a school-related function. Additionally, a 365-day suspension will be in effect for falsely reporting a bomb threat. There is a mandatory 300/365-day suspension for assaults causing serious injury to school personnel occurring on school premises or at a school-related function and superintendents may suspend students for up to 365 days for physical assault on a staff member or another student (Wettach, 2011). http://law.duke.edu/childedlaw/schooldiscipline/downloads/discipline_law_affecting_nc_students.pdf

5) Is there any evidence of a link between zero-tolerance policies, high-stakes testing, and exclusionary discipline/suspensions or expulsions?

High-stakes testing refers to the reliance on standardized testing to determine school accountability. Often the testing results are connected to rewards or consequences for schools and teachers. The Advancement Project suggests that zero-tolerance policies and high-stakes testing are based on corporate business ideology (i.e., tough competition, uncompromising discipline, repeated assessment, performance-inducing incentives, and the elimination of low performers.) http://b3cdn.net/advancement/d05cb2181a4545db07_r2im6cage.pdf Exclusionary discipline is any discipline strategy that excludes students from actual/regular instruction – such as in-school suspension (ISS) when students are outside of the regular classroom, out-of-school suspension (OSS), and expulsion. Often, zero-tolerance policies utilize mandatory suspensions or expulsions. In 1995, following the implementation of zero-tolerance policies in Chicago, the number of

expulsions went from 81 to 1,000 in just three years (Skiba, 2012). http://www.school-justicesummit.org/pdfs/journal-web_paper_17.pdf The U.S. Department of Education's Office for Civil Rights (OCR) reports that over 3 million students are suspended at least once and over 100,000 are expelled each year. <http://ocrdata.ed.gov/downloads/projections/2006/2006-nation-projection.xls> (See Table 1 – Students suspended in 2006 by Race/Ethnicity.) These statistics represent record high school discipline figures and they continue to affect minority youth disparately. African-American students are 3 times as likely to be suspended and 3.5 times as likely to be expelled, and Latino students are 1.5 times as likely to be suspended and 3.5 times as likely to be expelled, as compared to White students.

Table 1 - Students Suspended in 2006 by Race/Ethnicity

	Hispanic	Black (non-Hispanic)	White (non-Hispanic)	Total
Suspended	670,699	1,244,821	1,302,409	3,328,754
Expelled	22,144	38,642	32,028	102,077

Yet, the groundbreaking study of nearly a million students in Texas reveals that only 3% of the schools' disciplinary actions were for mandated suspensions and expulsions, the vast majority of the discipline was at the discretion of school personnel. Approximately 83% of Black male students had at least one discretionary violation (Fabelo et al., 2011). http://csgjusticecenter.org/wpcontent/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf

Nationwide in 2009-10, one in four Black secondary school children was suspended in 2009-10 and one in three Black middle school males was suspended at least once in 2009-10 (Losen & Martinez, 2013). http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-OffTrack_UCLA_4-8.pdf

Finally, despite overall declines in juvenile crime since the 1990s, the only offense type for which there has not been a steady reduction has been public order offenses such as disorderly conduct or obstruction of justice. These offenses increased 108% from 1985 to 2009 (Strategies for Youth, 2013). www.strategiesforyouth.org

6) Is there a correlation between suspensions/expulsions and juvenile justice involvement?

Of the students who have been suspended or expelled at least once, more than 1 in 7 had subsequent contact with the juvenile justice system. By race, the statistics are: 1 in 5 Black students, 1 in 6 Hispanic students, and 1 in 10 White students. This is in comparison to 2% of students who received no school disciplinary action (Fabelo et al., 2011). http://csgjusticecenter.org/wpcontent/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf

In North Carolina, the Department of Public Instruction's Report to the Joint Legislative Education Oversight Committee: Consolidated Data Report, 2011-2012, contends "correlations have been found for the relationships between crime and short-term suspension, between crime and dropout, and between short-term suspension and dropout" (p. viii).

<http://www.ncpublicschools.org/docs/research/discipline/reports/consolidated/2011-12/consolidated-report.pdf>

7) What are the national and statewide trends regarding school-based offenses/complaints?

Nationwide, there were an estimated 1.9 million crimes that took place at school during the 2009-2010 school year. In that time frame, 60% of schools reported a crime to police, which accounted for a total of 689,000 crimes or a total of 15 crimes per 1,000 students (Snyder & Truman, 2012). <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4677>

In **Pennsylvania**, the number of school-based arrests nearly tripled from 4,563 (1999-2000) to 12,918 (2006-2007). **Florida** had 21,289 arrests and referrals to the Department of Juvenile Justice for academic year 2007-2008. Of this number, 69% were for misdemeanor offenses and Black students were 2.5 times more likely to be arrested than their White peers. **Colorado** totaled 9,563 referrals to law enforcement in 2006-07. The majority of referrals were for minor offenses such as "detrimental behavior" or "violations of codes of conduct." Black students in Colorado were twice as likely to be referred to law enforcement and Hispanic students were 1.5 times more likely than White students. From the School District of **Philadelphia**, 4,361 individuals were taken into police custody for 2007-2008. Black students were 3.5 times more likely to be taken into police custody than White students while Hispanic students were 60% more likely than White students to be taken into custody. **Baltimore City** Public Schools had 1,699 arrests and referrals to law enforcement in 2007-08. Over half of the arrests and referrals were for elementary and middle school students and most for which would be considered non-serious offenses (Advancement Project 2010).

http://b3cdn.net/advancement/d05cb2181a4545db07_r2im6cage.pdf

North Carolina's State Board of Education works through the Department of Public Instruction on the Report to the Joint Legislative Education Oversight Committee. The data for that annual report are collected (whenever possible through NC WISE, the state data discipline data system) and the state receives some assistance with these data from Technical Outreach to Public Schools and the Federal Program Monitoring and Support Division of NCDPI. Data from their Consolidated Data Report 2011-2012 is presented here. <http://www.ncpublicschools.org/docs/research/discipline/reports/consolidated/2011-12/consolidated-report.pdf>

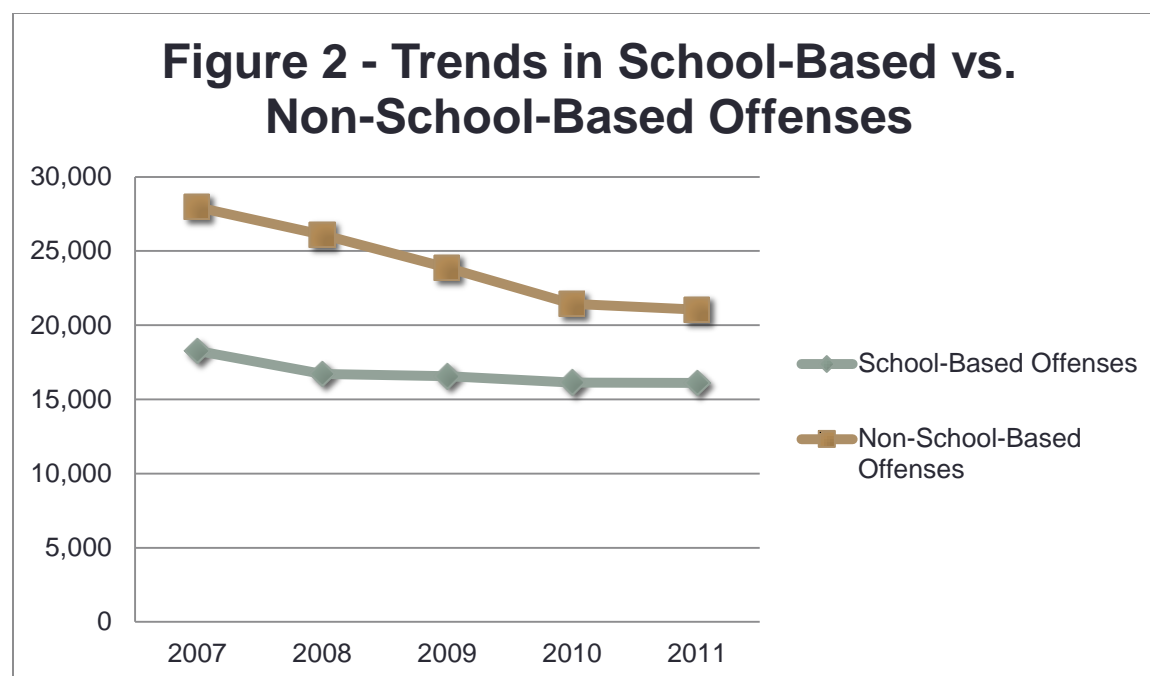
Since 2007-2008, the number of school-based offenses has varied. To calculate the number of reportable acts per students, the average daily membership (ADM) figure for NC schools is used as the denominator. (See Table 2 – NC "Reportable Acts" in grades K-12, 2007-2012.)

Table 2 - NC “Reportable Acts” in grades K-12, 2007-2012

Reporting Year	Total Acts	Acts Per 1,000 Students
2007-2008	11,276	7.85
2008-2009	11,116	7.59
2009-2010	11,608	7.97
2010-2011	11,657	8.03
2011-2012	11,161	7.63

<http://www.ncpublicschools.org/docs/research/discipline/reports/consolidated/2011-12/consolidated-report.pdf>

Not all school-based offenses are “reportable acts,” however (See Table 3 for the list of reportable acts). According to the Advancement Project, in 2008-2009, North Carolina had 16,499 delinquency referrals arrive to juvenile court directly from the local school districts in 2008-2009 (Advancement Project 2010). http://b3cdn.net/advancement/d05cb2181a4545db07_r2im6cage.pdf Similar figures are presented in the NC Department of Public Safety’s Division of Juvenile Justice Annual Report 2011 (See Figure 2).



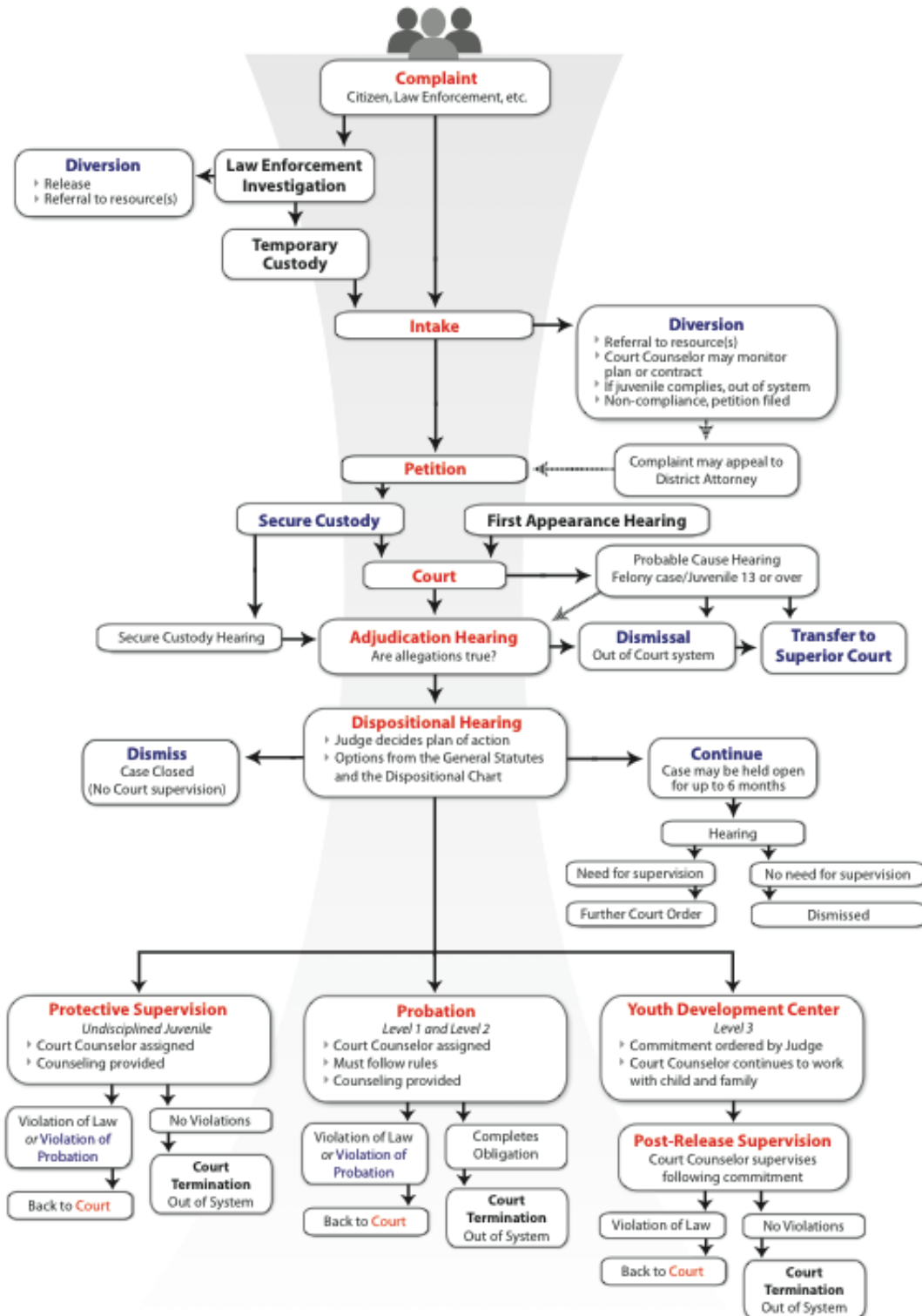
https://www.ncdps.gov/div/JJ/annual_report_2011.pdf

8) What are the various mechanisms by which school-based complaints are initiated and how are they processed in North Carolina's juvenile justice system?

In North Carolina, youth who are between the ages of 6 and 16 who are charged with a crime are processed in the juvenile justice system (NCGS 7B-1501(7)). The juvenile justice process is initiated by a complaint, which can be made by anyone, including law enforcement, school resource officers, school personnel or administrators, or victims of school-based allegations. The complaint is filed with the local court counselor's office, found in every county in the state (NCGS 7B-1803). The office then determines whether to dismiss the complaint for no further action, divert the complaint for other services, or file the complaint as a formal petition (NCGS 7B-1700, -1803). Once the petition is filed, the juvenile and the parent or guardian is served and summoned to appear before the court, and an attorney is appointed (NCGS 7B-1805, -1806, -2000). In court the juvenile may admit to the charges (NCGS 7B-2407) or deny the charges and have an adjudicatory hearing to determine whether the juvenile is delinquent (NCGS 7B-2405). If the court finds that the allegations have been proven beyond a reasonable doubt, the juvenile is adjudicated (NCGS 7B-2411). If the court finds that the allegations have not been proven, the court shall dismiss the petition with prejudice (NCGS 7B-2411). Otherwise the case may be continued "in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile" (NCGS 7B-2406).

See Figure 3 - North Carolina Juvenile Justice Process flow chart to identify decision-making points and decision-makers. Consider referral sources – citizens, law enforcement personnel, school administrators. Also consider the role of diversion. Research clearly suggests that once in the justice system, there is a cumulative disadvantage effect (Piquero, 2008). [Disproportionate minority contact. *The Future of Children*, 18, 60-61.](#)

North Carolina Juvenile Justice Process



9) What statutory guidance is there on school-based offenses? Based on statute, what are mandatorily reportable offenses, etc.? Divertable offenses, etc.

In 1993, the North Carolina General Assembly passed the Safe Schools Act requiring that Local Educational Agencies (LEAs) report acts of crime and violence to the State Board of Education (SBE). North Carolina General Statute §115C-288(g) states that 16 school-based offenses must be reported to law enforcement immediately:

Table 3 - MANDATORY REPORTABLE ACTS

- 01 – **Assault Resulting in Serious Injury**
- 02 – **Assault Involving Use of a Weapon**
- 03 – Assault on School Personnel
- 04 – Bomb Threat
- 05 – Burning of a School Building
- 06 – **Death by Other Than Natural Causes**
- 07 – **Kidnapping**
- 08 – Possession of an Alcoholic Beverage
- 09 – Possession of a Controlled Substance in Violation of the Law
- 10 – Possession of a Firearm or Powerful Explosive
- 11 – Possession of a Weapon
- 12 – **Rape**
- 13 – **Robbery with a Dangerous Weapon** (Armed Robbery)
- 15 – **Sexual Assault** (Not Involving Rape or Sexual Offense)
- 16 – **Sexual Offense**
- 17 – **Taking Indecent Liberties with a Minor**

(The nine offenses in bold are deemed dangerous and violent.)

General Statute §115C-12(21) requires that an annual report of crimes be compiled by the SBE. Schools reporting at least two violent acts and five or more violent acts per thousand students in two consecutive years and where “conditions that contributed to the commission of those offenses are likely to continue into another school year” are classified as Persistently Dangerous Schools (SBE Policy SS-A-006). In addition, General Statute §115C-12(27) requires that the SBE compile annual reports of school crimes, suspensions, expulsions, uses of corporal punishment, and placements in alternative programs (See Table 2 – Types of Acts and Their Occurrences in NC in 2011-12).

Table 4 - Types of Acts and Their Occurrences in NC in 2011-12

Type of Act	Number of Acts 2011-12 in NC
Possession of a Controlled Substance in Violation of the Law	4,777
Possession of a Weapon	3,613
Assault on School Personnel	1,212
Possession of an Alcoholic Beverage	971
Sexual Assault (Not Involving Rape or Sexual Offense)	187
Sexual Offense	79
Bomb Threat	73
Possession of a Firearm or Powerful Explosive	73
Assault Resulting in Serious Injury	73
Assault Involving Use of a Weapon	64
Burning of a School Building	26
Kidnapping	4
Rape	4
Robbery with a Dangerous Weapon	3
Taking Indecent Liberties with a Minor	1
Death by Other Than Natural Causes	1
Total	11,161*

*11,161 totals acts is 7.63 acts per 1000 students (this represents a 4.3% decrease from 2010-11)
<http://www.ncpublicschools.org/docs/research/discipline/reports/consolidated/2011-12/consolidated-report.pdf>

In 2008, the US Dept. of Education issued new data collection requirements that increase the number of act types that must be reported regardless of disciplinary consequences. These include possession or use of tobacco products, threatening acts, and violent acts resulting in injuries that fall below the threshold defined by the SBE for a reportable assault resulting in “serious” injury.

In July 2009, the NC GA passed HB 1682, requiring each use of corporal punishment to be reported. Corporal Punishment already existed as an Action Type in NC WISE and some districts routinely reported corporal punishment whenever it occurred. Yet, this statute, made the reporting of corporal punishment, mandatory. To comply with federal reporting on disciplinary removal, both in-school and out-of-school suspensions must now also be reported.

In North Carolina, the Department of Public Instruction provides these figures for youth in grades 9-13. The LEAs with the fewest reportable acts (grades 9-13) for 2011-12) were: Clay County, Clinton City, Newton Conover City, Weldon City, Swain County, Lexington City, Columbus County, Polk County, Washington County, and Edenton/Chowan. NC LEAs with the highest rates of reportable acts (grades 9-13) for 2011-12) were: Davidson County, Buncombe County, Madison County, Jackson County, Gates County, Robeson County, Harnett County, Avery County, Currituck County, and Transylvania County.

- There is no statutory guidance on whether any offenses are considered “divertable.”

10) What is a “school resource officer (SRO)? What is the role of a school resource officer? How many are there and where? What is the role of a school social worker? How many are there and where?

School resource officers (SROs) are often sworn police officers employed by either the local police department or school district. In 1997, there were approximately 9,446 SROs in the U.S. and latest figure estimates the number in 2010 was more than 17,000 (Wald & Thureau, 2010).

In 1993, The North Carolina Department of Juvenile Justice and Delinquency Prevention – Center for the Prevention of School Violence (DJJDP – Center) was created. The DJJDP – Center defines an SRO as “A certified law enforcement officer who is permanently assigned to provide coverage to a school or a set of schools. The SRO is specifically trained to perform three roles: law enforcement officer; law-related counselor; and law-related education teacher. The SRO is not necessarily a DARE officer (although many have received such training), security guard, or officer who has been placed temporarily in a school in response to a crisis situation but rather acts as a comprehensive resource for his/her school.” http://www.ncdjdp.org/cpsv/pdf_files/SRO_Census_08_09.pdf

- In the last Census produced by the Center (2008-2009), North Carolina reported a 249% increase in SROs from 1996 – 2009.

Across the 115 school districts, 113 had at least one identified SRO and 98 counties had an SRO presence in at least one school; 330/375 NC high schools had SROs exclusively assigned to the school; 315/450 NC middle schools had exclusive SRO coverage; and 20% of NC elementary schools had some form of service from SROs. (DJJDP - Center for the Prevention of School Violence, Annual School Resource Officer Census, 2008-2009).

http://www.ncdjdp.org/cpsv/pdf_files/SRO_Census_08_09.pdf;
http://www.ncdjdp.org/cpsv/school_resource_officer.html

J.D.B. V. NORTH CAROLINA: MIRANDA IN SCHOOLS

In June 2011, the United States Supreme Court ruled in *J.D.B. v. North Carolina* that age must be taken into account when police deliver a Miranda warning. The case involved a 13-year-old boy who confessed to breaking into two homes after being questioned by four adults, including a uniformed police officer and an SRO. The boy was not given Miranda warnings during the interrogation or prior to confessing. In their decision, the Court acknowledged that a child is different than an adult and would not have the same understanding that they could leave the questioning, which is a requirement of Miranda.

The ruling is also important given the relative ubiquity of police officers and SROs in schools. SROs and police officers will have to be far more careful how they handle cases in schools. Since school officials do not need to issue Miranda warnings to students to talk with them about incidents and potentially resolve them without law enforcement involvement, there is an opportunity to reconsider the role and effectiveness of SROs, as well as police, in schools.

Sources: Education Under Arrest: The Case Against Police in Schools. (November, 2011). Justice Policy Institute; *J.D.B. v. North Carolina*, No. 09–11121, June 16, 2011, www.supremecourt.gov/opinions/10pdf/09-11121.pdf
Donna St. George, “Supreme Court ruling, rising police presence in schools spur Miranda questions,” *Washington Post*, July 17, 2011. Juvenile Law Center, “Landmark U.S. Supreme Court Decision Protects Miranda Rights for Youth,” *Juvenile Law Center Press Release*, June 16, 2011.
www.jlc.org/news/landmark_u.s._supreme_court_decision_protects_miranda_rights_for_youth/

According to the North Carolina Department of Public Instruction, school social workers “bring unique knowledge and skills to the school system and student support services team. They are instrumental in furthering the purpose of the schools – to provide a setting for teaching, learning, and for the attainment of competence and confidence.” School social workers understand the influences of individual psychological factors, trauma, socioeconomic status (SES), health, families, and communities on development and youth outcomes. In order to be a licensed school social worker in North Carolina, individuals must have a Master’s Degree in social work from a Council on Social Work Education (CSWE)-accredited program and have completed specialization in school social work including a minimum of 400 contact hours in a school setting. Federal No Child Left Behind policy recommends a ratio of one Master’s degreed school social worker for every 800 students and the School Social Work Association of America recommends a ratio of one Master’s degreed school social worker for every 400 students.

<http://www.ncpublicschools.org/studentsupport/socialwork/>

School social workers can help students, parents or guardians, and school personnel identify needs that interfere with students’ learning. These needs may include those associated with: biological or physiological challenges; substance use or abuse; trauma; social, emotional, or behavioral problems; and/or cognitive or learning difficulties.

Table 5 - 2009 North Carolina Public Schools Statistical Profile	
3,795 counselors	1 per 385 students
1,236 social workers/attendance counselors	1 per 1,182 students
871 psychologists	1 per 1,182 students
838 nurses	1 per 1,743 students
188 dropout prevention counselors	1 per 7,771
107 community-school coordinators	1 per 13,653 students
849 school resource officers	1 per 1,744 students

http://www.ncdjjdp.org/cpsv/pdf_files/SRO_Census_08_09.pdf

11) Are minority youth disproportionately represented in juvenile justice complaints initiated by schools? Is there a way to determine whether school-based offenses are filed by SROs or by school administrators?

Nationally, minority youth are overrepresented in suspensions, expulsions, and school-based complaint statistics. Statistics also suggest that suspension rates are higher for students of color who have disabilities. In the Council of State Government’s study of almost a million youth, multivariate analyses were employed to control for 83 different variables. This allowed the researchers to isolate the effects of race and determine that African-American students had a 31% higher likelihood of a school-discretionary action, as compared to otherwise identical White and Hispanic students. Moreover, almost 75% of the students who qualified for special education services were suspended or expelled at least once. And finally, more than 1 out of every 7 students came into contact with the juvenile justice system at least once between seventh and twelfth grade. http://csgjusticecenter.org/wpcontent/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf

- The North Carolina State Board of Education - Department of Public Instruction's Report to the Joint Legislative Education Oversight Committee – Consolidated Data Report 2011-12 does not classify school-based offense statistics by race/ethnicity.

These data are broken down by offense type, number of acts by school level (PK-5; Elem/Mid; G6-8; Mid/High; G9-12; Other); victims (students or staff) and offenders are classified by student type (regular or exceptional), but racial and ethnic classifications are not provided.

- Additionally, the North Carolina Department of Public Safety's Division of Juvenile Justice does not differentiate their school-based offense figures by race/ethnicity either, as presented in their 2011 Annual Report.

School-based offenses versus non-school based offense rates and both over time are presented but not by minority status.

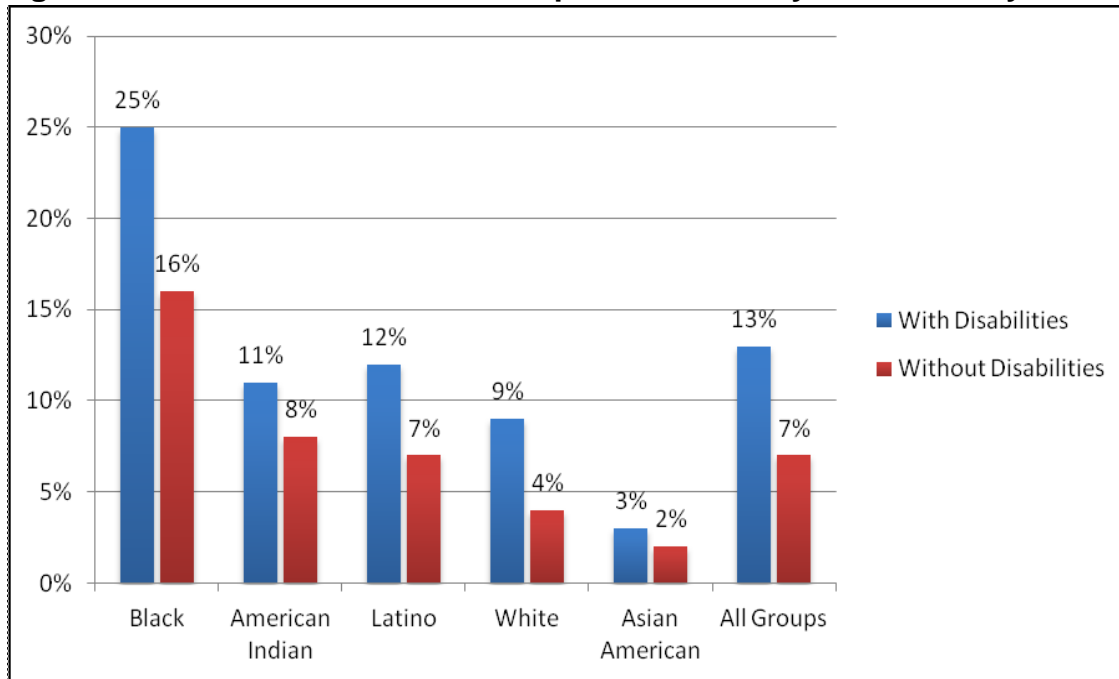
- Finally, our research team was unable to find distinctions of who originates the complaint in North Carolina – SRO or school administrator.

12) Within the processing of suspensions, expulsions, and school-based offenses - are there racial or ethnic disparities or disparities for youth with disabilities?

Nationally, students with disabilities (13%) are suspended at a rate almost twice as often as their non-disabled peers (7%) (Opportunities Suspended, 2012).

http://www.ctmirror.org/sites/default/files/UCLA%20report_0.pdf

Figure 4 - 2009-10 Out-of-school suspension rates by race/ethnicity & disability



http://www.ctmirror.org/sites/default/files/UCLA%20report_0.pdf

On April 16, 2013, the Advocates for Children's Services of Legal Aid of North Carolina filed a complaint against the Durham Public Schools alleging the frequent use of out-of-school suspension in the public schools of Durham, North Carolina, violates the U.S. Department of Education's regulations interpreting Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 and requesting that the Office for Civil Rights investigate.

Re: Complaint against the Durham Public School District under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973

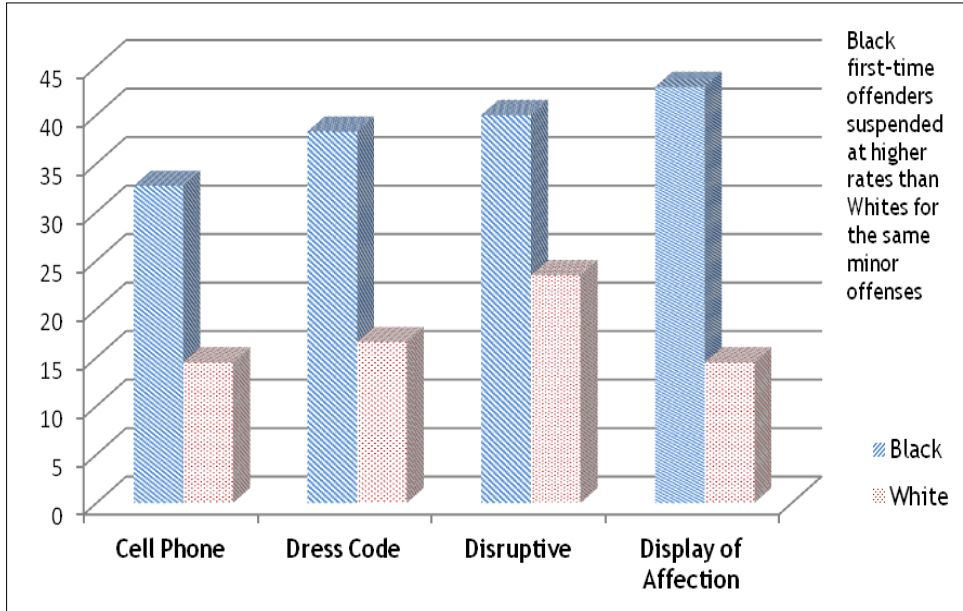
This Complaint, filed by Advocates for Children's Services of Legal Aid of North Carolina ("ACS"), on behalf of individual clients, and the Center for Civil Rights Remedies at the Civil Rights Project of UCLA ("CRP"), on behalf of all other similarly situated students, alleges that the frequent use of out-of-school suspension in the public schools of Durham, NC, violates the U.S. Department of Education's regulations interpreting Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. Applying a "disparate impact" theory, the Complaint seeks to vindicate the rights of all Durham Public School students - including Black students, students with disabilities, and especially Black students with disabilities - who are disproportionately harmed by suspension policies and practices in the Durham Public School District. The Complaint asks the U.S. Department of Education's Office for Civil Rights ("OCR") to investigate the Durham Public School District and encourage the district to adopt new non-discriminatory policies and practices that use out-of-school suspension only as a last resort.

www.legalaidnc.org/public/learn/media_releases/2013_MediaReleases/durham-public-schools-punish-black-students-disabled-students-at-higher-rates-than-peers.aspx

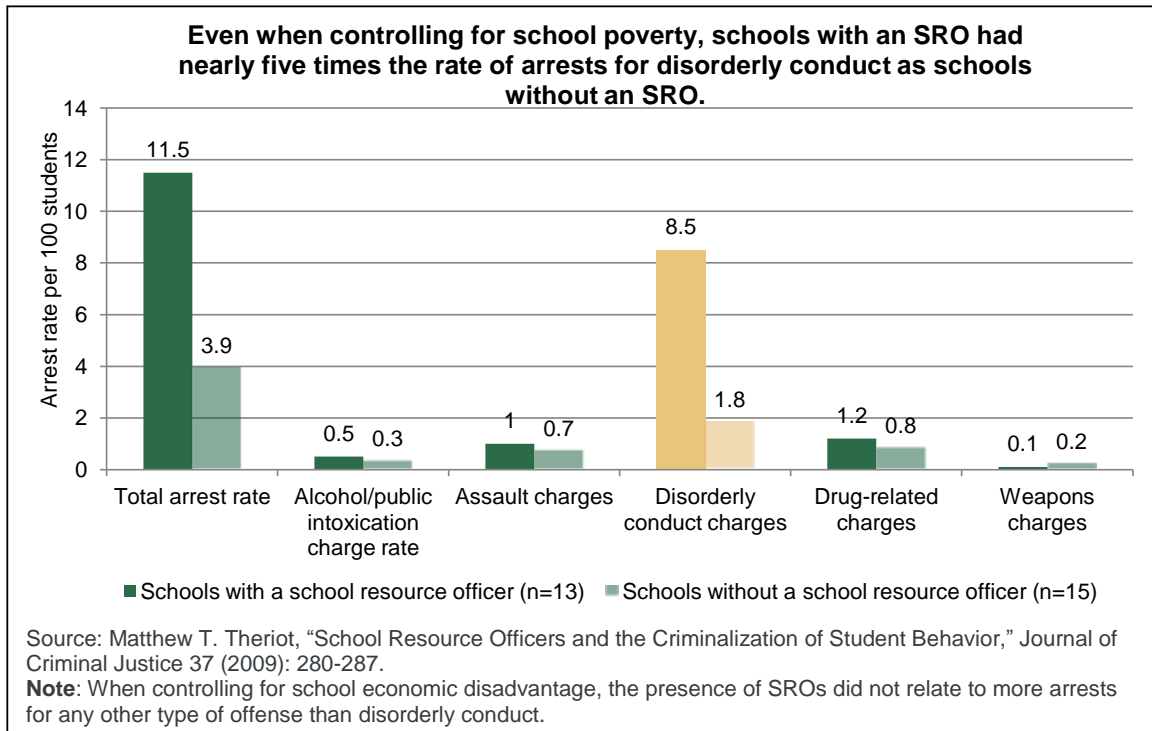
➤ Finding school-based offense data by race/ethnicity proved difficult as well. According to data obtained in an email from the NC Department of Public Safety, Division of Juvenile Justice to Legal Aid of NC, for students aged 15 and younger, there were a total of 16,000 school-based delinquency complaints filed in 2011 and of this total, 46.2% of the complaints were filed against African-American students despite only making up 26.8% of the student population (Fedders, Langberg, & Story, 2013). These data are not publicly available, however. http://www.legalaidnc.org/public/learn/media_releases/2013_MediaReleases/school-safety-in-north-carolina.pdf

13) Has the presence of school resource officers impacted the number of suspensions or complaints and the racial composition of those referred? What are the differences among schools without SROs, those with part time SROs, and those with full time SROs? (If possible, examine relative to crime rate in zip code/ geotype.)

National studies have indicated that SROs can increase arrests in schools and create situations where students are referred to the legal system for minor misbehavior, disrupt the learning environment by creating an environment of hostility, fear, and suspicion, and undermine the authority of teachers and school administrators (Majd, 2011, Students of the Mass Incarceration Nation; *Education Under Arrest: The Case Against Police in Schools*, Justice Policy Institute, November 2011; Hirschfield, 2010, Preparing for Prison?: The Criminalization of School Discipline in the USA, *Theoretical Criminology*, 79, 83; Cobb, 2009, *Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court*).

Figure 5 - Racial differences in North Carolina Suspension rates 2008-09(Losen, 2011) <http://escholarship.org/uc/item/4q41361g>

These results were also found in North Carolina. In NC for 2008-09, Black youth were much more likely to be suspended for minor offenses including cell phone infractions, dress code violations, disruptive behavior, and public displays of affection than were their White peers.

Figure 6 – Differences between schools with SROs and those without SROs

The Honorable Steven Teske reports that after placing SROs in schools in Clayton County, GA, the number of referrals directly to the juvenile justice system increased profoundly, from approximately 89 referrals per year in the 1990s to 1,400 per year in 2004 (Stop the Schoolhouse to Jailhouse Track, 2011). www.stopschoolstojails.org/clayton-county-georgia.html

In North Carolina, Fedders, et al., suggest that, “even though hundreds of millions of taxpayer dollars have been spent on SROs, there has never been a comprehensive study of the effectiveness of SROs in North Carolina. http://www.legalaidnc.org/public/learn/media_releases/2013_MediaReleases/school-safety-in-north-carolina.pdf

- An examination of the presence of school resource officers and how they may impact the racial composition of those youth referred to North Carolina’s juvenile justice system, might be considered.

14) What is the role of school climate? Demographics of administrators, staff, and students?

The National School Climate Center defines school climate as “the quality and character of school life as it relates to norms and values, interpersonal relations and social interactions, and organizational processes and structures. School climate sets the tone for all the learning and teaching done in the school environment and, as research proves, it is predictive of students’ ability to learn and develop in healthy ways. <http://www.schoolclimate.org/climate/faq.php>

The Consortium on Chicago School Research suggests that it is the quality of relationships between students and staff and between staff and parents that creates safe schools. Moreover, disadvantaged schools with high-quality relationships feel safer than advantaged schools with low-quality relationships. Their research found that the safety of schools has more to do with connections to adults, who do not have to be law enforcement officers of any sort (Steinberg, Allensworth, & Johnson, 2011, Student and teacher safety in Chicago Public Schools: The roles of community context and school social organization. *Consortium on Chicago School Research at the University of Chicago Urban Education Institute*).

15) Is there a level of variability (or discretion) in disciplinary processes across the school system? To what extent, if any, do these policies impact the overrepresentation of minority youth or youth with disabilities?

Reports from across the country note that levels of discretion vary not only across districts, but also within districts – across distinct schools. One study in Florida (2009) examined the changes in disciplinary actions as a result of the Florida state legislature amending their zero-tolerance policies to reduce juvenile justice referrals and minority overrepresentation. Data from 55/67 Florida school districts were collected. Researchers found that although the number of referrals to the Department of Juvenile Justice dropped by 8.7%, approximately half of the districts reported either the same or more referrals, and 67% of referrals were for misdemeanor offenses. And, 43 of

the school districts failed to rewrite their school discipline policies to define infractions that constitute “serious threats to school safety,” a direct violation of the state law. Racial disparities in school-based referrals also worsened in 2010-11. Issues related to this finding include not collecting or reporting discipline data disaggregated by race, allowing severe punishments for highly subjective offenses like “insubordination” or “defiance”, and giving excessive discretion to school officials to impose harsh punishment for minor offenses. (ACLU of Florida, Advancement Project, & Florida State Conference of the NAACP, 2011). *Still haven’t shut off the School-to-Prison Pipeline: Evaluating the impact of Florida’s new zero-tolerance law*. Miami, FL: ACLU of Florida, Washington, DC: Advancement Project, Orlando, FL: Florida State Conference of the NAACP. http://b.3cdn.net/advancement/be89ef01bcb350c7fc_z5m6btbgo.pdf

In Indiana, researchers examined suspension and expulsion rates for special education students, the extent of use of the special disciplinary provisions under the Individuals with Disabilities Education Act (IDEA), differences in suspension and expulsion rates by disability categories, and racial disparities in the use of IDEA disciplinary provisions. Findings indicated that students with disabilities were suspended twice as often and were 75% more likely to be expelled. Students with emotional disabilities were over 10 times more likely to be removed from school than students with other types of disabilities and Black students with disabilities were about 3 times more likely to be removed from school than other students with disabilities. (Rausch, 2006). *Discipline, disability, and race: Disproportionality in Indiana schools*. Bloomington, IN: Center for Evaluation and Education Policy.

http://www.indiana.edu/~equity/docs/discipline_disability_race_indiana.pdf

- To date, no study has been published which examines the level of variability or discretion in discipline processes across North Carolina schools and to determine the extent, if any, that this discretion may have on the overrepresentation of youth of color and those with disabilities in the juvenile justice system.

16) How do North Carolina figures compare to the national figures on juvenile risk and protective factor indicators?

Adolescence scholars study the range of risk and protective factors for youth in transition from childhood to adulthood (See McCarter, 2013, Adolescence, in Essentials of Human Behavior, Hutchison). The US Department of Health and Human Services created 12 health objectives for adolescents in Healthy People 2020 and they include: increased educational achievement, increased participation in extracurricular activities, increased percentage of youth tested for HIV, increased numbers of well-check ups, increased prohibition of sexual harassment, decreased school absences based on safety concerns, decreased percentage of youth with a violent incident, increased percentage of adolescents with connections to parents/caregivers, decrease percentage of youth offered an illegal drug on school property, increased percentage of vulnerable youth provided with services to ease transition to adulthood, decreased number of adolescents involved in criminal activity, and increase the number of schools with breakfast programs.

www.healthypeople.gov/2020/about Table 6 presents a compilation of indicators for juvenile risk and protective factors calculated for NC and the nation. (Note: North Carolina has the youngest age of majority – meaning that anyone older than 15 is automatically tried as an adult.)

Table 6 - Juvenile Indicators - Risk and Protective Factors – NC & US 2010		
	NC	US
Population Characteristics*		
Juvenile population, ages 0 to 17, 2010	2,279,498	74,124,558
Black, non-Hispanic proportion of population, 2010	29.2%	19.9%
Hispanic proportion of juvenile population, 2010	13.6%	23.2%
Poverty Indicators**		
Proportion of children under 18 living in poverty, 2010	25%	22%
Proportion of children under 18 without insurance, 2010	10%	10%
Pregnancies per 1,000 females ages 15 to 17, 2010	20	17
Maltreatment victimizations per 1,000 children under age 18, 2010	10	9
Averaged H.S. Graduation Rates***		
Averaged graduation rate, 2009-2010	76.9%	78.2%
Averaged graduation rate for Black students, 2009-2010	66.1%	69.5%
Suspension Rates****		
Suspension rate for Black, non-Hispanic students (public, K-12)	16%	17%
Suspension rate for Hispanic students (public, K-12)	7%	7%
Suspension rate for White, non-Hispanic students (public, K-12)	6%	5%
Suspension rate for Black students with disabilities	25%	25%
Juvenile Arrest Rates*****		
Total juvenile arrest rate, 2010	4414	4889
Violent Crime Index arrest rate, 2010	203	226
Robbery arrest rate, 2010	67	81
Aggravated Assault arrest rate, 2010	121	133
Simple assault arrest rate, 2010	828	626
Property Crime Index arrest rate, 2010	1137	1091
Larceny-Theft arrest rate, 2010	794	837
Drug Abuse arrest rate, 2010	333	508
Weapons arrest rate, 2010	164	93
Disorderly Conduct arrest rate, 2010	442	464
Juveniles in Correction*****		
Commitment rate (per 100,000 juveniles, 10 to upper age), 2010	68	154
Detention rate (per 100,000 juveniles, 10 to upper age), 2010	22	65
Proportion of juveniles placed for non-person offenses, 2010	58.0%	66.0%
Ratio of minority to white rate of youth in residential placement, 2010	3.1	2.8

*Population data compiled in Puzzanchera, C., Sladky, A. & Kang, W. (2012). "Easy Access to Juvenile Populations: 1990-2011." Online. Available: <http://www.ojjdp.gov/ojstatbb/ezapop/>

**Poverty indicators from The Annie E. Casey Foundation, KIDS COUNT data center, <http://datacenter.kidscount.org>

***Graduation rates from Stillwell R. & Jennifer S. (2013, January). Public School Graduates and Dropouts from the Common Core of Data: School Year 2009-2010. <http://nces.ed.gov/pubs2013/2013309rev.pdf>

****OCR data compiled in Losen, D. J. & Gillespie, J. (2012, August). Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School. The Civil Rights Project, Proyecto Derechos Civiles <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research>

****Arrest statistics compiled in Puzzanchera, C., & Kang, W. (2013). "Easy Access to FBI Arrest Statistics 1994-2010" Online. Available: <http://www.ojjdp.gov/ojstatbb/ezaurc/>

****Juveniles in correction data compiled in Sickmund, M., Sladky, T.J., Kang, W., & Puzzanchera, C. (2011). "Easy Access to the Census of Juveniles in Residential Placement." Available: <http://www.ojjdp.gov/ojstatbb/ezacjrp/>

^North Carolina commitment and detention rates are for youth <16, whereas the national data are for youth <18.

17) Does the unique age of juvenile delinquency court jurisdiction in NC impact these differences? If so, how (mandatory school attendance, driver's licenses, etc.)?

One certain way that the unique age of majority affects youth in North Carolina is within comparison to other states or the nation. (See Table 6 above.) This can artificially deflate North Carolina's figures (e.g., Commitment rate for NC only includes 10 - 15 year-olds whereas other states' figures include 10 – 17 year-olds.)

- No specific literature has examined the age of jurisdiction relative to the school-to-prison pipeline in North Carolina.

18) Finally, are there any current reforms, locally or nationally, that are effective in addressing the school-to-prison pipeline issues?

- **Baltimore** experienced a decrease in suspensions from 16,500 to 9,721 over a three year period ending in 2011-2012. This was accompanied by an increase in graduation rates as well. Various stakeholders were brought together to revise the code of conduct to create a more positive learning environment and reduce suspensions.
- In three **Connecticut** communities, residents worked to reduce the number of school-based referrals by having the courts refer cases back to the school that were not worthy of juvenile court jurisdiction.
- Six high schools in **New York** have rejected zero tolerance policies and are working with students to treat school discipline as an educational matter.
- The **Oakland Unified School District** has exhibited success with the use of Restorative Justice principles and the **Minneapolis Public Schools** require their schools to implement a positive behavioral plan regarding the disciplining students.
- **Oxford Gardens, Massachusetts** did away with security guards and diverted those funds to the arts; the school now has thriving arts programs and rapidly increasing improvement.
- Meanwhile, in **Clayton County, GA**, led by Judge Steven Teske, officials addressed the skyrocketing rates of arrest following the introduction of SROs to the school system by creating a tiered system where students first received warnings and mediation prior to any involvement with the legal system. Additionally, the school system eliminated the ability to refer elementary school students to the court system for school-based offenses.
- **Jefferson County, AL** replicated the system developed in Clayton County and school related offenses dropped by 40% in a four year period from 4,000 to 2,500.
- A new law has been introduced in **Colorado** to ensure that positive youth development is utilized in schools. This law works to develop preventative strategies and seeks to avoid

the handling of minor misbehavior by the legal system. In an agreement with the Denver Police Department, the **Denver City Schools** have increased training of SROs in the schools. This training draws a firm distinction between disciplinary issues and crimes.

- Likewise, the **San Francisco Unified School District** revised its handbook to restrict the use of SROs in school-based incidents.
- The **Cleveland Metropolitan School District** made efforts to improve both safety/order as well as learning conditions through the implementation of SEL programming and early intervention to improve school climate. (Fedders, Langberg, & Story, 2013).
http://www.legalaidnc.org/public/learn/media_releases/2013_MediaReleases/school-safety-in-north-carolina.pdf
- And finally, **Florida** has instituted a civil citation program, which is an option for most first-time misdemeanor offenders. The civil citation program provides a diversion from the formal juvenile justice system and avoids the labeling of a youth as “juvenile delinquent.” The programs have been found to be effective as the recidivism rate is between 3% and 7%. (Beattie & Rogers, 2012).
http://www.ncchild.org/sites/default/files/CivilCitation_North%20Carolina.pdf

In July 2011, the U.S. Department of Justice and the U.S. Department of Education announced a joint initiative called the Supportive School Discipline Initiative. The Initiative is intended to explore alternatives to punitive disciplinary structures, ensure that school discipline policies are in-line with civil rights, and keep youth in school and out of the justice system (Department of Justice, “Attorney General Holder, Secretary Duncan Announce Effort to Respond to School- to-Prison Pipeline by Supporting Good Discipline Practices,” Press Release, July 21, 2011). [As of the writing of this report, no additional information has been provided by Attorney General Holder, the Department of Justice, or Secretary of Education Duncan, or the Department of Education regarding the Supportive School Discipline Initiative.]

Implications for North Carolina

Legislators, judges, attorneys, scholars, court counselors, and child advocates may wish to investigate gaps in data and reporting within the School-to Prison Pipeline and their implications for North Carolina’s schools and students. Items for consideration may include:

- Providing statutory guidance on “divertable” offenses
- Updating the SRO census (last updated in 2008-09)
- Classifying school-based offense statistics by race/ethnicity and disability status
- Distinguishing the origination of complaints between SROs or school administrators and how school officials determine whether or not to file a delinquency complaint
- Examining the presence of SROs and how they may positively or negatively impact the racial composition of those youth referred to North Carolina’s juvenile justice system
- Studying the level of variability or discretion in discipline processes across NC schools and determining the extent, if any, that this discretion may have on the overrepresentation of youth of color and those with disabilities in the juvenile justice system
- Exploring the age of jurisdiction relative to the school-to-prison pipeline in North Carolina
- Conducting interviews with SROs and court counselors regarding their decision-making processes and procedures in filing school-based offense petitions