
UNINTENDED CONSEQUENCES:

THE IMPACT OF “ZERO TOLERANCE” AND OTHER EXCLUSIONARY POLICIES ON KENTUCKY STUDENTS



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This study is the eighth report that has been published by Building Blocks for Youth, a multi-year initiative to reduce racial disparities affecting youth of color in the justice system and promote rational and effective juvenile justice policies. The initiative has five major components:

- (1) Research on the disparate impact of the justice system on youth of color, including arrest, prosecution, adjudication, incarceration, and transfer to adult criminal court;
- (2) Site-based work on decision-making at critical points in the justice system, transfer to adult court, over-incarceration, and zero tolerance policies in schools;
- (3) Direct advocacy on behalf of youth in the justice system, particularly on issues that disproportionately affect youth of color such as conditions of confinement in juvenile facilities, jails, and prisons;
- (4) Constituency-building among African-American, Latino, and Native American and other minority organizations, as well as organizations in the medical, mental health, legal, law enforcement, child welfare, civil rights, human rights, religious, victims rights and domestic violence areas, at the national, state, and local levels;
- (5) Development of communications strategies to provide timely, accurate, and relevant information to these constituencies, public officials, policymakers, the media and the public.

The partners in the initiative are the Youth Law Center, Justice Policy Institute, Juvenile Law Center, American Bar Association Juvenile Justice Center/National Juvenile Defender Center, Minorities in Law Enforcement, and Pretrial Services Resource Center.

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EXECUTIVE SUMMARY

Introduction

A series of events in the mid-1990s brought unprecedented attention to youth crime in Kentucky. Like other states, Kentucky adopted “zero tolerance” and other exclusionary policies in their public schools. These changes in law and policy have had significant consequences, some of them unintended, for Kentucky’s children.

This study focuses on three questions:

1. What is the scope of the juvenile crime problem in Kentucky’s public schools?
2. How have Kentucky’s public schools reacted?
3. Have any particular groups been disproportionately affected by the adoption of new school discipline policies?

Background

From the mid-1980s to the early 1990s, there was a marked increase in arrests of juveniles for homicides with firearms. In response, Congress passed the Gun-Free Schools Act of 1994, which required states to expel firearm-carrying students for at least one calendar year. State school boards and local school districts expanded “zero tolerance” policies to include virtually any object that could be considered a weapon, illegal drugs, prescription drugs, and even some drugs available over-the-counter.

In Kentucky, several horrific juvenile crimes heightened the public’s concerns, and the state’s juvenile laws were toughened dramatically in 1996. A particularly important incident occurred in December, 1997 when 14-year-old Michael Carneal shot into a prayer group of students at Heath High School in West Paducah. Tragically, Carneal’s shootings killed three young people and wounded five other students. The incident became front-page news in Kentucky and throughout the country. The Kentucky school shooting was followed in April, 1999, with an even-more infamous school shooting. Eric Harris and Dylan Klebold killed a teacher and 12 students and wounded 23

others at Columbine High School in Littleton, Colorado, before they turned the guns on themselves. The Columbine school shooting was the worst in a series of a dozen school shootings in the U.S. over an 18-month period. Although violence in schools is actually quite rare - the chance of becoming a victim in a school-associated violent death is less than one in a million - these incidents had an enormous effect on public perceptions of school danger and on school policies.

Early Concerns about Zero Tolerance Policies

Many zero tolerance policies apply harsh penalties to relatively minor student conduct. Nationally, several prominent incidents highlighted extreme decisions by school officials, including students who were subject to disciplinary action for bringing Midol or Advil to school, bringing a water pistol to school, or taking a slurp of Listerine during school hours. In addition, research found zero tolerance policies were disproportionately applied to youth of color, especially African-American youth.

Questions about the Overuse of Suspensions and Expulsions

Moreover, suspensions and expulsions often are counter-productive. Out-of-school suspension and expulsion interrupt students’ educational progress and remove students from school at a time when they may most need stability and guidance in their lives. Repeated out-of-school suspensions may make it impossible for students to keep up with the curriculum, complete class assignments, and advance from one grade to another. Even more ominously, suspensions and expulsions reduce adult supervision and give students’ unstructured time in which to get in trouble.

Methodology

This study included an extensive review of the national and state literature, data collected by the Kentucky Administrative Office of the Courts on referrals of students by school officials to local juvenile courts, and data collected by the Kentucky Center for School Safety on school incidents that led to students

being suspended and expelled. Equally important, this study relied on verbal and written comments from nearly 500 juvenile justice and child welfare professionals at four forums convened in 2001 and 2002 by the Children's Law Center and Kentucky state agencies.

Findings

Scope of the Juvenile Crime Problem

The Kentucky study reviewed data on "status offenses" (which are not crimes for adults) and other offenses, guns and weapons charges, drug and alcohol offenses in schools, and law violations. The data do not support the claim that violent juvenile crime is a serious problem in Kentucky's public schools. On the contrary, the overwhelming majority of referrals from schools to juvenile court are for the status offenses of truancy and being "beyond the reasonable control of the school." Many other referrals include behavior that may be obnoxious and typically adolescent, but not dangerous. Referrals to court for weapons and firearms offenses are low. Most referrals for drug offenses are for minor possession charges. Referrals for alcohol offenses are also very low. Most reported "law violations" are not serious enough to warrant referral to court.

Reaction by Kentucky's Schools

By far the most common response by Kentucky's schools to student misconduct is out-of-school suspension. Kentucky school officials use expulsion rarely, a welcome contrast to other states and large cities. Nevertheless, Kentucky suspends a large number of students - more than 68,000 in 2000-2001 - for so-called "board violations" that are adolescent and disruptive, but not dangerous. Examples of board violations include: "defiance of authority," fighting, disturbing class, failure to attend detention, "inappropriate sexual behavior," profanity or vulgarity, and use of tobacco.

Groups Disproportionately Affected

Throughout the state, the suspension rate for African-American students for both school

board policy violations and for law violations was significantly greater than for white students. For board violations, the rate was more than twice as great in four school districts, more than three times as great in five school districts, more than six times as great in one district, and more than seven times as great in one district. For law violations, in eight districts it was more than twice as great as for white students; in four other districts it was at least three times as great; in three more districts, it was more than 5 times as great. In Jefferson County, it was 17 times as great as for white students. These data raise serious concerns that school officials have unlocked the back doors of public schools and sent African-American children away. The result is that they are denied an education.

Shift of Responsibility

A further problem created by "zero tolerance," and other exclusionary policies in many Kentucky schools is that the policies shift the responsibility for young people from the educational system to the courts. Judges and court staff suggested that these referrals were beginning to overwhelm Kentucky's juvenile and family courts. This situation is of particular concern because court staff made it clear that they were often ill-equipped to resolve the learning and behavioral problems of young people referred to them by school officials. Judges and court staff often feel that school officials regard them as magicians, having some mystical ability to resolve behavior problems that surface in schools.

Recommendations

The report makes recommendations for five groups that are critical to prompting change in Kentucky: (1) parents and students, (2) principals and site-based decision-making councils, (3) local school superintendents and school boards, (4) the Kentucky Department of Education, and (5) juvenile justice system personnel, including judges, court-designated workers, and defense attorneys. The full report includes a comprehensive set of suggestions for each of these target groups.

INTRODUCTION

A series of events in the mid-1990s brought unprecedented attention to youth crime in Kentucky. These events dramatically changed the way that Kentucky traditionally responded to juvenile crime. The situation in Kentucky also reflected national trends, as states stiffened their laws and reconsidered conventional ways of handling young offenders. Like other states, Kentucky adopted “zero tolerance” — and other exclusionary — disciplinary policies in public schools. These changes in law and policy have had significant consequences, some of them unintended, for Kentucky’s children.

This study focuses on three questions:

1. What is the scope of the juvenile crime problem in Kentucky’s public schools?
2. How have Kentucky’s public schools reacted?
3. Have any particular groups been disproportionately affected by the adoption of new school discipline policies?

BACKGROUND - JUVENILE CRIME AND THE ADOPTION OF ZERO TOLERANCE POLICIES

From the mid-1980s to the early 1990s, although arrest rates for other juvenile offenses remained stable, there was a significant increase in arrests of juveniles for homicides with firearms. Several reasons have been cited for this increase, including a rise in gangs, the increased use of (and resulting demand for) crack cocaine, and the easy availability of guns.¹

In response, Congress passed the Gun-Free Schools Act of 1994, which required states to expel firearm-carrying students for at least one calendar year. As a result, all 50 states, including Kentucky, created gun-free school

policies. According to a 1996-7 report by the U.S. Department of Education, 94% of U.S. public schools had implemented so-called “zero-tolerance” policies with regard to firearm possession in schools.² It is important to note that the federal law passed in 1994 prohibited “firearms,” not “weapons.” Nevertheless, state school boards and local school districts expanded the provisions of the law to include virtually any object that could be considered a weapon. The states also expanded their interpretation of the federal law from an initial prohibition of illegal drugs to include prescription drugs, and even some drugs available over-the-counter.

It was up to each state to draft policies that defined what constituted a weapon. In some states, the definition of what constituted a weapon — or threatening behavior — was so vague, and the discretion of school administrators so broad, that children were suspended or expelled for such behavior as creating paper handguns³ and using their fingers as guns.⁴ In some jurisdictions, children were suspended under guidelines that monitored what they said as well.⁵

High-Profile Juvenile Crimes Prompted Legislative Changes And Fear In Schools

Several horrific juvenile crimes in Kentucky⁶ heightened the public’s concerns and changed traditional perspectives on how juveniles should be treated.⁷ The issue of juvenile crime was catapulted to the top of Kentucky’s 1995 gubernatorial campaign,⁸ and the state’s juvenile laws were toughened dramatically in 1996.

On December 1, 1997, a school-shooting incident at Heath High School in Paducah/McCracken County, in western Kentucky, brought a national focus to violence and guns in schools. On that day, 14-year-old Michael Carneal shot into a prayer group of students, killing three young people and wounding five other students.⁹ The incident became front-

page news in Kentucky and throughout the United States.¹⁰

On April 20, 1999, students Eric Harris and Dylan Klebold killed a teacher and 12 students and wounded 23 others at Columbine High School in Littleton, Colorado, before killing themselves. It was the worst of a dozen school shootings over an 18-month period. While such school shootings are, in general, quite rare, and, in the words of a federal study, “few children are likely to fall prey to life-threatening violence in school settings,”¹¹ nearly everyone agreed that “each school-based attack has had a tremendous and lasting effect on the school in which it occurred, the surrounding state, and the nation as a whole.”¹²

Consequently, many public schools in Kentucky and throughout the nation created “zero tolerance” — and other strict exclusionary — policies with respect to questionable student behaviors, as well as guns and drugs. The public seemed to call for something dramatically different in treating juvenile misbehavior. School systems in Kentucky sought to reassure parents that schools were safe.

Concerns Raised About Zero Tolerance Policies

Under zero-tolerance and other exclusionary policies, when school authorities perceive a child to be violating a school rule or law, they remove him from school by suspension or expulsion. In essence, these policies allow for no margin of error — even the most minor student infraction is subject to immediate school disciplinary action. Public sentiment supported these policies, even though less than one percent of all violent incidents involving adolescents nationally occur on school grounds.¹³

Many of these policies apply harsh penalties to innocuous conduct, and seem to be “fueled less by genuine safety concerns” than by

political considerations.¹⁴ Other critics have referred to zero tolerance policies as resulting from an attitude of “hyper-vigilance.”¹⁵ Many of the decisions made by local school boards have been criticized as being too routine and “by-the-book,” without taking into account the particular circumstances of individual students or incidents. These “one-size-fits-all” approaches may severely punish students for violating the letter - but not the spirit - of such policies.

Nationally, several prominent incidents highlighted extreme decisions by school officials, including students who were subject to disciplinary actions for bringing Midol or Advil to school, bringing a water pistol to school, or taking a slurp of Listerine (which is 22 percent alcohol) during school hours.¹⁷ A junior high school student from Belle, West Virginia who gave a zinc cough lozenge to a classmate was suspended for three days. A kindergarten boy in Newport News, Virginia was suspended for bringing a beeper on a class trip. A nine-year-old boy from Manassas, Virginia was suspended for one day for giving breath mints to a classmate. A 13-year-old boy, who was an honor student, from Fairborn, Ohio received an 80-day suspension for bringing ibuprofen to class, a disciplinary action which later was reduced to three days. A six-year-old boy from Madison, North Carolina, who kissed a girl on the cheek, was given a one-day suspension. An 11-year-old girl from Columbia, South Carolina was arrested and suspended for having a steak knife in her lunchbox to cut chicken she had brought to school to eat. A 10-year-old boy was expelled for bringing a one-inch plastic knife to school. An 8-year-old girl from Alexandria, Louisiana was expelled for bringing to school a one-inch pocketknife that was attached to her grandfather’s pocket watch chain.

Throughout the U.S., some zero tolerance policies have had unintended consequences on children with special health needs. For example, some Kentucky schools prohibited asthmatic students from carrying their own

“rescue inhalers” on school premises, putting the children’s health in jeopardy. Once these practices became more public, Kentucky became one of eleven states during the late 1990s that passed legislation that specifically allowed students to carry their own inhaler to protect their health interests without fear of arrest.¹⁸

These early stories prompted some reviews of zero tolerance policies to look at whether there are racial disparities in the application of school discipline.¹⁹ A Michigan study found that, while 40% of the students in the districts surveyed were African- American, they accounted for 64% of school expulsions. A Seattle study found similar racial disparities.²⁰

A national report, referring to zero tolerance policies as a form of “racial profiling in schools,” pointed out that in 1998, African-Americans students comprised 17.1 percent of the student population nationally, but 32.7 percent of those suspended.²² Over the last 25 years, studies have shown that students of color are suspended at a rate two to three times that of white students.²³ This higher rate may also apply to Latino students in some areas of the country. In fact, Latino students may be significantly under-counted in school discipline data, because they are counted as white or “other.”²⁴

There is also concern that school discipline policies fall more heavily on children with educational disabilities. Students with special education needs are often caught in “the web of zero tolerance” and they are over-represented among students who are expelled.²⁵ Some get in trouble as a result of their disabilities.²⁶ Yet research indicates that few educationally disabled students who are excluded from school present real or serious dangers to other students or staff.²⁷ In 2002, the Children’s Law Center, based in Covington, KY, sponsored a series of forums across the state for juvenile justice and child welfare professionals on “The Rights and Needs of Disabled Students,” in conjunction

“... the number of children killed by gun violence in schools is about half the number of Americans killed annually by lightning strikes.”

- a 1998 report prepared by the Justice Policy Institute entitled, “School House Hype”¹⁶

with the Kentucky Departments of Juvenile Justice, Education, and Public Advocacy, the Administrative Office of the Courts, Cabinet for Children and Families, Eastern Kentucky University’s Training Resource Center, the National Center for Education, Disabilities, and Juvenile Justice, and the National Institute for Children, Youth and Families. Although comprehensive data are not available on school discipline and students with educational disabilities, the professionals at the forums agreed that the issue is a matter of continuing concern.

The many stories of excessive and inappropriate use of suspension and expulsion, as well as concerns about disparate impact of school discipline on youth of color, have led to a national backlash against zero tolerance policies. For example, in February, 2001, the American Bar Association voted to oppose zero tolerance policies that have a discriminatory effect, or mandate either expulsion or referral of students to juvenile or criminal court, without regard to the circumstances or nature of the offense or the student’s history.²⁸ Similar resolutions were approved by the South Carolina Bar Association in May, 2001, and by the Pennsylvania Bar Association in November, 2001.

Doubts About Out-of-School Suspensions And Expulsions

Out-of-school suspension and expulsion interrupt students’ educational progress and remove students from school at a time when they may most need structure and guidance in their lives. Repeated out-of-school

suspensions may make it impossible for students to keep up with the curriculum, complete class assignments and advance from one grade to another. Ultimately, suspensions can further discourage these youth and diminish their chances of graduating.

Since few suspended or expelled students receive educational services or alternative placements, the days out of school are lost, creating educational gaps from which many students cannot recover. Moreover, if a primary goal is to reduce misbehavior, out-of-school suspension and expulsion are completely counter-productive: they reduce adult supervision over students, and give them unstructured time in which to get into trouble. Research demonstrates that the high crime hours for young people are 3:00pm to 6:00pm, the after-school hours when they do not have other activities to occupy their attention. Equally important, suspending students put these children further behind in their studies. Finally, repeated suspensions for minor misbehavior convey a clear message to young people that the school system is authoritarian and arbitrary, and does not value them as individuals.

This situation is tragic because it is both devastating to students and largely unnecessary. There are a variety of alternatives to out-of-school suspensions that have been implemented successfully in parts of Kentucky and other states. These

alternatives hold young people accountable for their misbehavior but avoid the deleterious effect on students' education.

METHODOLOGY

This study relies on both quantitative and qualitative data. The researchers first conducted an extensive review of the literature at both the national and state level. This process included an internet survey of national reports on juvenile crime trends as well as reports that focused on zero tolerance and other exclusionary school policies. In addition, the researchers conducted a review of recent archival records from the state's two largest newspapers, which provided contextual information about Kentucky in the 1990s and provided the basis for the Introduction of this report.

This study relied on data collected and reported by the Administrative Office of the Courts (AOC), located in the state capitol in Frankfort, which include referrals of students by school officials to local family and juvenile courts. While the AOC tested its new data collection system during the July 1, 1999 to June 30, 2000 school year, the first *reliable* year of school data was collected during the July 1, 2000 to June 30, 2001 school year. Recently the AOC collected and analyzed its second data set, this time for July 1, 2001 to June 30, 2002.

"In Bell County, Kentucky, for example, a white student was dared by his friends to pick a fight with an African-American student. He then approached an African-American student, called him a 'nigger' and struck him. Despite the fact that both students were fighting, the African-American youth was suspended for two weeks, while the white youth was suspended for only one week. The administration justified its decision by saying that the African-American student continued to fight after the white student stopped, with no consideration of the racial harassment and provocation on the part of the white student."

- a recent report by the Applied Research Center, Oakland, California, entitled "Racial Profiling and Punishment in U.S. Public Schools"²¹

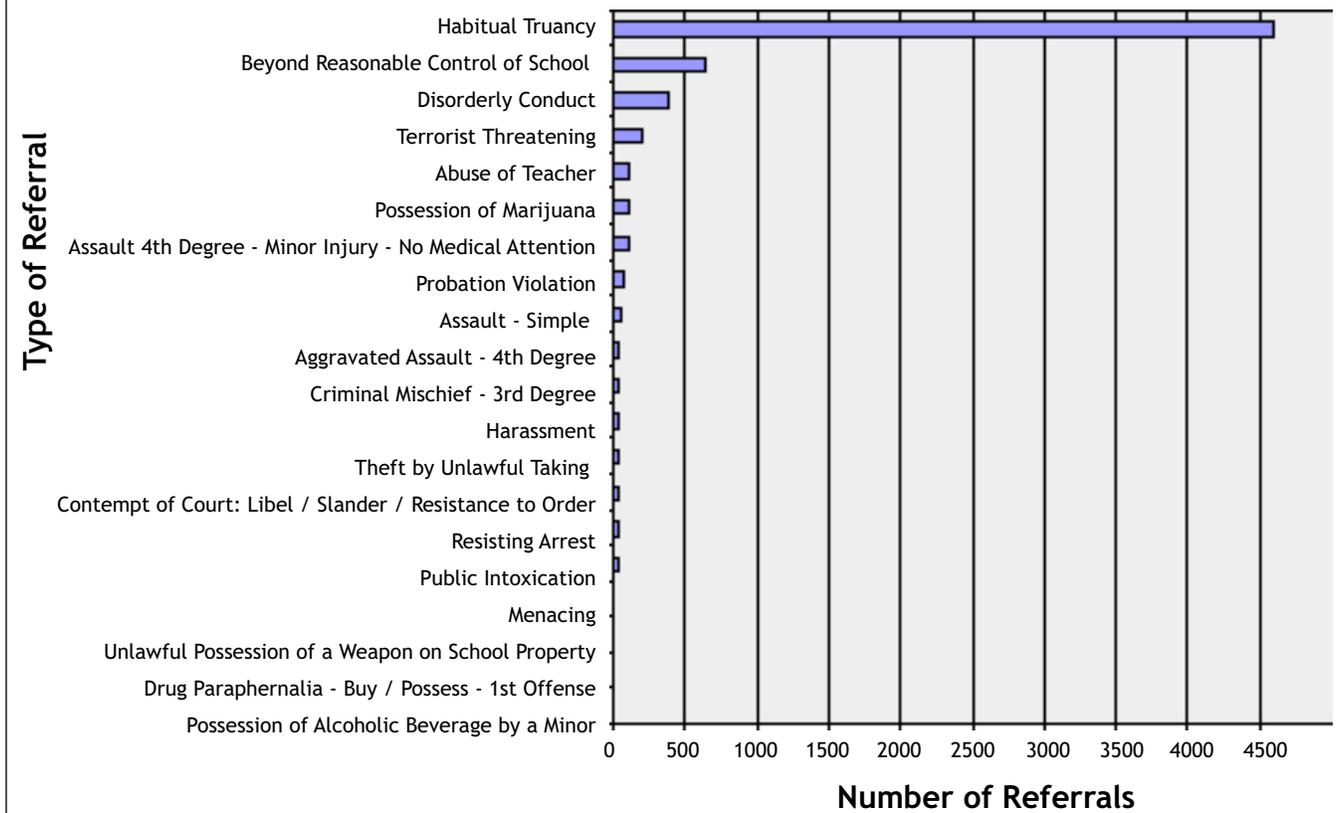
This study also relied on data collected by the Kentucky Center for School Safety (KCSS), in Richmond, Kentucky. The Center for School Safety collected data on school incidents that led to students being suspended and expelled from school. The researchers involved in this study have reformatted some of the Center for School Safety data so that (1) counties can be compared and (2) data available at the local level can be ranked.

This study also relied on verbal and written comments from nearly five hundred professionals from Kentucky’s public schools, juvenile courts, the legal community, mental health staff, social workers working in the child protection system, and staff working in the juvenile justice system throughout Kentucky. The information was collected by the Children’s Law Center at four forums convened in 2001 and 2002 in Covington, Louisville, Richmond and Bowling Green,

Kentucky. The observations and findings from these group discussions assisted the researchers by providing a deeper understanding of how public schools and local courts are operating. It also helped the researchers involved in this study better understand the nuances and complexities of the accusations made against children.

In view of the comments the researchers heard in the public forums, some of the quantitative data should be read and interpreted with a certain amount of caution, since they reflect only one perspective — that of school officials — of what may have happened. Many of the non-school professionals who participated in the four forums convened by the Children’s Law Center indicated that there was often another side of an incident - that of the student who was accused of some infraction, a perspective which was seldom known by school officials.

Figure 1:
Types of Allegations of School-Related Incidents Referred to Administrative Office of the Courts' Staff by School Personnel for Fiscal Year 2001-02



FINDINGS

1. What Is The Scope Of The Juvenile Crime Problem In Kentucky's Schools?

As the researchers involved in this project examined the data, they grouped the findings to Question 1 in four categories: (a) status and other offenses, which are included in Table 1, (b) guns and weapons charges, which are included in Tables 2-4, (c) drug and alcohol offenses in schools, which are included in Tables 5-7, and (d) law violations, which are included in Tables 8-10.

Status vs. Other Offenses

For the last two school years, the Administrative Office of the Courts counted the number of referrals made to courts by school personnel. The data related to school referrals for the most common offenses appear in Table 1 and Figure 1. As they indicate, the great majority of school referrals to court are for behaviors that are not even crimes, but are "status offenses" that only apply to minors. Nevertheless, these status offenses are prosecuted in juvenile court.²⁹

Analysis of Table 1 and Figure 1: In the 2000-2001 fiscal year, of the top seven allegations, nearly 89% (5,767 of 6,478) of all school referrals to courts were for two offenses: (1) being habitually truant from school, and (2) being "beyond the reasonable control of the school." Both of these are "status offenses" and would not be crimes if

the individual were an adult. In a sense, the child's "status" as a young person makes this behavior a violation of the law.

The number of school incidents referred to court decreased from 7,192 for 2000-01 to 6,986 for the most current year, 2001-2002. As in the prior year, the overwhelming majority of offenses during 2001-02 were for habitual truancy (65.8%) and "beyond the reasonable control of the school" (9.3%), a total of almost 75% of the total referrals.

The number of incidents that might be considered serious is very small, particularly

Table 1:
Types of Allegations of School-Related Incidents Totaling 25 or More That Were Referred to the Administrative Office of the Courts' Staff By School Personnel for Fiscal Years 2000-01 and 2001-02
(total number of referrals to court = 7,192 in 2000-01 and 6,986 in 2001-02)

Description of Offenses	Total: 00-01 # (Rank)	Total: 01-02 # (Rank)
Habitual Truancy (status offense)	5,079 (1)	4,603 (1)
Beyond Reasonable Control of School (status offense)	688 (2)	653 (2)
Terrorist Threatening (public offense)	209 (3)	184 (4) *
Disorderly Conduct (public offense)	193 (4)	386 (3)
Assault 4th Degree - Minor Injury - No Medical Attention (public offense)	106 (5)	120 (7)
Possession of Marijuana (public offense.)	104 (6)	121 (5)
Abuse of Teacher - Prohibited (public offense)	99 (7)	121 (5)
Probation Violation (public offense)	52 (8)	69 (8)
Harassment (public offense)	45 (9)	40 (11)
Criminal Mischief - 3rd Degree (public offense)	42 (10)	41 (10)
Theft by Unlawful Taking (public offense)	37 (11)	34 (12)
Assault-Simple (public offense)	33 (12)	65 (9)
Aggravated Assault- 4th Degree (public offense)	29 (13)	41 (10)
Menacing (public offense)	29 (13)	27 (14)
Drug Paraphernalia-Buy/Possess-1st Offense (public off.)	27 (15)	20 (--)
Possession of Alcoholic Beverage by a Minor (public off.)	25 (16)	14 (--)
Public Intoxication	23 (--)	32 (13)
Resisting Arrest	10 (--)	32 (13)
Contempt of Court: Libel/Slander/Resistance to Order	14 (--)	32 (13)
Unlawful Possession of a Weapon on School Property	--- (--)	26 (15)

Source: Kentucky Administrative Office of the Courts

*Note to Table 1: For the 01-02 data set, three categories of terroristic threatening were combined to make this category consistent with the 00-01 data; 3rd degree= 68, 2nd degree = 59; 1st degree = 9; no degree mentioned = 47

considering the huge number of students that attend public schools. For example, more than 625,000 students attend Kentucky's public schools each year. These students attend more than 1,400 elementary and secondary school buildings in 179 school districts in 120 counties in Kentucky. Since there are 180 days each school year, 1,400 school buildings, and more than 625,000 children in attendance, the number of potential interactions between students, and between students and staff, is enormous, while the number of serious crimes is tiny by comparison.

Putting This Data in Context: Of course, abuse of teachers and violent behavior should not be tolerated. But there were few such incidents in either year, and the overwhelming majority of other offenses listed in Table 1 are misbehavior that is adolescent but not violent. For example, a person is guilty of "disorderly conduct" when he causes public inconvenience, annoyance, or alarm, by, among other things, making "an unreasonable noise."³⁰ To cite another example, an assault in the fourth degree, which is a misdemeanor, may be as simple as a school yard fight where one student got the upper hand. Likewise, being "beyond the control of school authorities" is a blanket provision without a clear definition, a behavior that may be applied to almost any type of disruptive or non-compliant behavior.

Moreover, reporting data on violence or threatening behavior in schools is a complicated matter, for several reasons. First, some reports are allegations that cannot withstand closer scrutiny, and are dismissed in subsequent court proceedings. Second, the actual behavior may range from a simple disagreement that escalates into a shoving incident between classmates to an actual injury sustained by a teacher or another

student. Third, students often get in trouble for what they say, not what they actually do. In those cases, a young person who loses his temper can be charged with verbally "menacing" or "terroristic threatening" *even though no actual violence occurred.*³¹

In addition, school officials may "overcharge" a student for a particular incident in order to "send a message" to the child, his friends, his parents, and the court. Or, in reverse, school officials may "go easy" by charging a youth with a lesser offense because he is popular, a good athlete, or is perceived as coming from a good family. The identical incident can be described in many ways, depending upon the school official's perception of the seriousness of the incident, familiarity with the students involved, knowledge of the criminal law, ability to see two sides of the story and present a balanced perspective for court officials, and the message that they are trying to send.

Also, schools may differ in their policies regarding reporting matters to the police and to the courts. If a school reports an incident directly to the police, the incident may not be reported as a complaint from a school. Consequently, the incident may not be included as a school-initiated complaint in the data bases for the Administrative Office of the Courts or the Kentucky Center for School

Table 2:
All Weapon-Related and Firearms-Related Incidents Referred to the Administrative Office of the Courts' Staff By School Personnel, Fiscal Years 00-01 and 01-02
(total number of referrals = 7,192 in 2000-01 and 6,986 in 2001-02)

<u>Description of Offenses</u>	<u>Total:</u>	<u>Total:</u>
	<u>2000-01</u>	<u>2001-02</u>
Unlawful Possession of a "Weapon" on School Property	33	26
Carrying a Concealed "Deadly Weapon"	<u>8</u>	<u>7</u>
Total(s)	41	33
"Firearms" Charges	37	31

Source: Kentucky Administrative of the Courts

Safety. Thus, the number of reports based on behavior at schools may be more than the approximately 7,000 reported annually to the AOC.

Finally, the federal Gun-Free Schools Act and the state statutes, by requiring new and detailed listing of school incidents, may promote a “culture of reporting” that focuses excessively on numbers while requiring formal school responses to misbehavior that was previously handled informally by teachers and principals.

Guns and Weapons in Schools

There are several mechanisms for counting the numbers of guns and weapons that are in Kentucky schools. For example, Table 2 presents data collected by the Kentucky Administrative Office of the Courts about the number of “weapons-related” incidents in which school officials referred a child to juvenile court. On the other hand, Table 3 documents weapons violations as reported to the Kentucky Center for School Safety for “Part II” crimes, which includes “firearms” incidents. (Part I crimes include the most serious acts against persons or property. Part II crimes are violations of the law that may lead to a student’s arrest but are considered

Table 3:
Part II Law Violations
Involving Handguns, Rifle/Shotguns & Firearms
1999-2000 and 2000-2001 School Years

School Year	Weapons-Handguns	Weapons-Rifle/Shotgun	Weapons-Other Firearms	Total Weapons
1999-2000	17	6	11	34
2000-2001	18	1	0	19

Source: Kentucky Center for School Safety

School Year	Firearms-KCSS	Firearms-KAOC
1999-2000	34	---
2000-2001	19	37
2001-2002	---	31

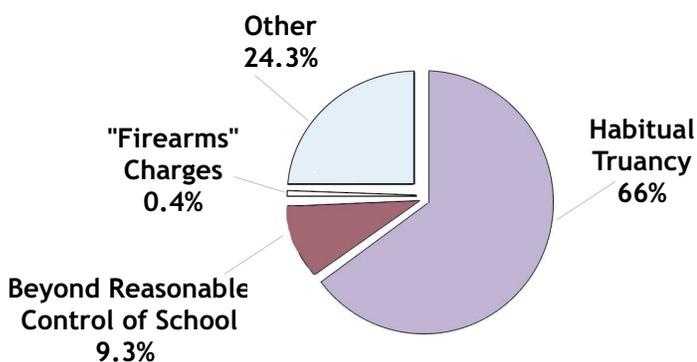
Source: Kentucky Center for School Safety (KCSS) and Kentucky Administrative Office of the Courts (AOC)

to be less serious than “Part I” crimes.) Table 4 lists the counties in which the firearms (not weapons) allegations were made.

Analysis of Table 2: In the 2000-01 school year there were only 41 incidents in which a youth possessed a weapon on or near school grounds. Similar to national data, these incidents comprised a little more than one half of one percent of all school-related offenses referred to Kentucky’s courts. Differentiating between “weapons” and “firearms,” the AOC indicated that 37 “firearms” charges were referred for the 2000-2001 school year.

In the 2001-02 school year, the total number of weapons-related incidents referred to the courts declined to 33. The 2001-02 weapons-related incidents comprised less than one half of one percent of the total referrals to court. Again, the AOC analysis for 2001-02 found a total of 31 “firearms” allegations, a drop from 37 the prior year.

Figure 2:
Referrals to AOC Staff 2001-2002



**Table 4:
Counties Where Firearms Allegations Were Made**

<u>County</u>	<u>00-01 Allegations</u> <u># (Rank)</u>	<u>County</u>	<u>01-02 Allegations</u> <u># (Rank)</u>
Fayette	10 (1)	Franklin	6 (1)
Bullitt	3 (2)	Estill	4 (2)
Barren	2 (3)	Fayette	3 (3)
Christian	2 (3)	Bullitt	3 (3)
Clark	2 (3)	Madison	2 (5)
Meade	2 (3)	Mercer	2 (5)
16 cos.	1* (7)	11 cos.	1* (7)
Total(s)	37		31

Source: Kentucky Administrative Office of the Courts

***Note to Table 4:** The counties with only one firearm complaint in 2000-01 were: Adair, Ballard, Calloway, Casey, Franklin, Greenup, Hardin, Harlan, Henry, Jessamine, Madison, Marshall, Mason, Meade, Owsley, Todd, and Trimble. The counties with only one firearm complaint in 2001-02 were: Barren, Boone, Calloway, Campbell, Daviess, McCreary, Ohio, Pulaski, Robertson, Warren and Wayne.

Table 3 provides a different perspective of weapons-related incident from data collected from the Kentucky Center for School Safety.

It is not clear why the data collected by these two agencies differ. Nevertheless, it is evident that — during the last three school years — there have been *less than 40* firearms-related incidents each year in Kentucky schools, which is a tiny fraction of referrals, as illustrated in Figure 2.

As Table 4 indicates, these firearms allegations are scattered throughout the state, with some concentrations in Fayette and Franklin counties.

Analysis of Table 4: Table 4 provides a valuable breakdown of the firearms reports. For the 2000-01 fiscal year, Fayette County (Lexington) had by far the most allegations of firearms violations referred to court (10).

Bullitt County, which is located directly south of Louisville, reported the second highest firearms referrals at three incidents. Four counties (Barren, Christian, Clark and Meade) reported two firearms incidents. Sixteen, mostly rural, counties reported one allegation of a firearms violation.

In the 2001-02 fiscal year, the number of firearms allegations dropped from 37 to 31. Most significantly, the number of such allegations in Fayette County declined from 10 in 00-01 to 3 in 2001-02. Franklin County increased to 6 in 2001-02.

Table 5:

All Drug- and Alcohol-Related Types of Incidents Totaling 12 or More That Were Referred to Administrative Office of the Courts Staff By School Personnel, Fiscal Years 2000-01 and 2001-02
(total number of referrals to court = 7,192 in 2000-01 and 6,669 in 2001-02)

<u>Description of Substance Abuse Offenses</u>	<u>Total: 00-01</u> <u># (Rank)</u>	<u>Total: 01-02</u> <u># (Rank)</u>
Possession-Related Offenses		
Possession of Marijuana	104 (1)	121 (1)
Drug Paraphernalia - Buy/Possess - 1st Offense	27 (2)	20 (3)
Possession of Alcoholic Beverage	25 (3)	14 (6)
Intoxication-Related Offenses		
Public Intoxication: Controlled Substance, Excluding Alcohol	23 (4)	32 (2)
Alcohol Intoxication in a Public Place - 1st Degree and 2nd Offense	20 (5)	14 (6)
Trafficking and Other Offenses		
Trafficking Control Substances within 1,000 Yards of School	18 (6)	20 (3)
Possession of a Control Substance - 3rd Degree - 1st Offense	7 (--)*	15 (5)
Trafficking in Marijuana (less than 8 oz.) -1st Offense	6 (--)*	13 (7)*

Source: Kentucky Administrative Office of the Courts

***Note to Table 5:** These figures are listed for comparison purposes only; these data fall below the threshold of a minimum of 12 offenses, and therefore, are not included in the totals

Drugs and Alcohol in Schools

Prior to the implementation of school practices that encouraged removing children from schools or referring children to the courts for minor incidents, there was a widespread (but erroneous) impression that drugs were permanent fixtures in Kentucky's schools. Table 5, 6, and 7 examine in more detail the number of drug and alcohol-related referrals actually made by school officials.

The eight drug- and alcohol-related offenses listed in Table 5 fall into three general categories. The most common offenses are minor "possession" offenses (possession of marijuana, drug paraphernalia, and alcohol). The next most common offenses involve drug or alcohol intoxication on school grounds. The least common involve trafficking or possession of a controlled substance. Figure 3 illustrates these data, including "beyond reasonable control" (the *second* most frequent status offense) for perspective.

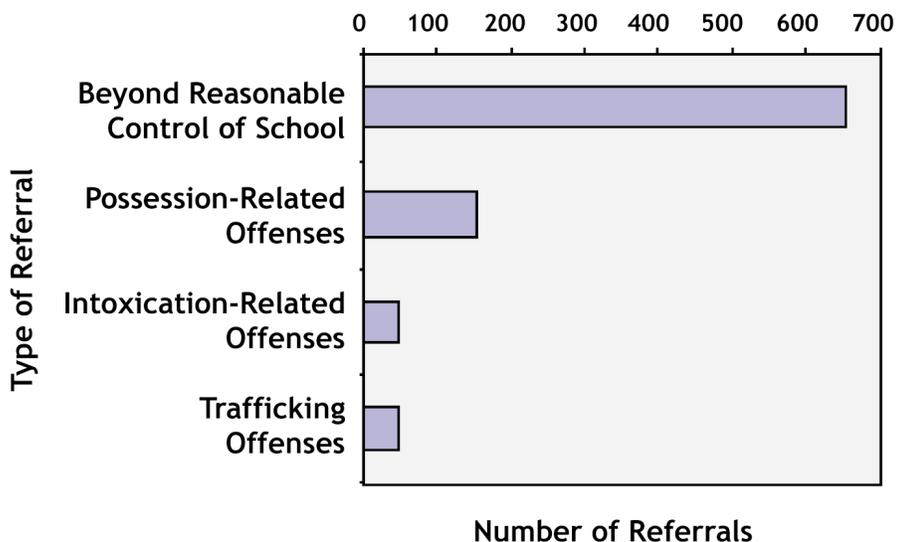
Table 6:
Top 12 Reporting Counties for Drug-Related Allegations Referred to Juvenile & Family Courts in 2000-01 and 2001-02

County	2000-01 Allegations # (Rank)	County	2001-02 Allegations # (Rank)
Fayette	37 (1)	Fayette	34 (2)
Bullitt	28 (2)	Bullitt	49 (1)
Grant	9 (3)	Grant	0 (--)*
Madison	9 (3)	Madison	2 (--)*
Barren	8 (5)	Barren	5 (10)
Daviess	8 (5)	Daviess	12 (4)
Franklin	7 (7)	Franklin	5 (10)
Calloway	6 (8)	Calloway	12 (4)
Whitley	6 (8)	Whitley	0 (--)*
Boyd	5 (9)	Boyd	1 (--)*
Grayson	5 (9)	Grayson	0 (--)*
Russell	5 (9)	Russell	0 (--)*
McCracken	3 (--)*	McCracken	13 (3)
Hardin	2 (--)*	Hardin	12 (4)
Boone	2 (--)*	Boone	11 (7)
Clark	1 (--)*	Clark	8 (8)
Knott	0 (--)*	Knott	7 (9)

Source: Kentucky Administrative Office of the Courts

*Note to Table 6: These figures are listed for comparison purposes only; these data fall below the threshold of being among the top 12 reporting counties.

Figure 3:
Referrals to AOC Staff for "Beyond Reasonable Control of School," Alcohol and Drug Offenses, 2001-2002



Analysis of Table 5: In the 2000-02 school year, the minor possession charges comprised 67.8% of the total offenses (156 of 230). Intoxication offenses represented an additional 18.7% of the total (43 of 230). Trafficking and possession of a controlled substance were only 31 of the total 230, or 13.5%.

The 2001-02 school year followed a similar pattern for substance-related charges: 62.2% of all types of charges totaling 12 or more were for minor possession allegations, while 18.5% were for intoxication, and 19.3% for trafficking and possession of a controlled substance.

**Table 7:
Counties Reporting Alcohol Related Allegations
Referred to Juvenile & Family Courts in 2000-01
and 2001-02**

County	00-01 Allegations		County	01-02 Allegations	
	#	(Rank)		#	(Rank)
Hardin	8	(1)	Fayette	6	(1)
Bullitt	7	(2)	Bullitt	5	(2)
Madison	6	(3)	Madison	4	(3)
Calloway	3	(4)	McCracken	3	(4)
Daviess	2	(5)	Calloway	2	(5)
Harlan	2	(5)	Hardin	2	(5)
McCracken	2	(5)			
Pulaski	2	(5)			
Scott	2	(5)			
Whitely	2	(5)			
6 counties	1	(11)	5 counties	1	(7)
	42			27	

Source: Kentucky Administrative Office of the Courts

Note to Table 7: In the 2000-01 school year, the following counties reported only one alcohol-related referral: Clinton, Fayette, Fleming, Ohio, Perry, and Wayne. In the 2001-02 school year, the following counties reported only one alcohol-related referral: Christian, Green, Mason, Perry and Warren.

Analysis of Table 6: Kentucky's second largest county in terms of school enrollment, Fayette (Lexington), ranked first in the number of referrals to courts for drug-related offenses for the 2000-01 school year, followed by Bullitt County, which is adjacent to the state's most populous county, Jefferson. In the 2000-01 school year, Fayette and Bullitt were the only counties with double-digit drug referrals to court.

In the 2001-02 school year, Bullitt and Fayette counties reversed their rankings with Bullitt County referring 49 drug-related allegations to its local courts and Fayette referring 34. No other county had more than 13 referrals.

Analysis of Table 7: Alcohol-related incidents that were referred by schools to local courts, totaled only 42 in the 2000-01 fiscal year.

Hardin and Bullitt Counties, located about 25 and 50 miles, respectively, south of Louisville, ranked first and second. Madison County, which includes Richmond, Kentucky, about 30 miles southeast of Lexington, ranked third with six referrals. Calloway County, in west Kentucky, made three alcohol related referrals to courts. Interestingly, among the state's most populous counties, Lexington-Fayette County had only one such referral.

In the 2001-'02 fiscal year, a total of only 27 alcohol-related incidents were referred to courts, compared to 42 the prior year. Bullitt, Calloway, Hardin, Madison, and McCracken counties are the only counties that had more than two alcohol-related referrals in both school years.

Law Violations (Part I and Part II Crimes)

Another way to look at the scope of the crime problem in Kentucky schools is to compare the number of "law violations" (i.e., incidents that are violations of the law) reported by school authorities with the number of incidents referred to the courts.

Unfortunately, the Kentucky Center for School Safety and the Kentucky Administrative Office of the Courts do not use identical definitions for crimes, which means that the researchers involved in this study were unable to compare the number of incidents in which school officials thought a violation of the law had occurred with the number of referrals those same school officials made to Kentucky's juvenile and family courts. Because the terms used by both agencies were not identical, the researchers involved in this study were not able to draw comparisons between these two data sets. Nonetheless, the Kentucky Center for School Safety data provide a different perspective of how frequently students allegedly violate state laws, according to school officials. For example, Table 8 shows the number of Part I (more serious offenses) law violations reported by school authorities during 1999-2000 and 2000-2001.

Table 8:
Allegations of Part I “Law Violations” Reported by Local Schools to The Kentucky Center for School Safety for Fiscal Years 1999-2000 and 2000-01

Description of Offenses	Total: 99-00	Total: 00-01
	# (Rank)	# (Rank)
Larceny-Theft	557 (1)	573 (1)
Aggravated Assault	183 (2)	119 (2)
Arson	90 (3)	92 (3)
Burglary	64 (4)	44 (4)
Robbery	26 (5)	36 (5)
Motor Vehicle Theft	22 (6)	9 (6)
Homicide	0 (7)	0 (7)
Rape	0 (7)	0 (7)

Source: Kentucky Center for School Safety

Analysis of Table 8: In the 1999-2000 school year, Kentucky schools identified stealing something as far and away the most prevalent of the Part I crimes committed. These property crimes accounted for 58% of the total serious (Part I) allegations. Aggravated assault (19.4%), arson (9.6%), burglary (6.8%), robbery (4.8%) and motor vehicle theft (2.3%). Most significantly, there were no homicides or rapes alleged in the 1999-2000 school year.

For the next school year, 2000-01, larceny-theft was again the most prevalent allegation made by school officials, accounting for almost 66% of the total serious allegations. The rankings for 2000-01 were the same as the prior year, with aggravated assault (13.6%), arson (10.5%), burglary (7.3%), robbery (4.1%), and motor vehicle theft (1.0%). As in 2000-01, there were no homicides or rapes alleged in the 2000-2001 school year.

Tables 9 and 10 report the number of Part II law violations, which are less serious offenses, reported by school authorities during 1999-2000 and 2000-2001.

Analysis of Table 9: The most frequent allegations that students committed the Part II crimes listed in Table 9 were for allegations

Table 9:
Allegations of Some Part II, “Law Violations” Reported by Local Schools to The Kentucky Center for School Safety for Fiscal Years 1999-2000 and 2000-01

Description of Offenses	Total: 99-00	Total: 00-01
	# (Rank)	# (Rank)
Drug Abuse	2,036 (1)	2,987 (1)
Assault: Simple	1,877 (2)	1,925 (2)
Disorderly Conduct	821 (3)	537 (3)
Vandalism	453 (4)	297 (6)
Weapons: All Other Offenses	390 (5)	421 (4)
All Other Offenses	355 (6)	406 (5)
Liquor Violations	235 (7)	260 (7)
Drunkenness	213 (8)	167 (9)
Stolen Property	182 (9)	183 (8)
Sex Offenses, Excluding Rape & Prostitution	128 (10)	63 (10)

Source: Kentucky Center for School Safety

of drug abuse (30.4% of the total), simple assault (28%), followed by disorderly conduct (12.3%) and vandalism (6.7%). “Other weapons”- related charges, which are the

Table 10:
Allegations of Other Part II, “Law Violations” Reported by Local Schools to The Kentucky Center for School Safety for Fiscal Years 1999-2000 and 2000-01

Description of Offenses	Total: 99-00	Total: 00-01
	# (Rank)	# (Rank)
Running Away	53 (1)	15 (3)
Curfew & Loitering	38 (2)	15 (3)
Forgery & Counterfeiting	32 (3)	52 (1)
Gambling	25 (4)	14 (5)
Weapons: Handguns	17 (5)	18 (2)
Offenses Against Families & Children	12 (6)	3 (7)
Weapons: Other Firearms	11 (7)	0 (11)
Weapons: Rifles, Shotguns	6 (8)	1 (8)
Driving Under the Influence	3 (9)	1 (8)
Fraud	0 (10)	5 (6)
Embezzlement	0 (10)	1 (8)
Prostitution	0 (10)	0 (11)

Source: Kentucky Center for School Safety

focus of this document and which could include almost any dangerous or non-dangerous instrument, accounted for 5.8% of these Part II offenses included in Table 9

The Part II offenses listed in Table 9 increased from 6,690 in the 1999-2000 school year to 7,246 in the 2000-2001 school year. The most frequent allegations that students violated the Part II crimes listed in Table 9 were for allegations of drug abuse (41.2% of the total), simple assault (26.6%), followed by disorderly conduct (7.9%) and vandalism (4.1%).

Table 10 includes another group of Part II “law violations” that was included in the two most recent reports released by the Kentucky Center for School Safety.

Analysis of Table 10: For the 1999-2000 school year, of allegations for lesser offenses, roughly half (46.2%) were for status offenses (running away and curfew violations), which would not be crimes if committed by adults. Many of the other allegations cited were for property or nuisance violations. As previously presented in Table 3, however, there were a total of 34 firearms charges in the 1999-2000-school year.

In the 2000-01 school year, the number of these kinds of allegations dropped from a total of 197 the prior year to 125 for the most current reporting period. For 2000-01, there was a jump in the forgery and counterfeiting type of charges, which accounted for 41.6% of the total for that year. Running away and curfew violations accounted for 24% of the total. The number of firearms-related allegations dropped significantly from 34 the prior year to 19 in the most recent reporting year.

Summary

The data in Tables 1-10 do not support the claim that violent juvenile crime is a serious problem in Kentucky’s public schools. The overwhelming majority of referrals from schools to juvenile court are for the status

Table 11:
Allegations of “Board Violations” Reported by Local Schools to The Kentucky Center for School Safety for Fiscal Years 1999-2000 and 2000-01

<u>Description of Violations</u>	<u>Total: 99-00</u> <u># (Rank)</u>	<u>Total: 00-01</u> <u># (Rank)</u>
Defiance of Authority	34,378 (1)	25,596 (1)
Fighting	15,475 (2)	17,312 (2)
Disturbing Class	12,651 (3)	8,698 (3)
Failure to Attend Detention	8,144 (4)	6,539 (5)
Threats or Intimidation	6,750 (5)	7,514 (4)
Tobacco Violations	6,339 (6)	4,185 (7)
Profanity or Vulgarity	5,849 (7)	5,896 (6)
Inappropriate Sexual Behavior	1,646 (8)	1,040 (8)
Dangerous Instruments	840 (9)	926 (9)

Source: Kentucky Center for School Safety

Table 12:
Disciplinary Actions Taken by School Officials for Violations of Board Policies Reported by Local Schools to The Kentucky Center for School Safety for Fiscal Years 1999-2000 and 2000-01

<u>Description of Disciplinary Action</u>	<u>Total: 99-00</u> <u># (Rank)</u>	<u>Total: 00-01</u> <u># (Rank)</u>
Out-of-School Suspensions	65,508 (1)	68,523 (1)
Alternative Placements	14,204 (2)	4,801 (2)
Corporal Punishment	5,328 (3)	4,166 (3)
Expulsions: “With Services”	269 (4)	169 (4)
Expulsions: “Without Services”	58 (5)	47 (5)

Source: Kentucky Center for School Safety

offenses of truancy and being “beyond the reasonable control of the school.” Many other referrals include behavior that is obnoxious and typically adolescent, but not dangerous. Referrals for weapons and firearms offenses are low. Most referrals for drug offenses are for minor possession. Referrals for alcohol offenses are also very low. Most reported “law violations” are not serious enough to warrant referral to court.

Table 13:
Percentage of Disciplinary Actions for School Board Violations

<u>Total Disciplinary Actions (Year)</u>	<u>Out-of-School Suspensions</u>	<u>Alternative Placements Services</u>	<u>Corporal Punishment Services</u>	<u>Expulsions With Services</u>	<u>Expulsions Without Services</u>
85,367 (99-00)	77%	17%	6%	.32%	.06%
77,706 (00-01)	88%	6%	5%	.21%	.06%

2. How Have Kentucky's Schools Reacted?

Despite the small amount of serious crime in Kentucky's schools, the schools suspend a large number of students, usually for minor misbehavior. Table 11 shows the type and number of alleged school board policy violations by students — in which a child may not have violated a law, but may be disrupting the proper functioning of the school. These violations were reported by school authorities during the 1999-2000 and 2000-2001 school years. During 1999-2000, there were a reported 92,072 board violations. During 2000-2001, the number of reported board violations *decreased* by 15% to 77,706 incidents.

Analysis of Table 11: Most of the reported board violations were for the type of immature and acting-out behavior that is common among some adolescents: defiance of authority, fighting, disturbing class, failure to attend detention, inappropriate sexual behavior, profanity or vulgarity, use of tobacco. While not criminal, these irritable incidents may affect the climate for learning, but which usually can be handled within the school.

Table 12 shows the actions that schools took in response to the behaviors listed in Table 12. During 1999-2000, there were 65,508 out-of-school suspensions. During 2000-2001, the number increased to 68,523.

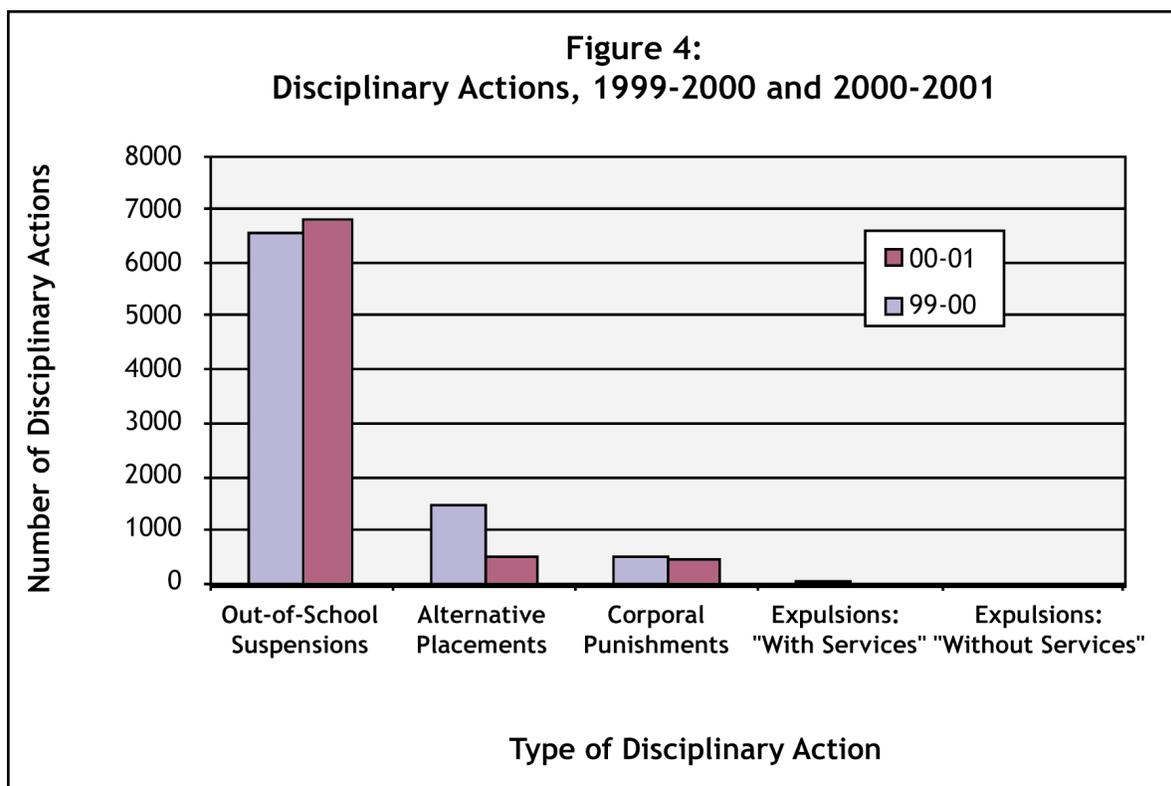
Analysis of Table 12: As Table 12 and Figure 4 indicate, few students were expelled for violations of board policies. In fact, students were expelled in 1999-2000 in slightly more than one third of one percent of all the disciplinary actions taken. In the next school year, 2000-01, expulsions accounted for less than one third of one percent of the disciplinary actions taken. However, a great many students were suspended. While some students were sent to alternate placements and given corporal punishment, the great majority of students were suspended and sent out of school.

Table 13 shows the percentages of students who were suspended and sent home, sent to

Table 14:
Suspension Rates for Board Violations Per 100 Students for Children of All Races, Top 12 School Systems (All Sizes of Schools) in 2000-01

<u>School District</u>	<u># of Students in the District</u>	<u>Suspension Rate Per 100 Students</u>	<u>Rank</u>
Harlan Independent	862	37.2	(1)
Bardstown Independent	1,864	29.5	(2)
Newport Independent	2,554	29.2	(3)
Jenkins Independent	529	28.7	(4)
Frankfort Independent	893	28.4	(5)
Trigg County	1,981	28.3	(6)
Dayton Independent	1,110	27.5	(7)
Clay County	3,993	27.1	(8)
Franklin County	5,740	26.6	(9)
Gallatin County	1,398	26.4	(10)
Harlan County	5,000	25.2	(11)
Carroll County	1,729	25.2	(11)

Source: Kentucky Center for School Safety



alternative placements (e.g., alternative schools, but *not* “in-school” suspensions or Saturday schools), subjected to corporal punishment, expelled *with* services (meaning that the student is expelled, but is still receiving some form of schooling from the school district), and expelled *without* services (where the student is receiving no educational services from the school district).

Analysis of Table 13: Table 13 shows that school officials in Kentucky overwhelmingly rely on suspensions in responding to violations of school board policies. The use of suspensions is increasing, jumping from 77% to 88% in the two most recent reporting years.

Summary

By far the most common response by Kentucky’s schools to student misconduct is out-of-school suspension. Kentucky school officials use expulsion rarely, a welcome contrast to other jurisdictions. Nevertheless, Kentucky suspends a large number of students - more than 68,000 in 2000-2001 - for board violations that are more disruptive than dangerous.

3. Have Any Particular Groups Been

“At best, zero tolerance ... measures represent a giant experiment, conducted primarily on students of color, on which we have little to no data, but which can clearly have negative effects if poorly planned or implemented. At worst, these measures represent a willingness to throw away a large proportion of students, especially students of color, if their behavior does not conform to increasingly strict standards of school conduct.”³⁸

-Russell J. Skiba, Indiana University-Bloomington and Peter E. Leone, Ph.D., University of Maryland, both of whom have studied school suspensions

Table 15:
Suspension Rates for Board Violations Per 100 Students for White Children, Top 12 School Systems (All Sizes of Schools in 2000-01)

<u>School District</u>	<u>Total # of Students</u>	<u># of White Students</u>	<u>Suspension Rate Per 100 Students</u>	<u>Rank</u>
Harlan Independent	862	777	36.9	(1)
Jenkins Independent	529	511	29.7	(2)
Newport Independent	2,554	2,233	29.3	(3)
Bardstown Independent	1,864	1,382	28.4	(4)
Gallatin County	1,398	1,351	27.2	(5)
Clay County	3,993	3,944	26.9	(6)
Carroll County	1,729	1,641	25.4	(7)
Franklin County	5,740	5,083	25.3	(8)
Harlan County	5,000	4,865	25.0	(9)
Trigg County	1,981	1,676	24.9	(10)
Providence County	411	305	24.6	(11)
Fulton County	767	521	23.8	(12)

Source: Kentucky Center for School Safety

Disproportionately Affected By The Adoption Of New School Disciplinary Policies?

As noted in the Introduction, several studies have found that zero tolerance policies, and other exclusionary practices, in public schools fall disproportionately on youth of color, particularly African-American students. While suspension rates for African-American children in Kentucky have been disproportionate in the past³² - well before the initiation of zero tolerance policies - the new KCSS data provide a much more detailed picture of differential suspension rates in the state.

The researchers first looked at the data for “board violations,” or violations of school board policies which are not violations of the law. Tables 14-16 document the suspension rates of *all students, white students, and African-American students* in Kentucky. Table 17 compares this suspension data by race. The researchers involved in this study then looked at the suspension rates for “law violations.” Table 18 includes schools with the

highest-ranking suspension rates for law violations for all students. Table 19 has suspension data for white students. Tables 20-21 compare this data by race in the highest-ranking school districts.

Analysis of Table 14: The districts with the highest suspension rates for *all* races were in relatively small school districts. In fact, Franklin County (which ranked 9th) and Harlan County (which ranked 11th) were the only districts among the twenty-four largest school districts in Kentucky that had high suspension rates among children of all races.

Analysis of Table 15: Again, smaller schools had higher suspension rates among *white* children, *except for* Franklin (8th) and Harlan (9th) counties, which were among the state’s twenty-four largest school districts.

Analysis of Table 16 and Table 17: The suspension rates for African-American students — in the top 15 school districts - are significantly higher than for white students. This suspension data is for “board violations,” or behaviors in which students’ conduct is questionable but where no law has been violated. These are incidents in which school officials have broad authority and the violations are often vaguely defined.

Tables 18-21 look at suspension data, this time for “law violations,” in which children were suspended for allegedly violating a criminal law.

Analysis of Table 18: Table 19 includes the twelve school districts with the highest suspension rates for students of all races, This table also reflects all school districts of

Table 16:
Suspension Rates for Board Violations Per 100 Students for African-American Children, Compared with White Suspension Rates, Top 15 School Systems (All Sizes of Schools in 2000-01)

<u>School District</u>	<u>Total # of Students</u>	<u># of A-A Students</u>	<u>Suspension Rate Per 100 Students</u> <i>(Rank: A/A Students)</i>	<u>Suspension Rate: White Students</u>
Floyd County	6,931	16	68.8 (1)	17.5
Estill County	2,592	11	63.6 (2)	9.3
Harlan Independent	864	61	55.7 (3)	36.9
Clay County	3,993	27	55.6 (4)	26.9
Carroll County	1,729	31	54.8 (5)	25.4
Trigg County	1,981	272	52.6 (6)	24.9
Grayson County	3,970	17	47.1 (7)	6.6
Fayette County	31,926	7,451	46.1 (8)	15.0
Caldwell County	1,995	145	43.4 (9)	14.6
Franklin County	5,740	512	43.0 (10)	25.2
Greenup County	3,090	33	42.4 (11)	10.9
Scott County	5,678	270	41.9 (12)	15.7
Christian County	8,777	3,120	40.3 (13)	12.9
Newport Independent	2,554	193	39.4 (14)	29.3
Fulton County	767	240	35.8 (15)	23.8

Source: Kentucky Center for School Safety

Table 17:
Ratio of Suspensions Rates for Board Violations for White Students and African-American Students, Top 15 School Districts (All Sizes of Schools 2000-2001)

<u>School District</u>	<u>Ratio of suspension rate of African-American Students to White Students</u>	<u>(Rank)</u>
Grayson County	7.1 African American students for every 1 white student	(1)
Estill County	6.8 African-American students for every 1 white student	(2)
Floyd County	3.9 African-American students for every 1 white student	(3)
Greenup County	3.9 African-American students for every 1 white student	(3)
Fayette County	3.1 African-American students for every 1 white student	(5)
Christian County	3.1 African-American students for every 1 white student	(5)
Caldwell County	3.0 African-American students for every 1 white student	(7)
Scott County	2.7 African-American students for every 1 white student	(8)
Carroll County	2.2 African-American students for every 1 white student	(9)
Clay County	2.1 African-American students for every 1 white student	(10)
Trigg County	2.1 African-American students for every 1 white student	(10)
Franklin County	1.7 African-American students for every 1 white student	(12)
Harlan Independent	1.5 African-American students for every 1 white student	(13)
Fulton County	1.5 African-American students for every 1 white student	(13)
Newport Independent	1.3 African-American students for every 1 white student	(15)

all size enrollments. Frankfort Independent Schools had the highest rate in the state, followed by Owsley County Public Schools, and the Kentucky School for the Deaf.

Analysis of Table 19: Among white students, Frankfort Independent Schools topped the list of school suspension rates at 7.3 per 100 students. The Frankfort schools had twice the suspension rate of any other school district in the state.

Analysis of Table 20: Of the school districts listed in Table 20, two districts had African American suspension rates *four times* the rate of white students, four districts had rates *three times* as great, and seven districts had rates *twice* as great for African-American students as white students. In order to compare the disparities between African-American suspension rates and white suspension rates in local school systems, the researchers involved in this study compared the rates from Table 19 (white

Table 18:
Suspension Rates for Law Violations Per 100 Students for Children of All Races, Top 12 School Districts (All Sizes of Schools) in 2000-01

<u>School District</u>	<u># of Students in the District</u>	<u>Suspension Rate Per 100 Students</u>	<u>Rank</u>
Frankfort Independent	893	6.30	(1)
Owsley County	882	6.00	(2)
Ky.School for the Deaf	157	5.70	(3)
Union County	2,320	4.10	(4)
Covington Independent	4,415	3.60	(5)
Lee County	1,323	3.20	(6)
Fayette County	31,926	3.00	(7)
Mason County	2,605	2.60	(8)
Powell County	2,523	2.40	(9)
Harlan Independent	910	2.40	(9)
Carroll County	1,729	2.30	(11)
Shelby County	5,032	2.30	(11)

Source: Kentucky Center for School Safety

students) and Table 20 (African American students) and developed a ratio as a means of comparison. These rates are listed in rank order in Table 21.

Analysis of Table 21: In the school districts compared, the suspension rate for law violations for African-American students was greater — at times, *far greater* — than for white students. In eight districts, it was more than twice as great; in four other districts it was at least three times as great; in three more districts, it was more than 5 times as great. In Jefferson County, it was 17 times as great as for white students.

Summary

The data in these tables demonstrate that African-American students are suspended for law violations and

school board policy violations at higher rates than white students throughout the state of Kentucky. While there may be many reasons

for these differing rates of suspensions, it is evident that the adoption of zero tolerance and other exclusionary policies has had unintended consequences in suspensions of African-American students.

It also is important to note that Kentucky does not currently capture data on Latino youth, which is an emerging population group in Kentucky and other states. National studies have indicated these youth can be subject to disparate and more punitive

Table 19:
Suspension Rates for Law Violations Per 100 Students for White Children, Top 12 School Districts (All Sizes of Schools in 2000-01)

<u>School District</u>	<u>Total # of Students</u>	<u># of White Students</u>	<u>Suspension Rate Per 100 Students</u>	<u>Rank</u>
Frankfort Independent	893	717	7.30	(1)
Union County	2,320	2,029	3.50	(2)
Covington Independent	4,415	3,231	3.20	(3)
Mason County	2,605	2,290	2.60	(4)
Powell County	2,523	2,484	2.40	(5)
Shelby County	5,032	4,106	2.40	(5)
Carroll County	1,729	1,641	2.30	(7)
Harrison County	3,123	2,953	2.30	(7)
Grayson County	3,970	3,920	2.20	(9)
Fayette County	31,926	22,106	2.10	(10)
Harlan County	864	777	2.10	(10)
Russell County	2,659	2,634	2.10	(10)

Source: Kentucky Center for School Safety

Table 20:
Suspension Rates for Law Violations Per 100 Students for African-American Children, Compared with White Suspension Rates, Top 15 School Districts (All Sizes of Schools in 2000-01)

<u>School District</u>	<u>Total # of Students</u>	<u># of A-A Students</u>	<u>Suspension Rate Per 100 Students</u> <i>(Rank: A/A Students)</i>	<u>Suspension Rate: White Students</u>
Estill County	2,592	11	18.20 (1)	1.70
Powell County	2,523	15	13.30 (2)	2.40
Harlan Independent	864	61	8.20 (3)	2.10
Union County	2,320	275	8.00 (4)	3.50
Fayette County	31,926	7,451	6.30 (5)	2.10
Gallatin County	1,398	16	6.30 (5)	1.90
Grayson County	3,970	17	5.90 (7)	2.20
Covington Independent	4,415	992	5.00 (8)	3.20
Scott County	5,678	270	3.80 (9)	1.40
Clay County	3,993	27	3.70 (10)	1.70
Newport Independent	2,554	193	3.60 (11)	1.70
Jefferson County	89,020	29,881	3.40 (12)	0.20
Shelby County	5,032	534	3.20 (13)	2.40
Woodford County	3,761	250	3.20 (13)	1.10
Spencer County	2,082	35	2.90 (15)	0.90
Oldham County	8,758	257	2.70 (16)	1.50
Harrodsburg Independent	910	155	2.60 (16)	1.10
Fleming County	2,369	41	2.40 (17)	1.00

Source: Kentucky Center for School Safety

treatment than their white peers. For example, in one recent report, Kentucky was identified as incarcerating Latino/a youth at a rate 2.1 times greater than for white youth.³³ (A recent study of the possible racial profiling of Hispanics during traffic stops³⁴ would seem to indicate that Kentucky may not be immune to differential treatment of this population group). In the Recommendations section of our report, we suggest that such data be collected in order to determine whether the trends identified with African-American students apply to Latino and Latina students with respect to suspensions and other disciplinary actions.

CONCLUSIONS AND DISCUSSION

1. Violent Juvenile crime in public schools is not a serious problem.

Crime in Kentucky's public schools does not present a significant danger to either students or school personnel. Juvenile crime in Kentucky classrooms is a very limited problem that has been exaggerated in the public's mind. Between 75% and 80% of all school-initiated incidents referred to courts are for truancy, being "beyond the reasonable control of the school," or other minor behavior problems. The number of court referrals for serious offenses, including offenses with weapons and trafficking in drugs, is very small. These data demonstrate the inaccuracy

of the public perception that juvenile crime is rampant in Kentucky. Unfortunately, that perception has altered the political and legal landscape and the actions of Kentucky's public schools.

2. School officials in Kentucky use out-of-school suspension excessively.

In view of the small number of serious offenses in Kentucky's public schools, the number of out-of-school suspensions is staggering. There were 65,508 out-of-school suspensions in 1999-2000, and 68,523 in 2000-2001. Most of the behaviors that led to those suspensions were for immature behavior that is common among this generation — and past generations — of adolescents: defiance of authority, disturbing class, failure to attend detention, profanity or vulgarity, use of tobacco. Such behaviors may be annoying and offensive, but they do not put students or faculty in danger.

Recent media attention has illustrated how some school officials are responding to the suspensions problems identified in this report. It would appear that adopting a different attitude towards suspensions as a solution to school behavior problems is an important first step. The principal of Boyd County High School, Jerry Johnson, has said: "We decided to use our 'safe school' money, not to buy a metal detector, but to buy a social worker." As another example, school officials at this high school, which is located in the eastern part of the state, are using a Saturday school instead of relying on suspensions.³⁵

3. School officials refer inappropriate matters to the courts.

A further problem created by "zero tolerance" and other exclusionary policies in many Kentucky schools is that the policies shift the responsibility for young people from the educational system to the courts. The

Table 21:
Ratio of Suspension Rates for Law Violations for White Students and African-American Students, Top 18 School Districts (All Sizes of Schools: 2000-2001)

<u>School District</u>	<u>Ratio of suspension rate of African-American students to white students</u>	<u>(Rank)</u>
Jefferson County	17.0 African-American students for every 1 white student	(1)
Estill County	10.7 African-American students for every 1 white student	(2)
Powell County	5.5 African-American students for every 1 white student	(3)
Harlan Independent	3.9 African-American students for every 1 white student	(4)
Gallatin County	3.3 African-American students for every 1 white student	(5)
Spencer County	3.2 African-American students for every 1 white student	(6)
Fayette County	3.0 African-American students for every 1 white student	(7)
Woodford County	2.9 African-American students for every 1 white student	(8)
Grayson County	2.7 African-American students for every 1 white student	(9)
Scott County	2.7 African-American students for every 1 white student	(9)
Harrodsburg Independent	2.4 African-American students for every 1 white student	(11)
Fleming County	2.4 African-American students for every 1 white student	(11)
Union County	2.3 African-American students for every 1 white student	(13)
Clay County	2.2 African-American students for every 1 white student	(14)
Newport Independent	2.1 African-American students for every 1 white student	(15)
Oldham County	1.8 African-American students for every 1 white student	(16)
Covington Independent	1.6 African-American students for every 1 white student	(17)
Shelby County	1.3 African-American students for every 1 white student	(18)

“If the child is viewed as the ‘cause’ of the problem, then the solution is to change the child or transfer him from the regular education program to an alternative education program.

If the school is viewed as the ‘cause,’ then the solution is to make changes in the school.”

- 1987 report by Kentucky Youth Advocates entitled “Unsatisfactory Performance: A Report Card on Kentucky’s School Reform Efforts for Children At Risk”⁴¹

comments made by the participants in the 2001-02 public forums conducted by the Children’s Law Center confirmed that children are being suspended from schools for relatively minor incidents in schools. The summary report on the forums concluded that “referrals by schools to juvenile court for misconduct appear to be on the increase... and are often made for conduct which many believe should be handled by the school and not the courts.”³⁶

Judges and court staff suggested that these referrals were beginning to overwhelm Kentucky’s juvenile and family courts. This situation is of particular concern because court staff made it clear that they were often ill-equipped to resolve the learning and behavioral problems of young people referred to them by school officials. Judges and court staff often feel that school officials regard them as magicians, having some mystical ability to resolve behavior problems that surface in schools.

It is not just the state’s courts that are being overwhelmed. The fragile system of prevention programs run by faith-based groups, local fiscal courts, non-profit groups, and state agencies also has been affected by an increased number of referrals from schools to courts. One of the most significant barriers documented in the forums conducted by the Children’s Law Center is that current programs serving students are crippled by a “lack of funding or other resources which can adequately address” their needs. Another

barrier is that this lack of resources causes the use of standardized, “cookie cutter” approaches for these children, so that “individualized” approaches are not used.

The Children’s Law Center report concluded: “There is often a tendency among service providers to ‘pass the baton’ and/or blame other systems for the failure of a young person....”³⁷ Thus, schools blame the courts for not being able to stop student misbehavior, and the courts feel that they have become the “dumping ground” for disruptive students, many of whom have learning or behavioral problems that the schools have not addressed. This tendency of the courts, the schools, and others to point fingers at each other may be a function of overly-rigid school suspension policies, or lack of resources to deal with learning and behavioral problems in schools. There also may be lack of adequate training for school and court personnel, inadequate investments in community-based alternative education and support programs, political posturing to avoid accountability, and the desire to get rid of problem students and send them “anywhere but here,” or a number of other factors. While the finger-pointing continues, students lose days and weeks of class time. Equally important, the finger pointing perpetuates a cycle in which the unique educational and behavioral needs of the children and youth are ignored. Ultimately, this cycle leads to discouraged and dispirited students who may lose their opportunity to be educated, and who may turn to crime.

4. School discipline policies fall most heavily on African-American students.

The data demonstrate that all over the state, for both law violations and board violations, African-American students are suspended from school at rates that are significantly higher than white students. These data raise serious concerns that school officials have unlocked the back doors of public schools and sent Black children away. The combination of broad authority by school officials and vaguely defined “violations” allows non-objective and non-individual factors - preconceived notions and racial stereotyping - to have an impact on school discipline practices.

A recent study by researchers at the University of Louisville and the University of Kentucky focusing on racial disparities in Kentucky’s juvenile justice system provides some illustrations about how the most routine decisions can be racially biased. While youth of color comprise about 10% of the state’s children’s population, they account for 39% percent of the youth detained (before their adjudication) and 27% of those convicted and committed to residential facilities (after their adjudication). The report found 17 separate points in the juvenile justice system where system personnel can exercise discretion. These “decision points” ideally allow the system to be flexible and responsive to the behavior and needs of each individual child. But they also allow professionals in the system to act on stereotypes about young people, and to interject bias about racial minorities or low socio-economic groups.³⁹ Other research has demonstrated that system personnel such as probation officers are significantly affected by stereotyped perceptions of white youth and youth of color, with the result that youth of color receive harsher punishment⁴⁰

The answer, of course, is not to eliminate discretion by either school officials or court

personnel. Rather, zero tolerance policies must be balanced with common sense and an appreciation of the potentially devastating consequences of out-of-school suspensions. Moreover, cookie-cutter approaches to school discipline should be avoided: each child should be held accountable for his or her individual behavior, but in a way that will help children to complete their education and become productive citizens. Zero tolerance policies that prevent school officials from exercising discretion and considering the individual circumstances in each incident are a mistake that has had enormous unintended consequences for the children of Kentucky. Such policies arose from what one commentator called the “politics of exasperation” after the school shootings.⁴² They should be replaced with policies that foster education for all of our children.

RECOMMENDATIONS FOR ACTION

Adolescence - and other stages of childhood - is full of risk-taking and hormone-induced activities. Very few of these activities are *actually* dangerous. The huge majority of children and adolescent behaviors in Kentucky are silly, but not necessarily criminal. But as one national conversation on adolescence concluded: “Risk taking is a natural part of teenagers’ lives. They need to take some risks in order to grow... generating new ideas, experimenting with new roles.”⁴³ A rational discussion of school disciplinary policies should begin with an understanding that physical, developmental, and emotional factors often drive student behavior. The great majority of youthful indiscretions are experimental and minor, and they occur without students fully understanding what the consequences might be.

Schools must balance their understanding of odd, silly, or risky behaviors with an equal comprehension that these experiences provide adults with opportunities to teach, and students with opportunities to learn and grow. Local communities must transcend

their emotional responses to youthful risk-taking, with a graduated, proportionate, reasoned approach to resolving these issues. There are a number of promising approaches throughout the country.⁴⁴ Given the nation's history of discrimination, it is particularly important that decisions made by school, law enforcement, and court personnel not perpetuate differential treatment of children of color.

In the spirit of prompting a new dialogue about school discipline, this report suggests several recommendations for five groups that are critical to prompting change in Kentucky, including: (1) parents and students, (2) principals and site-based decision-making councils, (3) local school superintendents and school boards, (4) the Kentucky Department of Education and (5) juvenile justice system personnel. These recommendations are not necessarily comprehensive, but they provide people interested in school suspensions and referrals to court with a place to start.

Guiding Principles

These recommendations are guided by basic principles similar to those voiced by the American Bar Association resolution against zero tolerance policies:

1. Schools should be safe places for students to learn and develop, and should have strong policies against possession of guns or other dangerous weapons.
2. Where student misconduct is alleged, school officials should exercise sound discretion that is consistent with the principles of due process and considers the individual student and the particular circumstances of the incident.
3. Students should be removed from school by out-of-school suspension or expulsion only as a last resort. School districts should develop alternatives to out-of-school suspension and expulsion that hold students accountable for their actions, improve student behavior, and foster a climate for learning in schools.

4. School districts should insure that their disciplinary policies and practices do not fall disproportionately on youth of color.

Parents and Students

Local involvement of parents and students is crucial to changing the school climate for children of color. The following four recommendations provide an outline of how local people can become involved.

1. Parents can get skilled and organized at the local level. Several community groups around Kentucky are already organizing to study and act upon differences in school achievement rates between children of color and white students. Some of the concern about differences in school achievement may, in part, be a consequence of differential suspension of students from school. It sends the message loud and clear that certain students are not wanted in the classroom, and before long, some students internalize the implicit and explicit things they hear, a step that begins the process of dropping out. Recognizing that parents who may be concerned about suspension practices may feel isolated, several prominent groups can be helpful in getting you organized, including the Democracy Resource Center in Lexington and Kentuckians for the Commonwealth (KFTC), both of which can help local groups organize around school issues.

2. Youth can be part of the solution, too. The Central Kentucky chapter of Kentuckians for the Commonwealth has organized students to speak for themselves. Since youth have a first-person familiarity with school practices, students can give voice to some of their concerns about how zero tolerance and school suspension policies are implemented. Throughout the country, children and youth are becoming more involved in civic affairs, and school reform is a highly significant issue among youth.⁴⁵

3. Interested parents and youth can hold their own community meetings. An important part of the change process is publicizing the issue and educating other parents about the school suspension problem and the possible solutions. Fortunately, some of this information is available at the school level, so you can contact the Kentucky Center for School Safety or the Kentucky Administrative Office of the Courts to get more specific information on your schools. After becoming familiar with the data, parents and students can challenge some of the conventional ways of responding to problem behavior by offering suggestions to site-based decision-making councils.

4. Local communities can consider alternatives to suspension programs. Suspension should be the last — not first — resort. Local groups have to educate themselves about alternative ways to respond to school-based behavior problems. Luckily, there are some good examples of local schools that are addressing their school drop-out rate by “keeping students in the building, being attuned to students needs, and encouraging their success.”⁴⁶

Principals and Site-Based Decision-Making (SBDM) Councils

Kentucky has a somewhat unique way of managing its public schools. Each school elects a “site-based decision-making council,” which is comprised of the principal, two teachers, and two parents. This council sets the policies that govern the school’s activities, which are directed at meeting the expectations laid-out by the Kentucky Education Reform Act (KERA). This decentralized authority gives significant power to school-based councils to adopt policies to meet the unique needs of each school population. In view of that authority, we recommend the following for local citizens and professionals:

1. Principals and SBDM councils can check available data, or change data collection procedures. In order to get an idea of how big a problem each school might have with respect to suspension rates, the councils must review the data collected by the Administrative Office of the Courts and the Kentucky Center for School Safety, which may be available at the school district and school building levels. (Looking at how school systems respond to Latino and Latina students should also be part of this process.)

2. Principals, especially, can change the school climate. Increasingly schools are coming to understand the benefits of resolving school discipline problems and creating a more engaging school climate, including increased attendance (that results in more state funding), a decline in the drop-out rate, and better achievement scores (that also may generate more financial rewards under the Kentucky Education Reform Act). Taking the advice of Gene Kirchner (the assistant principal of Walton-Verona schools, an independent school system of 1,000 students), schools can, first and foremost, be filled with engaging activities that entice and encourage students.⁴⁷

3. Principals and councils can educate themselves about alternatives to suspension and other ways of preventing youthful misbehavior. In October, 2002, the National Crime Prevention Council selected Woodford County High School as part of a national initiative to pilot school violence prevention initiatives. With the help of the Kentucky Center for School Safety, the Woodford County pilot project will focus on “soft” services that emphasize building better student-teacher relationships as well as on “hard” techniques that rely on purchasing more hardware and security procedures.⁴⁸

4. Principals and councils can put themselves in students' shoes by understanding the role that cultural differences — and learning disabilities — both play in misbehavior. The forum discussions convened by the Children's Law Center last year confirmed that many children are being suspended unnecessarily because of their learning disabilities. That is, some children do not process information the same way that others do, so this confusion may impair their ability to respond to directions from teachers and other school officials. In other situations, racial or ethnic background may be a barrier to understanding between students and principals.

Local School Superintendents and School Boards

1. Superintendents and school boards can conduct a safety audit of local schools using "the three Ps". The Center for the Prevention of School Violence recommends that schools consider "the three Ps": place, people, and purpose. "Place" refers to the school's physical environment that will provide a reasonable amount of safety and security for students and teachers alike. "People" refers to the people within the school who can help create a safe and respectful climate. Everyone in the school is part of this people-solution, especially as it relates to managing conflict. "Purpose" emphasizes that schools should not be turned into prisons, but should be directed at education. We recommend that each school district fashion an audit of the "three Ps," which could be used at the school-building level to determine the extent to which each school is educating students in a safe school environment.

2. Superintendents and school boards can create a tracking system that monitors school disciplinary practices. In order to hold local schools accountable, school boards and superintendents should study the local data available through the Administrative Office of the Courts and Kentucky Center for School Safety. In addition to these sources,

each school system should create a simple database to track suspensions, expulsions, and court referrals. As previously indicated, this tracking system should also collect data on Latino and Latina students.

3. Superintendents and school boards should encourage their schools to emphasize prevention over reaction. No less an authority than the U.S. Surgeon General has suggested that reducing youth violence may be a function of implementing "preventive programs that teach students alternative strategies for solving their problems."⁴⁹ A good place to start is to reject the zero tolerance policies that *automatically* exclude children from schools based on certain behaviors, and start anew by exploring other options beside suspensions and court referrals.

4. Superintendents and school boards should allow school officials some discretion in disciplinary matters. Consistent with re-thinking the application of universally-applied zero tolerance policies that take discretion out of the hands of local school officials, local school boards should consider empowering officials in each school with the authority to *individualize* school disciplinary decisions. We recommend that these local officials be provided with the disciplinary authority to take individual differences into account.

Kentucky Department of Education

While decision-making in Kentucky has been delegated to the local level, the state Board of Education and state Education Department still play an important role in guiding the agenda for Kentucky's public schools. While the focus of attention has been on student achievement, as well as meeting other school reform goals outlined in the Kentucky Education Reform Act (KERA), a significant effort has been made in recent years to look at racial disparities in school achievement rates. Education Commissioner Gene Wilhoit has been particularly sensitive to the achievement

“Effective school discipline is a method schools use to develop character, self-esteem, self-control, a sense of responsibility, and independence among students. Effective school discipline also creates a positive school climate in which children can learn and teachers can teach.”

- 1988 Kentucky Youth Advocates’ report entitled: “Schools for All Children: Recommendations for Including Kentucky’s Poor and Minority Children in School Reform”⁵¹

gaps between African-American and white students.⁵⁰ The Kentucky Department of Education, and State Senator Gerald Neal have been alert to the deeper reasons for, and solutions to, this school achievement process. In keeping with these initiatives, the authors of this report suggest four recommendations.

1. The Kentucky Department of Education should consider zero tolerance and other exclusionary policies as part of the larger process of identifying why there is an “achievement gap” between African-American and white students. To its credit, the Kentucky Department of Education has recently paid considerable attention to the academic gap between African-American and white children in Kentucky. While there are many reasons for this gap, at least one of those reasons is the messages — explicit and implicit — that these students hear from school officials through discipline policies and practices.

2. The Kentucky Department of Education should add to the national initiative in Woodford County by working in conjunction with the Kentucky Center for School Safety to fund demonstration and pilot projects that balance creating safe schools with an equivalent concern to avoid unnecessarily excluding students from school. Nothing speaks more powerfully than money. We recommend that the Kentucky Department of Education attempt to secure additional financial resources from the legislature — or use its own discretionary funds — to expand the number of pilot projects that will test alternative ways to manage school conflict before resorting to school suspensions or referrals to court.

3. The Kentucky Department of Education should use the existing data from the Administrative Office of the Courts and the Kentucky Center for School Safety, to develop a systematic, uniform monitoring system to determine the effectiveness of school safety measures. In the wake of the West Paducah school shootings, Kentuckians were desperate for answers to the problems of school gun violence. As we have pointed out, however, the chances of being shot in a school are less than those of being struck by lightning. In order to reassure the public, a record-keeping system should be created that evaluates the effectiveness of pilot programs and model projects, particularly as compared to those school systems that rely on zero tolerance and other exclusionary practices.

4. The Kentucky Department of Education should provide more training opportunities for school personnel. Fortunately, a body of knowledge and skills has evolved in recent years to foster understanding between school personnel and children of color. We repeat the advice of the 2002 Children’s Law Center report that school officials have to recognize their mutual obligation to assure safe schools while at the same time protecting the interests of racial minorities. Training is an important first step to changing attitudes and behaviors.

Juvenile Justice System Personnel

Juvenile justice system personnel - judges, prosecutors, defense counsel, court designated workers - are critical to school discipline reform efforts. Such efforts require concerted attention by, and effective training for, key personnel in the juvenile courts.

ABOUT THE AUTHORS

David Richart

David Richart currently serves as Associate Professor of Social Work at Spalding University. He also heads the National Institute on Children, Youth & Families, the only university-based center focusing on children and politics. Prior to assuming his current positions, he served from 1975 to 1997 as executive director of Kentucky Youth Advocates, one of the first multi-issue child advocacy groups in the South and Midwest. He has received two national, one regional, and eleven state awards for his work on behalf of children. He holds a masters degree in social work from the University of Louisville, and an interdisciplinary doctorate from The Union Institute and University in Cincinnati.

Dr. Richart has authored, or co-authored more than 150 monographs on children's issues. He also is co-author of the seminal work on child advocacy, *Fairness Is a Kid's Game: Children, Public Policy and Child Advocacy in the States*. Among other specialties, he has been referred to as "the historian of the contemporary modern child advocacy movement."

Kim Brooks

Kim Brooks was the founder of the Children's Law Center, Inc. and has been its Executive Director since its inception in 1989. The Center's mission is to protect the rights of children in Kentucky through individual and class action representation, research and policy development, and through training and education of attorneys and other professionals concerning the rights of children. Ms. Brooks is a graduate of Northern Kentucky University, where she received her B.S. in Social Work in 1978, and a J.D. in law from Salmon P. Chase College of Law in 1989. She serves as adjunct faculty at Chase, where she teaches Kentucky Juvenile Law.

1. Juvenile justice system personnel should examine the data from the Administrative Office of the Courts on school-based complaints in their local jurisdictions to analyze trends in court referrals by school officials, prosecution, adjudication, and placement. Like parents, students, principals, site-based councils, superintendents, schools boards, and the Department of Education, juvenile justice personnel should become knowledgeable about school-based complaints and their consequences in the justice system.

2. Local juvenile courts should promote effective judicial practices to eliminate unnecessary court intervention in school-related referrals and disparate impact upon children of color, and to promote effective practices that address the individual needs of children. As the most important individuals in the justice system, judges should provide leadership in addressing school discipline issues and developing necessary reforms.

3. Justice system personnel should ensure that children coming before the court have access to appropriate and equal educational opportunities. All justice system personnel should be responsible for making sure that children receive required components of general and special education programs. Juvenile defenders, in particular, should challenge policies and practices that exclude children from schools for minor behavioral infractions.

4. All justice system personnel should receive comprehensive, up-to-date, and effective training on key issues related to school discipline. The training should include positive practices that are alternatives to out-of-school suspensions and court referrals, special education and disability law, due process requirements, and ways of addressing racial disparities in school discipline and in the justice system.

Ms. Brooks serves as the coordinator for the Central Juvenile Defender Center, a regional affiliate office of the American Bar Association's National Juvenile Defender Center in Washington, D.C. She is on faculty for the NJDC's annual defender leadership summit, and has lectured and consulted on juvenile justice, conditions of confinement, indigent defense issues, and education issues throughout the country.

Mark Soler

Mark Soler joined the Youth Law Center as Senior Staff Attorney in 1978 and in 1980 became the Executive Director. He and his colleagues have worked in more than 40 states on juvenile justice, child welfare, health, mental health, and education issues, and have litigated successfully in 16 states on behalf of children whose rights have been violated in juvenile justice and child welfare systems. In August, 1994, he was appointed President of the Youth Law Center and opened a branch office of the Center in Washington, D.C., where he works on national policies affecting children and families, activities of Congress and federal agencies, collaborations with other national organizations, and advocacy activities on the East Coast.

He has written more than 20 articles and book chapters on civil rights issues and the rights of children, and has taught at Boston College Law School, the Washington College of Law at American University, Boston University School of Law, the University of Nebraska Law School, and San Francisco State University. He has received awards for his work from the American Psychological Association, American Bar Association, Alliance for Juvenile Justice, and Office of Juvenile Justice and Delinquency Prevention. He is the coordinator of Building Blocks for Youth, a national campaign to protect the rights of minority youth in the justice system and promote fair and effective juvenile justice policies.

ENDNOTES

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2. Taranto, J. (2001, May 18). 'Zero tolerance' makes zero sense. *The Wall Street Journal*, A-18. (Mr. Taranto is editor of *OpinionJournal.com*, and his article ran in the op ed page of the *Wall Street Journal*.)
3. One of the most celebrated recent cases include a student who used a paper gun in class, and who was described as a four foot, four inches tall, and was eight years old. Hamadi Alston was charged with terroristic threatening in Irvington, N.J. in March of 2001. Haughney, C. (2001, July 2-8). Kids will be criminals: A zero-tolerance policy means juvenile rap sheets for two second-graders with a paper gun. *The Washington Post National Weekly Edition*, 30.
4. In March of 2000 in Sayreville, N.J., four kindergarteners were suspended for three days for pretending to "shoot" one another with their fingers. Newman, M. (2000, April 7). Parents find that rules for play have changed. *The New York Times*, A-22.
5. For example, there were at least 50 suspensions in Manalapan-Englishtown, N.J. for children enrolled in kindergarten through third grade, some of which were for "repeating expressions that they had heard their parents use at home." Zernike, K. (2001, May 17). Crackdown on threats in school fails a test. *The New York Times*, A-1 & A-21.
6. To cite just two examples, a 15-year-old Shelbyville boy was charged with the rape and murder of a grandmother, aged 77, who was out for a walk. A 12-year-old girl was raped, sodomized, and murdered and her body abandoned in a park in Louisville by a juvenile offender.

7. Lawson, G. (1995, April 24). Juvenile crime takes big jump in state but trails U.S. rate. *The Courier-Journal*, B-1; Yetter, D. (1995, May 11) People want violent youths punished like adults. *The Courier-Journal*, A-1 & A-13. (*The Courier-Journal sponsored a special Bluegrass poll in late April and early May of 1995 that found, for example, that 76% of those polled wanted juveniles who committed serious crimes to have their records open to public inspection, rather than remaining confidential, which had been the state's policy. 75% of those polled thought that juveniles charged with serious crimes should be automatically charged as adults.*)
8. Yetter, D. (1995, April 30). Youth crime is 'hot topic' in campaign. *The Courier-Journal*, A-1 & A-19; Yetter, D. (1995, October 15). Juvenile justice key issue in race: Patton, Forgy vow 'get tough' approach. *The Courier-Journal*, A-1 & A-23; Garrett, R.T. (1998, May 17). Tackling the crime issue: Politicians pick up on a national obsession. *The Courier-Journal*, A-1 & A-17.
9. The three children who were killed were: Kayce Steger, Nicole Hadley and Jessica James. The students injured were: Kelly Hard, Hollon Holm, Missy Jenkins, Craig Keene, and Shelly Schaberg.
10. Understandably, this concern for the victims continues. [see: Gerth, J. (2002, December 1). Heath High school shooting: Five years later, Pain lingers from life-changing day. *The Courier-Journal*, A-1 & A-8.]
11. Vossekul, B., et al. (2002) *The final report and findings of the "Safe School Initiative": Implications for the prevention of school attacks in the United States*. Washington, DC: U.S. Secret Service and the U.S. Department of Education, 12.
12. Vossekul, B. (2002), 3.
13. Tebo, M.G. (2000). Zero tolerance, zero sense. *American B[ar] Association Journal*, 86, 40-46, 113.
14. Tebo, 41.
15. Taranto, J. (2001, August 27). Zero tolerance for duck sauce. *The Wall Street Journal*, A-14. (*As with the previous article prepared by Mr. Taranto, this analysis appeared on the Journal's op-ed page.*)
16. Donohoe, E., Schiraldi, V. & Zeidenberg, J. (1998). *School house hype: The school shootings, and the real risks kids face in America*. Washington, DC: The Justice Policy Institute, 1.
17. Portner, J. (1996, October 23). Suspensions spur debate over discipline codes. *Education Week*, 10.
18. Isaacs, B. (2002, August 17). Most schools put medicines in hands of trained staffers. *The Lexington Herald-Leader*. (*The American Lung Association of Kentucky pushed for this legislative change, and the bill was sponsored by Rep. Mary Lou Marizian. The legislation affects 70,000 asthmatic children in the state. Kentucky is ahead of many states on this issue. See Tarkan, L. (2002, Nov. 19). Educating students about life with asthma. The New York Times (11-year-old died of asthma because his school's zero tolerance policy prevented him from carrying an inhaler).*)
19. Poe-Yamagata, E., and Jones, M. (2000, April). *And justice for some*. Washington, DC: Building Blocks for Youth.
20. Denn, R. (2002, March 15). Blacks are disciplined at far higher rates than other students. *Seattle Post Intelligencer*; Denn, R. (2002, March 15); Racial disparities are nothing new: Past failures to wipe out discipline gap fuel skepticism over current efforts. *Seattle Post Intelligencer*; Denn, R.

- (2002, March 15). Coping with the school system: Black parents tell grim stories of mistreatment. *Seattle Post Intelligencer*. (These articles were part of a series of articles packaged as “An Uneven Hand: The Racial Discipline Gap in Seattle Schools.”)
21. Johnson, T., Boyden, J.E., and Pittz, W.J. (2001). *Racial profiling and punishment in U.S. public schools: How zero tolerance policies and high stakes testing subvert academic excellence and racial equity*. Oakland, CA: Applied Research Center, 16. (The Kentucky case example was provided by the Democracy Resource Center in Lexington.)
22. Johnson, Boyden & Pittz (2001), 15-16.
23. Skiba, R.J. & Leone, P.E. (2001). “Zero tolerance and school security measures: A failed experiment” in Johnson, Boyden & Pittz, Eds. *Racial profiling and punishment in U.S. public schools: How zero tolerance policies and high stakes testing subvert academic excellence and racial equity*. Oakland, CA: Applies Research Center, 35.
24. Villarruel, F. A. & Walker, N.E. et.al. (2002). *Donde esta la justicia? A call to action on behalf of Latino and Latina youth in the U.S. justice system, executive summary*. Washington, DC: Building Blocks for Youth.
25. Morrison, G.M., & D’Incau, B. (1997). The web of zero- tolerance: Characteristics of students who are recommended for expulsion from school. *Education and Treatment of Children*, 20, 316-335.
26. The federal Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*, provides certain protections for students whose misconduct is caused by their disabilities. The statute does not, however, prohibit school authorities from removing a student with educational disabilities if the student poses an imminent threat of physical harm to self or others.
27. Morrison, G.M., et al. (2001, Winter). School expulsion as a process and an event: Before and after effects on children at risk for school discipline. *New directions for youth development. Zero Tolerance: Can suspension and expulsion keep schools safe?* San Francisco, CA: Jossey- Bass.
28. American Bar Association Criminal Justice Section, Section of Family Law, Steering Committee on the Unmet Legal Needs of Children, Commission on Mental and Physical Disability, Young Lawyers Division (2001). *Report to House of Delegates and Resolution*. Washington, DC: American Bar Association.
- RESOLVED, that the American Bar Association supports the following principles concerning school discipline:
- 1) schools should have strong policies against gun possession and be safe places for students to learn and develop;
 - 2) in cases involving alleged student misbehavior, school officials should exercise sound discretion that is consistent with principles of due process and considers the individual student and the particular circumstances of misconduct; and
 - 3) alternatives to expulsion or referral for prosecution should be developed that will improve student behavior and school climate without making schools dangerous; and
- FURTHER RESOLVED, that the ABA opposes, in principle, “zero tolerance” policies that have a discriminatory effect, or mandate either expulsion or referral of students to juvenile or criminal court, without regard to the circumstances or

- nature of the offense or the student's history.
29. They are prosecuted as delinquent offenses because they are violations of previous court orders, e.g., requiring the students to attend school. See 42 U.S.C. § 5633(a)(11)(A)(ii).
 30. KRS 525.060.
 31. In addition, school officials may not pursue school discipline on every incident. If they refer a matter directly to the police, the incident may not be recorded with the Kentucky Center for School Safety.
 32. Tuley, S., Richart, D.W. & Miller, D. (1988). *Schools for all children: Recommendations for including Kentucky's poor and minority children in school reform*. Louisville, KY: Kentucky Youth Advocates, 22.
 33. Villarruel, et.al., 3.
 34. Yetter, D. (2002, November 13). Racial profiling survey proves inclusive. *The Courier-Journal*, B-4.
 35. Wolfe, C. (2002, August 9). State gets advice on how to prevent student dropouts: Administrator says that schools must be engaging. *The Courier-Journal*, B-4. (Mr. Wolfe writes for the *Associated Press in Kentucky*.)
 36. Brooks, K. (2002). *The needs and rights of disabled students: A forum for professionals working with youth in the juvenile justice and child welfare systems*. Covington, KY: Children's Law Center, 3.
 37. Brooks (2002), 2.
 38. Skiba & Leone (2001), 37.
 39. Talley, C.R. et.al. (2002) *Disproportionate minority confinement in Kentucky: An analysis of the process and decision-making points in the juvenile justice system, a technical report*. Frankfort: Kentucky Department of Juvenile Justice. (The report was written by Clarence R. Talley, Theresa Rajack-Talley, Richard Tewksbury, Danielle Albright, Melanie Otis and Chris Hensley.) The media in Kentucky also highlighted this study when it was released. This media attention includes: Yetter, D. (2002, May 15). Juvenile justice study finds racial discrepancy: Minority youths detained at higher rate than whites. *The Courier-Journal*, A-1 & A-8; Cheves, J. (2002, May 16). Penalties for blacks may be part bias: Study looks at treatment of minorities. *The Lexington Herald-Leader & The Associated Press*; Courier-Journal Editorial Board, The. (2002, May 17). Bias and juvenile justice. *The Courier-Journal*; Lexington Herald-Leader Editorial Board, The. Injustice system for black kids. *The Lexington Herald-Leader*, A-12.
 40. Bridges, G.S. & Steen, S. (1998). Racial disparities in official assessments of juvenile offenders: Attributional stereotypes as mediating mechanisms. *American Sociological Review*, 63.
 41. Tuley, S. et.al. (1987). *Unsatisfactory performance: A report card on Kentucky's school reform efforts for children at risk*. Louisville, KY: Kentucky Youth Advocates, 35.
 42. Raspberry, W. (2000, June 26). Zero tolerance makes zero sense. *The Washington Post National Weekly Edition*, 26.
 43. Fischhoff, B., Crowell, N.A. & Kipke, M. (eds). (1999). *Adolescent decision-making: Implications for prevention programs, summary of a workshop*. Washington, DC: National Research Council/National Academy Press, preface, page i.

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44. Osher, D.M., Sandler, S., and Nelson, C.L. (2001, Winter). The best approach to safety is to fix schools and support children and staff. *New directions for youth development: Zero tolerance: Can suspension and expulsion keep schools safe?* San Francisco, CA: Jossey-Bass.
 45. Richart, D.W. (2001). *Building bridges: Linking child advocacy and community organizing strategies to improve children's interests*. Louisville, KY: National Institute on Children, Youth & Families at Spalding University, 10-20.
 46. Wolfe, C. (2002, August 9). State gets advice on how to prevent student dropouts. *The Courier-Journal*, B-4. [The author is a writer for the Associated Press. Schools with a zero dropout rate in Kentucky include: Walton-Verona, Silver Grove, and Ludlow, all in Northern Kentucky.]
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 49. Skiba & Leone, 37,
 50. Richardson-Roberts, M. (2002, October 29). Wilhoit decries Fayette racial gaps: Education commissioner says community must lead. *The Lexington-Herald Leader*.
 51. Tuley, S., Richart, D.W., & Miller, D. (1988), 21.



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