

MISSISSIPPI AND THE SCHOOL-TO-PRISON PIPELINE

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ABSTRACT

For many young students in Mississippi, the educational system is broken. Every year, thousands of children are pushed or coerced out of schools and into prisons or juvenile detention centers in a process known as the School-to-Prison Pipeline. This procedure represents not only a massive waste of taxpayer resources, but in too many cases results in the psychological and sexual abuse of children. This paper explores some of the contributing factors, such as punitive standards-based accountability and zero-tolerance policies, and analyzes the human toll of the School-to-Prison Pipeline.

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I. INTRODUCTION: ABUSE AND WASTE—MISSISSIPPI AND THE SCHOOL-TO-PRISON PIPELINE

“The system broken, the schools closed, the prisons open.”¹

The “School-to-Prison Pipeline” (STPP) refers to the framework of the United States school system that, by design, pushes students out of public schools through suspension or expulsion and into a juvenile detention facility or prison.² The popularity of this practice recently exploded as a result of “zero-tolerance” policies,³ high-stakes testing,⁴ and state laws tying school funding to property taxes.⁵ Unfortunately, the students most affected by the STPP are the students in need of the most help, including students living in low-income or homeless conditions, minority students, students learning the English language, and students with disabilities.⁶ Two conditions create the basis for the STPP: (1) punishment-based disciplinary policies combined with (2) economically limited public schools struggling to provide at-risk children with an education. This combination “drastically increases the likelihood that these children will end up with a criminal record rather than a high school diploma.”⁷

The first part of this paper will introduce the STPP and the people it affects as well as examine a cost-benefit analysis of the waste of resources involved in funding prisons over schools. Next, this paper will discuss the treatment of children in Mississippi’s juvenile detention centers and will contrast this treatment with the experiences of children in a successful educational rehabilitation program. STPP is a problem warranting immediate attention and action. The purpose of this

¹ KANYE WEST, POWER (Roc-A-Fella Records 2010).

² Catherine Y. Kim, *Procedures for Public Law Remediation in School-to-Prison Pipeline Litigation: Lessons Learned from Antoine v. Winner School District*, 54 N.Y.L. SCH. L. REV. 955, 956 (2009 / 2010).

³ CATHERINE Y. KIM ET AL., THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM 79 (New York University Press 2010).

⁴ William S. Koski & Rob Reich, *When “Adequate” Isn’t: The Retreat from Equity in Educational Law and Policy and Why it Matters*, 56 EMORY L.J. 545, 584 (2006).

⁵ *Id.* at 555.

⁶ KIM, *supra* note 3, at 1.

⁷ *Id.* at 4.

paper is to create awareness of the horrific treatment of children in the Mississippi school and correctional systems in the hopes that reformation can be attained.

II. IT'S ALL IN THE GAME: FUNDING, LIES, AND STATISTICS – EDUCATION IN AMERICA

A. *The School-to-Prison Pipeline: A State-Sanctioned Assault on Poor, Uneducated Minorities*

The American educational system has huge cracks, and over a million students fall through them each year.⁸ In 2007, only 68.8% of all public school students in the nation graduated from high school.⁹ The dropout burden is not shared equally by all; urban high schools are facing an “extraordinarily concentrated . . . dropout crisis.”¹⁰ The unemployment rate for African-American male high-school dropouts is surpassing sixty percent, an exceptionally dire consequence both socially and economically.¹¹ Race and class define the STPP, and it has disproportionate effects on students in high-minority and high-poverty schools.¹² Sometimes, even when students do not wish to drop out, they are forced out by “desperate”¹³ school administrators concerned about state standardized testing.¹⁴

Minority children are disproportionately affected by the STPP's general and zero-tolerance discipline policies.¹⁵ For example, “[i]n 2003, African American youths make up 16 percent of the nation's overall juvenile population but accounted for 45 percent of juvenile arrests.”¹⁶ This phenomenon cannot be explained by an increase in unacceptable conduct by minority children.¹⁷ Reports indicate that

⁸ *Progress on Graduation Rate Stalls; 1.3 Million Students Fail to Earn Diplomas*, EDUCATION WEEK, 1 (June 10, 2010), http://www.edweek.org/media/ew/dc/2010/DC10_PressKit_FINAL.pdf.

⁹ *Id.* at 2 (the most recent data available at the time of the study was from the class of 2007).

¹⁰ *Id.*

¹¹ Robert Balfanz et al., *High-Poverty Secondary Schools and the Juvenile Justice System: How Neither Helps the Other and How That Could Change*, 99 NEW DIRECTIONS FOR YOUTH DEV. 71, 79 (2003).

¹² Johanna Wald & Daniel J. Losen, *Defining and Redirecting a School-to-Prison Pipeline*, 99 NEW DIRECTIONS FOR YOUTH DEV. 9, 9 (2003).

¹³ This is a characterization from the author, Matthew Burris, not the author of the source in the subsequent footnote.

¹⁴ Davin Rosborough, Note, *Left Behind, And Then Pushed Out: Charting a Jurisprudential Framework to Remedy Illegal Student Exclusions*, 87 WASH. U. L. REV. 663, 670 (2010).

¹⁵ KIM, *supra* note 3, at 2.

¹⁶ *Id.*

¹⁷ *Id.*

“African American students are more likely than their white peers to be suspended, expelled, or arrested for the *same kind* of conduct at school.”¹⁸ Racial disparity continues throughout the juvenile justice system.

Race plays a role beyond the punishment of our youth and is described this way because:

Just as youth of color are disproportionately suspended and expelled, the consequences . . . are not race-neutral either. It is estimated . . . that only 10 percent of young . . . white high school dropouts are incarcerated by their early thirties, compared to 52 percent of African American male high school dropouts.¹⁹

In 2004, African-American youth represented sixteen percent of the population, twenty-eight percent of juveniles arrested, thirty-two percent of juveniles convicted of a crime, thirty-six percent of youth incarcerated in a juvenile detention center, and fifty-eight percent of juveniles placed in adult prisons.²⁰

Suspensions and expulsions initiate the STPP process and are connected to dropout rates and adult incarceration because they result in a “referral to the juvenile justice system.”²¹ The National Center for Educational Statistics reported a thirty-one percent dropout rate for students who had been “suspended three or more times before the spring of their sophomore year,” as compared to the six-percent dropout rate for students who had never been suspended.²² Any involvement with the juvenile justice system can be powerfully damaging to an adolescent.²³ A recent study indicated a “first-time arrest during high school nearly doubles the odds of high school dropout, while a court appearance nearly quadruples the odds.”²⁴ Once an individual becomes a high-school dropout, that individual is 3.5 times more likely to be incarcerated than a high-school graduate.²⁵

¹⁸ *Id.*

¹⁹ MARSHA WEISSMAN ET AL., THE RIGHT TO EDUCATION IN THE JUVENILE AND CRIMINAL JUSTICE SYSTEMS IN THE UNITED STATES, Submission to Vernor Muñoz, Human Rights Council, United Nations, 3 ¶ 13 (2008), *available at* http://www.aclu.org/images/asset_upload_file164_38663.pdf.

²⁰ *Id.* at 5 ¶ 27.

²¹ *Id.* at 3 ¶ 12.

²² *Id.*

²³ MISS. YOUTH JUSTICE PROJECT, S. POVERTY LAW CTR., EFFECTIVE DISCIPLINE FOR STUDENT SUCCESS: REDUCING STUDENT AND TEACHER DROPOUT RATES IN MISSISSIPPI 3 (2008) [hereinafter EFFECTIVE DISCIPLINE].

²⁴ *Id.*

²⁵ WEISSMAN, *supra* note 19, at 3 ¶ 12.

A 2006 study addressed the STPP's human impact on the African-American community,²⁶ stating that "[t]he incarceration rate of young black males—particularly high school dropouts—has reached levels that jeopardize the achievement of broader social-justice goals."²⁷ Often, prisoners return to communities with "three strikes" against them regarding their employment prospects²⁸ and with the post-traumatic effects of their treatment inside the prisons.²⁹ Consider the impact on the African-American community in Chicago, where "nearly 80 percent of working-age African American men had criminal records in 2002."³⁰

B. *Standards-Based Accountability and No Child Left Behind:
How to Cripple Public Schools in America*

The most problematic aspect of the pipeline is that it creates an intractable downward spiral. Standards-based accountability and state funding of education from property taxes are the two fundamental causes of the pipeline.³¹ Schools that excel on state standardized tests can expect parents of students to become interested in moving to their area.³² Schools that perform poorly can expect to be taken over by the state and have their entire faculties subject to being fired.³³ Thus,

²⁶ RICHARD COLEY & PAUL BARTON, EDUCATION TESTING SERVICES, LOCKED UP AND LOCKED OUT: AN EDUCATIONAL PERSPECTIVE ON THE U.S. PRISON POPULATION 27 (2006) (statistics quoted below in full).

Black Male Incarceration Rates, by Age Groups

Ages 18-19	Ages 20-24	Ages 25-29	Ages 30-34	Ages 35-39	Ages 40-44	Ages 45-54	Ages 55 Up
5.4%	11.1%	12.6%	11.0%	10%	8.0%	4.6%	0.9%

²⁷ *Id.* at 3.

²⁸ *Id.* Strike one – Ex-cons with little or no education are not desirable hires. *Id.* Strike two – Employers look for prospective employees that have had a consistent work record and frown on those who do not. *Id.* Strike three – Some jobs are not available to those in possession of a criminal record. *Id.*

²⁹ Adam Liptak, *Ex-Inmate's Suit Offers View Into Sexual Slavery in Prisons*, N.Y. TIMES, Oct. 16, 2004, available at <http://www.nytimes.com/2004/10/16/national/16rape.html?pagewanted=print&position=>.

³⁰ Michelle Alexander, *The New Jim Crow*, THE AM. PROSPECT 1, at A19-A20 (Dec. 6, 2010), available at http://prospect.org/cs/articles?article=the_new_jim_crow.

³¹ Koski, *supra* note 4, at 581 (whereby the author gives a comprehensive account of the standards-based accountability movement in the U.S., including its history, causes, consequences, and political involvement); *See also* Rosborough, *supra* note 14, at 667, 670.

³² Koski, *supra* note 4, at 580, 586 ("Already there is significant evidence that realtors and homebuyers are among the most avid consumers of school accountability data . . .").

³³ *Id.* at 580.

a policy focusing on standards-based accountability provides school officials with a serious incentive to remove students from the roster when they perform poorly—sometimes by suspension, expulsion, arrest, or any other means necessary.³⁴ The impetus is obvious; school leaders in Alabama brazenly “admitted that they withdrew 522 students without their consent in the spring of 2000,” explaining their intent was to remove low-achieving students in order to raise standardized test scores.³⁵ “In general, the more black and brown a school’s population is, the more likely it is that students in that school are predominantly poor. And when that happens, the demographic characteristics compound one another and cannot ever be completely disentangled.”³⁶

The “Texas Miracle” refers to an event that illustrates how standards-based accountability projects are only an illusion of success.³⁷ After becoming superintendent of Houston, Texas schools in 1994, Rod Paige had immediate and astounding success in turning around a once-failing school district.³⁸ As the school district’s chief, Paige allegedly lowered the district’s dropout rate to 1.5%.³⁹ George W. Bush frequently cited the “Texas Miracle” in his 2000 presidential campaign, in an effort to market himself as the “education President.”⁴⁰ Bush became President in 2001, appointed Rod Paige as the Secretary of Education,⁴¹ and enacted the far-reaching federal law No Child Left Behind (NCLB) in January of 2002.⁴² NCLB was modeled after Rod Paige’s “Texas Miracle”⁴³ and established national goals providing the same basic standards-based accountability framework: rewards for success, consequences for failure, and flexibility of the schools to remove students⁴⁴—the necessary elements for the School-to-Prison Pipeline.⁴⁵

³⁴ Rosborough, *supra* note 14, at 667, 670.

³⁵ *Id.* at 676.

³⁶ Kristi L. Bowman, *A New Strategy for Pursuing Racial and Ethnic Equality in Public Schools*, 1 DUKE FORUM FOR LAW & SOC. CHANGE 47, 56 (2009), available at <http://www.law.duke.edu/shell/cite.pl?1+Duke+F.+L.+&+Soc.+Ch.+47+pdf>.

³⁷ Rebecca Leung, *The ‘Texas Miracle’*, 60 MINUTES, Feb. 11, 2009, available at <http://www.cbsnews.com/stories/2004/01/06/60II/main591676.shtml>.

³⁸ Informed Source: Houston Independent School District, *Bowie Elementary Replacement School Named After Former Superintendent Rod Paige*, June 26, 2007, [hereinafter Informed Source], available at <http://www.houstonisd.org/HISDConnectDS/v/index.jsp?vgnextoid=7f46fb6108463110VgnVCM10000028147fa6RCRD&vgnnextchannel=0d0c2f796138c010VgnVCM10000052147fa6RCRD#> (link for the article is on the right of the screen).

³⁹ Leung, *supra* note 37.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 20 U.S.C.A. § 6301, et seq. (2002).

⁴³ Leung, *supra* note 37.

⁴⁴ See generally President George W. Bush, *No Child Left Behind*, (2001), <http://www.cew.wisc.edu/ewl/resource/nochildleftbehind.pdf>.

In 2003, the *Dallas Morning News* exposed that Houston's astounding success, the "Miracle," was a big sham and "in fact . . . never happened."⁴⁶ Fifth graders in the Houston Independent School District (Houston I.S.D.), who reportedly performed at the ninetieth percentile, dropped to the tenth percentile the following year at their middle-school campus.⁴⁷ Teachers and administrators admitted to cheating, lying, and intentionally distorting the numbers.⁴⁸ Principals in the district were on one-year contracts and were on notice of both receiving \$5000 for meeting the district's goals, and for being "transferred, demoted or forced out" for failing to meet these goals.⁴⁹ One Houston school, Sharpstown High School, reported an unbelievable zero dropouts for the 2001-2002 school year, despite the "disappearance" of 463 students from its roster.⁵⁰ The same year, Houston I.S.D. received one million dollars from the Broad Foundation for "being the best urban school district in America."⁵¹ Now that Houston schools are reporting accurate numbers, a report from 2010 revealed that Houston I.S.D., the model for NCLB, failed to meet the requirements of the Act for three years in a row and, as a result, became subject to state sanctions.⁵² Ironically, the students, parents, and community who were involved, emerged from the "Texas Miracle" as victims, while the administrators at fault were rewarded with pay increases. Rod Paige was even rewarded when a school in Houston was named after him.⁵³

NCLB's failure to mandate common standards facilitated manipulative practices by delegating to the states the authority to define their own standards of proficiency.⁵⁴ In fact, "15 states have actually lowered their standards to make it easier for their kids to meet the targets set by No Child Left Behind."⁵⁵ This absurd

⁴⁵ Koski, *supra* note 4, at 577-78 (discussing the first two elements of NCLB and how they correlate to the STPP), 585 (discussing the "remove students" element of NCLB and how it correlates to STPP).

⁴⁶ Todd J. Gillman, *Houston Dropout Rate Questions Bedevil Paige*, THE DALLAS MORNING NEWS, Sept. 14, 2003, at 10A; Diane Ravitch, *Obama's War on Schools*, NEWSWEEK, Mar. 20, 2011, <http://www.newsweek.com/2011/03/20/obama-s-war-on-schools.html>.

⁴⁷ Lisa Snell, *How Schools Cheat*, 37 REASON 24, 26 (2005), available at <http://reason.com/archives/2005/06/01/how-schools-cheat>.

⁴⁸ Leung, *supra* note 37; Snell, *supra* note 47, at 26-27.

⁴⁹ Leung, *supra* note 37.

⁵⁰ *Id.* at 1.

⁵¹ Snell, *supra* note 47, at 26.

⁵² Kevin Quinn, *Poor ratings for some HISD schools*, ABC LOCAL NEWS 13, Aug. 6, 2010, <http://abclocal.go.com/ktrk/story?section=news/education&id=7596810>.

⁵³ Informed Source, *supra* note 38.

⁵⁴ Jim Rex, *American Schools Need Common Standards*, HUFFINGTON POST, June 15, 2009, http://www.huffingtonpost.com/jim-rex/american-schools-need-com_b_215550.html.

⁵⁵ President Barack Obama, *Don't cut the future*, THE HILL (Mar. 14, 2011, 3:34 PM), <http://thehill.com/blogs/congress-blog/education/149413-deadline-set-cuts-denied-for-education-reform>.

outcome, states *lowering* standards, could not have been the intent behind NCLB. The reality is that “[t]he federal government is spending billions to improve student achievement while simultaneously granting states license to game the system. As a result, schools have learned to lie with statistics.”⁵⁶ For example, the United States Chamber of Commerce found Alabama lied when reporting student performance in 2005.⁵⁷ Although Alabama reported its fourth graders scored eighty-three percent on the state reading proficiency test, ranking it among the best in the nation,⁵⁸ the same fourth graders only registered twenty-two-percent proficiency on the National Assessment of Educational Progress, ranking Alabama among the poorest performing states with respect to their fourth graders.⁵⁹

NCLB is a utopian mandate that places all of public education on a pathway to failure. Administrators and teachers have incentive to accept bribes and lie, or be threatened with termination if they refuse because it is so difficult to meet the mandated standards.

NCLB mandated that 100 percent of students be proficient in reading and math by 2014. Any school not on track to meet this utopian goal—*one never reached by any nation in the world*—would face a series of sanctions, culminating in the firing of the staff and the closing of the school. As 2014 nears, tens of thousands of schools have been stigmatized as failures, thousands of educators have been fired, and schools that were once the anchors of their communities are closing, replaced in many cases by privately managed schools. NCLB turns out to be a timetable for the destruction of public education.⁶⁰

To date, eighty-two percent of United States public schools are classified or soon will be classified as failing under NCLB.⁶¹ Unless they follow the “creative” example set in Houston, all public schools will be failing by 2014.

⁵⁶ Snell, *supra* note 47, at 26-27.

⁵⁷ CYNTHIA G. BROWN ET AL., U.S. CHAMBER OF COMMERCE, LEADERS AND LAGGARDS 2007: MAJOR FINDINGS, *available at* <http://www.uschamber.com/reportcard/2007/major-findings>.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Ravitch, *supra* note 46 (emphasis added).

⁶¹ Christine Amario, *Duncan: 82 percent of US Schools May Be Labeled “Failing” Under No Child Left Behind Policies*, HUFFINGTON POST, Mar. 9, 2011, http://www.huffingtonpost.com/.../failing-schools-82-percent_n_833653.html.

C. *Mississippi's Misplaced Money Priorities:
Minimally Adequate Schools and Maximally Funded Prisons*

*“14,000 Mississippi students drop out every year . . .
40 students drop out every day.”*⁶²

Mississippi has a less-than-enthusiastic stance on education. This lack of enthusiasm is transparent when considered in conjunction with the state's education funding. Mississippi pays its teachers an average salary of \$42,403 per year, ranking forty-eighth in the country.⁶³ This low compensation is paid despite the fact that Mississippi teachers obtain National Certifications, on a per capita basis, more often than teachers in forty-seven other states.⁶⁴ In 2007, Mississippi ranked last in per capita personal income, second-to-last in school financing from local and state property tax income, forty-seventh in funding per student, and second for percentage of school revenue supplied by the Federal Government.⁶⁵ With the approval of the Mississippi Adequate Education Program in 2010, Mississippi paid for schools, in part, by allocating \$4774 of state funds per student.⁶⁶ In 2007-2008, the combined state and federal spending totaled \$8691 per student.⁶⁷ For a small subset of students, Mississippi allows for increased spending. Schools receive additional funds if they have students with abilities (\$19,806 per able student), talents (\$21,929 per talented student), or disabilities (\$57,879 per disabled student).⁶⁸ Nonetheless, the state's graduation rate of sixty-two percent,⁶⁹ among the lowest in the nation, is the ultimate reflection of Mississippi's dedication to its students.

⁶² EFFECTIVE DISCIPLINE, *supra* note 23, at 2 (quoting Dr. Hank Bounds).

⁶³ NATIONAL EDUCATION ASSOCIATION, RANKINGS & ESTIMATES: RANKINGS OF THE STATES 2009 AND ESTIMATES OF SCHOOL STATISTICS 2010 18 (2009) [hereinafter NEA], *available at* <http://www.nea.org/assets/docs/010rankings.pdf>.

⁶⁴ Mississippi Department of Education, *Fiscal Year 2012 Budget Request: Legislative Budget Committee Hearing*, at 21 (Sept. 21, 2010) [hereinafter MDE], http://www.mde.k12.ms.us/PDF/2012_Budget_Presentation.pdf.

⁶⁵ NEA, *supra* note 63, at 26, 32, 42.

⁶⁶ MDE, *supra* note 64, at 17.

⁶⁷ NEA, *supra* note 63, at 39.

⁶⁸ MDE, *supra* note 64, at 25-27 (allocating \$19,800 for each of the 230 students at the Mississippi School for Math and Science, \$21,900 for each of the 123 students at the Mississippi School for the Arts, and \$57,800 for each of the 203 students at the Mississippi Schools for the Blind & the Deaf).

⁶⁹ EFFECTIVE DISCIPLINE, *supra* note 23, at 3.

As an example of misplaced priorities, the state also allows for different levels of funding for its prisons.⁷⁰ Mississippi's funding level for prisoners depends on the prisoner's level of security, with different expenditures for minimum- (\$18,173), medium- (\$15,395), psychiatric- (\$19,399), and maximum- (\$37,989) security incapacitation.⁷¹

The point is immediately clear. Mississippi historically and consistently ranks among the most conservative in denying state funding to education.⁷² "A recent analysis from the U.S. Department of Justice reports that Mississippi now ranks third in the nation, behind only Louisiana and Texas, in its rate of incarceration."⁷³ Mississippi also leads the country in its approval of discretionary state spending on prisons.⁷⁴ Additionally, from 1989 to 1998, the state increased its spending for prisons by 115%, while higher education spending increased "by *less than one percent*."⁷⁵ During the same time period, "Mississippi built 16 new correctional facilities," six of which were for-profit, private prisons, but the state has not built one new four-year college or university in the last fifty years.⁷⁶ Former Mississippi Governor Ronnie Musgrove exclaimed, "[w]e are taking money away from children and teachers in the classroom. We're taking money from the Institutions of Higher Learning. We're taking money away from our community colleges . . . yet we're going to pay money for prisoners located throughout the Mississippi system under the theory that it's good policy."⁷⁷ A report in 2007 found that Mississippi's penal system expanded by 166% from 1990, when 8000 people were imprisoned, to 2007, when 21,000 prisoners were behind Mississippi's bars.⁷⁸ This increase led to a yearly cost of \$292 million to keep low-level, non-violent drug offenders and parole violators locked up.⁷⁹ This money, consequently, could not be

⁷⁰ J. LEGIS. COMM. ON PERFORMANCE EVALUATION AND EXPENDITURE REVIEW (PEER), REPORT TO THE MISSISSIPPI LEGISLATURE: MISSISSIPPI DEPARTMENT OF CORRECTIONS' FY 2010 COST PER INMATE DAY, REP. NO. 550 vi (2010) [hereinafter PEER], *available at* <http://www.peer.state.ms.us/reports/rpt550.pdf>.

⁷¹ *Id.* (costing \$49.79 per day for minimum-security prisoners (\$18,173.35 per year), \$42.18 per day for medium-security prisoners (\$15,395 per year), \$53.15 per day for inmates needing psychiatric services (\$19,399.75 per year), and \$104.08 per day for maximum-security prisoners (\$37,989.20 per year)).

⁷² GRASSROOTS LEADERSHIP, EDUCATION V. INCARCERATION: A MISSISSIPPI CASE STUDY 2 (2001) [hereinafter EDUCATION V. INCARCERATION], *available at* http://www.grassrootsleadership.org/_publications/MSEdVIn.pdf.

⁷³ Marc Mauer & Ron Welch, *A balanced policy needed*, THE CLARION-LEDGER, Feb. 4, 2007, <http://sentencing.nj.gov/downloads/pdf/articles/2007/Mar2007/news20.pdf>.

⁷⁴ EDUCATION V. INCARCERATION, *supra* note 72, at 1-3.

⁷⁵ *Id.* at 1 (emphasis added).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Mauer, *supra* note 73.

⁷⁹ *Id.*

spent on other needs such as education, health care, or treatment for substance abuse.⁸⁰

Mississippi would accomplish more if it increased funding for education and health care to benefit its chronically suffering teenage population.⁸¹ The policy of “being tough on crime” that has helped feed the nation’s ballooning penal system is one that sounds good in theory but does not work practically, as proven by the research on Mississippi.⁸² What is needed is a policy that trades “tough” for “smart” and uses tax dollars and resources in a more responsible way.⁸³

D. *The Numbers are In:*

The Economic Argument in Favor of Funding Equality in Education

The severance of the School-to-Prison Pipeline is relevant, not just to the individuals that find themselves incarcerated, but also because of its profound generational and societal impact.⁸⁴ “[S]ome of the greatest economic benefits of earning a diploma are realized in the next generation, [and thus] the most significant loss is in the future.”⁸⁵ The generational cost is profound, but the “loss to society is immeasurable.”⁸⁶ Communities not only lose the bright and creative potential of their young students, but they also find themselves committing to greater expenditures to care for these students as they age.⁸⁷ The cost of funding an adolescent’s education is usually less than the future cost of elder care for the same person.⁸⁸

⁸⁰ *Id.*

⁸¹ EDUCATION V. INCARCERATION, *supra* note 72, at 2; See Press Release, Trust for America’s Health, New Report Finds Obesity Epidemic Increases, Mississippi Weighs in as Heaviest State: Experts Recommend Addressing Obesity through Health Reform, National Strategy (July 1, 2009), *available at* <http://healthyamericans.org/newsroom/releases/?releaseid=182> (discussing the need for better health reform as Mississippi has the highest rate of obese and overweight children in the U.S.); See also Lindsay Lyon, *Teen Birthrates: Where Does Your State Rank*, U.S. NEWS & WORLD REPORT, Jan. 8, 2009, *available at* <http://health.usnews.com/health-news/articles/2009/01/08/teen-birthrates-where-does-your-state-rank> (stating that Mississippi had the highest teen pregnancy rate in the U.S. in 2006).

⁸² Mauer, *supra* note 73.

⁸³ *Id.*

⁸⁴ KIM, *supra* note 3, at 4.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

Severing the pipeline saves and generates money.⁸⁹ A recent study conducted by a team of economists from Columbia University, Princeton University, and Queens College, predicted that an increase in graduation rates “would decrease violent crime by 20 percent and drug and property crimes by more than 10 percent,”⁹⁰ resulting in an average lifetime savings per additional graduate of \$26,600.⁹¹ Additionally, when the full range of benefits is considered, and factors such as “increases in productivity, tax revenues, and family stability and reductions in the need for public support such as welfare are included, the benefits grow exponentially while the costs remain the same.”⁹² An exhaustive 2004 study expanded on the idea that education would have a positive effect on the nation as a whole.⁹³ The study concluded that adding a single year to a student’s schooling reduced the rates of “murder and assault by almost 30%, motor vehicle theft by 20%, arson by 13%, and burglary and larceny by about 6%.”⁹⁴ Furthermore, “estimates imply that nearly 400 fewer murders and 8,000 fewer assaults would have taken place in 1990 if high school graduation rates had been one percentage point higher.”⁹⁵ This translates to a savings of \$1.1 billion from murder costs alone.⁹⁶ There is not a more compelling reason to decrease high-school dropout rates.⁹⁷

On a national-level, if the education policy is left unchanged, then the potential damage from the STPP could be financially devastating in the near future. In an analysis of the most recent Organization for Economic Co-operation and Development (OECD)⁹⁸ scores, a report found that a modest gain of twenty-five points in reading, math, and science scores over a period of twenty years would

⁸⁹ *Id.* at 9 (“As a society, we rely too much on juvenile court referrals and incarceration to respond to problematic behavior, even though research demonstrates that investing resources in education can improve behavior and prevent delinquency, saving money in the long term.”).

⁹⁰ *Id.* at 9 (citing Henry Levin et al., *The Costs and Benefits of an Excellent Education for America’s Children*, 13 (2007), http://www.cbcse.org/media/download_gallery/Leeds_Report_Final_Jan2007.pdf).

⁹¹ Levin, *supra* note 90, at 14 (“The average saving per new high school graduate is \$26,600.”).

⁹² KIM, *supra* note 3, at 9; *See generally* Levin, *supra* note 90, at 13.

⁹³ Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*, AM. ECON. REVIEW, 19 (Oct. 2003), available at <http://www.econ.berkeley.edu/~moretti/lm46.pdf> (originally published in 94 AM. ECON. REVIEW 155).

⁹⁴ *Id.*

⁹⁵ *Id.* at 25.

⁹⁶ *Id.*

⁹⁷ *Id.* at 27.

⁹⁸ *See generally* ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html (last visited Dec. 17, 2011).

yield a gain of \$41 trillion over the life of the 2010 generation.⁹⁹ A return to the top of the global rankings “could result in gains in the order of 103 trillion dollars” for the United States over the life of the 2010 generation.¹⁰⁰ Acknowledging these results, the United States Secretary of Education, Arne Duncan, stated, “[t]his is an absolute wake-up call for America,’ ‘The results are extraordinarily challenging to us[,] and we have to deal with the brutal truth. We have to get much more serious about investing in education.’”¹⁰¹

Education policy leaders must also examine programs to determine which are successful and which are not by using a cost-benefit analysis. A 2003 report catalogued several successful intervention programs for at-risk youth.¹⁰² Some programs, such as anger-management classes, family therapy, multi-systemic therapy, and expanded pre-school, all had significant front-end costs, but greater net-economic benefit.¹⁰³ Other programs, such as the harsh and retributive programs like juvenile boot camp and “scared-straight” programs, had extremely low front-end taxpayer costs or were completely subsidized, but they produced detrimental economic results.¹⁰⁴

⁹⁹ Karin Zietvogel, *US falls to average in education ranking*, THE GLOBAL RIPPLE (Dec. 7, 2010, 7:18 AM), <http://centerforgloballeadership.wordpress.com/2010/12/08/us-tanks-in-global-education-rankings/>.

¹⁰⁰ *Id.*

¹⁰¹ Christine Amario, *Wake-up Call: U.S. students trail global leaders*, ASSOCIATED PRESS, Dec. 7, 2010, available at http://www.msnbc.com/id/40544897/ns/us_news-life/.

¹⁰² Daniel M. Osher et al., *Deconstructing the Pipeline: Using Efficacy, Effectiveness, and Cost Benefit Data to Reduce Minority Youth Incarcerations*, 99 NEW DIRECTIONS FOR YOUTH DEV. 91, 93 (2003).

¹⁰³ *Id.* (quoted, in relevant part, below).

Cost-benefit analyses of programs

	Net Program Cost	Net Taxpayer and Crime Victim Benefits, per Participant	Benefit-Cost Ratio
Aggression replacement training	\$738	\$33,143	\$44.91
Functional family therapy	\$2,161	\$59,067	\$27.33
Multisystemic therapy	\$4,743	\$131,918	\$27.81
Perry Preschool Program	\$14,716	\$105,000	\$7.16

¹⁰⁴ *Id.* (quoted, in relevant part, below).

Cost-benefit analyses of programs

	Net Program Cost	Net Taxpayer and Crime Victim Benefits, per Participant	Benefit-Cost Ratio
Juvenile Boot Camps	-\$15,424	-\$3,587	N/A
“Scared straight” programs	\$51	-\$24,351	N/A

States spend approximately \$5.7 billion each year just to house “locked-up” minors, and this amount does not even include the state’s cost of litigating claims or other costs associated with detention.¹⁰⁵ This waste is exacerbated by the finding that two-thirds of the teenagers in juvenile detention facilities are there for non-violent offenses.¹⁰⁶ Examples of these non-violent offenses include not making an appointment with their probation officer correctly, failing a drug test, or some other technical violation of parole.¹⁰⁷

III. EDUCATION IN PRISON

A. *Zero Tolerance: Watch that First Step – It’s a Pipeline to Prison*

Faced with insufficient funds and a perverse incentive to push out low-performing students, many schools have embraced zero-tolerance policies.¹⁰⁸ They have resulted in an explosion of school suspensions, expulsions, and arrests that unfortunately contribute to and reinforce the School-to-Prison Pipeline.¹⁰⁹ Studies show that a short exclusion from school disrupts the student’s education and increases the likelihood that the student drops out, commits a crime, and later becomes incarcerated as an adult.¹¹⁰ Similarly, “[t]he single largest predictor of later arrest among adolescent females is having been suspended, expelled, or held back during the middle school years.”¹¹¹ Nonetheless, “[s]ince 1992, 45 states have passed laws making it easier to try juveniles as adults, 31 have stiffened sanctions against youths for a variety of offenses and 47 loosened confidentiality provisions for juveniles.”¹¹² Many states have legislation that runs counter to the best interests of students who are most vulnerable to being pushed out by zero-tolerance policies.

¹⁰⁵ Justice Policy Institute, *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*, 1 (2009) [hereinafter *The Costs of Confinement*], http://www.justicepolicy.org/uploads/justicepolicy/documents/09_05_rep_costsofconfinement_jj_ps.pdf.

¹⁰⁶ *Id.* at 3.

¹⁰⁷ *Id.*

¹⁰⁸ KIM, *supra* note 3, at 2-3 (indicating that there were over 3.2 million school suspensions in 2004 and, in some states, the total number of suspensions exceeded the total number of students; observing over 106,000 recorded expulsions in 2004).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 3.

¹¹¹ Wald, *supra* note 12, at 11.

¹¹² Johanna Wald & Daniel Losen, The Civil Rights Project, *Defining and Redirecting a School-to-Prison Pipeline*, Framing Paper for the *School-to-Prison Pipeline* Research Conference, 3 (May 16-17, 2003), available at http://www.justicepolicycenter.org/Articles%20and%20Research/Research/testprisons/SCHOOL_TO_%20PRISON_%20PIPELINE2003.pdf.

What we now know as “zero-tolerance” policies in schools dates back to the Gun Free Schools Act, passed in 1994.¹¹³ The Act required every state to enact a policy of a one-year expulsion for any student caught in possession of a gun on school grounds, with one caveat allowing the school’s administration to evaluate expulsion of the student “on a case-by-case basis.”¹¹⁴ The law has proven ineffective as a restraint on gun violence in schools.¹¹⁵ The law, however, does have a lasting legacy in mandating zero-tolerance policies as “[s]tates and localities have expanded zero-tolerance beyond expulsions for firearms [to] everything from weapons to drugs to smoking to fights.”¹¹⁶ The new interpretation of “zero tolerance” does not allow for the case-by-case exceptions of the Gun Free School Act, and it is frequently used to push out students “for minor offenses such as dress-code violations, truancy, or tardiness.”¹¹⁷ “Aspirin, Midol, and even Certs have been treated as drugs, and paper clips, nail files, and scissors have been considered weapons.”¹¹⁸ Despite the facially neutral language used in zero-tolerance policies, researchers have found that, in reality, African-American students are far more likely than white students to be punished for violations concerning disrespect, making threats, walking the hallways during class time, and being loud.¹¹⁹ By definition, today’s zero-tolerance policies insist on a predetermined punishment, without a case-by-case review of a student’s personal circumstances, “such as age, cognitive capacity, or even the existence of intent.”¹²⁰ Juvenile offenders should not be held to a standard that even adult offenders cannot meet. As noted by the American Bar Association, “zero-tolerance policies . . . adopt a theory of mandatory punishment that has been rejected by the adult criminal justice system because it is too harsh!”¹²¹

¹¹³ KIM, *supra* note 3, at 79.

¹¹⁴ *Id.*

¹¹⁵ Habib Ozdemir & Ramazan Yalcinkaya, *Zero Tolerance in Implementation of Gun-Free School Zones Act of 1995 in the USA* 9 (Int’l Police Exec. Symposium, Geneva Ctr. for the Democratic Control of Armed Forces, Working Paper No. 32, 2011), *available at* http://www.ipes.info/WPS/WPS_No_32.pdf.

¹¹⁶ KIM, *supra* note 3, at 79.

¹¹⁷ *Id.* at 80.

¹¹⁸ ADVANCEMENT PROJECT, OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO-TOLERANCE AND SCHOOL DISCIPLINE, (2002) [hereinafter OPPORTUNITIES SUSPENDED], *available at* <http://www.advancementproject.org/digital-library/publications/opportunitites-suspended-the-devastating-consequences-of-zero-tolerance->.

¹¹⁹ Wald, *supra* note 112, at 3; *See* 20 U.S.C.A. § 6301 (2002).

¹²⁰ KIM, *supra* note 3, at 80.

¹²¹ *Id.* (citing RALPH C. MARTIN, II, ABA JUVENILE JUSTICE POLICIES, ZERO TOLERANCE POLICIES: REPORT (2001), *available at* <http://www.maine.gov/education/spced/tools/b4se/reports/discipline/policyaba.pdf>).

Harsher still is the increase of in-school arrests of students.¹²² In the late 1960's it was clear that Congress intended to avoid school-based arrests for minor crimes.¹²³ Congress passed the Juvenile Delinquency Prevention and Control Act in 1968, which encouraged schools to reform non-criminal offenders outside of the court system.¹²⁴ Six years later, Congress passed the Juvenile Justice and Delinquency Prevention Act, pinning state federal funding on the existence of a reform system using preventative and constructive methods rather than punitive deterrents.¹²⁵ Nonetheless, schools currently employ law-enforcement techniques against students, including random locker and classroom sweeps, and searches of students; in some cases, these techniques are performed by a school-based police officer.¹²⁶ Increasingly, students are arrested at school for minor offenses.¹²⁷ In response, a youth-court judge remarked, "we're arresting children for offenses no one should be arrested for."¹²⁸ Recent causes of school arrests have been as simple as texting, farting, and failing to immediately clean up spilled cake to a teacher's satisfaction.¹²⁹ Even a six year old was arrested, and subsequently charged with resisting arrest for throwing a temper tantrum.¹³⁰

An example of extreme zero tolerance comes from Mississippi.¹³¹ During a bus ride home from school, some African-American students "were playfully

¹²² KIM, *supra* note 3, at 112 (referring to Paul J. Hirschfield, *Preparing for Prison? The criminalization of school discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 80 (2008); Daveen Rae Kurutz, *School arrests, citations jump by 46 percent*, PITTSBURGH TRIBUNE-REVIEW, Aug. 23, 2008, available at http://www.pittsburghlive.com/x/pittsburghtrib/news/mostread/s_584512.html).

¹²³ COLEY, *supra* note 26, at 12. Since 1985, the number of people incarcerated has increased from about 744,000 to 1.6 million in 1995 and to 2.1 million in 2004—an increase of 186%. *Id.* at 7. "While all sectors have grown over that time period, the highest growth was in the federal prison population, which increased by 373%." *Id.*

¹²⁴ *Id.* at 11.

¹²⁵ *Id.*

¹²⁶ KIM, *supra* note 3, at 112-13 (citing Matthew T. Theriot, *School resource officers and the criminalization of student behavior*, 37 J. OF CRIM. JUST. 280 (2009) (defining this officer, known as a School Resource Officer (SRO), and the correlations that have been made between the very presence of this officer on campus and the number of school-based arrests for "disorderly conduct")).

¹²⁷ *Id.* (including offenses such as "disturbing schools" and/or "disorderly conduct").

¹²⁸ Marie Leech & Carol Robinson, *City Schools Rely on Arrests to Keep Order*, BIRMINGHAM NEWS, Mar. 22, 2009, at 1A, available at http://www.al.com/news/index.ssf/2009/03/city_schools_rely_on_arrests_t.html (finding that at least 38% of students arrested in Birmingham, AL schools for 2007-2008 were for "disorderly conduct" or "harassment").

¹²⁹ KIM, *supra* note 3, at 195 (citing Sharif Durhams, *Tosa east student arrested, fined after repeated texting*, MILWAUKEE JOURNAL SENTINEL, Feb. 18, 2009, at B8; Liz Doup, *Student Arrested for Passing Gas and Turning Off Classmates' Computers*, SOUTH FLORIDA SUN-SENTINEL (Nov. 22, 2008 12:00 PM), http://weblogs.sun-sentinel.com/news/specials/weirdflorida/blog/2008/11/student_arrested_for_passing_g.html; Ann N. Simmons, *Scuffle Exposes a Racial Rift*, L.A. TIMES, Oct. 11, 2007, at B1).

¹³⁰ *Id.* (citing Bob Herbert, *6-Year-Olds Under Arrest*, N.Y. TIMES, Apr. 9, 2007, at A17).

¹³¹ OPPORTUNITIES SUSPENDED, *supra* note 118, at 2-3 (providing throughout the article an interesting account of other ridiculous zero-tolerance stories that were destructive to students,

throwing peanuts at one another.”¹³² The white bus driver called the police after one of the peanuts accidentally hit her.¹³³ The police then diverted the bus to the local courthouse and questioned the students.¹³⁴ Five African-American male students were then arrested for felony assault.¹³⁵ Although the charges were dropped, the five young men subsequently lost their bus privileges, and, as a result, all five students dropped out of school due to lack of transportation.¹³⁶ The sheriff in charge of the arrests told the newspaper, “this time it was peanuts, but if we don’t get a handle on it, the next time it could be bodies.”¹³⁷

B. “Educating” Teens in Prison:

Mississippi’s Juvenile Justice System – Oakley, Columbia, and Walnut Grove

*But that I am forbid / To tell the secrets of my prison house, / I could a tale
unfold whose lightest word / Would harrow up thy soul, freeze thy young blood, /
Make thy two eyes, like stars, start from their spheres . . .*¹³⁸

What happens when education fails and youth are put on the “prison track” along the School-to-Prison Pipeline? More likely than not, they are placed in a juvenile detention center. As of May 2009, 93,000 adolescents were being held in detention centers nationally.¹³⁹

In Mississippi, many children find themselves in the juvenile justice system.¹⁴⁰ Once in the system, some children are denied education, refused mental

families, and communities, including the tale of the six-year-old who received a 10-day suspension for possession of toenail clippers—this act apparently caused a school board member to scream, “[t]his is not about a toenail clipper! This is about the attachments on the toenail clipper!” (cited on *CBS Evening News*, (June 8, 2000)). See also John W. Whitehead, *Zero Tolerance Schools Discipline Without Wiggle Room*, HUFFINGTON POST, Feb. 8, 2011, available at http://www.huffingtonpost.com/john-w-whitehead/zero-tolerance-policies-schools_b_819594.html.

¹³² OPPORTUNITIES SUSPENDED, *supra* note 118, at 2-3.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* (indicating that the school was located thirty miles away from the student’s homes).

¹³⁷ *Id.* at 2.

¹³⁸ WILLIAM SHAKESPEARE, *HAMLET* act 1, sc. 5.

¹³⁹ *The Costs of Confinement*, *supra* note 105, at 1.

¹⁴⁰ Letter from Assistant Attorney General Ralph F. Boyd, Jr. to Gov. Ronnie Musgrove, *Re: CRIPA Investigation of Oakley and Columbia Training Schools in Raymond and Columbia, Mississippi*, *passim* (June 19, 2003) [hereinafter *CRIPA Investigation*], available at http://www.justice.gov/crt/about/spl/documents/oak_colu_miss_findinglet.pdf.

health services, and subjected to degrading conditions.¹⁴¹ In 2002, Oakley Training School and Columbia Training School were investigated for violations of the Civil Rights of Institutionalized Persons Act 42 U.S.C. § 1997 (1980) (CRIPA).¹⁴² Among the findings at both campuses, children ages ten to fifteen were repeatedly hog-tied, publicly shackled to poles and chairs, assaulted, and pepper-sprayed by the staff for minor insubordinations.¹⁴³ The practice of hog-tying a juvenile inmate refers to a punishment “where youth are placed face down on the floor with their hands and feet shackled and drawn together. That is, youths’ hands are handcuffed behind their backs. Their feet are shackled together and then belts or metal chains are wrapped around the two sets of restraints, pulling them together.”¹⁴⁴

A thirteen-year-old boy, who “had been severely sexually and physically abused by family members,” was restrained by staff in a chair for hours, ignored, and denied opportunity for schooling.¹⁴⁵ A few days prior to this atrocity, the boy “had been locked naked in his empty cell. His cell smelled of urine, and [there were] torn pieces of toilet paper on the concrete floor that he had been using as a pillow.”¹⁴⁶

At Oakley, over half of the youth reported that staff had physically assaulted them.¹⁴⁷ The youth reported being punched, slapped, choked, pepper-sprayed, placed in a “sleeper hold,”¹⁴⁸ or having their heads shoved into a toilet.¹⁴⁹ Detention staff openly admitted that a counselor who was physically abusive “would never be held accountable.”¹⁵⁰ The findings indicate that this statement is true because no reports were ever filed about the abuse.¹⁵¹ Youth reported being pepper-sprayed while restrained inside locked cells and while hog-tied.¹⁵² One already suicidal girl reported being sprayed for refusing to remove her clothes prior to “being placed in the ‘dark room.’”¹⁵³ A general assembly was held to address these incidents.¹⁵⁴ When students raised concerns regarding assaults by staff members, an

¹⁴¹ *Id.* at 6-12, 15-17, 26-29.

¹⁴² *Id.* at 1.

¹⁴³ *Id.* at 3-11, 19.

¹⁴⁴ *Id.* at 6.

¹⁴⁵ *Id.* at 19.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 10.

¹⁴⁸ *Id.* at 11.

¹⁴⁹ *Id.* at 10-11, 13-14.

¹⁵⁰ *Id.* at 10.

¹⁵¹ *Id.*

¹⁵² *Id.* at 11.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 10.

administrative official responded, “youths were not allowed to defend themselves against staff who assaulted them.”¹⁵⁵

It is estimated that sixty-six to eighty-five percent of the juvenile inmate population in Mississippi have mental disorders.¹⁵⁶ Female detainees who act out, including those who attempt suicide, report being forced to strip naked and spend days isolated in the “dark room.”¹⁵⁷ The “dark room” is an empty room that merely has a hole in the floor to be used as a toilet.¹⁵⁸ The children in these programs were subject to “conditioning” programs that consisted of drills requiring them to run or march for hours, while carrying bed mattresses on their backs or wearing automobile tires around their waists.¹⁵⁹ In extreme cases, some students were forced to eat their vomit if they got sick during conditioning.¹⁶⁰ Finally, female inmates reported being watched by a guard who stood at a window while they removed their clothes before bed.¹⁶¹ Youths in both centers stated that they often did not report the violations because they feared retaliation.¹⁶²

Oakley and Columbia Juvenile Detention Centers failed to provide adequate educational services to children in detention.¹⁶³ This failure extended to all types of students, from those enrolled in general education programs to those needing special education.¹⁶⁴ Further punishment included intentionally depriving some juveniles of an opportunity to receive an education.¹⁶⁵ Contrary to the incidents described above, scholars emphasize that residential facilities must provide quality

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 15 (finding in a 2001 study that this percentage “met DSM-IV diagnostic criteria for a mental disorder”).

¹⁵⁷ *Id.* at 7.

¹⁵⁸ *Id.* Two girls reported separate incidents in which they were forced to strip naked and then spend three days in complete darkness. *Id.* One stated that she was allowed to take a shower once a day; the other that her repeated requests for water were, for the most part, ignored. *Id.*

¹⁵⁹ *Id.* at 9.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 13.

¹⁶² *Id.*

¹⁶³ *Id.* at 28.

¹⁶⁴ *Id.* at 27-30 (“Youth committed for the first time receive no education for three weeks. Youth who are re-committed receive no education for five weeks.” *Id.* at 27-28. “Oakley and Columbia fail to follow key provisions of the IDEA and other special education services mandates. School administrators at both facilities were either unaware of the IDEA or erroneously believed their schools were exempt from its requirements.” *Id.* at 30.).

¹⁶⁵ *Id.* at 29. Youth in isolation are provided around one hour of instruction per day, less than twice a week. *Id.* Even then they are provided no pencils, hampering their ability to complete their assignments. *Id.* Also, anytime a student is shackled or placed in “the dark room” they would be unable to participate in the educational process for hours, days, and weeks on end. *Id.*

education in order to accomplish the goal of rehabilitating troubled juveniles into productive adults.¹⁶⁶

In 2007, Mississippi's per day cost to house a juvenile in detention was higher than most other states' per day housing cost.¹⁶⁷ That same year, Mississippi spent roughly \$6500 to educate its children in schools.¹⁶⁸ Therefore, Mississippi's juvenile detention spending was *twenty-four times* its education expenditures in 2007.¹⁶⁹ Despite this twenty-four-fold increase in spending on juvenile detention centers, detained children were assaulted, abused, and denied any education.¹⁷⁰ Indeed, for what the state paid to incarcerate one child in an educationally debilitating juvenile detention center, the state could have paid for three students to attend Harvard University.¹⁷¹ Mississippi spends so much money on the cost of detention that researchers have called it "a spectacularly unsuccessful treatment" with little likelihood of "reduc[ing] criminal behavior and in some cases actually increas[ing] it."¹⁷²

Recently, the Southern Poverty Law Center, the American Civil Liberties Union (ACLU), and Robert B. McDuff, a Jackson, Mississippi civil rights attorney, filed a class action suit against another Mississippi juvenile detention center, Walnut Grove Youth Correctional Facility (WGYCF/Walnut Grove), a for-profit organization.¹⁷³ The introductory allegations fit the standard STPP claim: Walnut Grove received at least \$41 million in taxpayer money from the state of Mississippi, failed to provide a safe or humane environment for its wards, and affirmatively subjected the children in its care to horrific abuse.¹⁷⁴ The allegations against Walnut Grove rise to a new level of horror compared to the events described at Oakley and

¹⁶⁶ COLEY, *supra* note 26, at 12.

¹⁶⁷ *The Costs of Confinement*, *supra* note 105, at 4. Connecticut was the only state with a higher per day cost than Mississippi. *Id.*

¹⁶⁸ Sewell Chan, *The Highest Per-Pupil Spending in the U.S.*, N.Y. TIMES (May 24, 2007, 10:25 AM), <http://empirezone.blogs.nytimes.com/2007/05/24/the-highest-per-pupil-spending-in-the-us/>.

¹⁶⁹ *The Costs of Confinement*, *supra* note 105, at 4.

¹⁷⁰ CRIPA Investigation, *supra* note 140, at 6-12, 15-17, 29.

¹⁷¹ HARVARD COLLEGE OFFICE OF ADMISSIONS: COST OF ATTENDANCE FOR 2011-2012, http://www.admissions.college.harvard.edu/financial_aid/cost.html (last visited Dec. 18, 2011) (attending Harvard during the 2011-2012 school year, including room, board, and estimated personal expenses, is approximately \$56,000 per year).

¹⁷² KIM, *supra* note 3, at 4.

¹⁷³ S. Poverty Law Ctr., *Federal Lawsuit Reveals Inhumane Conditions at For-Profit Youth Prison*, Nov. 16, 2010, available at <http://www.splcenter.org/get-informed/news/federal-lawsuit-reveals-inhumane-conditions-at-for-profit-youth-prison>.

¹⁷⁴ Sheila A. Bedi, Complaint for *C.B. v. Walnut Grove Correctional Authority*, 2 (Nov. 16, 2010), available at <http://www.aclu.org/files/assets/2010-11-16-WalnutGroveComplaint.pdf>. (representing the cost of the physical building; also, Mississippi taxpayers subsidize WGYCA with \$31.40 per youth per day, which comes out to \$47,100 a day, and \$17,191,500 every single year).

Columbia.¹⁷⁵ Walnut Grove staff members handcuffed, pepper-sprayed, kicked, beat, and punched juveniles all over their bodies.¹⁷⁶ The staff did not just demand the children strip naked before forcing them into isolation, but they also violently raped these children according to the allegations in the class-action lawsuit.¹⁷⁷ Staff indifference has resulted in many outrages at Walnut Grove. Some of these outrages include a twenty-four-hour rape and assault of one juvenile, a stabbing of another juvenile, and a battery that caused permanent brain damage of a third juvenile.¹⁷⁸

Walnut Grove is the nation's largest juvenile detention facility.¹⁷⁹ The facility began as a facility for thirteen to eighteen year olds.¹⁸⁰ When this arrangement was no longer profitable, the Mississippi legislature gave permission to Walnut Grove to incarcerate youth up to the age of twenty-two, making it the only facility that incapacitates thirteen year olds and twenty-two year olds together.¹⁸¹ Alarming, there has been local backlash against the investigation and judicial proceedings against Walnut Grove.¹⁸² This may be expected when one considers that WGYCF provides the town of Walnut Grove with fifteen percent of its overall budget for the year.¹⁸³ "All of this raises the [following] question: [i]s oversight of the Walnut Grove Youth Correctional Facility negligent because it's a golden goose?"¹⁸⁴ When State Representative Earle Banks initiated the investigation into the abuses at Walnut Grove, he said, "this community is just making so much money off Walnut Grove that no one wants to upset the applecart . . . [T]hat means they're not gonna make their money anymore."¹⁸⁵

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 2-3.

¹⁷⁷ *Id.* at 3.

¹⁷⁸ *Id.*

¹⁷⁹ John Burnett, *Town Relies on Troubled Youth Prison for Profits*, NATIONAL PUBLIC RADIO, Mar. 25, 2011, available at <http://www.npr.org/2011/03/25/134850972/town-relies-on-troubled-youth-prison-for-profits>.

¹⁸⁰ *Id.* at 4.

¹⁸¹ *Id.* ("Initially it was to be 13-through 18-year-olds," Mayo said, "And then, quite frankly, that did not populate Walnut Grove to be what I'm going to call a 'profitable operation.'" (quoting State Legislator John Mayo, who voted against every expansion of Walnut Grove)).

¹⁸² *Id.* at 5.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 6.

¹⁸⁵ Burnett, *supra* note 179, at 6.

C. *Bard College: What Works*

*“Education makes a people easy to lead, but difficult to drive;
easy to govern, but impossible to enslave.”*¹⁸⁶

Beginning in 1995, Bard College (Bard) has fought to promote education as a method crime and recidivism prevention by advocating on behalf of incarcerated persons seeking education.¹⁸⁷ Relying on governmental reports supporting its position,¹⁸⁸ Bard emphasized, “postsecondary education is the most successful and cost-effective method of preventing crime.”¹⁸⁹ A special report issued by the Bureau of Justice Statistics found that sixty-eight percent of inmates incarcerated in state prisons never earned a high school diploma.¹⁹⁰ According to government statistics, “19% . . . of adult inmates are illiterate, and up to 60% are functionally illiterate.”¹⁹¹

Several state studies have found “a consistent positive relationship between participation, educational attainment and lowered rates of recidivism.”¹⁹² Inmates who take classes while incarcerated have reduced their rate of recidivism by twenty-nine percent.¹⁹³ This method of rehabilitation is more cost effective than “boot camps, shock incarceration, or vocational training.”¹⁹⁴ In Texas, the recidivism rates for degree holders declined from a system-wide rate of forty-three percent to just twelve percent only two years after release.¹⁹⁵ The rate of recidivism further decreased to just 7.8% a full eight years after release.¹⁹⁶ Despite the positive effect

¹⁸⁶ THE TIMES BOOK OF QUOTATIONS 220 (Harper Collins 2000) (quoting Lord Henry Brougham).

¹⁸⁷ Daniel Schorn, *Maximum Security Education*, 60 MINUTES, Apr. 15, 2007, available at <http://www.cbsnews.com/stories/2007/04/15/60minutes/main2685164.shtml>.

¹⁸⁸ Daniel Karpowitz & Max Kenner, *Education as Crime Prevention: The Case for Reinstating Pell Grant Eligibility for the Incarcerated*, 3 (2002), available at www.bard.edu/bpi/pdfs/crime_report.pdf (“The data cited in this memo comes *exclusively* from official publications produced by or for the United States Government and the governments of the states.”).

¹⁸⁹ *Id.*

¹⁹⁰ CAROLINE WOLF HARLOW, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT, EDUCATION AND CORRECTIONAL POPULATIONS 1 (2003), available at www.policyalmanac.org/crime/archive/education_prisons.pdf.

¹⁹¹ Karpowitz, *supra* note 188, at 4.

¹⁹² *Id.* at 5.

¹⁹³ *Id.* at 4.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 5.

¹⁹⁶ *Id.*

of education on recidivism,¹⁹⁷ the Pell Grant policy was abandoned because “*less than 1/10 of one percent*” of Pell grants awarded in 1993 went to prisoners,¹⁹⁸ even though such a program would save the taxpayers millions of dollars.

Bard partnered with the Eastern Correctional Facility (Eastern), a maximum-security prison in New York, to promote the reduction of recidivism by allowing prisoners to take college classes.¹⁹⁹ At Eastern, Bard encountered inmates *eager* to take advantage of college courses.²⁰⁰ Testimonials from these inmates speak to the normalization effect of education.²⁰¹ The decrease in recidivism of the Eastern prisoners who participated in the Bard College program is evidence that more education could lead to less crime. The reduced rate of recidivism among Bard College student-inmates shows that early education in public schools taught students a constructive way of thinking about and dealing with their problems. This new way of thinking could have prevented much of the crime for which these inmates were later incarcerated. The prevention of these crimes through education, in turn, could have spared their victims pain and suffering, saved taxpayers from providing the unnecessary taxes attendant with the commission of crimes, and prevented the need to fund rehabilitation in prison to such an alarming degree.²⁰²

Salih Israel, Joe Bergamini, Reshawn Hughes, Wes Caines, and Travis Darshan are all inmates who deserve their stay in a maximum-security prison.²⁰³ While in prison, however, all five inmates have demonstrated a dedication to learning and obtaining a degree.²⁰⁴ They studied five to six hours a day, forcing their Bard College professors to make the prison lesson plans *more difficult* than those provided to Bard’s traditional non-inmate college students.²⁰⁵

More impressive than the inmates’ dedication to studying and learning is the creativity they demonstrate in liberal arts courses like English, German, philosophy, and sociology.²⁰⁶ Despite the criticism that Bard received for offering “impractical”

¹⁹⁷ Karpowitz, *supra* note 188, at 4.

¹⁹⁸ *Id.* at 7; See also U.S. DEPARTMENT OF EDUCATION: FEDERAL PELL GRANT PROGRAM, <http://www2.ed.gov/programs/fpg/index.html> (last visited Dec. 19, 2011) (describing the Pell Grant Program as having the goal of providing money to qualifying needs-based students pursuing an undergraduate degree).

¹⁹⁹ Schorn, *supra* note 187.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.* Salih Israel shot a woman in the commission of a robbery. *Id.* Joe Bergamini killed his mother. *Id.* Reshawn Hughes shot and killed a man. *Id.* Wes Caines was involved in a shootout that resulted in one man dying and another man sustaining serious injuries. *Id.* Travis Darshan robbed and killed a taxi driver *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

courses, inmates have taken an interest in obtaining a traditional liberal-arts college education.²⁰⁷ Israel lobbied for a German language course in order to expand his understanding of philosophy. He argued, “I mean, you’ve got Hegel, you have Marx, you have Kant. A lot of those prevailing ideas – they’re in German.”²⁰⁸ Furthermore, Bergamini highlighted the difference between an education in the humanities and in vocational trade:

Well, a vocational training will teach you how to do something, to have a job, but it doesn’t teach you how to think, and I think that’s the problem a lot of men in prison have is that they’re not thinking, they’re reacting. And a vocational program might give you the skills, to have a job, but it’s not gonna give you skills to have a life.²⁰⁹

Caines vocalized the real-world motivation he discovered behind Bard when he stated, “I really wanted [my daughters] to have a father figure who, when they looked at their father, [thought] he’s more than prison, he’s more than a prisoner.”²¹⁰ Hughes insists he would trade his new-found freedom at a medium-security prison for the maximum-security restrictions at Eastern, just so he could continue his education: “I would go right after this interview . . . I would go right now.”²¹¹

If nothing else, the support and success of this program stand for two related propositions: (1) the current public education system failed to derail the School-to-Prison Pipeline for these prisoners; and (2) the lack of curricular substance available to at-risk students was likely a leading cause of this phenomenon. The New York State Head of Corrections shared the prisoners’ enthusiasm and defended the Bard College program as a good way to achieve prison security and recidivism:

We treat inmates for medical reasons . . . for drug addition, why aren’t we treating inmates for educational needs? . . . Education changes people. And I think that’s what prisons should do. Change somebody from one way of thinking to a different way of thinking. Going to prison *is* the punishment.²¹²

²⁰⁷ *Id.* One criticism of the Bard College program, or any college course taken in prison, is that liberal arts courses are not practical, and prisoners should be learning a vocational trade—something useful. *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

The president of Bard College, Leon Borstein, was surprised “that it [took] radical incarceration, the loss of all hope[,] to engender a genuine love of learning.”²¹³

IV. CONCLUSION

There are several options to sever the School-to-Prison Pipeline. One option is to ensure that children in juvenile detention centers receive an appropriate education. This could be accomplished through an approach similar to the program initiated at Bard College, where universities offer degree programs to both adult and juvenile detainees.

Virtually any change of policy would be more cost-effective—and less abusive to juveniles and society—than the zero-tolerance approach to school discipline. “It is a truth universally acknowledged that education is the key to economic success”²¹⁴ of individuals and society as a whole. “[B]right children from poor families are less likely to finish college than much less able children [from] affluent [families] . . . [This is not] just an outrage; [it is] a huge waste of the nation’s human potential.”²¹⁵ The future of America, our youth, depends on the eradication of the School-to-Prison Pipeline.

²¹³ *Id.*

²¹⁴ Paul Krugman, *Degrees and Dollars*, N.Y. TIMES, Mar. 6, 2011, available at <http://www.nytimes.com/2011/03/07/opinion/07krugman.html>.

²¹⁵ *Id.*