

Confronting Racial Disparity: Legislative Responses to the School-to-Prison Pipeline

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I. INTRODUCTION

For a few months in 2007, the nation focused its attention on the fate of six young black men in the small town of Jena, Louisiana.¹ After a schoolyard fight left a white student unconscious, a local prosecutor charged the Jena Six with attempted murder and conspiracy.² On September 20, 2007, in a protest evocative of the civil rights era, thousands flocked to Jena to express their collective outrage at the severity of the criminal charges and to demand the release of Mychal Bell, who remained in prison even after a court voided his adult conviction.³ Although all of the students have since been released,⁴ the underlying incident illustrates both the growing criminalization of behavior at schools and the racially disparate impact of this trend. The Jena Six case provides a window into these problems as well as a platform upon which to advocate appropriate for legislative responses to the school-to-prison pipeline.

This Response examines potential legislative responses to the school-to-prison pipeline and advocates for a solution that will ultimately eliminate the racially disparate impact of the current system of juvenile discipline. After providing a brief background of the Jena Six case as a starting point for a broader discussion of the school-to-prison pipeline phenomenon, this Response analyzes two proposed legislative responses—the Gang Abatement and Prevention Act and the Youth Promise Act—and concludes with a recommendation.

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¹ See, e.g., *All Eyes on Jena: Thousands Prepare for Protests* (NPR radio broadcast Sept. 20, 2007), available at <http://www.npr.org/templates/story/story.php?storyId=14557603>. Hereinafter, this article refers to this group of defendants as the “Jena Six.”

² Richard G. Jones, *Protest in Louisiana Case Echoes the Civil Rights Era*, N.Y. TIMES, Sept. 21, 2007, at A15, available at <http://www.nytimes.com/2007/09/21/us/21jena.html>.

³ *Id.*; Richard G. Jones, *In Louisiana, a Tree, a Fight and a Question of Justice*, N.Y. TIMES, Sept. 19, 2007, at A14, available at <http://www.nytimes.com/2007/09/19/us/19jena.html>.

⁴ See *Mychal Bell of ‘Jena 6’ Released on Bail*, Sept. 27, 2007, CNN.COM, <http://edition.cnn.com/2007/US/law/09/27/jena.six/index.html> [hereinafter *Bell Released*] (only jailed member of Jena Six released).

II. THE JENA SIX

*They called it the White Tree. Not because of the color of its leaves or tint of its bark, but because of the kind of people who typically sat beneath its shade here at Jena High School.*⁵

In September 2006, racial tensions in Jena, Louisiana rose to the surface when black students who sat under the “white tree” found three nooses hanging from its branches the following day.⁶ School administrators briefly suspended the white students responsible for hanging the nooses.⁷ The ensuing tension—as manifested in a white student bringing a gun to school property,⁸ a school fire,⁹ and a protest on school property¹⁰—culminated in the now infamous fight outside the Jena High School gym. Six black students—Robert Bailey Jr., 17; Jesse Beard, 15; Mychal Bell, 17; Carwin Jones, 18; Bryant Purvis, 17 and Theo Shaw, 17—allegedly beat a white student who was associated with the students who hung the nooses.¹¹ The white student was treated and released from a local hospital the same day of the incident.¹² In response, the District Attorney for LaSalle Parish, Louisiana charged the six black students with attempted murder and conspiracy.¹³ The prosecutor lowered most of the charges to battery and conspiracy in response to public outrage, but Mychal Bell remained incarcerated after the initial charges were filed.¹⁴

The plight of the Jena Six is an extreme example of the alarming trend in disciplinary practices at Jena High School. During the 2006–2007 school year, 22.1% of students at Jena High School were subject to in-school suspension.¹⁵ Of the ninety black students at Jena, 41.1% received an in-school

⁵ Jones, *supra* note 3.

⁶ *Id.*

⁷ *Thousands ‘March for Justice’ in Jena, Court Orders Hearing on Teen*, CNN.COM, Sept. 20, 2007, <http://www.cnn.com/2007/US/law/09/20/jena.six/index.html>.

⁸ *Jena 6 Timeline*, TOWN TALK, Apr. 1, 2008, <http://www.thetowntalk.com/article/99999999/NEWS/80401045>.

⁹ Mandy M. Goodnight, *Jena High School Reopens 4 Days After Arson Blaze*, TOWN TALK, Dec. 5, 2006, <http://www.thetowntalk.com/apps/pbcs.dll/article?AID=/99999999/news/70916010>.

¹⁰ *Jena Six and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools: Hearing Before the H. Comm. on the Judiciary*, 110th Cong. 2 (2007) (statement of J. Richard Cohen, President, Southern Poverty Law Center), available at <http://judiciary.house.gov/hearings/pdf/1016071.pdf>. At an assembly after the protest, LaSalle Parish District Attorney Reed Walters is reported to have said: “With a stroke of my pen, I can make your lives disappear.” *Id.*

¹¹ *Jena 6 Timeline*, *supra* note 8.

¹² Jones, *In Louisiana, a Tree, a Fight and a Question of Justice*, *supra* note 3.

¹³ *Id.*

¹⁴ *Bell Released*, *supra* note 4.

¹⁵ See Louisiana Department of Education, *2006-2007 District Composite Report: LaSalle Parish* 3-6, Mar. 2008, <http://www.louisianaschools.net/1de/pair/DCR0607/DCR030.pdf> (119 (22.1%) of Jena High School students received in-school suspension 2006-2007); see also Louisiana Department of Education, *Student Data as of 2006-2007*, Oct. 2, 2006, <http://>

suspension at least once during the academic year while only 18.2% of white students received an in-school suspension.¹⁶

The criminal charges filed against the six black young men attending Jena High School highlight this disparate treatment. Although all the young men involved in the Jena Six incident have been released, the practice of racially disparate responses to schoolyard misbehavior remains a live problem in American high schools.

III. SCHOOL-TO-PRISON PIPELINE PHENOMENON

“The ‘school-to-prison pipeline’ refers to the policies and practices that push our nation’s schoolchildren, especially our most at-risk children, out of classrooms and into the juvenile and criminal justice systems.”¹⁷ Although the tree that propelled Jena, Louisiana into the American consciousness has since been cut down,¹⁸ the underlying trend of criminalizing school behavior continues in school districts across the country.¹⁹ In the wake of the Columbine shootings and other violent episodes in American schools, local administrators have adopted zero tolerance policies as a means of strengthening school safety.²⁰ The U.S. Department of Education defines a “zero tolerance policy” as one that “mandates predetermined consequences or punishments for specific offenses.”²¹ Although initially intended to send a “tough on violence” message to students and parents alike, zero tolerance policies gradually expanded to cover ambiguous, non-violent offenses such as insubordination and school disturbance.²² As the disciplinary net widened, rigid

www.louisianaschools.net/lde/pair/1489.html (follow “Multi-Stats - Oct 2, 2006—By Site—Grades K-12(Only)” hyperlink) (521 total students at Jena High School in 2006-2007).

¹⁶ See *Student Data as of 2006-2007*, *supra* note 15 (there were 90 black students and 424 white students at Jena High School in 2006-2007); Melinda Edwards, Supervisor of Child Welfare & Attendance, LaSalle Parish School Board, *Jena School Discipline Data*, Sept. 24, 2007 (on file with author) (37 black students and 77 white students received in-school suspension at Jena High School in 2006-2007).

¹⁷ Am. Civil Liberties Union, *Locating the School-to-Prison Pipeline*, http://www.aclu.org/images/asset_upload_file966_35553.pdf (last visited Mar. 25, 2009).

¹⁸ Jones, *supra* note 3.

¹⁹ See, e.g., ROBIN L. DAHLBERG, AM. CIVIL LIBERTIES UNION, LOCKING UP OUR CHILDREN (2008), available at http://www.aclu.org/pdfs/racialjustice/locking_up_our_children_web_ma.pdf; DEBORAH FITZGERALD FOWLER ET AL., TEXAS APPLESEED, TEXAS’ SCHOOL-TO-PRISON PIPELINE (2007), available at <http://www.texasappleseed.net/pdf/pipeline%20report.pdf>; ELORA MUKHERJEE, N.Y. CIVIL LIBERTIES UNION, CRIMINALIZING THE CLASSROOM (2007), available at http://www.nyclu.org/files/criminalizing_the_classroom_report.pdf.

²⁰ See generally ADVANCEMENT PROJECT & HARVARD UNIV. CIVIL RIGHTS PROJECT, OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO-TOLERANCE AND SCHOOL DISCIPLINE (2000) [hereinafter OPPORTUNITIES SUSPENDED], available at <http://www.advancementproject.org/reports/opsusp.pdf> (discussing the adoption of zero tolerance policies across the country).

²¹ PHILLIP KAUFMAN ET AL., U.S. DEP’T OF EDUC. & U.S. DEP’T OF JUSTICE, INDICATORS OF SCHOOL CRIME AND SAFETY 117 app. A (1999), available at <http://nces.ed.gov/pubs99/1999057.pdf>.

²² See, e.g., OPPORTUNITIES SUSPENDED, *supra* note 20, at 1; RALPH C. MARTIN II, AMERICAN BAR ASS’N, ZERO TOLERANCE POLICY REPORT (2001), available at <http://www.abanet.org/crimjust/juvjus/zerotolreport.html>.

policies mandating suspension or expulsion pushed an increasing number of students out of school, often times for minor offenses.²³

Zero tolerance policies also corresponded with the increasing use of criminal sanctions at schools, including the placement of law enforcement officers in schools as a mechanism of maintaining school discipline.²⁴ An alarming number of students are now excluded from school grounds, reported to law enforcement officials, and ultimately face criminal sanctions for activity that took place on school grounds.²⁵ Studies show that African American students are subject to disciplinary actions in school settings more often than white students, and often for less severe infractions.²⁶ Additionally, African American students often receive more severe forms of punishment for the same infractions committed by their white classmates.²⁷ Studies have consistently indicated that black students are punished at a disproportionate rate.²⁸ The increase in the level of severity of school punishment has thus disproportionately affected those who are being punished in the system most often—namely, students of color. As zero tolerance policies have induced a pattern of criminalizing behavior on school grounds, the racially disparate trend in disciplinary practices pushes more black students than white students from the schoolyard to the jailhouse.²⁹

Although zero tolerance policies are not officially entrenched in any federal legislation, their spirit appears in legislation like the Federal Gun-Free Schools Act,³⁰ which was one of the first pieces of federal legislation to

²³ See OPPORTUNITIES SUSPENDED, *supra* note 20, at 1; Johanna Wald & Daniel J. Losen, *Out of Sight: The Journey Through the School-to-Prison Pipeline*, in *INVISIBLE CHILDREN IN THE SOCIETY AND ITS SCHOOLS* 23, 25 (Sue Books ed., 3d ed. 2007).

²⁴ AM. CIVIL LIBERTIES UNION & AM. CIVIL LIBERTIES UNION OF CONN., *HARD LESSONS: SCHOOL RESOURCE OFFICER PROGRAMS AND SCHOOL-BASED ARRESTS IN THREE CONNECTICUT TOWNS* (2008) [hereinafter *HARD LESSONS*], available at http://www.aclu.org/pdfs/racial_justice/hardlessons_november2008.pdf; see also MARTIN, *supra* note 22 (describing zero tolerance policies as “one-size-fits-all mandatory punishment”).

²⁵ OPPORTUNITIES SUSPENDED, *supra* note 20, at 3.

²⁶ RUSSELL SKIBA, ROBERT S. MICHAEL, ABRA CARROL NARDO & RENEE PETERSON, *THE COLOR OF DISCIPLINE: SOURCES OF RACIAL AND GENDER DISPROPORTIONALITY IN SCHOOL PUNISHMENT* 2-5 (2000), available at <http://www.indiana.edu/~safeschl/cod.pdf>; Wald & Losen, *supra* note 23, at 25.

²⁷ Wald & Losen, *supra* note 23, at 25-26.

²⁸ See SKIBA ET AL., *supra* note 26, at 2 (citation omitted).

²⁹ Johanna Wald, *The Failure of Zero Tolerance: A Nationwide Crackdown on Students has Resulted in Outrageous Punishments that Disproportionately Affect Minorities*, SALON, Aug. 29, 2001, http://archive.salon.com/mwt/feature/2001/08/29/zero_tolerance/print.html (“Less chronicled is the fact that, in many schools, zero tolerance has become a convenient tool for disposing of more and more children of increasingly young ages—disproportionately poor and minority—who may be irritating, problematic or troublesome, but hardly dangerous.”). See also OPPORTUNITIES SUSPENDED, *supra* note 20, at 6-7; KIM BROOKS, VINCENT SCHIRALDI & JASON ZIEDENBERG, *SCHOOL HOUSE HYPE: TWO YEARS LATER* 16-27 (2001), <http://www.prisonpolicy.org/scans/jpi/shh2.pdf>.

³⁰ Gun-Free Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3907, 3907-08 (2000) (codified at 20 U.S.C. §§ 8921-8923 (2000)), repealed by Pub. L. No. 107-110, 115 Stat. 1986 (2002); see also Gun-Free Schools Act, Pub. L. No. 107-110, 115 Stat. 1762, 1762-63 (2002) (codified at 20 U.S.C. § 7151 (2006)) (repealing the Gun Free Schools Act of 1994, but simul-

mandate specific punishments for gun crimes taking place at school.³¹ The zero tolerance policies reflected in federal legislation such as that Act, which were subsequently adopted at the state and local level, embody an approach in which more students are excluded from school and punishment is prioritized over education.³² The American Bar Association described such zero tolerance policies implemented by schools as an adult theory of punishment “now applied to first graders.”³³ The harshness of this reality begs the question whether there are better ways for the federal government to signal appropriate forms of punishment in schools.

IV. LEGISLATIVE RESPONSES

The furor over the Jena Six extended all the way to Capitol Hill, as lawyers who participated in the case testified before the House Judiciary Committee.³⁴ Members of the Congressional Black Caucus became involved in the case and demanded justice for the Jena Six.³⁵ Although these initial responses and other forms of public pressure ultimately resulted in the release of the students, the Jena Six incident should prompt more sustainable solutions to the problem of racially disparate disciplinary practices. What type of legislation would remedy the racially disparate treatment of students in American schools? The following section explores two different legislative measures that attempt to grapple with the growing problem of school discipline, youth crime and punishment. One legislative response would reinforce the general over-criminalization of youth and the pronounced effect such policies have on black students in particular, while the other proposal has the potential to reverse these problems.

A. *Gang Abatement and Prevention Act of 2007*

The Gang Abatement and Prevention Act of 2007 (“GAPA”) seeks, among other objectives, “[t]o increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime . . . to revise and enhance criminal penalties

taneously enacting another, similar Gun Free Schools Act as a subpart of the No Child Left Behind Act of 2001).

³¹ See, e.g., Gun-Free Schools Act of 1994, 20 U.S.C. § 8921(b)(1) (1994) (repealed 2002) (mandating that states receiving federal funds for education require expulsion “from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school,” but allowing case-by-case exceptions if the exceptions are made in writing); see also Gun-Free Schools Act, 20 U.S.C. § 7151(b)(1) (2006) (mandating same penalty, but allowing case-by-case exceptions, without requiring that exceptions be made in writing).

³² See OPPORTUNITIES SUSPENDED, *supra* note 20, at 1.

³³ MARTIN, *supra* note 22.

³⁴ See Douglas Stanglin, *House Panel Examines Jena 6 Case*, USA TODAY, Oct. 17, 2007, http://www.usatoday.com/news/nation/2007-10-16-jena-six_N.htm.

³⁵ See *National Briefing: Pardons Sought in Jena Six Case*, N.Y. TIMES, Dec. 22, 2007, at A23.

for violent crimes [and] to expand and improve gang prevention programs.”³⁶ Thus, GAPA would augment pre-existing federal anti-gang law provisions by: 1) broadening the definition of “gang” and “gang crime,”³⁷ 2) increasing criminal penalties for what is determined to be gang-related activity under the act,³⁸ and 3) increasing funding to augment federal, state and local agencies’ ability to deter, investigate, and prosecute gang-related crime.³⁹ The 2007 version of the bill is the most recent iteration of a proposed federal anti-gang law. Senator Dianne Feinstein of California, the bill’s sponsor, has pursued federal anti-gang legislation for years.⁴⁰ As early as 2001, Senator Feinstein and Senator Orrin Hatch of Utah proposed an anti-gang bill.⁴¹ An amended version of GAPA passed the Senate by unanimous consent in 2007, but has not gone further.⁴²

Critics argue that GAPA is an ineffective means of dealing with gang-related youth activity. There are three serious critiques with which GAPA must contend: 1) it fails to effectively address gang activity or the underlying causes of gang related activity through mechanisms of prevention rather than suppression; 2) it casts too broad a net in its attempt to crack down on gang crime, which will result in a disproportionate impact on youth of color; and 3) it increases the severity of current gang sentences, ensuring longer youth involvement in the criminal justice system.⁴³

One of the strongest critiques leveled against the bill is its broad definition of “gang” and “gang crime.”⁴⁴ In defining gang membership based

³⁶ Gang Abatement and Prevention Act of 2007, S. 456, 110th Cong. (2007) [hereinafter GAPA], available at <http://www.thomas.gov/cgi-bin/bdquery/z?d110:SN00456:@@L&summ2=m&#status>.

³⁷ The new legislation drops the purposive requirement that is present in existing federal anti-gang law. Compare *id.* § 521 (defining “criminal street gang” as “a formal or informal group or association of 5 or more individuals, who commit 3 or more gang crimes . . . in 3 or more separate criminal episodes,” and listing a series of offenses that constitute “gang crime”), with 18 U.S.C. § 521(a) (“criminal street gang” has “as 1 of its primary purposes the commission of 1 or more” of a list of crimes).

³⁸ GAPA, *supra* note 36, at §§ 201-215.

³⁹ *Id.* §§ 301-314.

⁴⁰ See Andrew Goldsmith, Recent Development, *Criminal Gang Abatement Act*, 39 HARV. J. ON LEGIS. 503, 503 (2002).

⁴¹ See *id.*

⁴² See 153 CONG. REC. S11, 965 (2007); see also S. 456. The companion bill, H.R. 3547, was introduced in the House by Representative Adam Schiff, but that bill is less developed in the legislative process than the Senate version. See H.R. 3547, 110th Cong. (2007), available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR03547:@@X>. Therefore, this analysis will focus on Senator Feinstein’s bill.

⁴³ LINH VUONG & FABIANA SILVA, NAT’L COUNCIL ON CRIME AND DELINQUENCY, EVALUATING FEDERAL GANG BILLS 3 (2008), available at http://www.nccd-crc.org/nccd/pubs/2008_eval_fed_gang_bills.pdf.

⁴⁴ Criminal street gang is defined as “a formal or informal group, organization, or association of 5 or more individuals—(A) each of whom has committed at least 1 gang crime; and (B) who collectively commit 3 or more gang crimes (not less than 1 of which is a serious violent felony), in separate criminal episodes.” S. 456, § 521. The Act’s definition of “gang crimes” includes, among others, crimes that involve the threatened use of physical force; obstruction of justice; tampering with a witness; drug manufacture, distribution, or possession; crimes related

upon individual rather than group behavior, the Act fails “to distinguish between a criminal gang and a group of individuals who have committed various crimes.”⁴⁵ Additionally, in an effort to stamp out gang activity, more crimes are included in the definition of “gang related crimes,” despite the lack of evidence-based research to indicate that such crimes are actually a result of gang membership or activity.⁴⁶ At the same time that it creates a wider net with which to catch “gang related behavior,” and therefore potentially includes non-gang involved youth, the Act also imposes much steeper criminal sanctions.⁴⁷ Although the bill fails to distinguish between gang related involvement, or even membership in a gang, it imposes more severe punishment under a federal criminal scheme.⁴⁸ The “tough on gang crime” approach, however, has been found to be ineffectual across the country.⁴⁹ The gang suppression methods employed by enforcement officers, which are characterized by targeting neighborhoods with greater police presence and more aggressive enforcement of public ordinances,⁵⁰ have even been accused of perpetuating the problem of gang involvement by closing off other avenues of community integration to wayward youth.⁵¹

In many ways, GAPA’s approach to youth delinquency and gang crime is like that embodied by the zero tolerance policies currently used in school settings. The bill broadens the class of activities which would constitute gang related crimes and therefore fall under the federal scheme, just as zero tolerance policies have come to be applied to an amorphous set of behaviors beyond those violent acts that triggered the zero tolerance response in the first place. Additionally, the Act removes discretion in both addressing the problem of gang violence and the subsequent sentencing by imposing mandatory and harsher sentences for those who fall under the broadly defined universe of gang or gang related crimes. This formula follows the same knee-jerk reaction imposed by zero tolerance policies, and thus is susceptible to the same fault of funneling more youth into the penal system.

Another danger of GAPA, like zero tolerance policies, is the potentially disproportionate impact on youth of color.⁵² A literature study conducted by

to explosive materials; crimes relating to firearm possession; fraud or identity theft; and harboring aliens. *Id.*

⁴⁵ VUONG & SILVA, *supra* note 43, at 3.

⁴⁶ *Id.*

⁴⁷ *Id.* at 4-5.

⁴⁸ *Id.* at 6-7.

⁴⁹ *See id.*; *see also* JUDITH GREENE & KEVIN PRANIS, JUSTICE POLICY INST., GANG WARS: THE FAILURE OF ENFORCEMENT TACTICS AND THE NEED FOR EFFECTIVE PUBLIC SAFETY STRATEGIES 72 (2007), available at http://www.justicepolicy.org/images/upload/07-07_REP_Gang_Wars_GC-PS-AC-JJ.pdf. For a critique of an anti-gang punishment system in California comparable to S. 456, see Raj Jayadev, *Two Words that Can Get You Life in Prison*, COLORLINES, Nov.-Dec. 2008, at 23, 23, available at <http://www.colorlines.com/article.php?ID=446&p=1>.

⁵⁰ GREENE & PRANIS, *supra* note 49, at 67.

⁵¹ VUONG & SILVA, *supra* note 43, at 6.

⁵² *See id.* at 1, 9 (stating that eight members of the House of Representatives withdrew their support for Rep. Schiff’s companion bill to Senator Feinstein’s proposal “due to concerns of disproportionate effects the legislation will have on youth of color”); *see also* Press Re-

the Department of Justice in 2002 found that approximately two-thirds of the thirty-four studies reviewed confirm the over-representation of youth of color in the juvenile and criminal justice process.⁵³ The disproportionate amount of people of color involved in the criminal justice system is not a new phenomenon, and various efforts have been made at the federal level to correct some of the disparities.⁵⁴ This reflects at least tacit acknowledgement at the federal level that action must be taken to correct the way in which facially neutral rules of federal criminal law have disparate racial impacts.⁵⁵ The same is true for gang law enforcement. Nationwide surveys of law enforcement officers indicate a much higher percentage of youth of color are perceived to be gang involved than what the surveys conducted of youth indicate.⁵⁶ While whites report roughly the same amount of gang membership and behavior as blacks and Latinos, according to a youth survey, there is a much higher perception among law enforcement officers of youth of color's involvement in gang-related crimes.⁵⁷ Punitive approaches to gang-related activity have also been criticized for their disproportionate impact on youth of color.⁵⁸

Federal legislation that includes a broad definition for prohibited gang activity and creates automatic and severe punishments parallels the zero tolerance culture pervading American schools and is likely to exacerbate the racial disparity in the school-to-prison pipeline.

B. *Youth Promise Act*

The Youth Promise Act of 2007 ("YPA") proposes an alternative to the "tough on crime" approach embodied in GAPA.⁵⁹ Instead of confronting

lease, Justice Policy Institute, 38 National and State-Based Organizations Voice "Grave Concerns" for Senator Feinstein's Gang Bill; Emphasizes Costly, Stop-Gap Approaches Could Worsen Problem, Unfairly Targets Undocumented Youth (June 6, 2007), available at <http://www.justicepolicy.org/content-hmID=1817&smID=1571&ssmID=42.htm> (asserting that "the overbroad and too-inclusive definition of gangs in the bill will dramatically increase unwarranted federal prosecution of youth of color, and could ensnarl a wide spectrum of youth").

⁵³ VUONG & SILVA, *supra* note 43, at 9 (citing CARL E. POPE, RICK LOVELL & HEIDI M. HSIA, U.S. DEP'T OF JUSTICE, DISPROPORTIONATE MINORITY CONFINEMENT: A REVIEW OF THE RESEARCH LITERATURE FROM 1989 THROUGH 2001, 5 (2002), available at http://www.ojjdp.ncjrs.org/dmc/pdf/dmc89_01.pdf).

⁵⁴ POPE ET AL., *supra* note 53, at 1 (making recommendations for reducing disproportionate minority confinement); see also VUONG AND SILVA, *supra* note 43, at 10 (stating that "partly in response to the concerns of the racial disparity created by the difference in sentencing between crack and powder cocaine, the US Sentencing Commission lowered its sentencing guidelines for crack cocaine offenses.").

⁵⁵ See VUONG & SILVA, *supra* note 43, at 10 (noting that the Sentencing Commission also reported that approximately 70% of defendants convicted under the existing gang codes were African Americans and Latinos).

⁵⁶ See GREENE & PRANIS, *supra* note 49, at 36-37.

⁵⁷ *Id.* at 40-43.

⁵⁸ See, e.g., Justice Policy Institute, *supra* note 52.

⁵⁹ Youth PROMISE Act, H.R. 3846, 110th Cong. § 4 (2007).

youth violence and gang-related activity with the specter of broad criminal liability and harsh punishments, the YPA approaches the problem with a preventative rather than punitive focus. The Act proposes to “provide for evidence-based and promising practices related to juvenile delinquency and criminal street gang activity prevention and intervention to help build individual, family, and community strength and resiliency to ensure that youth lead productive, safe, healthy, gang-free, and law-abiding lives.”⁶⁰ Taking an innovative approach to youth crime and delinquency, the Act seeks to establish nationally funded units at the local level to design an individualized approach community by community to address delinquent and at risk youth.⁶¹ The preventative approach includes provisions for mentoring programs and intervention methods as alternatives to the current system of criminalizing youth behavior.⁶² The proposed grant program would focus on creating a wider net of resources for at risk youth—including specialized units to deal with youth crime and violence.⁶³ Numerous youth advocates and critics of harsh anti-gang laws have praised the bill.⁶⁴

The YPA approach is superior to that of GAPA for several reasons. First, the grants in the Act would serve to educate the law enforcement community about identifying gangs and gang related activity, so that presumptions and underlying assumptions about the criminal proclivities of youth of color do not continue to lead to criminalization of black youth. An important way in which the cycle of prejudicial law enforcement action can be broken is through education. The Act provides for training for law enforcement who will specifically be involved with youth, so that they are better able to assist at risk youth.⁶⁵ Second, the YPA seeks to address the issues underlying youth delinquency by engaging in genuinely preventative measures, rather than those that seek to punish. It does so through community created initiatives which are linked with federal research and resources so that implementation is based on what works and not what is politically expedient—namely, a “tough on crime” approach. The YPA thus not only stems the disparate representation of youth of color in the criminal justice system, but also targets those often vulnerable communities of color—not for raids

⁶⁰ *Id.*

⁶¹ VUONG & SILVA, *supra* note 43, at 5.

⁶² H.R. 3846, § 202.

⁶³ *Id.* § 201.

⁶⁴ *See, e.g.*, Coalition for Juvenile Justice, Youth Promise Act Support Letter, http://www.juvjustice.org/announcement_116.html (last visited Feb. 27, 2009); Letter from Sarah Bryer, Director, National Juvenile Justice Network, to Members of Congress (Dec. 20, 2007), available at http://www.house.gov/scott/pdf/NJJN_supportletter.pdf; Letter from Caroline Frederickson, Director, American Civil Liberties Union, to Members of Congress (Dec. 17, 2007), available at http://www.aclu.org/images/asset_upload_file17_33287.pdf; *see also* VUONG AND SILVA, *supra* note 43, at 4-5 (describing GAPA as primarily suppressive and YPA as preventative).

⁶⁵ H.R. 3846, § 403.

or aggressive enforcement, but for increased resources and specialized plans to meet the individual communities' needs.⁶⁶

Perhaps more important than the preventative rather than punitive approach of the YPA is the message it sends regarding appropriate responses to youth delinquency. Rather than applying a "one-size-fits-all" zero tolerance approach to the growing trend of youth crime, the Act attempts to address some of the underlying issues plaguing marginalized youth. In many ways, the Act could be a catalyst for a new culture of youth discipline, which may ultimately stem the school-to-prison pipeline and its racially disparate effects.

V. RECOMMENDATIONS AND CONCLUSION

School districts across the country must play a significant role in closing the school-to-prison pipeline. As the Jena Six incident and the broader disciplinary phenomenon at Jena High School illustrate, broadly defined disciplinary codes and arbitrary enforcement of zero tolerance policies lead to a racially disparate impact on students of color. In order to aid schools in identifying the problem, shaping solutions, and executing programs, the federal government must provide a roadmap reflecting a paradigm shift in the approach to school discipline. Although several studies confirm the racially disparate impact of the school-to-prison pipeline,⁶⁷ school districts have been slow to respond and communities lack the resources necessary to advocate for change.⁶⁸

Legislative responses like the Youth Promise Act may initiate a new approach to school discipline that addresses the devastating impact of current school discipline policies on communities of color. The United States cannot afford to "prioritiz[e] incarceration over education."⁶⁹ Improving the disciplinary polices of American schools will require many different tools and strategies. Grassroots organizing, community action campaigns, and parental committees must all contribute to creating a sustainable solution to the drain of American youth from the schoolhouse to the jailhouse. Although these local initiatives extend beyond the reach of what federal legislation can reasonably offer, Congress should take a critical first step toward closing the school-to-prison pipeline by providing a new framework for helping at risk and marginalized youth in our school system.

⁶⁶ VUONG & SILVA, *supra* note 43, at 11.

⁶⁷ See, e.g., OPPORTUNITIES SUSPENDED, *supra* note 20, at 6-7.

⁶⁸ See, e.g., HARD LESSONS, *supra* note 24, at 35-37.

⁶⁹ Am. Civil Liberties Union, *Locating the School-to-Prison Pipeline*, *supra* note 17.