

RESTORATIVE  
JUSTICE IN SCHOOLS:

**AN UPSTREAM APPROACH  
FOR ADDRESSING  
INEQUITIES IN THE RISK  
OF INCARCERATION**



# INTRODUCTION

Adverse Childhood Experiences (ACEs) are potentially traumatic events that occur in childhood (0-17 years), resulting in an increased risk of adverse health outcomes and decreased personal well-being.<sup>1</sup> ACEs have a cumulative effect, meaning the more ACEs someone has been exposed to the more likely they are to experience the associated negative health outcomes. The cumulative nature of ACEs is especially concerning when compounded by exposures to other forms of stressors such as racism, poverty, and adverse community conditions, which further increase risk and contribute to the intergenerational passage of adversity. The ACE of having a household member incarcerated is strongly linked to higher cumulative ACE scores; it is also the greatest predictor for a child to experience four or more ACEs, which further increases the likelihood of adverse health outcomes and the intergenerational passage of ACEs.<sup>2,3</sup>

While ACEs are a strong predictive factor for future negative health outcomes, there are opportunities to counteract the harmful effect of ACEs. Protective factors are conditions or attributes from the individual level to the societal level that can mitigate or eliminate risk, thereby increasing the health and well-being of children and families.<sup>4</sup> Protective factors can help build resilience in childhood and early adolescence and decrease long-term impacts of ACEs and other traumatic experiences in childhood.<sup>5</sup>

Incarceration is a serious public health concern. The United States leads the developed world in incarceration rates at roughly 750 per 100,000 adults.<sup>2</sup> Incarceration is a significant risk factor for adverse health and social outcomes across the socio-ecological framework. The social-ecological framework considers the complex interplay from the individual, relationships, community, and societal levels that shape people. It allows us to understand the range of factors that put people at risk for violence or protect them from experiencing or perpetrating violence.<sup>6</sup>

At the individual level, incarceration puts a person at greater risk for chronic disease (e.g., hypertension, diabetes), infectious disease (e.g., HIV, TB, Hepatitis C), and poor mental health outcomes.<sup>2,3,7-9</sup> Incarceration contributes to the stress and financial burden for families of an incarcerated person, placing their partners and children at increased risk for negative mental and physical health outcomes.<sup>2,8-10</sup>

These individual and intergenerational consequences become more evident at the community level. Communities that experience higher rates of incarceration—specifically economically disadvantaged and communities of color—have a decreased life expectancy, increased infant mortality rates, and increased cases of HIV in the community.<sup>8</sup> Furthermore, the burdens of incarceration and its impacts are not equitably distributed, with incarceration disproportionately affecting communities of color.<sup>2,3,8,9</sup>



**An estimated 50% of black women have a family or extended family member imprisoned.**

**In comparison, only 12% of white women have a family or extended family member imprisoned.**

High and disproportionate levels of incarceration within communities of color play a critical role in racial health inequities and other forms of structural racism in the United States.<sup>2,3,7,8,10</sup>

School discipline policies can be associated with a child's risk of future incarceration. Exclusionary discipline practices that remove a student from the classroom as a form of punishment, such as school suspension or expulsion, increase a student's risk for arrest.<sup>11,12</sup> For example, youth suspended from school at least once in an academic year were nearly three times more likely to have contact with the justice system over the following year.<sup>12</sup> The same study found that more frequent suspensions exponentially increase the likelihood of a student having contact with the justice system.<sup>12</sup> In contrast, non-exclusionary school discipline policies that aim to keep students in a learning environment may reduce a student's risk of incarceration.<sup>13</sup>

This report discusses school restorative justice practices as a potential protective factor and an alternative to exclusionary discipline policies in K-12 school settings. Rather than assigning blame and punishment, restorative justice focuses on non-punitive, relationship-centered approaches to addressing behavioral issues while youth continue to participate in school activities.<sup>11,14,15</sup> School-based restorative justice has been shown to be a promising practice for preventing youth incarceration (i.e., school-to-prison pipeline) and reducing racial inequities, thereby protecting youth from current and future negative outcomes (or negative health and social outcomes across the life course).<sup>14-18</sup>

School discipline policies can serve as either risk or protective factors for individuals at heightened risk of incarceration, as well as negative health and social outcomes. Zero-tolerance discipline policies (i.e., policies that mandate predetermined consequences), which primarily use exclusionary discipline practices to address misconduct, have been shown to increase suspension, expulsion, and dropout rates, thereby heightening students' risk of incarceration—especially for Black and Indigenous students and youth of color.<sup>14,15,17-22</sup>

This exclusion from school can have a detrimental effect on students. For example, students suspended at least once are twice as likely to be arrested as their peers.<sup>18</sup> Zero-tolerance practices can adversely affect the whole student body, but these policies tend to have disproportionate outcomes. Using systemic racism as a framework, while Black students make up roughly 16% of public-school students, they account for approximately 38% of suspensions from schools.<sup>11,15,16,23</sup> The racial inequities in school discipline make Black youth as much as 18 times more likely to be incarcerated as adults.<sup>24</sup> One way to mitigate these outcomes is to replace zero-tolerance policies with a non-punitive practice such as restorative justice, which evidence suggests has an opposite effect on youth and serves as a protective factor to keep students in school.<sup>11-15</sup>

School-based restorative justice efforts have shown great promise in reducing suspensions and reducing racial discipline inequities.

**Restorative justice efforts in New York City and Denver public schools showed a decrease in school suspensions by approximately 50%.<sup>22,25</sup>**

Other studies have also found restorative justice efforts to reduce days lost to suspension and future youth delinquency outcomes.<sup>13,26</sup> Restorative justice practices appear to narrow racial discipline inequities.<sup>14-18</sup>

**Oakland Unified Schools experienced as much as a 6% decrease in the Black/White discipline gap, and Denver Public Schools reported a decrease in Black students' suspension rate from roughly 17% to 3% over the span of a year following the implementation of restorative justice in schools.<sup>18,22</sup>**

It is important to note that while restorative justice efforts may help narrow racial inequities, they do not eliminate racial discipline inequities.<sup>14-18,20</sup> Given this shortcoming, a more concerted effort must be made to address the presence of both implicit and explicit racism in school discipline. Moving school discipline policy toward a restorative justice standard offers the opportunity to take steps toward dismantling the school-to-prison pipeline and work to rebuild jurisdictions disproportionately impacted by the intergenerational cycle of incarceration.

Restorative practices are a long-standing tradition in many tribal communities, and over the past several years more states and territories have been looking to enact policies that support restorative justice programs within schools. Reimagining school discipline practices could afford an opportunity to reduce ACEs and improve overall health by supporting policies that may lessen racial inequities in school discipline and reduce the school-to-prison pipeline. To help increase awareness of school-based restorative justice efforts, ASTHO's state health policy team conducted a policy scan to examine school-based restorative justice legislation enacted over the past three years.

## PURPOSE AND METHODS

Law and policy are determinants of public health and provide states and territories with a mechanism to address social conditions that affect physical, mental, and emotional health of populations.<sup>27</sup> This mechanism is available to states and territories to implement interventions that reduce ACEs, and specifically the ACE of having a household member who is incarcerated. Through the legislative process, states and territories can direct funding, evaluation, training, and research toward promising practices, such as restorative justice programs, to reduce poor health outcomes. State and territorial legislatures are considering a wide range of proposals to support the use of restorative justice in K-12 education directly, or as an option available to local school districts to reduce discipline practices that remove children from the classroom.



In collaboration with the CDC National Center for Injury Prevention & Control, Division of Violence Prevention, ASTHO conducted a 59-jurisdiction survey of laws and proposed legislation (2018-2021) that supports the use of Restorative Justice practices in K-12 education.



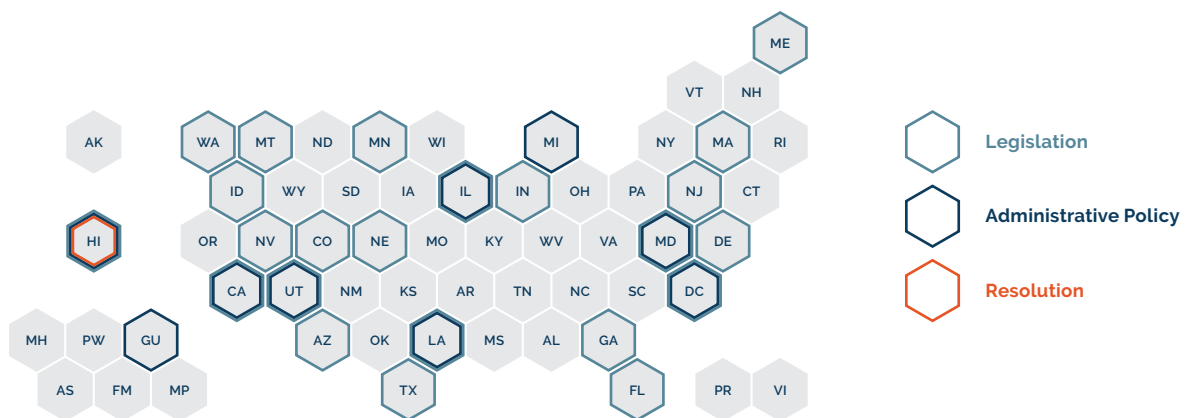
Using the legal database Casemaker and legislative database FiscalNote, the ASTHO team identified restorative justice policies using four search strings ("Restorative Justice" OR "Restorative Practices" OR "Restorative methods"; "Restorative Justice" ~4; "Positive Behavioral Interventions and Supports"; "School Discipline").



Based on these search terms, ASTHO identified over 150 policies across 37 states and one territory—including grant programs for jurisdictions to implement restorative justice discipline practices—that encourage or direct a local education authority (LEA) to conduct an assessment of restorative justice practices implemented in their jurisdiction, and which establish policy groups to implement or evaluate restorative justice practices in schools.

ASTHO identified restorative justice laws and policies enacted in 25 jurisdictions and proposed in 32 jurisdictions between 2018 and 2021. The types of policies enacted included legislation that was passed by the legislature and approved by the governor, resolutions passed by the legislature not requiring executive approval, and administrative rules adopted by the state or territorial executive branch. The proposed policies identified in the scan were limited to legislative bills and proposed resolutions.

## Enacted Policies



### ASTHO Identified:

29 restorative justice policies to prevent exclusionary discipline and 2 to prevent absenteeism generally.

23 restorative justice policies establishing a positive school climate.

9 restorative justice policies to prevent bullying.

9 creating grant programs to support restorative justice practices.

8 restorative justice policies intended to prevent physical restraint, punishment, and isolation.

5 restorative justice policies to prevent felonies.

4 restorative justice policies to prevent racial disparities in school discipline.

## Enacted Policies

Reducing exclusionary discipline was the most common goal of these policies. For example, in Nevada the state enacted a policy in 2019 which requires public schools to create a plan based on restorative justice principals prior to expelling a student from school, a form of exclusionary discipline. These policies actively implement interventions to increase protective factors and reduce the potential of poor health outcomes.<sup>28</sup>

The second most common policy goal identified was the promotion of a positive school climate. These policies include restorative practices and positive behavioral supports to deescalate conflict and overall misconduct. A variety of states that have enacted policies to improve school climate have also used data collection through surveys and reports to track improvement. The policy scan showed an increase in policies to improve school climate, which may be due to a recent U.S. Department of Education priority to research and develop more effective policy and school practices.<sup>31</sup> The U.S. Department of Education has a suite of survey instruments, known as the ED School Climate Surveys, that provide school districts with reporting tools and scoring methodologies that can be used at the district and local level.

ASTHO also identified policies supporting training for staff and educators, grant funding for programmatic interventions using restorative practices, and data collection on behavioral supports and discipline policies being used. This collection of data may be used to track and analyze the effect of these policies in improving health outcomes for students. Several policies instruct committees, task forces, and offices to use this information to monitor and implement strategies based on this information. These policies are using legal enforcement as a mechanism to establish these interventions.

Few states enacted policies expressly intended to reduce racial disparities in exclusionary discipline. Illinois stands out as a state that implemented a grant program to establish positive behavioral supports and restorative justice practices that increase and improve educational outcomes for Black students.<sup>33</sup>



## Enacted Policies

### STATE FOCUS



#### Colorado Coordinating Council for Restorative Justice Programs<sup>29</sup>

In 2007, the Colorado legislature established the Colorado Restorative Justice Coordinating Council (RJ Council), which was tasked with providing training, resources, and data collection related to restorative justice programs throughout the state. With 19 appointed representatives and professional staff, the RJ Council has created guiding documents and resources for implementing school-based restorative justice programs. The RJ Council annually updates a database of all restorative justice programs in the state, including those implemented in the school setting. In addition to the RJ Council, Colorado law encourages public and charter schools to use restorative justice practices in their school discipline plans, particularly for interpersonal conflicts and attendance issues.



#### Georgia Encouraging Schools with Low School Climate Ratings to Implement Restorative Justice Approaches

Georgia law directs the Department of Education to annually assess school climate for individual schools and school systems, creating a five-star scale for schools.<sup>30</sup> The school climate assessment includes student health surveys, data on environmental and behavioral indicators, and information regarding school discipline. For schools with a low school climate rating, one- or two-stars, the state law encourages local boards of education to implement Positive Behavioral Interventions and Supports (PBIS), as well as evidence-based efforts to reduce disciplinary incidents using a multitiered approach, with some districts implementing restorative practices as part of their PBIS strategy. The state further supports schools in implementing restorative justice policies by providing local school boards an optional training program in conflict management and resolution to provide to students, parents/guardians, and school employees.



#### Maryland Prohibition on Corporal Punishment and Use of Restorative Approaches and Non-Exclusionary Discipline

The city of Baltimore, the largest city in Maryland, started implementing restorative practices in its schools in 1997, with private philanthropic support assisting in programmatic implementation and assessment. As the practice use grew, Baltimore City Public Schools formally adopted an administrative policy to use restorative practices in school discipline and use classroom removal as a last resort. In 2019, the Maryland legislature enacted a law aligned with the Baltimore City policy. Under Maryland law, corporal punishment within public schools is prohibited and requires local education agencies to implement disciplinary measures that include restorative approaches and provide alternatives to exclusionary discipline.





## KEY CHALLENGES

States considering legislation to implement restorative justice practices in K-12 education face challenges in enacting policies, as well as broad implementation of these policies. To enact legislation, proponents of restorative justice policies must build consensus among the legislators to support programs and policies promoting restorative practices in schools as an alternative to exclusionary discipline. Additionally, the type of policy considered and adopted will affect whether there is broad implementation of these policies within a jurisdiction. Depending on how a policy is designed, there may be varying levels of implementation across school districts and localities. For example, a grant program that incentivizes districts to implement restorative justice practices may limit the number of districts with the resources to support the program.

Outside of the challenges to enacting restorative justice legislation, there are several other factors within the school district that affect programmatic implementation:



### **Time Constraints:**

School staff have limited capacity and time, and the training, implementation, practice, and maintenance of restorative justice practices require time, making it a significant barrier for policy implementation.<sup>10,13,14,16</sup>



### **Resistance to Change:**

Conflict can occur around previously held perceptions and values where some staffers are resistant to restorative justice, believing restorative justice practices are "soft" and ineffective.<sup>10,13-15</sup>



### **Variability and Span of Control:**

Restorative justice programs must be flexible to meet the varying size and demographics of a school. A restorative justice policy has a limited span of control, with policy effectiveness changing based on each individual classroom.<sup>10,13,14,16,21</sup>

# OPPORTUNITIES FOR STATE AND TERRITORIAL HEALTH OFFICIALS

State and territorial health officials' support for policies and programs that prevent ACEs and promote nurturing environments for children will lower the risk those children have of experiencing a myriad of negative health outcomes throughout their lives. Reducing ACEs requires a cross-sector approach, including working with education officials to promote policies that create a safe and stable classroom environment, which can include the promising practice of implementing restorative justice programs in school disciplinary procedures. State and territorial health officials can help advance this promising practice by:



Leveraging existing public health resources and promoting restorative justice practices in schools as one strategy to reduce adverse outcomes.



Engaging with educational leaders in jurisdictions to raise awareness of ACEs and restorative justice as a promising practice.



Encouraging policymakers to allocate additional resources to the implementation and study of restorative justice programs in schools.

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