JUVENILE JUSTICE GONE AWRY: EXPULSION STATUTES UNJUSTLY DENY EDUCATIONAL RIGHTS TO STUDENTS

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Howard, a seventeen year old senior, had sold cocaine to undercover officers on three occasions. Two to three weeks following the last incident, the officers arrested Howard while he was at school. Approximately one month after the incident, Howard was expelled from school. None of the sales were alleged to have occurred on school property or at a school sponsored event.[1]

Jane Doe was expelled from school based on her admission that she was in possession of a lipstick case containing a one and one-quarter inch blade. The school became aware of the blade when they noticed bandages on Doe's wrist which were present because she had attempted suicide. Another student had told the teacher that Doe should show the lipstick knife. Upon doing so, Doe was suspended and a hearing was held which determined that she should be expelled.[2]

I. INTRODUCTION

"Between 1985 and 1991, arrest rates for criminal homicide increased 140% among thirteen- and fourteen-year-old males, 217% among fifteen-year-old males, 158% among sixteen-year-old males, and 121% among seventeen-year-old males."[3] Unfortunately, this violence has permeated the nation's public schools, severely impacting a child's access to public education.

It is estimated that as many as fifty young people lose their lives each year in school-related violence.[4] This has resulted in ap-

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1 Howard v. Colonial Sch. Dist., 621 A.2d 362 (Del. Super. Ct. 1992).

2 Doe v. Superintendent of Sch. of Worcester, 653 N.E.2d 1088 (Mass. 1995).

3 Hattie Ruttenberg, *The Limited Promise of Public Health Methodologies to Prevent Youth Violence*, 103 YALE L.J. 1885, 1892 (1994) (citing Glenn L. Pierce & James A. Fox, *Recent Trends in Violent Crime: A Closer Look* [Nat'l Crime Analysis Program, Northeastern Univ.] Oct. 1992, at 2-3).

4 Charles J. Russo, United States v. Lopez *and the Demise of the Gun-Free School Zone Act: Legislative Over-Reaching or Judicial Nit-Picking?*, 99 Educ. L. Rep. (West) 11 (June 1995) (citing California Senator Dianne Feinstein, 140 CONG. REC., S6586 [daily ed. June 8, 1994]).

proximately 105 deaths attributed to school-related violence between 1990 and 1991.[5] Further, when focusing specifically on weapons, gun shot wounds are the leading cause of death among American teenage boys whether in school or out,[6] while approximately 10% of all youngsters aged ten to nineteen say they have fired a gun at someone or have themselves been the target of gunfire.[7] Accordingly, within the past ten years, the death rate from firearms for teenagers aged fifteen to nineteen has increased by 61%.[8]

In 1993, 20% of American students knew someone who had been attacked by an individual wielding a gun or a knife, while 7% had been assaulted themselves.[9] A recent survey funded by Metropolitan Life found that 11% of teachers and 23% of students reported that they had been victims of violence in or near their schools.[10]

Accompanying this increase in school violence has been a phenomenal increase in the number of weapons seized in schools across the country. Chicago schools have had a 171% increase in seizures of weapons;[11] San Francisco, a 147% increase;[12] Indianapolis, a 322% increase;[13] and, in Virginia, it was reported by a local newspaper that 2313 students were found in possession of weapons during the 1992-93 school year alone.[14] Students bring roughly 135,000 guns to the nation's 85,000 public schools each day.[15] Furthermore, while one out of five high school students carries a

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5 *Id.* n.3 (citing Todd S. Purdum, *Clinton Seeks Way of Avoiding Ruling on School Gun Ban*, N.Y. TIMES, Apr. 30, 1991, § 1, at 16).

6 Mary Kathleen Babcock, *Constitutional Issues and the Safety of Schoolchildren: The Tenth Circuit's Approach*, 34 WASHBURN L.J. 33 (1994) (citing Timothy Dyer, *War on Handguns and Other Weapons*, KAN. SCH. BOARD J., Apr.-May 1994, at 7).

7 *Id.* (citing Catherine Byers, *Will the Lone Ranger Ever Ride Again?*, KAN. SCH. BOARD J., Apr.-May 1994, at 4).

8 Bernadine Dohrn, *As I See It: Children, Violence, and Mythology*, CITYSCHOOLS, Spring 1995, at 11 (citing Michael A. Jones and Barry Krisberg, *Images and Reality: Juvenile Crime, Youth Violence and Public Policy*, NAT'L COUNC. ON CRIME & DELINQ., June 1994 Fig. 6 at 18, source, Centers for Disease Control and Prevention).

9 Deborah Austern Colson, *Safe Enough to Learn: Placing An Affirmative Duty of Protection on Public Schools Under 42 U.S.C. § 1983*, 30 HARV. C.R.-C.L. L. REV. 169 (1995) (citing ROBERT L. MAGINNIS, FAMILY RESEARCH COUNCIL, VIOLENCE IN THE SCHOOL-HOUSE: A 10-YEAR UPDATE 3 (1994)).

10 R. Craig Wood & Mark D. Chestnutt, *Violence In U.S. Schools: The Problems and Some Responses*, 97 Educ. L. Rep. (West) 619 (Apr. 1995) (citing THE METROPOLITAN LIFE SURVEY OF THE AMERICAN TEACHER, Sept./Oct. 1993).

11 ABA Report; America's Children at Risk, at 28 (1995).

12 *Id.*

13 *Id.*

14 Wood & Chestnutt, *supra* note 10, at 619 (internal citation omitted).

15 Colson, *supra* note 9, at 170 (citing MAGINNIS, *supra* note 9, at 3).

weapon to school on a *daily* basis,[16] it is estimated that 20% of American high school students carry a weapon to school at least once a month.[17]

In response to this increase in weapons and violence within the nation's schools, various states have enacted legislation to combat and prevent school related violence. Unfortunately, the effect of these expulsion statutes has been to unjustly deny educational rights to many students. More importantly, expulsion statutes represent a severe departure from the goal and function of the juvenile justice system and do not address the actual cause of delinquent behavior. In addition, most expulsion statutes do not provide for alternative educational services or programs to actually address the increase in violence or to prevent recidivism amongst juvenile offenders.

In an attempt to answer these concerns, this Note will focus on current statutes which provide for (1) the expulsion from school of students found to possess a weapon and (2) the expulsion from school of students who have been convicted for felonies and/or adjudicated a delinquent.[18] Part II of this Note gives a brief historical overview of the juvenile justice system and where it stands at present. Part III gives an overview of the statutes in various states which require the expulsion of students for the reasons previously mentioned. Part IV presents a discussion of the problems which expulsion statutes create. The problems addressed focus primarily on how expulsion statutes depart from the intent behind the juvenile justice system and how such statutes fail to provide alternative educational and other services to combat or prevent juvenile violence. In addition, statutes are also discussed which provide for the disparate treatment of students. Part V addresses solutions which have and are currently being implemented in various states to address the issue of school-related violence as well as preventive steps which this author believes must be considered.

II. HISTORICAL OVERVIEW OF THE JUVENILE JUSTICE SYSTEM

In 1833, Nicholas White, a nine-year old boy, removed a few

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16 Babcock, *supra* note 6, at 33.

17 Colson, *supra* note 9, at 169 (citing Denise M. Topolnicki, *Voices From the Mean Street*, MONEY, June 1994, at 129).

18 There are also state statutes which provide for the expulsion of students for other behavior such as the destruction of school property, threatening faculty and/or students, disobedience, and possession of drugs and/or alcohol. However, this Note will only focus on the two issues presented as they relate specifically to juvenile adjudication.

crayons from a broken window of a London shop.[19] For this offense, Nicholas was sentenced to a public hanging.[20] Unfortunately, this was not a rare occurrence for, during the eighteenth century, children who committed offenses were tried in the same courts and received the same punishments as adults, including death.[21] This was also the situation in the United States because our juvenile justice system developed out of England's chancery courts, which were established to "protect and supervise" delinquent children.[22]

Under this system, the prevailing view was that children under the age of seven were incapable of forming the intent necessary for the imposition of criminal liability.[23] Therefore, these children were not held liable for felonious behavior.[24] However, this presumption of absolute incapacity was rebuttable for children aged seven to fourteen by a demonstration that the child was able to distinguish between right and wrong, that she had understood the nature of the act, and that she knew that the act was wrong.[25] If this was rebutted, the child was punished under the adult criminal system. Conversely, children fourteen years or older were deemed to have the same criminal capacity as adults and, therefore, were subject to arrest, trial, and punishment like adult offenders.[26]

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19 William Wilson, Note, *Juvenile Offenders and the Electric Chair: Cruel and Unusual Punishment or Firm Discipline for the Hopelessly Delinquent?*, 35 U. FLA. L. REV. 344 (1983) (citing E. CALVERT, CAPITAL PUNISHMENT IN THE TWENTIETH CENTURY 5 (2d ed. 1971)).

20 *Id.* (citing CALVERT, *supra* note 19, at 5-6).

21 *Id.*

22 Susan S. Greenebaum, Note, *Conditional Access to Juvenile Court Proceedings: A Prior Restraint or a Viable Solution?*, 44 WASH. U.J. URB. & CONTEMP. L. 135, 140-41 (1993).

23 Linda André-Wells, Comment, *Imposing the Death Penalty Upon Juvenile Offender's: A Current Application of the Eighth Amendment's Prohibition Against Cruel and Unusual Punishment*, 21 N.M. L. REV. 373, 375 (1991) (citing Victor L. Streib, *Death Penalty for Children: The American Experience with Capital Punishment for Crimes Committed While Under Age Eighteen*, 36 OKLA. L. REV. 613, 614-15 (1983)); Helene B. Greenwald, Comment, *Capital Punishment for Minors: An Eighth Amendment Analysis*, 74 J. CRIM. L. & CRIMINOLOGY 1471, 1473 (1983) (citing Martin A. Frey, *The Criminal Responsibility of the Juvenile Murderer*, 1970 WASH. U. L.Q. 113, 113); Etta J. Mullen, Note, *At What Age Should They Die? The United States Supreme Court Decision With Respect to Juvenile Offenders and the Death Penalty:* Stanford v. Kentucky *and* Wilkins v. Missouri, 109 S. Ct. 2969 (1990), 16 T. MARSHALL L. REV. 161, 163 (1993) (citing Lisa Kline Arnett, Comment, *Death At An Early Age: International Law Arguments Against the Death Penalty for Juveniles*, 57 U. CIN. L. REV. 245, 246 (1988)).

24 Greenwald, *supra* note 23, at 1473.

25 André-Wells, *supra* note 23, at 375; Greenwald, *supra* note 23, at 1473 (citing Frey, *supra* note 23, at 113); Mullen, *supra* note 23, at 163 (citing Streib, *supra* note 23, at 614).

26 André-Wells, *supra* note 23, at 375 (citing Streib, *supra* note 23, at 614-15); Mullen, *supra* note 23, at 163 (citing *In re* Gault, 387 U.S. 1, 16 (1967)); Greenwald, *supra*

Under this system of justice, children seven and above could be, and were, tried, convicted, and sentenced under the adult criminal system.[27]

Early reform movements of the nineteenth century sought to change the system so children would not be subjected to the adult process. The establishment in 1899 of a juvenile court in Cook County, Illinois, marked the beginning stages of a separate judicial system where the sole concern was the problems and misconduct of youth.[28] By 1912, approximately half the states in this country had juvenile justice legislation;[29] by 1925 all but two states, Maine and Wyoming, had juvenile courts.[30]

It was at this time that the court first began to act as *parens patriae,* thus becoming the parental authority with the obligation of protecting children who were no longer able to care for themselves.[31] The court attempted to steer away from punishment and, therefore, was allowed broader discretion to intervene in the lives of children. Through this approach, children were no longer dealt with as criminals, but rather as wards of the state who were not fully responsible for their conduct and, therefore, capable of rehabilitation.[32] The philosophy was that children were in need of protection from themselves and others and, if their families would not or could not provide this protection, then the courts would. In accordance with this belief, children were designated delinquents rather than criminals, hearings were considered "civil" rather than "criminal",[33] and findings and decisions were made without follow-

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note 23, at 1473 (citing L. RADZINOWICZ, A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750: THE MOVEMENT FOR REFORM 12 (1948); Frey, *supra* note 23, at 113).

27 Greenwald, *supra* note 23, at 1473 (citing A. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY 198-99 (2d ed. 1977)).

28 Sheila L. Sanders, *The Imposition of Capital Punishment on Juvenile Offenders: Drawing the Line,* 19 S.U. L. REV. 141, 143 (1992); Francis Barry McCarthy, *The Serious Offender and Juvenile Court Reform: The Case for Prosecutorial Waiver of Juvenile Court Jurisdiction,* 38 ST. LOUIS U. L.J. 629, 643 (1994) (citing Sanford J. Fox, *Responsibility in Juvenile Court,* 11 WM. & MARY L. REV. 659 (1970)); SAMUEL M. DAVIS, RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM, § 1-2 (2d ed. 1994).

29 Victor L. Streib, *Death Penalty for Juveniles,* JUV. IN L. & SOC'Y, at 4 (1987).

30 *Id.*; Greenwald, *supra* note 23, at 1474.

31 DAVIS, *supra* note 28, § 1-2.

32 DAVIS, *supra* note 28, § 1-2 (citing Julian W. Mack, *The Juvenile Court,* 23 HARV. L. REV. 104, 109 (1909)).

33 DAVIS, *supra* note 28, § 1-3 (citing *Ex parte* Sharp, 96 P. 563 (1908)); Greenebaum, *supra* note 22, at 141-42 (citing McKeiver v. Pennsylvania, 403 U.S. 528, 544 n.5 (1971)).

ing normal criminal procedure rules.[34]

Because the proceedings followed a different approach, steps were taken to distinguish a juvenile proceeding from a criminal proceeding. The juvenile court building was located apart from the criminal court building so as to avoid any stigma from the adult proceeding.[35] A "euphemistic"[36] vocabulary was introduced, hearings were confidential, and access to court records limited.[37] Further, juvenile court proceedings focused more on the child's background and welfare than on the facts of the alleged crime.[38] Judges began to see their jobs as including "early identification, diagnosis, prescription of treatment, implementation of therapy, and cure or rehabilitation under aftercare supervision."[39] They depended solely on the principles of psychology and social work rather than on formal rules in their decision process. The court's responsibility became one of collecting information about the child's life history, character, social environment, and individual circumstances.[40] At hearings and dispositions, the court directed its attention first and foremost to the child's character and lifestyle because it believed that the child's past would reveal the proper treatment.[41]

The underlying goal of the juvenile system was to intervene before serious misconduct occurred. Rather than reflecting over past criminal acts, the system attempted to predict the behavior of the child in the hopes of preventing the behavior from actually occurring. The system was designed to offer a child approximately the same care, custody, and discipline that a loving parent would.[42] This was done by avoiding harsh criminal penalties for child offenders and providing conventionally approved moral, ethical, political, and social values for deprived, unfortunate children.[43]

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34 Greenebaum, *supra* note 22, at 142 (citing McKeiver v. Pennsylvania, 403 U.S. 528, 544 n.5 (1971)).

35 Barry C. Feld, *The Juvenile Court Meets the Principle Offense: Punishment, Treatment, and the Difference it Makes*, 68 B.U. L. REV. 821, 825 (1988) (citing PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 92-93 (1967); D. ROTHMAN, CONSCIENCE AND CONVENIENCE: THE ASYLUM AND ITS ALTERNATIVE IN PROGRESSIVE AMERICA 205, 217-18 (1980)).

36 *Id.*

37 *Id.*

38 *Id.*

39 Frederic L. Faust & Paul J. Brantingham, Juvenile Justice Philosophy: Readings, Cases and Comments 147 (1974).

40 Feld, *supra* note 35, at 825.

41 Feld, *supra* note 35, at 825.

42 Streib, *supra* note 29, at 4.

43 Streib, *supra* note 29, at 5.

The emphasis was on rescue, meaning that the proceeding was to be non adversarial, presided over by a judge—a father figure[44]—who represented the interests of the child and the interests of the state. The ultimate hope was that reformed children would be free of any stigma of being a delinquent child.[45]

However, the historical process of the juvenile justice system began to change with the Supreme Court's decision in *Kent v. United States*.[46] In *Kent*, the Court dealt with the due process requirements of a sixteen-year old whose case was transferred from juvenile to adult criminal court, was convicted of six felonies, and was sentenced to a total of thirty to ninety years in prison. This was the first time the U.S. Supreme Court demonstrated a willingness to review the juvenile justice process and establish standards for due process and individual rights within the system. In conjunction with this holding, the judiciary, Congress, and society, began to question the *parens patriae* approach and, as a result, juvenile proceedings have become more similar to those of adult criminal proceedings.

Recent legislation has also taken a more punitive philosophy as opposed to the historical rehabilitative philosophy of the juvenile system.[47] This departure has largely been in response to society's belief that there has been a substantial increase in violent youth crime.[48] Juvenile courts are now required to adhere to specific constitutional guidelines and may no longer ignore procedural "niceties"[49] so as to provide the treatment a judge may believe is in the best interest of the child. Because the focus is now more on punishment than on treatment, serious juvenile offenders are being transferred from juvenile court to criminal court. This is evident in a recent Senate bill which provided that a juvenile between the ages of thirteen and fourteen accused of a serious federal violent crime be tried as an adult, which, in turn, could expose

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44 DAVIS, *supra* note 28, § 1-2.

45 Greenebaum, *supra* note 22, at 142 (citing Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281, 282 (1967)).

46 383 U.S. 541 (1966).

47 This is seen in criminal proceedings in which children above the age of thirteen and/or fifteen are tried as adults for specific designated felonies. *See, e.g.*, N.Y. PENAL LAW § 30.30.

48 According to a 1982 public opinion poll commissioned by the National Council on Crime and Delinquency, the Field Institute, and the Hubert Humphrey Institute of Public Affairs, which was conducted by the Opinion Research Corporation, 87% of those polled believed that juvenile crime was increasing at an alarming rate.

49 Streib, *supra* note 29, at 6.

them to the death penalty.[50] Unfortunately, the statistics present throughout the country[51] are moving this transition along much faster and are affecting more areas of a minor's life than anyone may have expected or even been aware.

III. Overview of Weapon Expulsion Laws

In response to the increase in school related violence, Congress enacted the Federal Gun-Free Schools Act as part of the Crime Control Act of 1990.[52] This Act would make it a federal offense for any individual to knowingly possess a firearm in a place that the individual believed or had reasonable cause to believe was a school zone.[53] In addition, federal education funds were conditioned on a state's adherence to the Act. Under the Act, a school zone was defined as "in, or on the grounds of, a public, parochial or private school" or "within a distance of 1000 feet from the grounds of a public, parochial or private school."[54] However, this Act was held unconstitutional by the Supreme Court of the United States in *United States v. Lopez*.[55]

Although *Lopez* nullified the original Gun-Free School Zones Act, forty-three states have statutes imposing sanctions on individuals who bring weapons onto school property.[56] The Court's holding in *Lopez* did not invalidate these state statutes, nor did it prevent school districts from drafting other restrictions pertaining to weapon possession within a school zone. This is primarily because *Lopez* did not eliminate "the obligation of states receiving federal education funds to mandate specific penalties for students who carry firearms onto school property under the 'Gun-Free Schools Act of 1994' which Congress enacted as part of amend-

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50 *See Juvenile Crime and Delinquency: Do We Need Prevention?*, 1994: *Hearing Before the Subcommittee on Human Resources Committee on Education and Labor United States of Representatives*, 104th Cong., 1st Sess. (1994) [hereinafter Committee Hearing] (statement of Karabelle Pizzigati, Director of Public Policy, Child Welfare League of America).

51 *See supra* text accompanying notes 3-17.

52 18 U.S.C. § 922(q)(1)(A) (1988 ed.).

53 *Id.* at (q)(1)(l).

54 18 U.S.C. § 921(a)(25).

55 115 S. Ct. 1624 (1995).

56 *High Court Derails Federal Anti-Gun Law*, Sch. L. News, 23, May 5, 1995, at 1, 3. The article notes that only seven states lack statutes similar to the Gun-Free School Zones Act. These states include Alaska, Delaware, Hawaii, Iowa, Montana, New Hampshire and Wyoming. However, New Hampshire has passed Chapter 193-D which establishes standards and procedures which shall require expulsion of a pupil for knowingly possessing a firearm in a safe school zone without written authorization from the superintendent or designee.

ments to the Elementary and Secondary Education Act (ESEA)."[57] Therefore, states that wish to receive educational funding are mandated to implement policies which require the referral of any student who brings a weapon to school to the criminal justice system or juvenile delinquency system.[58] This provision passes constitutional muster because, unlike *Lopez*, it is premised on Congress's power under the Spending Clause of the United States Constitution.[59]

In addition to these statutes, legislation has designated other various circumstances in which a student may be suspended and/or expelled from school at a principal's, school board's, or superintendent's discretion. And, in accordance with the Act, the most common circumstance among state statutes is where students are found to be in possession of weapons. Another circumstance gaining significant respect is where students are charged and/or convicted of a felony and/or adjudicated a delinquent, even for behavior off school grounds.

A. *Weapons*

States which have enacted legislation allowing for the expulsion of students who bring weapons to school are numerous and distinguishable.[60] One distinction between these statutes is the

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[57] Daniel B. Kohrman & Kathryn M. Woodruff, Commentary, *The 1994-95 Term of The United States Supreme Court and its Impact on Public Schools*, 102 Educ. L. Rep. (West) 421 (Oct. 1995).

[58] *Id.*

[59] U.S. CONST. art. I, § 8.

[60] *See, e.g.*, ARIZ. REV. STAT. ANN. § 15-841(B) (1995) (a pupil may only be expelled for violent behavior which includes the use or display of a dangerous instrument or deadly weapon or possession of a gun); CAL. EDUC. CODE § 48900(b) (West 1993-94) (a pupil shall be suspended from school or recommended for expulsion if the superintendent or the principal of the school determines that the pupil has possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certified school employee, which is concurred in by the principal or the designee of the principal); CONN. GEN. STAT. § 10-233d(a) (1995) (expulsion proceedings shall be required whenever there is reason to believe that any pupil was in possession of a firearm or deadly weapon and such pupil shall be expelled for one calendar year); GA. CODE ANN. § 20-2-751.1(a) (1995) (each local board of education shall establish a policy requiring the expulsion from school for a period of not less than one calendar year any student who is determined to have brought a weapon to school); IDAHO CODE § 33-205 (1995) (the board shall expel from school for a period of not less than one year a student who has been found to have carried a weapon or firearm on school property); KY. REV. STAT. ANN. § 158.150(1)(a) (Baldwin 1995) (the carrying or use of weapons on school property, as well as off school property at school-sponsored activities, constitutes cause for suspension or expulsion from school); LA. REV. STAT. ANN. § 17:416(B) (West 1994) (a

length of an expulsion for the possession of a weapon. While most of the statutes cited provide for an expulsion period of one year,[61] some provide for a modification on a case-by-case basis,[62] some provide for permanent expulsion,[63] while others differ even more significantly.[64]

While the above mentioned statutes clearly provide for the expulsion of a student found to be in possession of a weapon, there are other statutes which allow similar results without such specific

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principal may recommend, after immediate suspension, expulsion of a student carrying or possessing a firearm); MD. CODE. ANN., EDUC. § 7-304(2) (1995) (if the county superintendent or the superintendent's designated representative finds that a student has brought a firearm onto school property, the student shall be expelled); MASS. GEN. LAWS ANN. ch. 71 § 37H (West 1993) (grants discretionary power to the principal to expel a student for the possession of a dangerous weapon on school property or at a school-sponsored event); MICH. COMP. LAWS ANN. § 380.1311(2) (West 1995) (if a pupil possesses a weapon, the school board, or the designee of the school board, shall expel the pupil from the school district permanently, subject to possible reinstatement under subsection (5)); N.H. REV. STAT. ANN. § 193-D:2(I)(2) (1994) (the state board of education shall adopt rules regarding standards and procedures which shall require expulsion of a pupil for knowingly possessing a firearm in a safe school zone without written authorization from the superintendent or designee); N.M. STAT. ANN. § 22-5-4.7(A) (Michie 1978) (each school district shall adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school); N.C. GEN. STAT. § 115C-391(d1) (1995) (a local board of education shall suspend for 365 days any student who brings a weapon onto school property); OR. REV. STAT. § 339.250(6) (1995) (a school district shall have a policy that requires the expulsion from school for a period of not less than one year any student who is determined to have brought a weapon to a school); S.D. CODIFIED LAWS ANN. § 13-32-4 (1995) (the board may expel from school any student for the use or possession of a firearm on or in any elementary or secondary school premises, vehicle, or building or any premises, vehicle, or building used or leased for elementary or secondary school functions or activities); UTAH CODE ANN. § 53A-11-904(2)(a)(i) (1995) (a student shall be suspended or expelled from a public school for the possession, control, or actual or threatened use of a real, look alike, or pretend weapon, explosive, or noxious or flammable material).

61 CONN. GEN. STAT. § 10-233d(a) (1995); GA. CODE ANN. § 20-2-751.1(a) (1995); IDAHO CODE § 33-205 (1995); MASS. GEN. LAWS ANN. ch. 71 § 37H (West 1993); MD. CODE. ANN., EDUC. § 7-304(2) (1995); N.M. STAT. ANN. § 22-5-4.7(A) (Michie 1978); S.D. CODIFIED LAWS ANN. § 13-32-4 (1995); UTAH CODE ANN. § 53A-11-904(2)(a) (1953).

62 CONN. GEN. STAT. § 10-233d(a) (1995); GA CODE ANN. § 20-2-751.1(a) (1995); IDAHO CODE § 33-205 (1995); MD. CODE. ANN., EDUC. § 7-304(3) (1995) (however, this will only apply if alternative education has been approved); N.M. STAT. ANN. § 22-5-4.7(A) (Michie 1978); N.C. GEN. STAT. § 115C-391(d1) (1995); UTAH CODE ANN. § 53A-11-904(2)(b) (1953).

63 MICH. COMP. LAWS ANN. § 380.1311(2) (West 1995); PA. STAT. ANN. tit. 24, § 13-1318 (1949); 89-66 S.C. Op. Att'y Gen. 168 (1989).

64 OHIO REV. CODE ANN. § 3313.66(B) (Baldwin 1995) (provides for the expulsion of a student for up to 80 days).

language.[65] The language in these statutes is very broad, making it possible for a student in possession of a weapon to be expelled even though the statute does not specify such an action.

These statutes are also important because, in all states cited and under the requirements for receiving federal funding, a student who is found to be in possession of a weapon must be reported to the criminal justice system or juvenile delinquency system[66] and possession of a weapon constitutes a crime in which a minor can be charged. Thus, while students are being expelled from school for such offenses, they are also being indicted. Accordingly, in those situations where a minor is only subject to suspension for a possession violation, she is often later expelled if convicted and, in some states, is even charged as an adult.

Two examples of this are Arkansas and Illinois. Arkansas has a statute which makes the possession of a handgun by any person on school property or any school bus a felony.[67] In addition, any student who violates the statute is not permitted a suspended or limited sentence. An Illinois statute provides that a minor, aged fourteen to sixteen, who is indicted for the unlawful possession or use of a weapon in or on school grounds, will have her case automatically transferred to criminal court.[68]

B. Conviction For Felonies/Adjudication As A Delinquent

Of greater concern to the aforementioned weapon expulsion statutes are those expulsion statutes which authorize school districts, either through the principal, superintendent, or local school board, to expel students who have been charged with and/or convicted for felonies or adjudicated a delinquent.[69] These statutes

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65 FLA. STAT. ANN. § 232.26(1)(c) (West 1994) (the principal may recommend to the superintendent the expulsion of any student who has committed a serious breach of conduct, including willful disobedience, violence against persons, or any other act which substantially disrupts the orderly conduct of the school); N.J. STAT. ANN. § 18A:37-2(C) (West 1994) (any pupil who is guilty of conduct of such character as to constitute a continuing danger to the physical well-being of other pupils shall be liable to punishment and expulsion from school); PA. STAT. ANN. tit. 24, § 13-1318 (1949) (every principal or teacher may permanently expel any pupil on account of disobedience or misconduct); S.C. CODE ANN. § 59-63-210 (Law. Co-op 1973) (any district board of trustees may authorize or order the expulsion of any pupil for a commission of any crime, gross immorality, gross misbehavior, persistent disobedience, or when the presence of the pupil is detrimental to the best interest of the school).

66 Kohrman & Woodruff, *supra* note 57.

67 ARK. CODE ANN., § 5-73-119 (Michie 1992).

68 ILL. REV. STAT., ch. 37, para. 702-6 (1992).

69 *See, e.g.*, ALASKA STAT. § 14.30.045(5) (1994) ("A school-aged child may be sus-

permit school districts to go beyond disciplining students for conduct or behavior which occurs on school property or while on school-sponsored activities. The statutes, however, generally differ as to whether there is an immediate expulsion following the student being *charged* with a felony or whether a student is automatically expelled upon *conviction and/or adjudication* as a delinquent.

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pended from or denied admission to the public school that the child is otherwise entitled to attend" if the child is convicted of a felony "that the governing body of the district determines will cause the attendance of the child to be inimicable [sic] to the welfare or education of other pupils."); COLO. REV. STAT. ANN. § 22-33-105(5)(a) (1994) ("Whenever a petition filed in juvenile court alleges that a child between the ages of 14 and 18 has committed an offense that would constitute a crime of violence if committed by an adult or whenever charges are filed in district court allege that a child has committed such an offense, the board of education of the school district shall conduct a hearing to determine whether the student should be educated in the school. Thus the board shall determine if sufficient grounds exist to expel the student at that time and shall proceed with the expulsion. Alternatively, the board may determine that it will wait until the conclusion of the juvenile proceedings to consider the expulsion matter."); FLA. STAT. ANN. § 232.26(2) (West 1994) ("Suspension proceedings may be initiated against any pupil who is formally charged with a felony, or with a delinquent act which would be a felony if committed by an adult if that incident is shown to have an adverse impact on the educational program, discipline, or welfare in the school in which the student is enrolled. Any pupil who is suspended as a result of such proceedings may be suspended from all classes of instruction on public school grounds during regular classroom hours for a period of time, which may exceed 10 days, as determined by the superintendent. If the pupil is found guilty of a felony, the superintendent shall have the authority to determine if a recommendation for expulsion shall be made to the school board."); LA. REV. STAT. ANN. § 17:416(D) (West 1994) ("For the conviction of any student of a felony or the incarceration of any student in a juvenile institution for an act which had it been committed by an adult, would have constituted a felony, shall be cause for expulsion of the student for a period of time as determined by the board."); MASS. GEN. LAWS ANN. ch. 71, § 37H 1/2 (West 1994) ("The principal may suspend, for a period of time determined appropriate by the school's principal, any student against whom a criminal or felony delinquency complaint has been issued. In addition, the principal may expel any student who has been convicted or admitted guilt in court with respect to a felony delinquency."); N.C. GEN. STAT. § 115C-391(d) (1995) ("A local board of education may, upon recommendation of the principal and superintendent, expel any student 14 years of age or older who has been convicted of a felony and whose continued presence in school constitutes a clear threat to the safety and health of other students or employees."); OHIO REV. CODE ANN. § 3313.662 (Baldwin 1995) ("The superintendent of public instruction may issue an adjudication order that permanently excludes a pupil from attending any of the public schools of this state if the pupil is convicted of, or adjudicated a delinquent child for, committing, when he was 16 years of age or older, an act that would be a criminal offense if committed by an adult."); S.C. CODE ANN. § 59-63-210 (Law. Co-op 1973) ("Any district board of trustees may authorize or order the expulsion, suspension, or transfer of any pupil for a commission of any crime when the presence of the pupil is detrimental to the best interest of the school."); UTAH CODE ANN. § 53A-11-904(2)(a)(ii) (1995) ("A student shall be suspended or expelled from a public school for the commission of an act involving the use of force or the threatened use of force which if committed by an adult would be a felony or class A misdemeanor.").

Some school districts are authorized to suspend a student immediately after she has been charged with a felony or criminal juvenile complaint.[70] Such statutes allow for the principal, superintendent or school board to suspend a student who has a criminal or felony delinquency complaint filed against her for a period of time deemed appropriate. Under such statutes, if the charges are later dismissed or the student has been convicted and/or adjudicated a delinquent, then the suspension is terminated. Unfortunately, in the latter situation, expulsion is substituted for the suspension. It is only Florida, however, that mandates alternative education for any student it decides should be suspended from school while court proceedings are occurring.[71] It is thus the school board's responsibility to provide suspended students with an appropriate alternative educational program or a home-based educational program. Conversely, most state statutes do not mandate that educational services be provided at any time during expulsion. This issue is discussed in greater length in part IV.

There are expulsion statutes which go beyond simply suspending students charged with a felony or juvenile charge. Some statutes permit school districts to *expel* a student merely for being charged with a felony or delinquent act.[72] Such statutes provide that if the principal or school board determines that the student's presence within the school system presents a danger to the safety and health of other students and/or employees, then the student may be expelled immediately—even prior to conviction or adjudication.[73]

The final step authorized by school districts is the expulsion from school of those students who have been convicted for a felony and/or adjudicated a delinquent.[74]

IV. POTENTIAL PROBLEMS

A. *Lack of Alternative Education or Readmission Programs*

The most notable departure of expulsion statutes from the historical concept of juvenile justice is that education is no longer

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70 *See, e.g.*, COLO. REV. STAT. ANN. § 22-33-105(5)(a) (1994); FLA. STAT. ANN. § 232.26(2) (West 1994); MASS. GEN. LAWS ANN. ch. 71, § 37H 1/2 (West 1994).

71 FLA. STAT. ANN. § 232.26(2) (West 1994) (such suspension shall not affect the delivery of educational services to the pupil, and the pupil shall be immediately enrolled in a daytime alternative education program, or an evening alternative education program, where appropriate.)

72 *See, e.g.*, COLO. REV. STAT. ANN. § 22-33-105(5)(a) (1994).

73 *Id.*

74 *See, e.g.*, ILL. REV. STAT., ch. 37, para. 702-6 (1992).

viewed as essential. This is demonstrated in the fact that under some expulsion statutes, school districts are not mandated to provide an alternative education to suspended and/or expelled students. Nor are school districts mandated to provide for the readmission of an expelled student to another school or school district. Therefore, this author believes that the first place to start in challenging the constitutionality of expulsion statutes is to determine: (1) whether there is a federal or state constitutional right to an education; (2) whether alternative education is offered to those students who are expelled; (3) whether an expelled student is permitted to transfer to another school district; and (4) what detriment is caused by the lack of alternative educational services.

The issue of whether there is a federal right to an education was addressed by the Supreme Court in *San Antonio Indep. Sch. Dist. v. Rodriguez*[75] where the Court held that public education was not a right granted to individuals by the United States Constitution.[76] However, while the Court was not willing to hold education to be a fundamental right subject to strict scrutiny analysis, the court explicitly accepted the premise from *Brown v. Board of Educ.*[77] that "education is perhaps the most important function of state and local governments."[78]

Further, in *Plyler v. Doe*,[79] while the Court again declined to hold that education was a fundamental right, the Court nevertheless appeared to treat education under a higher standard than a mere rational relationship test.[80] Therefore, while the Court held that education is not a right guaranteed by the United States Constitution, it does hold such a privilege to a higher standard.

Since there is no fundamental right to an education in the federal constitution, we must look to individual state constitutions. Because state constitutions can expand the rights of state citizens beyond those they hold as a matter of federal law,[81] students in some states have a guaranteed right to an education while students in other states receive it only as a privilege.

Massachusetts, which guarantees a free education in its consti-

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75 411 U.S. 1 (1973).

76 *Id.* at 26.

77 347 U.S. 483 (1954).

78 *Id.* at 493.

79 457 U.S. 202 (1982).

80 *Id.* at 225. In *Plyler v. Doe*, under an equal protection argument, the Court held that there was no rational reason that the state could give for denying children of illegal aliens an education.

81 *See, e.g.*, William Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

tution,[82] is among the states which establish state constitutional protection in the area of public education.[83] In *McDuffy v. Secretary of the Executive Office of Educ.*,[84] the Supreme Judicial Court of Massachusetts held that, after examining the views of those who framed and adopted the state's constitution, there was compelling support that the legislature has a duty to provide an education "for all its children, rich and poor, in every city and town of the Commonwealth at the public school level."[85]

However, while some states do provide education as a fundamental right,[86] they do not provide alternative forms of education for students who have been expelled. Therefore, while expulsion statutes have expanded the powers of principals, superintendents and school boards, these same statutes have failed to protect the cast-out students by not requiring re-admittance to school or the mandate to provide educational services to the student who has been expelled.

For example, in Massachusetts, which provides that education is a fundamental right, school districts are refusing to provide alternative educational services to expelled students by relying on *Board of Educ. v. Sch. Comm. of Quincy*.[87] There, the state's high court held that compulsory attendance statutes create no right of alternative education for expelled students. The court stated that compulsory attendance statutes address only who shall attend school and where; they do not require a school committee to provide an educational alternative to an individual child who is excluded from the public school for disciplinary reasons.[88] The court stated that if this were the case, the board would exceed its statutory authority and intrude on the school committees' right to discipline stu-

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82 MASS. CONST. part II, ch. 5, § 2.

83 According to Victoria J. Dodd, *An (Adequate) Education for All:* McDuffy v. Secretary of Education, THE ADVOCATE, Fall 1993, at 20, Arkansas, California, Connecticut, Kentucky, Montana, New Jersey, Texas, Washington, West Virginia, and Wyoming are among the states that guarantee an education in their constitution. In addition, according to case law, other states also provide education as a constitutional right in their state constitutions, including Alaska (Hootch v. Alaska State-Operated School System, 536 P.2d 793 (Alaska 1975)); Arizona (Roosevelt Elementary Sch. Dist. Number 66 v. Bishop, 877 P.2d 806 (Ariz. 1994)); Georgia (Wells v. Banks, 266 S.E.2d 270 (Ga. 1980)); Minnesota (Skeen v. State, 505 N.W.2d 299 (Minn. 1993)); New York (Scott v. Bd. of Educ., 305 N.Y.S.2d 601 (Sup. Ct. Nassau County 1969)); and North Dakota (Bismark Public Sch. Dist. #1 v. North Dakota Legislative Assembly, 511 N.W.2d 247 (N.D. 1994)).

84 615 N.E.2d 516 (Mass. 1993).

85 *Id.* at 548.

86 *See supra* note 83.

87 612 N.E.2d 666 (Mass. 1993).

88 *Id.* at 670.

dents.[89] (In Massachusetts, the school committee consists of members who are elected officials whereas a school board is composed simply of parents and teachers from a particular school.)

This issue of a state's failure to provide alternative education is vitally important because some students who are expelled are not permitted to transfer to another school district or to a school in a different state. In essence, a child is refused any future opportunity to learn.

An example of this is Arkansas,[90] where a school district may refuse to admit any pupil who has been expelled from another educational institution or who is in the process of being expelled from another educational institution. In addition, Michigan[91] provides that, except if a school district operates or participates in a program appropriate for individuals expelled and, in its discretion, admits the individual to such program, an expelled student is expelled from all public schools in the state and a school district shall not allow the individual to re-enroll in the school district unless the individual has been reinstated.[92] Unfortunately, many states follow this process.[93]

By not allowing a student alternative forms of education or the opportunity to re-enter school, states are depriving students of the fresh start envisioned by the juvenile justice system. By not providing students with a fresh start, we are creating, rather than preventing, the problem. Because they are not provided the knowledge necessary to lead a productive future, most students who do not receive an education are caught in a never ending cycle which, for some, leads to future crime.

While schooling has as its most important goal the teaching of academics to students, it also serves the essential task of preparing young people for their future roles as workers and consumers.[94] A major function of schools is to socialize young people to assume a position within the national economy.[95] Therefore, the process is not a "simplistic education [of] particular mental and physical

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89 *Id.*

90 *See* ARK. CODE ANN. § 15-841(C) (Michie 1994).

91 *See* MICH. COMP. LAWS ANN. § 380.1311(3) (West 1995).

92 *Id.*

93 *See* ALASKA STAT. § 14.30.045 (1994); ARIZ. REV. STAT. ANN. § 15-841(C) & (D) (1994); CONN. GEN. STAT. § 10-233d(h) (1995); IDAHO CODE § 33-205 (1995); KY. REV. STAT. ANN. § 158.155(1) (Baldwin 1995): LA. REV. STAT. ANN. § 17:416(B) (West 1994); MISS. CODE ANN. § 37-13-92(2) (1993); OR. REV. STAT. § 339.115(4)(a) & (b) (1995); UTAH CODE ANN. § 53A-11-904(3) (1953).

94 M.A. BORTNER, DELINQUENCY AND JUSTICE: AN AGE OF CRISIS 19 (1988).

95 *Id.*

tasks or the attainment of particular skill levels[, but] involves an [indoctrination] of the attitudes and values [which are] necessary for individuals to fit into the adult working world."[96] This hidden curriculum instills in students the values and attitudes which are essential to generate conformity with the dominant power and work force within the country.[97]

In addition, the importance of education can be seen in the fact that historically, Americans have consistently placed great value on public education because it is

> perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal [sic] instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. *In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.*[98]

Moreover, it has been held that children benefit more from being educated in a collective classroom environment than in individual seclusion at home.[99] The importance of education is also evident in the fact that all states provide for compulsory school attendance either legislatively or through constitutional provisions.[100]

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96 *Id.*

97 *Id.* (citing LARRY VAN SICKLE, THE AMERICAN DREAM AND THE IMPACT OF CLASS: TEACHING POOR KIDS TO LABOR (1985)).

98 Brown v. Board of Educ., 347 U.S. 483, 493 (1954) (emphasis added).

99 It has been held by numerous courts that it is permissible for a state to prohibit home tutoring in place of its compulsory school attendance requirement because of the effect that classrooms have on youth. *See, e.g.*, Duro v. District Attorney, 712 F.2d 96 (4th Cir. 1983), *cert. denied*, 465 U.S. 1006 (1984). In so holding, courts have reasoned that states have a legitimate interest in requiring children to be educated in a classroom because children can benefit from the social interaction with other children who have different attitudes and abilities. *See, e.g.*, Blackwelder v. Safnauer, 689 F. Supp. 106 (N.D.N.Y. 1988), *appeal dismissed*, 866 F.2d 548 (2d Cir. 1989).

100 *See, e.g.*, ALASKA STAT. § 14.30.010(a) (1962-1995) (every child between 7 and 16 years of age shall attend school); ARIZ. REV. STAT. ANN. § 15-802(a) (every child between the ages of 6 and 16 shall be provided instruction in at least the subjects of reading, grammar, mathematics, social studies and science); CAL. EDUC. CODE § 48200 (West 1993-94) (each person between the ages of 6 and 18 years is subject to compulsory full-time education); COLO. REV. STAT. ANN. § 22-33-104 (West 1963) (every child between the ages of 7 and 16 shall attend public school); D.C. CODE ANN. § 31-402(a) (1983) (every child between the ages of 5 and 18 shall attend public school); FLA. STAT. ANN. ch. 232.01 (West 1994) (all children between the ages of 6

Youth who receive no form of formal education, or receive an inadequate education, will be unable to function in the future or to compete with those who have received either an elementary, secondary, or post graduate education. This is because, as Thomas Jefferson suggested, "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system."[101] Education provides a basic tool by which youth lead economically productive lives to the benefit of society. We cannot ignore the significant social costs borne by our nation when select groups of children are denied the means to learn the values and skills upon which our society depends simply because they have engaged in behavior which is not considered to be moral or in the best interests or safety of those who attend elementary and secondary schools.

When looking at the premise behind the juvenile justice system, education is the first step to rehabilitation. To disrupt a child's education for a substantial period of time either while a trial is pending or after conviction is extremely damaging, both academically and psychologically.

Firstly, to deprive a child of an education is to tell her that society has given up on her and that she is not as worthy as other children. If society is not willing to provide an individual youth with an education,

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and 16 are required to attend school regularly during the entire school term); HAW. REV. STAT. § 298-9(a) (1988-94) (all children between the ages of 6 and 18 shall attend either a private or public school); IDAHO CODE § 33-202 (1948-95) (every child between the ages of 7 and 16 shall be instructed in subjects commonly and usually taught in the public schools); ILL. ANN. STAT. ch. 105, para. 26-1 (Smith-Hurd) (every child between the ages of 7 and 16 shall attend some public school); IOWA CODE ANN. § 299.1A (West 1994) (a child between the ages of 6 and 16 shall attend school); KAN. STAT. ANN. § 72-1111(a) (1994) (every child between the ages of 7 and 16 shall attend school); KY. REV. STAT. ANN. § 159.10 (Baldwin 1994) (every child between the ages of 6 and 16 shall attend a regular school); LA. REV. STAT. ANN. § 221 (West) (every child from the age of 7 to 17 shall attend school); ME. REV. STAT. ANN. § 3271 (children who are at least 7 and under 17 shall attend a public day elementary or secondary school or an approved private school); MD. CODE ANN., EDUC. § 7-301 (1991 & 1992 Supp.) (requires compulsory school attendance for children between the ages of 5 and 16); MICH. STAT. ANN. § 3271 (every child from the age of 6 to 16 shall attend public school); MISS. CODE ANN. § 37-13-91(f) (compulsory-school-age child means a child who has or will attain the age of 6 on or before September 1 and who has not attained the age of 17 on or before September 1); OR. REV. STAT. § 339.010 (1993) (all children between the ages of 7 and 18 who have not completed the 12th grade are required to attend regularly a public full-time school); TENN. CODE ANN. § 49-6-3001 (1992) (requires compulsory school attendance for children between the ages of 6 and 17); UTAH CODE ANN. § 53A-11-101 (every minor between 6 and 18 years of age shall attend a public or regularly established private school). The only major difference among all compulsory attendance statutes are (1) the difference in the minimum and maximum age requirements, and (2) whether home tutoring is included.

101 Wisconsin v. Yoder, 406 U.S. 205, 221 (1972) (quoting Thomas Jefferson).

then what other services will it be willing to provide when the child is unable to provide further for themselves?

Secondly, if we fail to educate our children, then we are not providing them with the necessary tools to survive. By not providing an education, society is setting up these youth for failure and future criminal involvement. When these children become adults, they will be less apt to provide financially for themselves and/or their families because, with a limited or no source of income, they are more likely to turn to crime to survive.

It is essential to consider this issue because most expulsion statutes cited provide for the exclusion of students for a time period of not less than a year,[102] while some go as far as expelling a child permanently.[103] In addition, some statutes do not provide a time frame for the exclusion, thus leaving the determination to the principal, superintendent or school board. Therefore, many of these youth are losing a substantial, if not a complete, education. If nothing is provided for them, we, as a society, have failed.

In contradiction to expulsion statutes which provide for no forms of alternative education, either temporarily or permanently, these states do have statutes which mandate compulsory school attendance. This raises two issues: (1) states still act as *parens patriae*,[104] and (2) states are portraying a hypocritical belief that education is important for some, but not for all of its children.

A state is acting as *parens patriae* when, as is evident in most of the statutes cited,[105] it provides some form of punishment for parents who do not ensure that their children are attending school. Therefore, the state is essentially stepping in and telling the parents that if they do not provide this essential tool to their children, they will be punished. A state's strong belief that education is important and essential for the well-being of minors is evident in the fact that a state frequently has the power to require school attendance even over parental objection.[106] This leads to the issue that states are governing under a double standard.

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102 *See, e.g.*, CONN. GEN. STAT. § 10-233D(a) (1995); GA. CODE ANN. § 20-2-151.1(a) (1995); IDAHO CODE § 33-205 (1995); MASS. GEN. LAWS ANN. ch. 71, § 37H (West 1993); MD. CODE ANN., EDUC. § 7-304(2) (1995); N.M. STAT. ANN. § 22-5-4.7(A) (Michie 1978); OR. REV. STAT. § 339.250(6) (1995); S.D. CODIFIED LAWS ANN. § 13-32-4 (1995); UTAH CODE ANN. § 53A-11-904(2)(a) (1953).

103 *See, e.g.*, MICH. COMP. LAWS ANN. § 380.1311(2) (West 1995); PA. STAT. ANN. tit. 24, § 13-1318 (1949); 89-66 Op. Att'y Gen. 168 (S.C. 1989).

104 *See, e.g.*, Prince v. Massachusetts, 321 U.S. 158 (1944).

105 *See supra* note 100.

106 Prince v. Massachusetts, 321 U.S. at 166.

By creating compulsory attendance statutes, all states express their belief that education is essential. However, not all states are willing to provide this essential privilege to all children. This is demonstrated by a state's lack of alternative educational programs for those students who have been excluded from school. This again suggests that states are governing with a double standard. This can only reinforce a student's belief that she is unworthy.

B. Behavior Off of School Grounds

As mentioned previously, states are failing to consider that students expelled because of a conviction more likely than not engaged in this behavior off of school grounds; the requisite conduct does not need to be an act which occurred on school property or against school personnel. Children are being excluded from school for behavior which may have little or no relationship to their conduct or performance in school.

An example of this is Connecticut where a local or regional board of education may expel any pupil whose conduct endangers persons or property or whose conduct on or off school grounds is seriously disruptive of the educational process, or violates a publicized policy of such board.[107] The statute does not explain what is meant by this standard nor does it outline a test which should be applied to the conduct. The statute neither addresses nor shows a correlation between this "off-school-grounds" behavior and obedience of school rules. There is, in fact, no relationship. How are we to punish kids when there is no demonstrated relationship?

C. Confidentiality of Records

An issue which must be addressed when considering expulsion based on conviction and/or adjudication statutes is the confidentiality of juvenile records. In response to this issue, legislation has historically protected a juvenile's identity from the general public so as to aid in the rehabilitation of the juvenile and prevent the stigmatization of the youth.[108] However, expulsion based on conviction statutes now make it necessary for the principal, school superintendent, or board of education to be notified or given access to a juvenile's criminal record in order to determine if that student has been charged with or convicted for a felony and/or adjudicated a delinquent. Therefore, the question of imminent concern

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107 CONN. GEN. STAT. § 10-233d(a) (1995).

108 Feld, *supra* note 35, at 825.

is how does this process work to favor a juvenile under the intended purpose of the juvenile justice system?

In answer to this question, many respond that "[i]f schools know the identity of a violent juvenile, they can respond to misbehaviors [sic] by imposing stricter sanctions, assigning particular teachers, or having the student's locker near a teacher's doorway entrance so that the teacher can monitor his conduct during the changing of class periods. In short, this . . . would allow schools to take measures to prevent violence"[109] which some view as the goal behind the juvenile justice system. However, the reason for such confidentiality is the rehabilitation of delinquent children as opposed to punishment and retribution. Therefore, to accomplish these objectives, certain basic changes in the traditional method of dealing with criminal offenders has been made in the case of juveniles. Partly to avoid infringement of the constitutional rights of juveniles and partly to avoid attaching to them the stigma of being criminals, special procedures for the hearing of juvenile offenses have been established.[110]

In accordance with this purpose, since its inception, it has been the goal of the juvenile justice system that all proceedings be conducted outside of the public's eye and that youths brought before juvenile courts be shielded from publicity.[111] This insistence on confidentiality is centered around a concern for the welfare of the child, "to hide his youthful errors and bury them in the graveyard of the forgotten past."[112] The prohibition of publication of a juvenile's name is designed to protect her from the stigma of her misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the state.[113] It has always been held that the publication or release of the names of juvenile offenders would seriously impair the rehabilitative goals of the juvenile justice system and handicap the youths' prospects for adjustment in society and acceptance by the public.[114] Thus, the widespread dissemination of a juvenile offender's name would detract from the "beneficent and rehabilitative purposes" of a state's juvenile court system.[115] However, as

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109 141 CONG. REC. S13,656-05 (1995).

110 *See* MASS. GEN. LAWS ANN. ch. 119, § 53; Metcalf v. Commonwealth, 156 N.E.2d 649, 651 (Mass. 1959).

111 *See, e.g.*, Smith v. Daily Mail Publishing Co., 443 U.S. 97, 107 (1979).

112 *In re* Gault, 387 U.S. 1, 24-25 (1967).

113 *Daily Mail Publishing Co.*, 443 U.S. at 107.

114 *Id.* at 107-08.

115 *Id.*

indicated by statutes in various states, this desire for confidentiality has rapidly crumbled and entered into the school setting.

States which permit the suspension and/or expulsion of a student based on a charge and/or conviction generally provide for the release of juvenile records to the school district.[116] As demonstrated by the statutes cited, the court is allowed, and under some statutes, mandated to inform members of the school district of a student's charge and/or conviction. This is a substantial departure from the intent of the juvenile justice system and provides no assurance that a student is not treated according to the charge. Once a

116 *See, e.g.*, ARIZ. REV. STAT. ANN. § 9-27-309(d) ("Prosecuting attorneys or the juvenile court may provide information, concerning the disposition of juveniles who have been adjudicated delinquent to the school superintendent of a school district. Further, when a juvenile is adjudicated delinquent for an offense for which he could have been charged as an adult or for unlawful possession of a handgun, the prosecuting attorney shall notify the school superintendent of the school district in which the juvenile is currently enrolled."); COLO. REV. STAT. ANN. § 19-1-119(5) ("Whenever a petition filed in juvenile court alleges that a child between the ages of 14 and 18 years has committed an offense that would constitute a crime of violence if committed by an adult or whenever charges filed in district court allege that a child has committed such an offense, then the arrest and criminal records information shall be made available to the public. Basic identification information, along with details of the alleged delinquent act or offense, shall be provided immediately to the school district in which the child is enrolled."); CONN. GEN. STAT. § 54-761 ("The court may permit an inspection of any papers or records and the court shall make the identity of a person who is adjudged a youthful offender as a result of a felony known to the superintendent of schools. Such superintendent shall use the information for school placement or disciplinary purposes only."); FLA. STAT. ANN. § 39.045(5) ("All information obtained in the discharge of official duty by any judge, . . . is confidential and may be disclosed only to the . . . school superintendents and their designees. Within each county, the sheriff, . . . school superintendent, and the department shall enter into an agreement to share information about juvenile offenders among all parties. In addition, subsection provides that . . . , when a child of any age is taken into custody by a law enforcement officer for an offense that would have been a felony if committed by an adult, or a crime of violence, the law enforcement agency must notify the superintendent of schools that the child is alleged to have committed the delinquent act. Upon notification, the principal is authorized to begin disciplinary actions. In addition, the information must be released within 48 hours after receipt to appropriate school personnel of the school of the child. The principal must immediately notify the child's immediate classroom teachers."); LA. REV. STAT. ANN. ch. 3, art. 412(H)(1) ("Within 24 hours after receiving a predisposition report, the sentencing court shall order the release of any portion of a predisposition report containing and limited to conviction, adjudication, or disposition of a child in grades seven through twelve, who is arrested, charged, or adjudicated a delinquent for committing a felony-grade delinquent act or a misdemeanor-grade delinquent act involving the distribution or possession with intent to distribute a controlled substance or any violent offense against the person, to the principal of the school in which the child is registered and enrolled or registered and enrolled but suspended. Such notification shall be a continuing responsibility of the court through adjudication and disposition. The principal shall have a continuing responsibility to advise each teacher who has that student assigned to his class of the notification, within two school days, after the principal receives it.").

teacher or principal is informed of the child's history, that student will not receive the same educational benefits as other children whether they are expelled or not.

After receiving the label of delinquent, a student will be expected to exhibit certain behavior and, accordingly, these expectations will be communicated repeatedly and effectively to the individual.[117] In addition, these expectations will influence teachers' and other school personnel's responses to the student, as well as the student's self-concept and response to the community.[118] Consequently, this will serve the opposite role of rehabilitation. "[T]he stigmatization of a young person as 'bad,' and the negative responses of the larger community to the juvenile once she or he is categorized as 'delinquent' all contribute to the likelihood that a juvenile will embark upon more and perhaps escalated delinquent activities. The social definition of the young person, complete with officially pronounced disapproval and condemnation, may act as a triggering agent or a catalyst that propels the juvenile into more delinquency."[119]

In addition, students are often placed into "tracks"[120] when it is known that they have a court record. These tracks have two effects. First, students are typically assigned to low-functioning classrooms which are below the students' actual levels of functioning because teachers, principals, other school personnel, and students themselves come to expect less.[121] Second, in response to this placement, the student will engage in school crime both to live up to school personnel's expectations as well as their own expectations[122] and also to obtain some level of success and well-being.[123]

Unfortunately, courts are aware of this detriment but are unwilling to step in and correct the situation.[124] Therefore, the judiciary has left to the discretion of the legislature the decision regarding the precise type of treatment a juvenile should receive as compared to an adult. This is demonstrated in court rulings that while "publicity might have an adverse effect on the prospects of

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117 BORTNER, *supra* note 94, at 249.

118 BORTNER, *supra* note 94, at 249.

119 BORTNER, *supra* note 94, at 250.

120 Richard Lawrence, *Controlling School Crime: An Examination of Interorganizational Relations of School and Juvenile Justice Professionals*, 46 JUV. & FAM. CT. J. 3, 7 (1995).

121 *Id.*

122 *Id.* at 8 (citing D.H. Kelly & W.T. Pink, *School Crime and Individual Responsibility: The Perpetuation of a Myth?*, 14 URB. REV. 47, 55 (1982)).

123 *Id.*

124 *See, e.g.*, News Group Boston, Inc. v. Commonwealth, 568 N.E.2d 600 (Mass. 1991).

rehabilitation of a particular juvenile and, [while] public disclosure of certain information about a juvenile could have adverse consequences, . . . [it is] a question for legislative judgment"[125] as to what type of differential treatment a juvenile should receive.

Therefore, while courts admit that public access to a juvenile's name has a negative impact on the entire rehabilitative process, they are unwilling to correct it. This is worsened by the fact that expulsion statutes are applicable to students who are only *alleged* to have committed a crime. In such cases, there has been no conviction according to law, yet there has been a conviction according to society.

Recent legislative enactments demonstrate that juvenile records are becoming more and more accessible to the public either through open court rooms or failure to seal or expunge records. While some statutes still restrict many segments of the public from access to such records, the only individuals who appear to have little or no access are employers. This has remained such so that courts can protect a juvenile's ability to obtain future employment. However, this same reasoning is an argument that may be made for education. It is allowed by state statute that if a child is convicted of committing a felony, she may be excluded from school permanently or for a lengthy period of time. If courts do not step in and limit access to a juvenile's criminal record to school departments and personnel, those juveniles convicted will be denied an equal opportunity to an education and, therefore, will not have an equal opportunity for employment because they will lack the necessary skills. Not only will the release of confidential records allow for the failure of states to provide juveniles with an education, it will also influence a juvenile's future involvement in crime because students will not be able to obtain employment to provide for themselves and their families.

D. Presumption of Innocence

Many expulsion statutes overlook the premise behind the justice system that a person is innocent until proven guilty. This is evident in the fact that school districts are permitted to suspend and/or expel a student who has simply been charged with a felony or delinquent act. There is no required scrutiny of the facts which underlie the charge nor is there a reasonable doubt standard under which conviction could be had. Instead, a report is simply

125 *Id.* at 603.

received stating that the student has been charged for an offense and the school then decides whether such alleged behavior would be harmful to other students and/or school personnel. What about a determination that the student in fact committed the alleged act? No time is given to analyze the facts. The premise seems to have now become guilty until you prove yourself innocent.

Further, under expulsion statutes which are based upon conviction and/or adjudication, students that have pled guilty to charges brought against them are expelled. They are also expelled for judgments of a continuance without a finding. Therefore, it must always be explained to a student that if they plead guilty to a charge, regardless of the reason, they will be expelled from school. This is also an issue which should be addressed by the defense to a judge when a juvenile in a state providing for such an expulsion is faced with a felony or juvenile charge. Without this discussion, many more students are going to be expelled from school with no further education.

V. Possible Solutions

When considering possible solutions, I believe that there are two areas which must be addressed: (1) pre-delinquent intervention[126] and (2) post-adjudication intervention.[127] Within these two areas, I will discuss programs which have previously been and/or are currently being implemented. In addition, I will present issues which must be addressed in order to work towards the prevention of violence which expulsion statutes do not address.

However, prior to considering the following solutions, the best solutions are to either abolish or amend all current expulsion statutes. I am of the strong belief that the only true way to prevent this injustice and deprivation of an education is to abolish all existing expulsion statutes. If this is not an option, then these statutes must be amended so as to mandate that an alternative education be provided to all students who are expelled regardless of the reason. If neither option is to occur, then we must look to the following solutions.

A. *Pre-Delinquent Intervention*

It is my contention that before Congress and the various state

[126] Richard J. Lundman, Prevention and Control of Juvenile Delinquency 13 (1984).
[127] *Id.* at 14.

legislatures can begin to punish specific conduct, they must first determine the cause and, in response, possible solutions to prevent such violent behavior.

In approaching violence in the schools, Congress and the legislatures must first determine the cause and then attempt to prevent such behavior from occurring within society. To approach this, there are several things that must be done.

First, legislative bodies must actually talk and listen to students. Students, much more than the government, have some idea as to what the cause is, and how to prevent violence in the schools. This is so simply because it is students who are either carrying weapons or who need protection from those who are. It is difficult, if not impossible, for Congress and state legislatures to address the issue of school violence without knowing how adolescents struggle with the issue. When asked about violence and its effect on the future, one student responded that:

> [t]he world today is very violent and it is hard trying to survive. I picture the world as a big tree, and everyone starts at the bottom and when you are at the top you have survived. On your way to the top are many branches, twigs and leaves. I try to move to the top very fast, but carefully.
>
> I made a lot of mistakes. On the way I have shot at people. I have gotten into gangs. I have stabbed people, and have fought people. As I moved deeper down the branches, (they) get thinner and thinner and at the end that is where I fall and die. What I tried to do is leave the branch. Put myself in reverse and move on.
>
> I moved a little. I go to school and I don't sell drugs yet, hopefully, I won't. Hopefully, I'll just move the right way, move towards a positive branch.[128]

Another student stated that "[a]s for the future, I see a bunch of bodies lying on the street."[129]

In addition, when asked about possible solutions, the answers one would most likely hear are "I would have counseling"[130] or "I would make all gangs come together during school hours and make a little peace treaty during school hours"[131] or "it's not a matter of more security or any types of things like that as it is kicking the knowledge to

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128 DEBORAH PROTHROW-STITH & MICHAELE WEISMANN, DEADLY CONSEQUENCES: HOW VIOLENCE IS DESTROYING OUR TEENAGE POPULATION AND A PLAN TO BEGIN SOLVING THE PROBLEM 87 (1991).

129 *Id.* at 94.

130 Lynette Richardson & Debra Williams, *Teens Sound Off On School Security*, CATALYST, Nov. 1994, at 11.

131 *Id.*

the people that this is your school, making safety for yourself . . . . They need to come out with some kind of counseling thing where students try to work out their problems by themselves."[132]

While talking to students may seem somewhat trivial, simplistic, and idealistic, it is what the students believe is needed and, therefore, are solutions that must be addressed when implementing solutions to the problem of violence in neighborhoods and schools.

This style of conversation with students is the first necessary step which must be taken when considering possible methods of prevention rather than, or at least before, punishment. In order to combat a problem, there must be a cause. Simply punishing the behavior after it occurs is not going to correct or prevent it from occurring in another neighborhood or school.

In addition to talking with students, Congress and the states should look to other school districts around the nation to consider programs which, through student involvement, have been implemented to combat and prevent the issue of violence.

For example, in Chicago, Illinois, public schools have implemented a program known as STAR (Straight Talk About Risks).[133] This program attempts to teach children about the dangers of guns, how to recognize threatening situations, and how to make wise choices to ensure their safety.[134]

In Baltimore, Maryland, after the superintendent of schools realized that children were afraid of going to and from school, the public schools created a "safety corridor."[135] This involves a group of churches, businesses, and other institutions that volunteer to open their doors to students for two hours before and after school.[136] The volunteers are trained in conflict resolution and crime prevention and have also been taught what to do if a child has been involved in a crime, is injured or ill, or is just plain scared.[137]

In Cleveland, Ohio, public schools have developed a program for elementary school students which teaches what is and is not appropriate behavior. The program teaches kids what hands should and should not be used for, as well as covering such issues as sexual misconduct, fighting, and cheating on tests.[138]

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132 *Id.*

133 *Teaching Kids How to Handle Anger, Avoid Violence*, CATALYST, Nov. 1994, at 12.

134 *Id.*

135 Elizabeth Crouch, *What Other Cities Are Doing to Protect Kids*, CATALYST, Nov. 1994, at 7.

136 *Id.*

137 *Id.*

138 *Id.*

In conjunction with the aforementioned, there must be a re-investment of economic resources into poor, underserved communities. Resources are necessary to rebuild and revitalize neighborhoods and business districts of these communities. We must devise programs in which youth from surrounding communities go into neighborhoods and clean up streets and alleyways, paint buildings, and help remodel the interiors and exteriors of vacant buildings. Buildings that are remodeled may then be rented or sold, or used for subsidized housing. By this revitalization, businesses will be more apt to move back into these communities, thus creating jobs for the unemployed.

Through the implementation of such programs, youth will begin to feel a sense of pride in their communities and in themselves due to their involvement in the revitalization process. In addition, with the revitalization of neighborhoods, adults will also begin to take pride in their communities. With a new sense of pride, adults will have a reason to take back their neighborhoods and they will have a better sense of self due to better living conditions. This in turn will have a positive effect on their children.

There must also be a financial investment in the school system. All schools need to be upgraded to a standard that far surpasses what is currently available in many areas throughout the country. Through the reinvestment of money, more teachers can be hired which will help lower classroom size, making them more personal and structured. This is essential because, "[r]esearch shows that schools with strong principals; schools that are not too large; schools where discipline is fair, but firm; schools where teachers are imbued with high expectations for every child; schools where parents are drawn into the educational orbit, are schools where learning takes place."[139] With an investment of funding, these factors will be attainable.

Further, the curriculum in schools must be improved so as to include cultural education, drug and alcohol awareness programs, and violence prevention programs.

First, by teaching students about all cultures we are educating them about different histories, backgrounds and races. This is essential because if children are taught about our differences, then they will also be made aware of our commonalities. In addition, if children learn about their ancestors, they will have more pride in who they are.

Second, children need to be educated about violence and drugs and alcohol in the first grade because they are subjected to these things at a very young age due to television, movies and society. How-

139 PROTHOW-STITH & WEISMANN, *supra* note 128, at 168.

ever, this education needs to continue throughout a child's schooling and, as students progress into higher grades, this education should become much more intense, specific and straight forward. The effects and consequences of violence and drugs and alcohol should be expressed in a very honest and realistic manner. Students need to be made aware that death is final and effects many people, both in relation to the victim and the perpetrator.

Moreover, there need to be other outlets presented to youth that take the place of "hanging out" on street corners with their friends. Possible outlets can include such things as the Boys and Girls Clubs, neighborhood sports leagues, neighborhood dances, or community centers where kids can go to be with their friends while taking part in some form of activity. Through these types of centers, youth are taken off the street and given other choices that are fun and social.

> Making available after-school, weekend, and evening youth activities that provide academic, vocational, athletic, artistic, and other types of activities for young people will provide positive opportunities to prevent crimes [because we] are providing life-enhancing alternatives to criminal activity. Midnight sports league programs, for example, provide young people with structured athletic, educational, and job training activities that keep at-risk youth off the street at night and provide key educational and employment support.[140]

Another solution that must be considered is counseling services in schools. Schools need to provide both individual and group counseling for those youth who have either become involved with violence or who are within a high-risk population. Through counseling, students will find other options for dealing with feelings and fears that do not involve violence.

Individual counseling is important because it provides students with a neutral person with whom to talk. Many of these youth do not have, or feel they do not have, an adult figure in their lives to whom they can go to talk about issues which are creating pressures and fears.

Further, there needs to be some form of groupwork with these youth. Groupwork is important because it shows kids that they are not alone—that there are others with the same issues they have. It is often easier for a youth to listen to someone their own age who is going through or has gone through similar experiences and who is growing up under the same pressures.

In looking at other solutions for the prevention of violence, we need to realize that youth are affected by many varying environmental

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140 Committee Hearing, *supra* note 50.

and psychological factors that were not as prevalent two decades ago when the juvenile justice system was in its prime. One such factor is a self-fulfilling prophecy.[141] Many of our youth have been stereotyped as being part of a population that is lazy, uneducated, and involved with drugs and, therefore, heavily involved in crime and violence. In response to this, society treats youth according to this stereotype and, after having been treated accordingly for such a significant period of time and by such a significant number of people, "[e]ventually, the prophecy creates the facts which prove it correct."[142] Our youth have seen generations before them follow in those footsteps and believe that it is the only way of life. With this "criminal" lifestyle comes not only an image of a person driving a nice car, but also the necessary concern of being safe. Many youth who are involved in violence grow up in a community in which they live in fear. This typically means growing up very fast and much to soon. To the younger population, a nice car and money means respect from one's peers, while fear means safety.

Moreover, a feeling of isolation, poor relationships with friends and family, weak decision making skills, and low self-esteem, are internal beliefs or feelings that motivate a youth towards violence.[143] Through the use of weapons and criminal involvement, a youth is achieving a sense of respect which helps to relieve feelings of loneliness and self-doubt. In conjunction with this, we must also look at the environment in which most kids involved in violence are living, the type of activities they engage in, and opportunities they have available to them.[144] While there are kids that have achieved while growing up in the same situation, we must address the ones that have not. We must determine what it is that they need to achieve.

There have been several programs at various times throughout the country which have addressed all of the issues which I have discussed in the hopes of solving this very problem. These programs, some of which are either still in existence or which have been replicated, were developed specifically to prevent violence in communities. For example, the Chicago Area Project (CAP), which began in 1932, attempts to prevent juvenile delinquency through neighborhood involvement and improvement.[145] This program, which functions mostly through adult volunteers, encourages adults within the neigh-

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141 BORTNER, *supra* note 94, at 249.

142 BORTNER, *supra* note 94, at 249 (citing Kai T. Erikson, *Notes on the Sociology of Deviance* 302 *in* THOMAS J. SCHEFF, MENTAL ILLNESS AND SOCIAL PROCESSES (1967)).

143 BORTNER, *supra* note 94, at]218-24.

144 BORTNER, *supra* note 94, at 218-24.

145 LUNDMAN, *supra* note 126, at 58.

borhood to join community committees, elect committee leaders, and initiate fund-raising activities.[146] The funds which are raised are spent mostly to employ indigent gang workers who are assigned to neighborhood youth gangs, refurbish rented storefront community centers, and buy sports equipment used in the recreational programs run by adult volunteers.[147]

Through community committees, CAP focuses on three primary activities. First, it sponsors recreational programs for neighborhood children through the use of neighborhood park facilities. In addition, several of the community committees built summer camps outside of the city and sponsor extensive summer camp programs for neighborhood juveniles.[148] Second, community committees sponsor needed community improvement campaigns which focus primarily on health care, sanitation, educational, and law enforcement services.[149] Lastly, community committees engage in specific activities intended to prevent and control juvenile delinquency.[150]

The prevention of juvenile delinquency is done in several ways. First, CAP employs indigent gang workers who are assigned to neighborhood youth gangs.[151] Second, gang workers, staff members, and adult volunteers advocate on behalf of neighborhood juveniles with the juvenile justice system.[152] These workers also advocate on behalf of neighborhood juveniles prior to arrest, following arrest, and during incarceration.[153] However, if these attempts fail, staff members and volunteers frequently visit the juvenile so they realize that the community is still behind them and is ready to provide acceptance and assistance upon their return.[154]

Similarly, Midcity Project (MP), which was located in Boston, Massachusetts, from 1954 to 1957, also directed its efforts at three factors thought to play a causal role in urban delinquency: the community, the family, and the neighborhood gang.[155] MP developed and strengthened previously existing community groups and utilized existing professional agencies, such as settlement houses.[156] In addition, families which had a long history of repeated use of welfare services

146 LUNDMAN, *supra* note 126, at 62.
147 LUNDMAN, *supra* note 126, at 62.
148 LUNDMAN, *supra* note 126, at 62.
149 LUNDMAN, *supra* note 126, at 62-63.
150 LUNDMAN, *supra* note 126, at 63.
151 LUNDMAN, *supra* note 126, at 63.
152 LUNDMAN, *supra* note 126, at 63.
153 LUNDMAN, *supra* note 126, at 63.
154 LUNDMAN, *supra* note 126, at 63.
155 LUNDMAN, *supra* note 126, at 68.
156 LUNDMAN, *supra* note 126, at 68.

were identified and subjected to a special and intensive program of psychologically-oriented case-work.[157]

However, the major thrust of MP's work was similar to that of CAP's work with indigent gang members. The only noticeable difference was that MP's workers were social workers with graduate degrees.[158] These workers changed the gangs into formal clubs, served as "intermediaries between gang members and adult institutions, such as employers, schools, police, and other professional agencies, and encouraged law-abiding behavior through groupwork techniques, persuasion, and role modeling."[159] The workers were in contact with the gangs on an average of three times per week, and each of these contacts lasted between five and six hours.[160] The remainder of the workers' time was spent performing other services such as conferences with teachers and police officers.[161] These services lasted for approximately ten to thirty-four months.[162]

The last project worth mentioning, the New York Mobilization for Youth (MFY), functioned under the premise that youth must be given an opportunity to act in nondelinquent ways so as to prevent them from participating in delinquent acts.[163] MFY included thirty separate programs which focused on the areas of work, education, community organizations, and group service.[164]

One of MFY's programs, Urban Youth Services Corps, hired several hundred unemployed neighborhood youths and focused on fostering the types of attitudes and behaviors (e.g., following orders, reporting to work on time) necessary to succeed in the working world, and on strengthening the participants' job skills.[165] Following this training, a Youth Jobs Center attempted to find permanent jobs for those who successfully completed the training program.[166]

In addition to Youth Services Corps, MFY also created educational programs, such as the Homework Helper program, in which low-income high school students were hired to tutor children in ele-

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157 LUNDMAN, *supra* note 126, at 68 (citing Walter B. Miller, *The Impact of a 'Total Community' Delinquency Control Project*, SOCIAL PROBLEMS, Fall 1962, at 169).

158 LUNDMAN, *supra* note 126, at 69.

159 LUNDMAN, *supra* note 126, at 69.

160 LUNDMAN, *supra* note 126, at 70.

161 LUNDMAN, *supra* note 126, at 70.

162 LUNDMAN, *supra* note 126, at 70.

163 ALBERT R. ROBERTS, JUVENILE JUSTICE: POLICIES, PROGRAMS, AND SERVICES, 47-48 (1989).

164 *Id.* at 48.

165 *Id.*

166 *Id.*

mentary school.[167]

Lastly, a group service aspect of the project included services for youths who had joined a gang, as well as delinquency prevention programs aimed at younger children.[168] For youths aged eight through twelve, MFY developed the Adventure Corps which was a character-building organization designed to reach delinquency-prone youths by providing exciting recreational and educational activities for young people as an alternative to gang membership.[169]

While these are only a few prevention programs that have been and can be implemented, through their use, it is my contention that many youth will have a better sense of self and feeling of safety. They will be given guaranteed choices to help alleviate some of the issues and pressures that are prevalent in their daily lives. Through these programs, students have another route offered other than the path of violence.

While society is concerned with the cost of funding these types of programs, we must realize that violence in itself is a very costly problem. The cost of criminal violence on a national scale has been estimated to cost more than $3.5 billion, with $1.5 billion resulting from firearms.[170] The average cost to treat a child wounded by a gun is more than $14,000 alone.[171] With costs being this high, how can we not afford to invest in the prevention of violence? With this investment, we are not only helping those individuals who are at-risk of becoming juvenile offenders, but we are improving society as a whole while also helping to prevent a problem.

In addition to these prevention programs, other steps need to be taken which many may view as extreme. One such step is either a complete ban on weapons or some other action which will make it more difficult for a person to purchase a weapon. While individuals are given such a fundamental right under the United States Constitution,[172] some control needs to be in place so that access to these weapons is not so simple. It should be of great concern to society that a youth on the street can obtain a weapon faster than she can obtain a Big Mac.

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167 *Id.*
168 *Id.* at 49.
169 *Id.*
170 Committee Hearing, *supra* note 50.
171 Committee Hearing, *supra* note 50.
172 U.S. Const. amend. II.

B. Post-Adjudication Intervention

In regards to individuals who have been convicted for felonies or adjudicated delinquent, services must be provided to them so that they are not simply placed back in a situation in which they were unable to function previously without the use of violence. Intensive counseling needs to be provided while a youth is either in lock-up or in a detention center so that she is taught ways to handle the stress of growing up in a violent world. This is important especially when kids are carrying weapons because "they think [that] by carrying guns, . . . they will be protected from dying."[173]

An example of a program that has implemented these services is the Provo Experiment (Provo), an all-boys program which was located in Utah County, Utah between 1959 and 1965. Provo was premised on the belief that treatment had to be community based, because it was in the community that juveniles made their delinquent decisions.[174] This nonresident facility utilized an intensive group program with employment and a delinquent peer group as the primary instruments of treatment.[175] In Provo, the boys primarily lived at home and when they were not in school, they were either working in a paid city program or at the site partaking in group activity. However, following their departure from either school or work, the boys attended a group meeting.[176] Following the completion of the meetings, the boys returned to their own homes. During the summer, except on rare occasions, every boy attended an all-day program which involved work and group discussion.[177] This treatment program lasted approximately five to six months for each boy.[178]

In accordance with the services previously mentioned, it is essential that individuals who have been expelled under weapon and conviction statutes be provided with educational services. However, these services must be more structured and monitored than regular school services. This alternative education should include individualized instruction, reward systems, goal-oriented work, strong and competent teachers, small classrooms, and continuous activity. While these sound like essential elements of all educational services, it is primarily needed in the case of at-risk juveniles.

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173 PROTHOW-STITH & WEISSMAN, *supra* note 128, at 84.
174 LUNDMAN, *supra* note 126, at 157.
175 LUNDMAN, *supra* note 126, at 158.
176 LUNDMAN, *supra* note 126, at 158.
177 LUNDMAN, *supra* note 126, at 158.
178 LUNDMAN, *supra* note 126, at 158.

These youth need structure and commitment in their lives so that they can overcome the label and life they have come to know.

VI. CONCLUSION

In the past year, nearly 1000 students were expelled from school under suspension and expulsion statutes.[179] Twenty percent of those expelled were thirteen-years old or younger, while some were as young as eight-years old.[180] The offenses leading to expulsion ranged from snapping a girl's bra strap to murder. If we have any hope of saving the younger generation and preventing further increase in the lethality of juvenile crime, we must realize that expulsion statutes are not working. We must begin to progress back to the thought process that initiated the separation of the juvenile justice system from the adult system. The focus must once again be on rehabilitation and prevention as opposed to punishment and retribution.

Unfortunately, the impetus behind expulsion statutes fails to address these issues and are, therefore, not confronting the most relevant factors which permeate violence in and around schools. Because of this, the goal behind expulsion statutes is unassailable because the statutes do not provide solutions to problems which actually plague the public schools and surrounding communities. Often, the statutes actually create more harm than good.

179 *Student Expulsions on the Rise*, LAWYERS WKLY., May 8, 1995, at 8.
180 *Id.*