



## Restorative Justice, School Reopenings, and Educational Equity: A Contemporary Mapping and Analysis of State Law

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*The opportunity to use restorative justice practices to address structural inequalities and reimagine school structures has become increasingly important in the wake of twin social and public health pandemics. As research-based restorative practices continue to grow across the country with the aim of fostering supportive, safe, and anti-racist learning environments, calls to codify school-based restorative justice are spreading. Despite the prevalence of on-the-ground practices since the 1990s and a growing evidence base for school-based restorative practices, there is little understanding of the effect of the legalization of restorative justice on individual- or school-level outcomes. This study is the first analysis of the*

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*current school-based restorative justice schemes enshrined in state law. This data lays an important foundation for future directions in research, policy construction, and the use of restorative practices as education in the United States continues to transform following COVID-19 closures. To ensure that schools can best support the needs of students as they return to classrooms, close attention to the current restorative justice legal scheme is a key step to avoid practices and policies that could exacerbate long-standing systemic inequities in education. As schools rebuild their learning communities, future attention should focus on rigorous and systematic evaluation of restorative justice laws and how they can strengthen not only our educational system as a whole but also support educational achievement and healthy social and emotional development. Such studies will also promote new sociolegal understandings of the deployment of law as a core element of educational equity and justice movements, as well as enhance the evidence base for restorative justice in schools.*

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## INTRODUCTION

Restorative justice in American schools has grown significantly over the last two decades.<sup>1</sup> Against a backdrop of growing evidence of the pernicious effects of exclusionary discipline on Black and Latine students and students with disabilities,<sup>2</sup> policymakers, educators, reform advocates, and communities have turned their attention to legal and policy interventions grounded in non-punitive philosophies and practices.<sup>3</sup> In this multidisciplinary field, researchers utilize multiple methodologies, from random controlled trials to qualitative analyses to

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<sup>1</sup> See TREVOR FRONIUS, SEAN DARLING-HAMMOND, HANNAH PERSSON, SARAH GUCKENBERG, NANCY HURLEY & ANTHONY PETROSINO, WESTED JUST. & PREVENTION RSCH. CTR., *RESTORATIVE JUSTICE IN U.S. SCHOOLS: AN UPDATED RESEARCH REVIEW 1* (2019), <https://www.wested.org/wp-content/uploads/2019/04/resource-restorative-justice-in-u-s-schools-an-updated-research-review.pdf> [<https://perma.cc/6ENW-NHKL>]; ANNE GREGORY & KATHERINE R. EVANS, NAT'L EDUC. POL'Y CTR., *THE STARTS AND STUMBLING OF RESTORATIVE JUSTICE IN EDUCATION: WHERE DO WE GO FROM HERE?* 6 (2020), [https://nepc.colorado.edu/sites/default/files/publications/Revised%20PB%20Gregory\\_0.pdf](https://nepc.colorado.edu/sites/default/files/publications/Revised%20PB%20Gregory_0.pdf) [<https://perma.cc/L8CK-5UVY>] (identifying the growth and development of school-based restorative justice and presenting recommendations for future implementation); Marilyn Armour, *Restorative Practices: Righting the Wrongs of Exclusionary School Discipline*, 50 U. RICH. L. REV. 999, 1015-23 (2016) (discussing the history of restorative justice in schools in relationship to zero tolerance and presenting contemporary case studies in Texas).

<sup>2</sup> See Am. Psych. Ass'n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, 63 AM. PSYCH. 852, 854-55 (2008); Russell J. Skiba, Choong-Geun Chung, Megan Trachok, Timberly L. Baker, Adam Sheya & Robin L. Hughes, *Parsing Disciplinary Disproportionality: Contributions of Infraction, Student, and School Characteristics to Out-of-School Suspension and Expulsion*, 51 AM. EDUC. RSCH. J. 640, 640-41 (2014) ("multilevel examination of the relative contributions of infraction, student, and school characteristics to rates of and racial disparities in out-of-school suspension and expulsion").

<sup>3</sup> See, e.g., Yolanda Anyon, Anne Gregory, Susan Stone, Jordan Farrar, Jeffrey M. Jenson, Jeanette McQueen, Barbara Downing, Eldridge Greer & John Simmons, *Restorative Interventions and School Discipline Sanctions in a Large Urban School District*, 53 AM. EDUC. RSCH. J. 1663 (2016) (an empirical analysis of intervention responses to discipline incidents with findings that indicate first-semester restorative justice participants had lower odds of a discipline referral); Thalia González, *Restorative Justice from the Margins to the Center: The Emergence of a New Norm in School Discipline*, 60 HOW. L.J. 267, 270, 288-306 (2016) (examples of advocacy efforts to reform school discipline practices and school, district and state-level reforms); Lydia Nussbaum, *Realizing Restorative Justice: Legal Rules and Standards for School Discipline Reform*, 69 HASTINGS L.J. 583 (2018) (arguing for policy and legal reforms to increase the use of restorative justice in schools); Mara Schiff, *Can Restorative Justice Disrupt the 'School-to-Prison Pipeline?'*, 21 CONTEMP. JUST. REV. 121 (2018) (review of the effectiveness of school-based restorative justice and recommendations for policy change); GREGORY & EVANS, *supra* note 1 (advancing restorative justice over punitive responses to address student behavior).

single group design, to examine diverse sets of practices and their results.<sup>4</sup> Studies have validated positive outcomes associated with school-based restorative justice in the United States in a range of domains. These include measures of decreased office referrals,<sup>5</sup> student absenteeism and truancy,<sup>6</sup> suspensions and expulsions,<sup>7</sup> and overall reduced reliance on punitive practices.<sup>8</sup> Researchers have also found positive associations between restorative approaches and improved student-teacher relationships, strengthened school connectedness,<sup>9</sup>

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<sup>4</sup> See FRONIUS ET AL., *supra* note 1, at 21-32 (systematic review of school-based restorative justice in the United States).

<sup>5</sup> Patrice H. Goldys, *Restorative Practices from Candy and Punishment to Celebrations and Problem-Solving Circles*, 12 J. CHARACTER EDUC. 75, 75 (2016); see Anne Gregory & Kathleen Clawson, *The Potential of Restorative Approaches to Discipline for Narrowing Racial and Gender Disparities*, in INEQUALITY IN SCHOOL DISCIPLINE: RESEARCH AND PRACTICE TO REDUCE DISPARITIES 153, 160 (Russell J. Skiba et al. eds., 2016) (a study of two high schools finding fewer discipline office referrals for misconduct/defiance are issued to students and increased use of restorative practices).

<sup>6</sup> See SONIA JAIN, HENRISSA BASSEY, MARTHA A. BROWN & PREETY KALRA, DATA IN ACTION, RESTORATIVE JUSTICE IN OAKLAND SCHOOLS: IMPLEMENTATION AND IMPACTS 53, 57 (2014), <https://www.ousd.org/cms/lib/CA01001176/Centricity/Domain/134/OUUSD-RJ%20Report%20revised%20Final.pdf> [<https://perma.cc/57DG-VEKH>] (multi-year study of restorative justice program and practice implementation in Oakland Unified Schools).

<sup>7</sup> CATHERINE H. AUGUSTINE, JOHN ENGBERG, GEOFFREY E. GRIMM, EMMA LEE, ELAINE LIN WANG, KAREN CHRISTIANSON & ANDREA A. JOSEPH, RAND CORP., CAN RESTORATIVE PRACTICES IMPROVE SCHOOL CLIMATE AND CURB SUSPENSIONS? AN EVALUATION OF THE IMPACT OF RESTORATIVE PRACTICES IN A MID-SIZED URBAN SCHOOL DISTRICT 47-51 (2018), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR2800/RR2840/RAND\\_RR2840.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR2800/RR2840/RAND_RR2840.pdf) [<https://perma.cc/4TYL-L8P9>] (a random controlled trial of restorative practices in Pittsburgh public schools with findings of improved school climate, reduced suspension rates); Gregory & Clawson, *supra* note 5, at 155-56 (data review of previously published studies of restorative practices and suspensions and expulsions); Ayesha K. Hashim, Katharine O. Strunk & Tasminda K. Dhaliwal, *Justice for All? Suspension Bans and Restorative Justice Programs in the Los Angeles Unified School District*, 93 PEABODY J. EDUC. 174, 174 (2018) (study of Los Angeles Unified School District implementation of restorative justice and suspension rates); Paul Carroll, *Evaluating Attempts at the Implementation of Restorative Justice in Three Alternative Education High Schools*, at xiv (2017) (Ph.D. dissertation, University of California, Merced) (ProQuest), <https://escholarship.org/content/qt2t95r24f/qt2t95r24f.pdf?t=p3s1iz> [<https://perma.cc/JP8N-9YPN>] (analysis of rates of suspension following restorative justice implementation in California schools).

<sup>8</sup> See AUGUSTINE ET AL., *supra* note 7, at 4-5; JAIN ET AL., *supra* note 6, at v, 39-40; Armour, *supra* note 1, at 1019-23.

<sup>9</sup> See AUGUSTINE ET AL., *supra* note 7, at 5; THALIA GONZÁLEZ & REBECCA EPSTEIN, GEO. L. CTR. ON POVERTY AND INEQ., BUILDING FOUNDATIONS OF HEALTH AND WELLBEING IN SCHOOLS: A STUDY OF RESTORATIVE PRACTICES AND GIRLS OF COLOR 12-14 (2021), [https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2021/05/21\\_COPI\\_BuildingFoundations\\_Report\\_Accessible\\_Final.pdf](https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2021/05/21_COPI_BuildingFoundations_Report_Accessible_Final.pdf) [<https://perma.cc/UV8T-3EST>] (finding associations between school connectedness and Black and Latina female middle school students participation in restorative practices); TALAYA L. TOLEFREE, KOINONIA

positive school climate and safety,<sup>10</sup> feelings of resilience and agency,<sup>11</sup> and enhanced social emotional skills and learning.<sup>12</sup> As the field continues to develop, an emerging body of work has also begun to examine school-based restorative justice practices as a structural health intervention.<sup>13</sup>

As school-based restorative justice has expanded, new descriptive terms and models of practices have also emerged. Review of the literature indicates the most commonly used terms to describe principles and practices of restorative justice include: restorative

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LEADERSHIP ACADEMY, A COMPREHENSIVE APPROACH FOR IMPLEMENTING SCHOOL-BASED RESTORATIVE PRACTICES: RESTORATIVE PRACTICES PILOT SITE: UPPER MIDWEST URBAN ELEMENTARY SCHOOL PRE-K-5 7-12, 18 (2017), <https://genderpolicyreport.umn.edu/wp-content/uploads/2018/01/KLA-RP-Report-1.15.18-2.pdf> [<https://perma.cc/KDL2-JV59>] (finding school connectedness as an outcome of restorative practices implemented in an elementary school setting); Anne Gregory, Kathleen Clawson, Alycia Davis & Jennifer Gerewitz, *The Promise of Restorative Practices to Transform Teacher-Student Relationships and Achieve Equity in School Discipline*, 26 J. EDUC. & PSYCH. CONSULTATION 325, 328 (2016).

<sup>10</sup> See Gregory et al., *supra* note 9, at 342; Goldys, *supra* note 5, at 75; Thalia González, Heather Sattler & Annalise J. Buth, *New Directions in Whole-School Restorative Justice Implementation*, 36 CONFLICT RESOL. Q. 207, 208-09, 211, 217 (2018).

<sup>11</sup> GONZÁLEZ & EPSTEIN, *supra* note 9, at 17; David Knight & Anita Wadhwa, *Expanding Opportunity Through Critical Restorative Justice: Portraits of Resilience at the Individual and School Level*, 11 SCHOOLS: STUD. EDUC. 11, 14-16 (2014); Sara Terrill, Olivet Nazarene Univ., Presentation at the MidAmerica Nazarene University Colloquium: Discipline that Restores: An Examination of Restorative Justice in the School Setting, slide 21 (Mar. 24, 2018), [https://digitalcommons.olivet.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredht=1&article=1178&context=scholar\\_week\\_events](https://digitalcommons.olivet.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredht=1&article=1178&context=scholar_week_events) [<https://perma.cc/3XRW-UAX2>].

<sup>12</sup> See GONZÁLEZ & EPSTEIN, *supra* note 9, 16-17; Knight & Wadhwa, *supra* note 11, at 16; Ann Schumacher, *Talking Circles for Adolescent Girls in an Urban High School: A Restorative Practices Program for Building Friendships and Developing Emotional Literacy Skills*, 2014 SAGE OPEN 1, 1.

<sup>13</sup> See, e.g., GONZÁLEZ & EPSTEIN, *supra* note 9, at 13 (finding restorative practices were associated with health protective factors for Black and Latina female middle and high school students); Thalia González, Alexis Etow & Cesar De La Vega, *Health Equity, School Discipline Reform, and Restorative Justice*, 47 J.L. MED. & ETHICS (SUPPLEMENT 2) 47, 47-48 (2019) (framing restorative justice as a public health intervention to address the health harms of school discipline); Jelena Todi, Catherine Cubbin, Marilyn Armour, Michele Rountree & Thalia González, *Reframing School-Based Restorative Justice as a Structural Population Health Intervention*, 62 HEALTH & PLACE 102289 (2020) (finding the schools in California with restorative justice programs diminished risks for poor health outcomes); Jelena Todi, Catherine Cubbin & Marilyn Armour, *Restorative Justice in K-12 Schools As a Structural Health Equity Intervention*, in ROUTLEDGE INTERNATIONAL HANDBOOK OF DELINQUENCY AND HEALTH 269 (Michael G. Vaughn et al. eds., 2020) (presenting the conceptual framework for school-based restorative justice to operate as a structural intervention).

interventions,<sup>14</sup> restorative practices,<sup>15</sup> restorative measures,<sup>16</sup> restorative approaches,<sup>17</sup> restorative discipline,<sup>18</sup> and restorative justice.<sup>19</sup> Models and applied practices in schools also vary but correspond to three main categories: proactive, reactive, or both.<sup>20</sup> In proactive practices, the central focus is on developing community, engaging in social-emotional learning, and building youth empowerment and resilience-building practices. Reactive models aim to address disciplinary infractions, repair harm, and restore relationships. In whole-school models — in which restorative practices are spread throughout all levels of the school community and where practices align with a multilevel system of primary, secondary, and tertiary interventions<sup>21</sup> — both proactive and reactive practices co-exist to develop and enhance relational ecology at all levels.<sup>22</sup> In practice, the use of primary, secondary, and tertiary tiers “establish[es] a nonauthoritarian culture of high expectations with high levels of support that emphasizes doing things ‘with’ someone as opposed to doing things ‘to’ or ‘for’ someone.”<sup>23</sup> Whether viewed through an analysis of individual or cumulative indicators, restorative justice

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<sup>14</sup> See Anyon et al., *supra* note 3, at 1663.

<sup>15</sup> See GREGORY & EVANS, *supra* note 1, at 3; JAIN ET AL., *supra* note 6, at vii; JON KIDDE, VT. AGENCY EDUC., WHOLE-SCHOOL RESTORATIVE APPROACH RESOURCE GUIDE: AN ORIENTATION TO A WHOLE-SCHOOL RESTORATIVE APPROACH AND GUIDE TOWARD MORE IN-DEPTH RESOURCES AND CURRENT RESEARCH 4 (2017), [https://education.vermont.gov/sites/aoe/files/documents/edu-integrated-educational-frameworks-whole-school-restorative-approach-resource-guide\\_0\\_0.pdf](https://education.vermont.gov/sites/aoe/files/documents/edu-integrated-educational-frameworks-whole-school-restorative-approach-resource-guide_0_0.pdf) [<https://perma.cc/7KDL-ETWJ>]; Schumacher, *supra* note 12, at 1.

<sup>16</sup> See MINN. DEP’T OF EDUC., RESTORATIVE MEASURES IN SCHOOLS SURVEY 1 (2011), <https://web.archive.org/web/20170301224108/http://www.ibarj.org/docs/musaifer.pdf> [<https://perma.cc/4CZ3-49ER>].

<sup>17</sup> See González et al., *supra* note 10, at 207.

<sup>18</sup> See LORRAINE STUTZMAN AMSTUTZ & JUDY H. MULLET, THE LITTLE BOOK OF RESTORATIVE DISCIPLINE FOR SCHOOLS: TEACHING RESPONSIBILITY; CREATING CARING CLIMATES (2014); Armour, *supra* note 1, at 1034.

<sup>19</sup> See FRONIUS ET AL., *supra* note 1, at 1; GREGORY & EVANS, *supra* note 1, at 3.

<sup>20</sup> See FRONIUS ET AL., *supra* note 1, at 1-3; GREGORY & EVANS, *supra* note 1, at 3; González et al., *supra* note 10, at 208-09; Nussbaum, *supra* note 3, at 607.

<sup>21</sup> Armour, *supra* note 1, at 1017; KIDDE, *supra* note 15, at 6; Brenda Morrison & Dorothy Vaandering, *Restorative Justice: Pedagogy, Praxis and Discipline*, 11 J. SCH. VIOLENCE 138, 144-45 (2012).

<sup>22</sup> See González et al., *supra* note 10, at 209.

<sup>23</sup> Armour, *supra* note 1, at 1017.

supports the development of key resilience-building strategies at both the individual and school levels.<sup>24</sup>

Though there is no agreement on a formal definition of restorative justice within the field, there is a consensus that key principles include: “transforming schools from rule-based institutions to relationship-based communities; replacing punitive models of discipline with restorative models that promote repair of harm . . . [and] confronting hierarchical and authoritarian systems that instill attitudes of obedience and conformity.”<sup>25</sup> It is also well accepted that restorative justice is grounded in Indigenous traditions that emphasize interconnectedness and relationality to promote the well-being of all community members.<sup>26</sup> More recently, policymakers, educators, and researchers have focused on the role of restorative philosophies and practices in developing and sustaining school learning environments grounded equity and justice.<sup>27</sup>

Following national school closures due to COVID-19, educators called for increased applications of restorative justice as part of reopening and student reintegration plans.<sup>28</sup> From addressing and mitigating school discipline disparities, to promoting equity and dismantling structural inequities, to supporting renewed school and peer connectedness, restorative school reopenings have moved to the forefront of education policy and practice.<sup>29</sup> Given the traumas of

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<sup>24</sup> See GREGORY & EVANS, *supra* note 1, at 3; Knight & Wadhwa, *supra* note 11, at 14-16; see also TOLEFREE, *supra* note 9, at 19 (describing restorative justice mindsets which could support resilience).

<sup>25</sup> GREGORY & EVANS, *supra* note 1, at 7-8.

<sup>26</sup> See *id.* at 3; BRENDA MORRISON, RESTORING SAFE SCHOOL COMMUNITIES: A WHOLE SCHOOL RESPONSE TO BULLYING, VIOLENCE AND ALIENATION 77 (2007); Nussbaum, *supra* note 3, at 623.

<sup>27</sup> See GREGORY & EVANS, *supra* note 1, at 3; see, e.g., FANIA E. DAVIS, THE LITTLE BOOK OF RACE AND RESTORATIVE JUSTICE: BLACK LIVES, HEALING, AND US SOCIAL TRANSFORMATION 31-57 (2019) (presenting an integrated framework for racial justice and restorative justice); MAISHA T. WINN, JUSTICE ON BOTH SIDES: TRANSFORMING EDUCATION THROUGH RESTORATIVE JUSTICE (2018) (arguing for the need of a racial equity lens applied to school-based restorative practices and recommendations to develop such practices).

<sup>28</sup> See, e.g., ABBY SCHACHNER & LINDA DARLING-HAMMOND, LEARNING POL'Y INST., RESTARTING AND REINVENTING SCHOOL: LEARNING IN THE TIME OF COVID AND BEYOND 33 (2020), [https://learningpolicyinstitute.org/sites/default/files/product-files/Restart\\_Reinvent\\_Schools\\_COVID\\_Priority4\\_SEL.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Restart_Reinvent_Schools_COVID_Priority4_SEL.pdf) [<https://perma.cc/V4MA-ZYA7>] (recommending ten priorities for educators and policymakers as schools reopen).

<sup>29</sup> See, e.g., JENNIFER DEPAOLI, LAURA E. HERNÁNDEZ, ROBERTA C. FURGER & LINDA DARLING-HAMMOND, A RESTORATIVE APPROACH FOR EQUITABLE EDUCATION 1 (2021), [https://learningpolicyinstitute.org/sites/default/files/product-files/WCE\\_Restorative%20Approach\\_Equitable\\_Education\\_BRIEF.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/WCE_Restorative%20Approach_Equitable_Education_BRIEF.pdf) [<https://perma.cc/WTM2-5MFL>] (describing

COVID-19 and systemic racism, education researchers have advanced restorative practices as a key tool for students, teachers, and staff to build positive supportive relationships, which “strengthen connectivity among existing brain structures”<sup>30</sup> and can buffer students against adversity.

Despite the extensiveness of on-the-ground practices and an ever-growing body of literature on school-based restorative justice in the United States, there is little understanding of the effect of the legalization of restorative justice on individual- or school-level outcomes. There is no research on the compliance with restorative justice laws. Nor has the field examined normative changes within jurisdictions, reflecting new widespread understandings or attitudes about school discipline. This lack of scholarly attention is likely attributable to the fact that presently there are no published studies of the scope and content of school-based restorative justice laws. Prior research on the codification of restorative justice has been limited to examination of American criminal law.<sup>31</sup> This study aims to begin filling

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restorative approaches to making school environments more anti-racist); Jennifer DePaoli, Laura E. Hernández & Linda Darling-Hammond, *Supporting a Restorative Opening of U.S. Schools*, LEARNING POL’Y INST. (Aug. 5, 2020), <https://learningpolicyinstitute.org/blog/covid-supporting-restorative-opening-schools> [https://perma.cc/3MFV-DEXL] (describing the diverse uses of restorative practices for school reopening); *Issue Brief 77: School Discipline During COVID-19: Inclusive and Supportive Strategies for Schools as they Re-Open*, CHILD HEALTH & DEV. INST. OF CONN., INC. (Oct. 13, 2020), <https://www.chdi.org/index.php/publications/issue-briefs/school-discipline-during-covid-19-inclusive-and-supportive-strategies-schools-they-re-open> [https://perma.cc/5GKW-6G3Y] (describing the need for restorative justice in lieu of traditional suspension, expulsions or punitive response to students during and after COVID-19); *Reimagine and Rebuild*, PACE (Apr. 2021), <https://edpolicyinca.org/publications/reimagine-and-rebuild> [https://perma.cc/TBH9-RZTQ] (discussing restorative practices as promoting learning environments “where students feel safe, known, supported, and fully engaged in learning — we can lay the groundwork for long-term systemic transformation”).

<sup>30</sup> Pamela Cantor, David Osher, Juliette Berg, Lily Steyer & Todd Rose, *Malleability, Plasticity, and Individuality: How Children Learn and Develop in Context*, 23 APPLIED DEVELOPMENTAL SCI. 307, 311 (2019).

<sup>31</sup> See Thalia González, *The Legalization of Restorative Justice: A Fifty-State Empirical Analysis*, 5 UTAH L. REV. 1027, 1056-57 (2019); Thalia González, *The State of Restorative Justice in American Criminal Law*, 2020 WIS. L. REV. 1147, 1147 (2020) [hereinafter *The State of Restorative Justice*]; Elizabeth Lightfoot & Mark Umbreit, *An Analysis of State Statutory Provisions for Victim-Offender Mediation*, 15 CRIM. JUST. POL’Y REV. 418, 419 (2004); Sandra Pavelka, *Restorative Justice in the States: An Analysis of Statutory Legislation and Policy*, 2 JUST. POL’Y J. 1, 6 (2016); Shannon M. Sliva, *A Tale of Two States: How U.S. State Legislatures Consider Restorative Justice Policies*, 20 CONTEMP. JUST. REV. 255, 259-60 (2017); Shannon M. Sliva & Carolyn G. Lambert, *Restorative Justice Legislation in the American States: A Statutory Analysis of Emerging Legal Doctrine*,



this gap in the literature. As the first analysis of the school-based restorative justice scheme in state law, the findings lay an important foundation for future directions in research, policy, and practice.

### I. DATA COLLECTION AND ANALYSIS

The study was guided by two research objectives: (1) To determine the degree of adoption of restorative justice into state-level American education law; and (2) to identify trends and patterns among restorative justice education laws across multiple jurisdictions (e.g., fifty states and the District of Columbia). To investigate these objectives, this study employs textual content analysis of state education laws in the United States, which includes references to restorative justice or derivative terms (e.g., restorative discipline, restorative approaches, restorative measures, etc.). Content analysis is a widely accepted empirical methodology utilized in multiple disciplines that systematically classifies text data.<sup>32</sup> It is a key method for understanding legal schemes, legislative analysis, and legal decisions.<sup>33</sup>

Laws for analysis were collected from the Westlaw database, which provides full text state and federal materials, including enacted and proposed statutes, court rules, and regulations. A closed set of study codes were applied to fifty-one jurisdictions: all states and the District of Columbia. Study codes were derived from an open and iterative process beginning with the initial term restorative justice and developed by cross referencing academic and gray literature.<sup>34</sup> This process resulted in a comprehensive list of commonly accepted descriptive terms for school-based restorative justice and established a non-

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14 J. POL'Y PRAC. 77, 85 (2015); Shannon M. Sliva, Elizabeth H. Porter-Merrill & Pete Lee, *Fulfilling the Aspirations of Restorative Justice in the Criminal System? The Case of Colorado*, 28 KAN. J.L. & PUB. POL'Y 456, 479-80 (2019).

<sup>32</sup> Hsiu-Fang Hsieh & Sarah E. Shannon, *Three Approaches to Qualitative Content Analysis*, 15 QUALITATIVE HEALTH RSCH. 1277, 1278 (2005).

<sup>33</sup> John B. Gates, *Content Analysis: Possibilities and Limits for Qualitative Data*, 73 JUDICATURE 202, 202-03 (1990); Mark A. Hall & Ronald F. Wright, *Systematic Content Analysis of Judicial Opinions*, 96 CALIF. L. REV. 63, 67 (2008); Chad M. Oldfather, Joseph P. Brockhorst & Brian P. Dimmer, *Triangulating Judicial Responsiveness: Automated Content Analysis, Judicial Opinions, and the Methodology of Legal Scholarship*, 64 FLA. L. REV. 1189, 1200-04 (2012); see Catherine R. Albiston, *Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights*, 39 L. & SOC'Y REV. 11, 20-21 (2005).

<sup>34</sup> See generally ROBERT M. LAWLESS, JENNIFER K. ROBBENNOLT & THOMAS S. ULEN, *EMPIRICAL METHODS IN LAW* (2d ed. 2010) (describing closed-ended and open-ended questions in data gathering); Hall & Wright, *supra* note 33 (describing systematic case coding within the context of content analysis).

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arbitrary set of codes for analysis. The final closed set of ten codes representing variants of restorative justice was applied to all education laws in the fifty-one jurisdictions yielding a dataset of thirty-eight laws in twenty-two jurisdictions. From this dataset, categories and subcategories were developed utilizing an emergent coding process.<sup>35</sup> Coding was completed by three individuals and cross-checked for validity. Any outliers were noted and confirmed by joint analysis. Table 1 provides categories of analysis and total number of laws distributed across each jurisdiction.

## II. FINDINGS

Restorative justice has been part of education practice and policy in the United States since the 1990s.<sup>36</sup> Yet only more recently has it become formally embedded into state education laws (see Figure 2). As of January 2021, twenty-one states and the District of Columbia have adopted laws specific to school-based restorative justice (n=38). Table 1 presents the overall distribution by jurisdiction and classifies each law by category. Collectively, the thirty-eight laws illustrate state legislative support across a range of areas, including model of implementation, use in response to student behavior, professional development and training, program funding, and data collection. Figure 1 illustrates the geographic distribution of restorative justice laws. There is presently a slight pattern of diffusion, based on aggregate numerical grouping (n=9), for the West and Southwest regions of the United States. However, disaggregated analysis reveals no evidence of a substantial body of law marked by similarities consistent with regional associations or influence.

The number of restorative justice laws was relatively stable between 2009 and 2011, with an inflection point in 2013. In 2013, the number of jurisdictions (n=17) and laws (n=29) advanced in an upward trajectory (Figure 2). Between 2013 and 2019, legislative support for restorative justice in K–12 educational settings increased by ninety percent, with the most significant increase in 2019 (Figure 2). Cross-analysis of the laws revealed no distinct patterns of restorative-justice legislation by jurisdiction, region, content, or categorization.

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<sup>35</sup> See generally BARNEY G. GLASER & ANSELM L. STRAUSS, *THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH* (1967) (outlining the basics of theoretical sampling).

<sup>36</sup> Thalia González, *Restorative Justice from the Margins to the Center: The Emergence of a New Norm in School Discipline*, 60 *HOW. L.J.* 267, 270 (2016).

Figure 1: United States map of school-based restorative justice laws

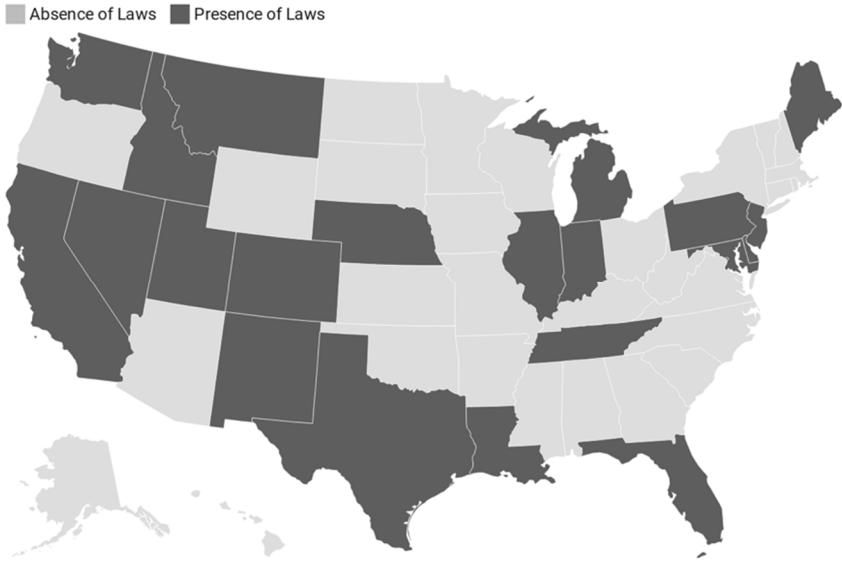


Figure 2: School-based restorative justice laws codified by year

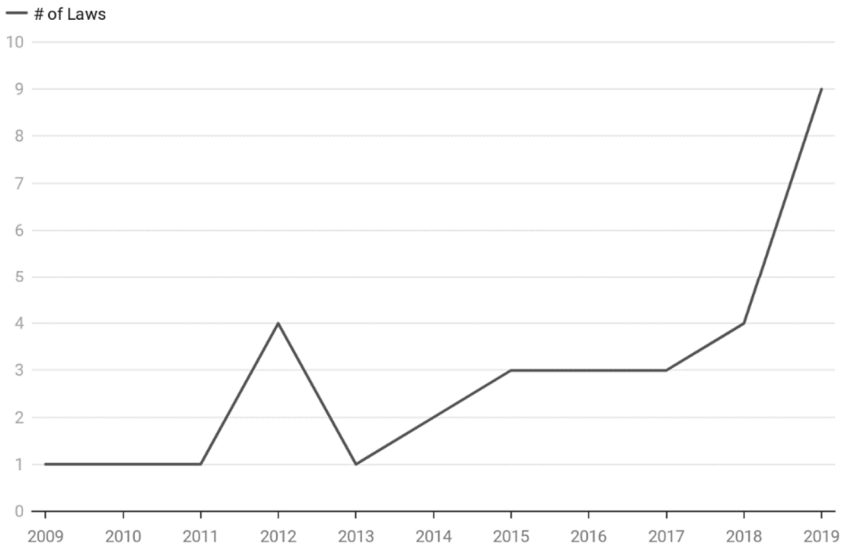


Table 1: Distribution and classification of school-based restorative justice laws by jurisdiction

Jurisdiction	No. Laws	Whole School Model	Culturally Competent / Trauma-Informed Model	Disciplinary Alternative	Professional Development	Program Funding	Data Collection
California	5			X	X	X	
Colorado	2			X			X
District of Columbia	2			X	X	X	
Delaware	1				X		X
Florida	1			X			
Idaho	1			X			
Illinois	2				X	X	
Indiana	1		X		X		
Louisiana	1				X		
Maine	2	X		X			
Maryland	3	X	X	X	X	X	X
Michigan	2			X			
Montana	1					X	
Nebraska	1			X			
Nevada	2			X			
New Jersey	2		X	X		X	
New Mexico	1						
Pennsylvania	3				X	X	
Tennessee	1			X			
Texas	1			X	X		
Utah	2				X		
Washington	1				X		

The degree and form of legal codification of school-based restorative justice varies across the country (Table 1). The most common category of laws — where restorative justice is presented as an alternative to discipline — exists in thirteen jurisdictions (n=16 laws). Though varying in specific textual language, all of these laws seek to operationalize restorative justice as one potential alternative for schools to consider before, in place of, or alongside exclusionary discipline practices, such as suspension or expulsion. The legislative purpose of promoting restorative justice approaches, in contrast to punitive ones, ranges from the intent to create healthier learning environments and safer schools to reducing exposure to the juvenile justice system. A small subset of laws identifies linkages between exclusionary school discipline and negative life outcomes. In Colorado, for example, the law notes that suspensions and expulsions increase the likelihood of student dropout, which has harmful consequences:

Students who drop out of high school face diminished job opportunities, lower lifetime earnings, and increased unemployment and more often require public assistance. They are more likely to participate in criminal activity, resulting in higher incarceration rates, and they face much greater challenges to becoming productive, contributing members of their communities.<sup>37</sup>

Analysis of this category reveals three distinct subcategories of how restorative justice is operationalized: presumptive response (n=2 laws), requires consideration (n=9 laws) or permits consideration (n=4 laws).<sup>38</sup> As a presumptive response, restorative justice is identified as the primary disciplinary response to student behavior and as a preferred alternative to suspension or expulsion. Only two jurisdictions, Colorado and Michigan, have such laws. Colorado specifies “the use of restorative justice as a school’s first consideration to remediate offenses,” and Michigan requires that restorative practices be considered prior to suspension or expulsion.<sup>39</sup> The majority of jurisdictions fall within the second class of laws, which require schools either to implement restorative justice or consider using it as an alternative to exclusionary discipline. Such laws are present in California, the District of Columbia, Maine, Maryland, Nevada, New Jersey, and Tennessee. In the District of Columbia, for example, the legal code requires local education agencies to promote disciplinary actions that are “individualized, fair, equitable, developmentally appropriate, proportional to the severity of the student’s offense, and, if appropriate, restorative.”<sup>40</sup> Four jurisdictions permit schools to consider restorative justice as a disciplinary tool, rather than requiring it: Florida, Idaho, Nebraska, and Texas. Among these thirteen jurisdictions that permit or require restorative justice as a disciplinary alternative, over one-third limit the use of restorative alternatives based on student age or grade level: Maryland (prekindergarten to second

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<sup>37</sup> COLO. REV. STAT. § 22-32-144(1)(b) (2021).

<sup>38</sup> Presumptive Response: *id.* § 22-32-144(2)(a); MICH. COMP. LAWS § 380.1310d(1)(f) (2021). Requires Consideration: CAL. EDUC. CODE § 48900.5(a) (2021); D.C. CODE ANN. § 38-236.03(b)(9) (2021); ME. REV. STAT. ANN. tit. 20-A, § 1001(15-A)(A)-(B) (2021); MD. CODE ANN., EDUC. §§ 7-305.1(d), 7-306(d) (2021); NEV. REV. STAT. §§ 392.472(1), 392.466(1) (2021); N.J. STAT. ANN. § 18A:35-4.31(a) (2021); TENN. CODE ANN. § 49-6-3024(b)-(c) (2021). Permits Consideration: FLA. STAT. ANN. § 1006.13(1) (2021); IDAHO CODE ANN. § 33-1631(3) (2021); NEB. REV. STAT. ANN. § 79-258 (2021); TEX. EDUC. CODE ANN. § 37.0013(a) (2021).

<sup>39</sup> COLO. REV. STAT. § 22-32-144(2)(a); MICH. COMP. LAWS § 380.1310d(1)(f).

<sup>40</sup> D.C. CODE ANN. § 38-236.03(b)(9); *see also id.* § 38-236.06(a)(2)(D).

grade) Nevada (over 11 years old), New Jersey (kindergarten to grade 5), Texas (below grade 3), and Tennessee (prekindergarten to kindergarten).<sup>41</sup>

The second largest category of laws (n=11 jurisdictions and n=12 laws) include restorative justice training as a component of professional development for school personnel.<sup>42</sup> These laws vary in scope, such as assigning restorative justice training to a subset of school personnel or requiring training school-wide. Within this class of professional-development laws, two subcategories exist: mandatory and permissive. Laws in eight jurisdictions mandate restorative justice as a component of professional development (California, the District of Columbia, Indiana, Louisiana, Pennsylvania, Texas, Utah, and Washington), and four jurisdictions have codified restorative justice as a professional development option (California, Delaware, Illinois, and Maryland).

The laws that establish funding for restorative justice programs comprise the third largest category and exist in seven jurisdictions (n=11 laws).<sup>43</sup> These laws empower state educational agencies to provide grant funding to local education agencies, individual schools, and non-profit organizations to support school-based restorative justice programs. The legislative aim of the majority of these laws is to improve school climate through financial support of non-punitive disciplinary alternatives, including restorative justice. For example, Illinois establishes a grant program “to promote school safety and healthy learning environments by providing schools with additional resources to implement restorative interventions and resolution strategies as alternatives to exclusionary discipline, and to address the full range of students’ intellectual, social, emotional, physical, psychological, and moral developmental needs.”<sup>44</sup> California, the District of Columbia, and New Jersey have established similar funding goals and programs.<sup>45</sup> Other states target funding towards specific areas, such as technical assistance for school safety (Montana and Pennsylvania) or professional development (Maryland).<sup>46</sup>

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<sup>41</sup> MD. CODE ANN., EDUC. § 7-305.1(d); NEV. REV. STAT. § 392.466(1); N.J. STAT. ANN. § 18A:35-4.31(a); TEX. EDUC. CODE ANN. § 37.0013(a); TENN. CODE ANN. § 49-6-3024(a)-(c).

<sup>42</sup> See *supra* Table 1.

<sup>43</sup> *Id.*

<sup>44</sup> 105 ILL. COMP. STAT. ANN. 5/2-3.176(a) (2021).

<sup>45</sup> CAL. EDUC. CODE §§ 33430, 33432 (2021); D.C. CODE ANN. §§ 38-236.06, 38-236.07 (2021); N.J. STAT. ANN. 18A:37-39 (2021).

<sup>46</sup> MD. CODE ANN., EDUC. § 6-123(c)(4) (2021); MONT. CODE ANN. § 20-9-236(1) (2021); 24 PA. CONS. STAT. §§ 13-1302-A(c), 13-1306-B(j), 13-1313-C (2021).

Two additional categories of restorative justice laws emerged. First, several laws address models of implementation (whole-school, culturally competent, and trauma-informed). The most comprehensive statutory definitions exist in Maryland and Maine (n=3 laws).<sup>47</sup> For example, Maryland's law establishes:

“Restorative practices” means practices conducted in a whole-school ethos or culture that supports peacemaking and solves conflict by building a community and addressing harm in a school setting and that: (i) Are conducted by trained staff; (ii) Focus on repairing the harm to the community through dialogue that emphasizes individual accountability; and (iii) Help build a sense of belonging, safety, and social responsibility in the school community.<sup>48</sup>

Second, a handful of laws mandate the collection of school- and district-level data on use of restorative justice. While multiple states identify the need for improving data collection, only two states provide clear mandates for disaggregated data collection (n=3 laws). These jurisdictions require that data on restorative justice interventions is tracked annually and submitted for review.<sup>49</sup>

### III. DISCUSSION

Across the country codification of restorative justice into state education law exists in highly individualized contexts with low to medium commonalities. In its current form, the restorative justice scheme raises a number of considerations for research, policy, and practice. This study reveals two primary areas for future study and action: definitional ambiguity and preferential association to discipline. Each of these areas are ripe for inquiry, especially research that examines relationships between the codification of restorative justice into state law and on-the-ground practices. More rigorous and systematic evaluations of how restorative justice laws affect individual- and population-level educational outcomes would enhance the evidence-base for school-based restorative justice and promote new understandings of the deployment of law as a core instrument of educational equity and justice. The lack of any prior systematic analyses

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<sup>47</sup> ME. REV. STAT. ANN. tit. 20-A § 1001(15-A)(B) (2021); MD. CODE ANN., EDUC. § 7-305.1(a)(3) (2021); *see supra* Table 1.

<sup>48</sup> MD. CODE ANN., EDUC. § 7-305.1(a)(3).

<sup>49</sup> DEL. CODE ANN. tit. 14, § 703 (2021); MD. CODE ANN., EDUC. § 7-306(e)(1)-(2) (2021).

of state school-based restorative laws has limited such inquiries. Given the extensiveness of practices in schools, the field could benefit from new sociolegal exploration focused on how the law independently (or as a scheme) operates not only as a formal mechanism specifying or requiring a desirable practice, but also an action tool for scaling up practices that stakeholders (e.g., policymakers, educators, advocates, families, and youth) collectively identify as supporting students' academic, cognitive, and social-emotional growth. There are of course many other directions that policy, practice, and research may take now that an initial mapping and analysis of the state-level American laws is available.

The first area of the scheme we draw attention to is represented by four nested and interrelated issues of definitional ambiguity. First, across the country there is no adherence to a universal definition of restorative justice. In fact, only six jurisdictions (n=7 laws)<sup>50</sup> seek to define restorative justice or even identify specific restorative practices to be implemented within schools. Among these laws there is no consistency in text. For example, New Jersey states: “[R]estorative justice activities’ means activities designed to improve the socioemotional and behavioral responses of students through the use of more appropriate, and less punitive, interventions thereby establishing a more supportive and inclusive school culture.”<sup>51</sup> In Illinois, the legislature defines restorative justice as “restorative measures,” which are

[A] continuum of school-based alternatives to exclusionary discipline, such as suspensions and expulsions, that: (i) are adapted to the particular needs of the school and community, (ii) contribute to maintaining school safety, (iii) protect the integrity of a positive and productive learning climate, (iv) teach students the personal and interpersonal skills they will need to be successful in school and society, (v) serve to build and restore relationships among students, families, schools, and communities, and (vi) reduce the likelihood of future disruption by balancing accountability with an understanding of students’ behavioral health needs in order to keep students in school.<sup>52</sup>

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<sup>50</sup> COLO. REV. STAT. § 22-32-144(3); 105 ILL. COMP. STAT. 5/27-23.7(b) (2021); 20-A ME. REV. STAT. ANN. tit. 20-A, § 1001(15-A); MD. CODE ANN., EDUC. §§ 7-305.1(a)(3), 7-306(a)(1); MICH. COMP. LAWS § 380.1310c(3)(b) (2021); N.J. STAT. ANN. § 18A:35-4.31(c) (2021).

<sup>51</sup> N.J. STAT. ANN. § 18A:35-4.31(c).

<sup>52</sup> 105 ILL. COMP. STAT. ANN. 5/27-23.7(b).



Second, in the vast majority of jurisdictions (n=16), restorative justice appears in a list of options. The following example is from Maine:

- “Alternative discipline” includes, but is not limited to:
- (1) Meeting with the student and the student’s parents;
  - (2) Reflective activities, such as requiring the student to write an essay about the student’s misbehavior;
  - (3) Mediation when there is mutual conflict between peers, rather than one-way negative behavior, and when both parties freely choose to meet;
  - (4) Counseling;
  - (5) Anger management;
  - (6) Health counseling or intervention;
  - (7) Mental health counseling;
  - (8) Participation in skills building and resolution activities, such as social-emotional cognitive skills building, resolution circles and restorative conferencing;
  - (9) Community service; and
  - (10) In-school detention or suspension, which may take place during lunchtime, after school or on weekends.<sup>53</sup>

Third, there is no consensus among jurisdictions on the purpose of restorative justice practices. In Maryland, for example, the law describes restorative practices in the context of “peacemaking and solv[ing] conflict by building a community and addressing harm in a school.”<sup>54</sup> In New Jersey, restorative justice is defined as “activities designed to improve the socioemotional and behavioral responses of students.”<sup>55</sup>

Fourth, there is an absence of procedural specificity. Presently, no laws in the scheme provide detailed procedural guidance for using restorative justice, including addressing potential legal issues of confidentiality.

Each of these findings warrants consideration. A host of challenges are associated with the lack of definitional specificity about restorative justice, such as incoherence in implementation and lack of fidelity.<sup>56</sup> However, when viewed in totality and contextualized in the contemporary social and political landscape, this study points to a strong need for careful examination of the potential compounding effect of definitional ambiguity in education law and policy. For example, the

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<sup>53</sup> ME. REV. STAT. ANN. tit. 20-A, § 6554(2)(A) (2021).

<sup>54</sup> MD. CODE ANN., EDUC § 7-305.1(a)(3).

<sup>55</sup> N.J. STAT. ANN. § 18A:35-4.31(c).

<sup>56</sup> Nussbaum, *supra* note 3, at 627.

presentation of restorative justice as one option among many disciplinary alternatives dilutes the potential for use according to the individual preferences and knowledge of school officials and decisionmakers. Further, without definitional guidance at the state level, individual districts and schools are left to interpret what is or is not a “restorative” option. Each of these layers of ambiguity reinforces the risk of lack of access and negative outcomes for marginalized students.

Discretion exists not only at the level of implementation or “availability” of restorative practices in a school, but also how and when school officials apply restorative responses or determine the eligibility of an individual student for restorative alternatives. While local control is central to the American educational model, the persistence of systemic, structural and interpersonal racism and disparities is well documented in the context of education policy, which create inequities in school discipline,<sup>57</sup> school policing,<sup>58</sup> school funding,<sup>59</sup> and the achievement gap.<sup>60</sup> This necessitates evaluation of how the local

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<sup>57</sup> REBECCA EPSTEIN, ERIN GODFREY, THALIA GONZÁLEZ & SHABNAM JAVDANI, GEO. L. CTR. ON POVERTY & INEQ., DATA SNAPSHOT: 2017-2018 NATIONAL DATA ON SCHOOL DISCIPLINE BY RACE AND GENDER (2020), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/12/National-Data-on-School-Discipline-by-Race-and-Gender.pdf> [<https://perma.cc/P5RV-9V6P>]; AMIR WHITAKER, SYLVIA TORRES-GUILLEN, MICHELLE MORTON, HAROLD JORDAN, STEFANIE COYLE, ANGELA MANN & WEILING SUN, AM. C.L. UNION, COPS AND NO COUNSELORS: HOW THE LACK OF SCHOOL MENTAL HEALTH STAFF IS HARMING STUDENTS 7 (2019), [https://www.aclu.org/sites/default/files/field\\_document/030419-acluschooldisciplinereport.pdf](https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf) [<https://perma.cc/3ESJ-X7AG>]; U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-258, K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES 12 (2018), <https://www.gao.gov/assets/gao-18-258.pdf> [<https://perma.cc/PR3S-SYUJ>].

<sup>58</sup> MICHELLE MORTON, ELIZABETH GILLIAM, KELSEY NORMAN, JESSIKA PARISH, SAVANNA WILLIAMS, ANGELA MANN, KATHERINE DUNN, BACARDI JACKSON, YASAMIN SHARIFI, IAN SILJESTROM & CHARLOTTE NYCKLEMOE, AM. C.L. UNION OF FLA., THE COST OF SCHOOL POLICING: WHAT FLORIDA'S STUDENTS HAVE PAID FOR A PRETENSE OF SECURITY 2018-19, at 17 (2020), [https://www.aclufl.org/sites/default/files/field\\_documents/school\\_policing\\_report\\_2018-19.pdf](https://www.aclufl.org/sites/default/files/field_documents/school_policing_report_2018-19.pdf) [<https://perma.cc/EEF5-RYHG>]; Kristen Harper & Deborah Temkin, *Compared to Majority White Schools, Majority Black Schools Are More Likely to Have Security Staff*, CHILD TRENDS (Apr. 26, 2018), <https://www.childtrends.org/blog/compared-to-majority-white-schools-majority-black-schools-are-more-likely-to-have-security-staff> [<https://perma.cc/DD9E-XL74>]; Emily K. Weisburst, *Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-Term Education Outcomes*, 38 J. POL'Y ANALYSIS & MGMT. 338, 339 (2019).

<sup>59</sup> Bruce D. Baker, Ajay Srikanth, Robert Cotto Jr. & Preston C. Green III, *School Funding Disparities and the Plight of Latinx Children*, 28 EDUC. POL'Y ANALYSIS ARCHIVES 1, 1-3 (2020).

<sup>60</sup> Edward W. Morris & Brea L. Perry, *The Punishment Gap: School Suspension and Racial Disparities in Achievement*, 63 SOC. PROBS. 68, 69 (2016); Francis A. Pearman II,

conditions in schools may implicitly or explicitly shape whether a school official determines to offer a student a non-punitive alternative. For students whose identities fall at the intersection of race, gender, sexual orientation, and/or ability, social constructions, assumptions, and bias may heighten the risk of losing discretionary opportunities to access restorative justice.<sup>61</sup> There are no studies indicating that individual decision-making is devoid of bias in the context of restorative practice.

The absence of procedural rules and standards for restorative justice represents an interrelated yet distinct subject for exploration. The present gap in the scheme of procedural restorative laws raises potential ethical and constitutional concerns. For example, this legal deficiency may have most acute consequences in the context of restorative practices used as disciplinary interventions—in particular, when statements made during restorative processes that are not affirmatively protected under law as confidential and inadmissible in criminal prosecutions. Without formal, legally prescribed protections in place, schools are left to navigate confidentiality of restorative practices on an ad hoc basis. Not only does this gap create risks for participation in restorative processes, it also subverts the aim of many restorative justice laws to mitigate or eliminate the school-to-prison pipeline, and it undermines the legitimacy of restorative processes which are built on trust and relationships.<sup>62</sup> It also is in conflict with current models of codifying restorative justice into state-level American criminal law, which protect statements made before and during restorative processes from use in concurrent or subsequent legal proceedings.<sup>63</sup>

The second area that is ripe for scrutiny is the association of restorative justice with school discipline (n=13 jurisdictions). Though varying in specific language, all these laws seek to implement restorative justice as an alternative for schools to consider before, in place of, or in addition to traditional disciplinary measures. Though logical in light of the rise of school-based restorative justice and reform efforts to address

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F. Chris Curran, Benjamin Fisher & Joseph Gardella, *Are Achievement Gaps Related to Discipline Gaps? Evidence from National Data*, 5 AERA OPEN 1, 1, 14 (2019).

<sup>61</sup> See, e.g., MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* 55-62 (2011) (discussing how myths about black women affect both how they are perceived by others and how they must navigate society); Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2017, 2045-51 (2017) (explaining the negative consequences of the stereotype of the “Angry Black Woman”).

<sup>62</sup> See GREGORY & EVANS, *supra* note 1, at 3.

<sup>63</sup> See González, *The State of Restorative Justice*, *supra* note 31, at 1190-93.

discipline disparities,<sup>64</sup> coupling restorative justice and discipline in state law may give rise to a host of harmful unintended consequences. Sociolegal scholarship characterizes the expressive power of law as the extent to which law influences behavior by providing a “coordinating focal point or by signaling information[;] then the new behavior can shape preferences and change social meaning in a way that multiplies the initial expressive effect.”<sup>65</sup> In the case of restorative justice laws, this may serve to explain why so few states (n=2) have codified whole-school models,<sup>66</sup> despite research demonstrating that whole-school and proactive interventions are the most effective in improving student outcomes.<sup>67</sup> It may also help explain why the scheme has failed to legally integrate and define school-based restorative practices into multi-tiered structures of school support or promulgate guidance for trauma-informed restorative practices. Lastly, the equating of restorative justice with discipline may also reinforce a deficit-based model of youth development.<sup>68</sup> In this context, restorative justice is a means to fix students, rather than the system and its discriminatory patterns. Each of these hypotheses warrants attention and may have implications across multiple domains of policy, practice, and research.

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<sup>64</sup> See, e.g., Armour, *supra* note 1, at 1015-16 (“Although restorative justice has been used primarily in response to criminal behavior, it is gathering significant momentum in education . . . .”); González, *supra* note 36, at 270 (discussing the introduction of restorative justice in schools in the 1990s in response to strict school disciplinary environments); Schiff, *supra* note 3, at 125 (“[Restorative justice practices] are increasingly being applied in schools to address youth misbehavior, rule violations and to improve school climate . . . .”).

<sup>65</sup> RICHARD H. MCADAMS, *THE EXPRESSIVE POWERS OF LAW: THEORIES AND LIMITS* 168 (2015).

<sup>66</sup> See *supra* Table 1.

<sup>67</sup> See, e.g., GREGORY & EVANS, *supra* note 1, at 13 (explaining how narrow models of restorative justice are inferior to whole-school models); TOLEFREE, *supra* note 9, at 19 (providing a positive assessment of one public school district’s implementation of a whole-school restorative justice initiative); González et al., *supra* note 10, at 218 (discussing the positive results of one school’s use of a whole-school restorative justice model); Tala Manassah, Tom Roderick & Anne Gregory, *A Promising Path Toward Equity: Restorative Circles Develop Relationships, Build Community, and Bridge Differences*, 39 *LEARNING PRO.* 36, 37-39 (2018) (explaining how restorative justice practices in schools requires building capacity at the school level with school leaders and educators).

<sup>68</sup> See Shannon Renkly & Katherine Bertolini, *Shifting the Paradigm from Deficit Oriented Schools to Asset Based Models: Why Leaders Need to Promote an Asset Orientation in Our Schools*, 2 *EMPOWERING RSCH. EDUCATORS* 23, 24 (2018) (defining a deficit-based model in schools).

## CONCLUSION

Calls for using restorative approaches in the context of school reopenings to address structural inequalities and reimagine learning environments that support the academic and wellbeing of students are growing across the United States. As students more fully return to classrooms and campuses there is increasing attention being paid to school-based restorative justice practices and laws, from reformists seeking to eliminate past disparities (and mitigate the risk future inequities) in school discipline and policing practices to educators aiming to develop more supportive, safe, and anti-racist learning environments. Law has an important role to play in promoting healthy and safe learning environments. This is true whether law plays an determinative role, by providing a set of incentives, or an expressive one, by shaping group values and norms.<sup>69</sup> The redesign of schools as “restorative places”<sup>70</sup> is of particular significance for students whose intersectional identities (e.g., students of color, students with disabilities, LGBTQ students, low-income students) place them at greatest risk for school disconnection, exclusion, dropout and pushout, and ultimately entry into the juvenile justice system.<sup>71</sup>

<sup>69</sup> See Janice Nadler, *Expressive Law, Social Norms, and Social Groups*, 42 *LAW & SOC. INQUIRY* 60, 61-66 (2017).

<sup>70</sup> POL’Y ANALYSIS FOR CAL. EDUC., REIMAGINE AND REBUILD: RESTARTING SCHOOL WITH EQUITY AT THE CENTER 1 (2021), [https://edpolicyinca.org/sites/default/files/2021-04/pb\\_rebuild\\_reimagine\\_apr21.0.pdf](https://edpolicyinca.org/sites/default/files/2021-04/pb_rebuild_reimagine_apr21.0.pdf) [https://perma.cc/ER7R-JBD6].

<sup>71</sup> See, e.g., NEAL A. PALMER, EMILY A. GREYAK & JOSEPH G. KOSCIW, GAY, LESBIAN & STRAIGHT EDUC. NETWORK, EDUCATIONAL EXCLUSION: DROP OUT, PUSH OUT, AND THE SCHOOL-TO-PRISON PIPELINE AMONG LGBTQ YOUTH xiv (2016), [https://www.glsen.org/sites/default/files/2019-11/Educational\\_Exclusion\\_2013.pdf](https://www.glsen.org/sites/default/files/2019-11/Educational_Exclusion_2013.pdf) [https://perma.cc/2VUV-CPSK] (“[F]or many LGBTQ students schools are hostile environments that effectively function to deprive students of the ability to learn . . . .”); LETICIA SMITH-EVANS, JANEL GEORGE, FATIMA GOSS GRAVES, LARA S. KAUFMANN & LAUREN FROHLICH, NAACP LEGAL DEF. & EDUC. FUND & NAT’L WOMEN’S L. CTR., UNLOCKING OPPORTUNITY FOR AFRICAN AMERICAN GIRLS: A CALL TO ACTION FOR EDUCATIONAL EQUITY 6 (2014), [http://www.nwlc.org/sites/default/files/pdfs/unlocking\\_opportunity\\_for\\_african\\_american\\_girls\\_final.pdf](http://www.nwlc.org/sites/default/files/pdfs/unlocking_opportunity_for_african_american_girls_final.pdf) [https://perma.cc/NGT6-YSCE] (“[N]egative perceptions of African American female behavior, informed by stereotypes, lead teachers to assume African American girls require greater school correction and thus lead to increased disciplinary referrals.”); Subini Ancy Annamma, Yolanda Anyon, Nicole M. Joseph, Jordan Farrar, Eldridge Greer, Barbara Downing & John Simmons, *Black Girls and School Discipline: The Complexities of Being Overrepresented and Understudied*, 54 *URBAN EDUC.* 211, 215-19 (2019) (“[D]ominant narratives about Black girls reify the social processes that funnel Black girls out of urban schools and into prisons.”); Kathryn E.W. Himmelstein & Hannah Bru ckner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 *PEDIATRICS* 48, 49 (2011) (“[N]onheterosexual

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This study presents the first analysis of the prevalence and key features of state-level school-based restorative justice laws. This data lays an important foundation for future directions in research, policy, and practice. However, measuring the content of the laws is merely a first step; it does not assess them or evaluate their effects. Researchers must turn their attention to a host of crucial questions aimed at improving educational equity through the use of law. Key questions for evaluation may include: Are restorative justice laws effective at promoting equitable disciplinary practices? What are the relationships between restorative justice laws and implementation of restorative practices at district- and school-levels? Can associations between restorative justice laws and student-level outcomes be defined and measured? Are restorative justice laws operating to change educational norms and school climates? Research coupled with policy reform also is needed to proactively address emerging legal issues in the current landscape. In this article, we have highlighted two areas that merit close attention. However, as the evidence body expands, new dimensions to explore will undoubtedly emerge, producing valuable knowledge for educators and legislators as well as advocates mobilizing for racial and educational justice. This work will be inherently multidisciplinary and require collaboration that foster innovative and insightful research that challenges the educational status quo and transforms schools.

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adolescents, particularly girls, suffer punishments by school and criminal-justice authorities that are disproportionate to their rates of transgressive behavior.”).