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Fashioning Children: Gender Restrictive Dress Codes as an Entry Point for the Tans School to Prison Pipeline

Deanna J. Glickman

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FASHIONING CHILDREN: GENDER RESTRICTIVE DRESS CODES AS AN ENTRY POINT FOR THE TRANS* SCHOOL TO PRISON PIPELINE

DEANNA J. GLICKMAN[†]

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I. INTRODUCTION

Dress codes are a point of controversy within many school districts, raising questions of classism, racism, and conformity. When debated in the media, the constitutionality and desirability of dress codes typically focus on their effect on the student body in general, or on large classes of students like those too poor to afford the cost of a mandated uniform requirement in a dress code.¹ Dress codes are constructed to reflect the type of adults the children are to be molded into, a conservative norm which values a narrow definition of success. Girls are to become ladies and boys are to become gentlemen, without regard for what type of adult the child wants to become. For students unable or unwilling to conform to these norms, dress codes are more than a mild annoyance. Dress codes become a controlling force that students must either conform to or face repercussions that can last a lifetime. For trans*² students, that conformity may come at the cost of their gender identity, a cost which can cause negative reverberations throughout their life, including lowered academic performance, higher dropout rates, and increased disciplinary action.³ Essentially, dress codes serve as an entry point to the school to prison pipeline for trans* students.⁴

1. See generally Todd A. DeMitchell et al., *Dress Codes in Public Schools: Principals, Policies, and Precepts*, 29 J.L. & EDUC. 31, 31-32 (2000).

2. Because this article is about those who violate gender norms, I have chosen trans* as an umbrella term in an effort to be as inclusive as possible.

3. See Emily A. Greytak et al., HARSH REALITIES: THE EXPERIENCES OF TRANSGENDER YOUTH IN OUR NATION’S SCHOOLS 25-28 (2009), https://www.genderspectrum.org/images/stories/Resources/GLSN.Harsh_Realities_report.pdf; see also Jaime M. Grant et al., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 33 (2011), http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

4. *The School To Prison Pipeline: And the Pathways for LGBT Youth*, GSANETWORK <http://www.gsanetwork.org/files/resources/STPPdiagram.pdf> (last visited April 12, 2015) [hereinafter *Pipeline*] (visual network of school to prison pipeline with

Although a small percentage of the population, the visibility of trans* students has increased significantly in the past few years. Moving beyond an invisible minority, trans* students are challenging the gender norms that are an ingrained part of the American public education system. Trans* students' very existence calls into question the binary application of gender expectations through dress codes because they break the binary and smash gender expectations. As society becomes more aware of trans* people, there are inevitable questions about terminology. Terms like transgender can be read to include only those who at birth were identified with one of the binary genders and seek to have a medical transition to the other binary gender.⁵ However, this does not encompass every person who has a non-cisgendered identity.⁶ Sex and gender can be complex concepts to unpack, even without disagreements on definitions. This article does not endeavor to give definitive definitions. When used herein, sex refers to a person's biological organs. Gender refers to the combination of gender identity and expression. In general, gender identity refers to a person's *internal* perception of their gender, and gender expression is the *external* display of their gender.⁷ A person's gender identity may not always correspond with their gender expression, often due to fear of the repercussions of expressing gender identity that is viewed as deviant.⁸

There are a line of historic cases that challenge the legality of gendered application of dress codes.⁹ However, these cases reflect the confrontation of two generations' differing notions of gender norms, rather than a challenge to the gendered nature of dress codes themselves.¹⁰ In the recent

particular pathways for LGBT youth).

5. This article does recognize that people may use the term transgender in ways other than defined here, but that is one of the reasons for using the trans* umbrella.

6. Cis-gendered is a term for a person whose gender identity and expression align with their biological sex assigned at birth.

7. Sam Killermann, *Comprehensive List of LGBTQ+ Term Definitions*, IT'S PRONOUNCED METROSEXUAL, <http://itspronouncedmetrosexual.com/2013/01/a-comprehensive-list-of-lgbtq-term-definitions/> (last visited March 18, 2015).

8. See Greytak et al., *supra* note 3 at 30.

9. See, e.g., *Karr v. Schmidt*, 460 F.2d 609, 609 (5th Cir. 1972) (hair length); *Griffin v. Tatum*, 425 F.2d 201, 201 (5th Cir. 1970) (hair style); *Lambert v. Marushi*, 322 F. Supp. 326, 326 (S.D.W.V. 1971) (hair length); *Livingston v. Swanquist*, 314 F. Supp. 1, 1 (N.D. Ill. 1970) (hair length).

10. For example, in *Karr*, a young man wanted to grow his hair past the acceptable grooming standards for men, but not women, in the school's dress code not because of *Karr's* gender expression, but because he wanted to identify with the 'hippie' movement. *Karr*, 460 F.2d at 728; see also Gael Graham, *Flaunting the Freak Flag: Karr v. Schmidt and the Great Hair Debate in American High Schools, 1965-1975*, 91.2 J. OF AM. HISTORY 522, 522-25 (2004) (noting that the school's arguments relied heavily on gender roles, including a lack of 'manliness' in having long hair).

years, trans* students and their allies have challenged the gendered enforcement of dress codes in schools across the country, both through complaints to individual schools and school boards and legal challenges via the court system.¹¹ Many of these lawsuits were successful, relying on novel uses of already-established jurisprudence governing sex and gender discrimination.¹² However, because the ability for trans* students to challenge discriminatory application of dress codes does not explore the relationship between dress codes and future criminalization they will not be analyzed in this article.

Part II of this article will explore the relationship between gender norms and dress codes, focusing on schools' rationales for mandating dress codes and how gender norms are enforced through enforcement of those dress codes.¹³ Part III explains how dress codes create a negative environment and allow for specific targeting of trans* students.¹⁴ Additionally, Part III will explain the relationship between dress codes and the school to prison pipeline for trans* students, finding that both purposefully harsh application of dress codes and disproportionate but unintentional application of gendered dress codes result in similar negative outcomes for trans* students, including disproportionately high rates of poverty and incarceration.¹⁵ Finally, Part V will conclude that gendered dress codes create an entry point for trans* students in the school to prison pipeline by punishing trans* students for their gender identity and expression.¹⁶

II. GENDER NORMS AND DRESS CODES: A TAUTOLOGY

*"Skirt and pants stand juxtaposed as the Western world's symbolic Great Divide."*¹⁷

A. Brief History of Dress Codes

Institutional dress codes, both the formal policies of government and the

11. See, e.g., *Doe v. Yunits*, No. 001060A, 2000 WL 33162199, at *3-4 (Mass. Super. Ct.), *aff'd sub nom*, *Doe v. Brockton Sch. Comm.*, No. 2000-J-638 (Mass. App. 2000).

12. See generally Zenobia V. Harris, *Break the Dress Code Protecting the Identities of Transgender Students, Their Identities, and Their Rights*, 13 THE SCHOLAR: ST. MARY'S L. REV. ON MINORITY ISSUES 149, 163-64 (2010).

13. See *infra* Part II.

14. See *infra* Part III.

15. See *infra* Part IV.

16. See *infra* Part IV.

17. SUSAN BROWNMILLER, FEMININITY 82 (1984).

informal and unspoken social expectations, have existed for millennia.¹⁸ American public schools as we know them came into existence in the late 19th and early 20th centuries and along with them came gendered dress codes that reflected the gendered separation of society at large.¹⁹ At that time, the purpose of compulsory education was focused on preparing the two genders for the duties expected of them in their respective spheres.²⁰ The 1960s saw the first major challenges to dress codes as the social upheaval of the civil rights and anti-war movements permeated the school gates.²¹ Despite the growing protections for students' civil rights, dress codes were still highly gendered, often not allowing girls and young women the option of wearing pants.²² The relaxation of dress codes that students of the 1970s and 1980s enjoyed was not long lived, as the conservative shift of the late 1980s brought dress codes and uniform policies back to schools.²³

The resurgence of uniforms and restrictive dress codes was the result of a confluence of factors, including a rise in violence and gang activity, and creative attempts to improve the academic performance of students in schools that were performing below the national average.²⁴ These reforms

18. For example, sumptuary laws have existed for thousands of years enforcing gender and class norms through the legal structure. *See, e.g.*, Paul Skidmore, *Book Reviews*, 56.3 CAMBRIDGE L.J. 631-32 (1997) (reviewing Alan Hunt, *GOVERNANCE OF THE CONSUMING PASSIONS: A HISTORY OF SUMPTUARY LAW* (1996)) (noting that sumptuary laws were instated in a variety of societies and cultures spanning thousands of years and that the semiotics of clothes "can convey messages about identities").

19. *See generally* David Tyack & Elizabeth Hansot, *LEARNING TOGETHER: A HISTORY OF COEDUCATION IN AMERICAN PUBLIC SCHOOLS 8-11* (1992) (examining the reciprocal relationship between gender in society and gender within schools).

20. *Id.* at 11.

21. *See* *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (holding that students may wear black armbands in protest of the war in Vietnam because students do not "shed their constitutional rights . . . at the schoolhouse gate."); *see also* *Leonard v. Sch. Comm. Of Attleboro*, 212 N.E.2d 468, 470 (Mass. 1965).

22. Emily Spivak, *Dress Codes and Etiquette, Part I: What Not to Wear to High School in the 1960s*, SMITHSONIAN.COM 5, <http://www.smithsonianmag.com/arts-culture/dress-codes-and-etiquette-part-1-what-not-to-wear-to-high-school-in-the-1960s-74464285/?no-ist> (last visited March 27, 2015).

23. *See* *School Dress Grow More Conservative*, N.Y. TIMES (Oct. 24, 1981), <http://www.nytimes.com/1981/10/24/style/school-dress-grows-more-conservative.html>. *But cf.* Paul D. Murphy, *Restricting Gang Clothing in Public Schools: Does a Dress Code Violate a Student's Right of Free Expression?*, 64 CAL. L. REV. 1321, 1323 (1991) (pointing to the rise of violence in schools as reason dress codes are necessary, an argument analogous to the conservative "tough on crime" platform of the late 1980s, both of which ignored other underlying social problems).

24. *See* Amy Mitchell Wilson, *Public School Dress Codes: The Constitutional Debate*, 1998 BYU ED. & L.J. 147, 147-48 (1998).

began at the local level with individual principals or school boards adopting restrictive dress codes or uniform policies in response to the perceived specific needs of their community.²⁵ As state legislatures saw the success, or at least public acceptance, of the new dress policies, the reforms expanded with a heightened level of government involvement as a number of states adopted laws that specifically authorized schools to institute both uniform and dress code policies.²⁶ Together, these local and state reforms spurred national action, culminating in President Bill Clinton's 1996 State of the Union address where he explicitly endorsed school uniforms as a solution to school violence and improved education outcomes.²⁷ After hearing the President's call, more local municipalities answered through adopting restrictive dress codes, and numerous studies indicate that the trend of restrictive dress codes and uniforms is continually growing, finding the number of schools with either a uniform or strict dress code increases every year for which there is available data.²⁸ The composition and requirements of dress codes and uniform policies change based on jurisdiction and can range from bans on gang related clothing and bans on clothing with allegedly sexual tones, like leggings, to mandatory uniforms that can dictate clothing options down to appropriate socks and belts.²⁹

25. See Wendell Anderson, SCHOOL DRESS CODES AND UNIFORM POLICIES 2-3 (Fall 2002), http://eric.uoregon.edu/pdf/policy_reports/policy%20report%20dress%20code.pdf (highlighting how adoption started on a school-by-school and district-by-district basis).

26. See Michael Colasanti, SCHOOL UNIFORMS AND DRESS CODES: STATE POLICIES, EDUCATION COMMISSION OF THE STATES, <http://www.ecs.org/clearinghouse/77/97/7797.pdf> (stating that 21 states and the District of Columbia have such laws).

27. Address before a Joint Session of the Congress on the State of the Union, 1 PUB. PAPERS 79, 81 (Jan. 23, 1996) ("I challenge all our schools to teach character education, to teach good values and good citizenship. And if it means that teenagers will stop killing each other over designer jackets, then our public schools should be able to require their students to wear school uniforms.").

28. See Greg Toppo, *What to Wear? Schools Increasingly Making That Decision*, USA TODAY (Aug. 18, 2013), <http://www.usatoday.com/story/news/nation/2013/08/18/more-school-uniforms/2662387/> (explaining National Center for Education Statistics breakdown of schools that require dress codes and uniforms finding usage up over 47% in the last decade); see also Jennifer Weiss-Wolf, *School Dress Codes Unfairly Target Girls*, ALJAZEERA AMERICA (Oct. 14, 2014), <http://america.aljazeera.com/opinions/2014/10/school-dress-codegirlsstudentprotestsmapplewoodnewjersey.html> (arguing that gender neutral dress codes target female bodies).

29. See Wendy Mahling, *Secondhand Codes: An Analysis of the Constitutionality of Dress Codes in the Public Schools*, 80 MINN. L. REV. 715, 717-18 (1996).

B. Current Rationales for Dress Codes

As the demands of the twenty-first century have transformed the needs of students and the challenges of schools, the rationales for dress codes and uniforms have also evolved in an attempt to maintain a balance between the requirements of the Constitution, the safety of the institutions, and the free expression of students.³⁰ Because these interests are often at odds with each other, those in administrative roles are faced with difficult decisions.³¹ When education first became compulsory in America, the world as a whole may have been more violent, but schools did not deal with gang violence, bomb threats, or drug addiction on a regular basis.³² In attempts to keep schools as safe places of learning and development, schools, particularly those in lower income urban areas, began to turn to stringent dress codes or uniforms to ameliorate outside negative influences.³³ Even schools that are not dealing with extreme disciplinary issues adopt dress code or uniform policies in hopes of many of the positive benefits, such as enhanced student self-esteem, will follow.

1. Gang Prevention and Violence Reduction

As discussed above, reducing gang activity through school dress codes was a significant factor in the rise of restrictive dress codes and uniform policies.³⁴ Because gangs employ an extensive variety of clothing-based solidarity symbols, including specific colors, athletic teams, bandanas, and more, these efforts can result in draconian policies.³⁵ Gangs cause

30. See, e.g., Wilson, *supra* note 24, at 148-49 (explaining that dress code opponents are concerned about Constitutionality while their proponents are focused on the success of dress codes).

31. See, e.g., Alabama and Coushatta Tribes of Texas v. Tr. of the Big Sandy Indep. Sch. Dist., 817 F. Supp. 1319, 1323 (E.D. Tex. 1993) *aff'd*, 20 F.3d 469 (5th Cir. 1994) (holding that a hair length restriction on male students cannot withstand a challenge based on a “sincerely held religious belief” and gave American Indian students an injunction against enforcement of the dress code).

32. See HUMAN SECURITY REPORT PROJECT, THE DECLINE IN GLOBAL VIOLENCE: REALITY OR MYTH? (2014), http://www.hsrgroup.org/docs/Publications/HSR2013/HSR_2013_Press_Release.pdf (discussing the assertion that we live in the most peaceful era of human’s existing and finding that there is sufficient quantitative data to support the argument).

33. See Alyson Ray, Note, *A Nation of Robots? The Unconstitutionality of Public School Uniform Codes*, 28 J. MARSHALL L. REV. 645, 655 (1995) (discussing the first uniform program in the United States, the Long Beach Unified School District, and the gang presence that spawned its creation).

34. See Mahling, *supra* note 29, at 719-22 (focusing on gang violence as a main motivator in passing dress code requirements, even if the evidence of their success is questionable).

35. See *id.* at 718, n.22 (noting that one district went as far as dictating the color of

problems within schools due in part to their mere presence and in part to secondary effects such as increased drug sales and consumption, increased fighting, and an increase in the number of weapons brought on campus.³⁶ A cynic may point out that dress codes as a solution for gang violence merely target clothing as window dressing, leaving the underlying problems that cause students to join gangs in the first place untouched.³⁷ Although empirical data establishing the success of dress codes curbing gang-related disruptions is scant, schools are still maintaining dress code bans based on anecdotal evidence that other students feel less intimidated.³⁸ Although girls are joining gangs in growing numbers, boys are still the main population of gang members, so dress codes designed to combat gang issues are inherently more targeted at clothing traditionally associated with masculinity.³⁹ Dress codes designed around gang concerns are also tinged with racism, as they focus mainly on black gangs which can result in students being targeted for discipline based on their skin color.⁴⁰ The ability to apply facially neutral dress code or uniform policies, either accidentally or with intent, in a discriminatory manner is not contained to the gang context.

2. *Disciplined Learning Environment*

Maintaining discipline is not an entirely contemporary rationale and has supported school restrictions on the free expression of students for decades.⁴¹ However, it has found new life in the modern push for dress

shoe laces students can wear).

36. See Murphy, *supra* note 23, at 1324-25.

37. Cf. Janet Hethorn, *Gang Identity or Self-Expression? Researches Look Beyond the Surface of "Gang Clothing" and Appearance*, 48(7) CAL. AGRIC. 44, 45, 48 (1994) (comparing gang identity and adolescent style in order to understand whether dress codes solve or create more problems and finding that school discipline should target behavior and not appearance).

38. See Philip T.K. Daniel, *Violence and the Public Schools: Student Rights Have Been Weighed in the Balance and Found Wanting*, 27 J.L. & EDUC. 573, 581 (1998) (arguing that dress codes based on gang activities can be supported on perceived threat reduction).

39. See, e.g., *Olesen v. Bd. of Educ.*, 676 F. Supp. 820, 821 (N.D. Ill. 1987) (anti-gang dress code only banned boys from wearing any earrings, regardless of whether there was proof of gang affiliation).

40. See Murphy, *supra* note 23, at 1356-57.

41. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 503 (1969) (allowing arm bands protesting war); see also *Morse v. Fredrick*, 551 U.S. 393, 393 (2007) (disallowing signs that promoted drug use); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 260 (1988) (allowing censorship of school newspaper); *Ferrell v. Dallas Indep. Sch. Dist.*, 392 F.2d 697, 697 (5th Cir. 1968) (allowing regulation of hair length).

codes because, in addition to the violence that schools are struggling to deal with, students today face a perceived ever-growing amount of distractions and obstacles.⁴² Expensive clothing, if not regulated by a dress code, can lead to fights, thefts, and bullying.⁴³ By maintaining a dress code or uniform system, all students are wearing a similar type of clothing with a similar cost, and therefore, a designer jacket or basketball shoes by today's favorite athlete are simply not present.⁴⁴ Even the most lenient dress codes that allow students to choose their clothing largely unrestricted will ban political or offensive messages if it disrupts the mission or purpose of the school.⁴⁵ Dress codes are seen as the solution to these disruptions because they remove the stimulus that causes the disruption; however, what is considered disruptive can be quite subjective.⁴⁶ Less disciplinary issues have been shown to result in improved academic performance, arguably the main reason for compulsory schooling.⁴⁷ However, a disciplined environment can also refer to an environment in which students who question any part of the status quo are seen as disruptive regardless of whether the status quo is a safe and supportive environment for them.

3. *Professionalism*

Public schools have sought to prepare their pupils for the "real world" which will require them to conform to a fairly rigid concept of professionalism in order to achieve the type of success they were taught to desire during their education.⁴⁸ These "professionalism" standards are rooted in deeply ingrained cultural beliefs of proper behavior and are

42. See Rob Killen, *The Achilles' Heel of Dress Codes: The Definition of Proper Attire in Public Schools*, 36 TULSA L. REV. 459, 461 (2000) (explaining that dress codes justified under the disciplined learning environment theory have led to banning a "broad range of symbols and apparel.").

43. See U.S. DEPT. OF EDUC., MANUAL ON SCHOOL UNIFORMS 3 (1996) <http://files.eric.ed.gov/fulltext/ED387947.pdf>.

44. *Id.* (stating that a uniform policy is a "creative way" to improve discipline).

45. See *B.H. v. Easton Area Sch. Dist.*, 725 F.3d 293, 297-98 (3d Cir. 2013) (overturning a school's discipline of students who wore bracelets in support of breast cancer awareness that read "I <3 Boobies"), *cert. denied*, 134 S. Ct. 1515 (2014).

46. Long hair on boys was disruptive enough for one group of school officials. The case went all the way to the Fifth Circuit. See *Ferrell v. Dallas Indep. Sch. Dist.*, 392 F.2d 697, 697 (5th Cir. 1968).

47. See Anderson, *supra* note 25, at 6 (discussing enhanced academic performance as a main motivator for adopting restrictive dress codes because it "helps children focus on their school work.").

48. See DeMitchell, *supra* note 1, at 45 (reporting that "Proper Dress=Success" has been the motto of at least one principal in supporting a dress code and that only one principal found that culture had changed enough that dress codes were archaic).

related to the expectation of a disciplined learning environment.⁴⁹ A representative program “has two goals: to prepare students in the standards of dress and grooming expected in the workplace, and to reinforce values of discipline and hard work by encouraging students to think of education as their job.”⁵⁰ Dress codes often imitate the type of clothing one would need to wear in a professional office including button up collared shirts, dress pants, and ties.⁵¹ For students who, for a variety of reasons, including body type and gender expression, cannot conform to this idea of professionalism, dress codes are teaching them early on the struggles they will face in adulthood.⁵² Additionally, because the ideal professional is still a cis-gendered male, professionalism rationales can still lead to disproportionate disciplinary measures against those who do not operate within the gender binary.⁵³ Because women’s bodies are deemed inherently sexual, they must take extra care so as to not disrupt a professional atmosphere with provocative clothing.⁵⁴ Again, this leads to disproportionate violations of dress code policies since female bodies cannot automatically conform to professional standards based on male bodies that require a certain minimum level of skin coverage, ban certain parts of the body from exposure, or bans particular garments worn almost exclusively by women.⁵⁵

C. *How Gender Norms Operate Through Dress Codes*

Schools exist not only to teach children the fundamentals of the

49. See Anderson, *supra* note 25, at 6 (comparing “dressing for success” at school to success “in the office” which assumes a particular career trajectory for all students).

50. Jeremiah R. Newhall, *Sex-Based Dress Codes and Equal Protection in Public Schools*, 12 APPALACHIAN J.L. 209, 209 (Spring 2013).

51. See Ray, *supra* note 33, at 656 (discussing the requirements for the Long Beach Unified School District, the location of the first uniform mandate).

52. See Edward W. Morris, “Tuck In That Shirt!” *Race, Class, and Discipline in an Urban School*, 48.1 SOC. PERSP. 25, 26 (2005) (discussing the relationship between cultural capital and school dress codes where the lack of capital signified by an inability to conform results in the alienation of students).

53. *Harper v. Edgewood Bd. of Educ.*, 655 F. Supp. 1353, 1356 (S.D. Ohio 1987) (upholding a school mandate that prevented student from wearing “clothing of the opposite sex” to prom).

54. See NAOMI WOLF, *THE BEAUTY MYTH: HOW IMAGES OF BEAUTY ARE USED AGAINST WOMEN* 275 (1991) (arguing that appearance is speech for women in a society that places a higher value on their physical appearance than their substantive contributions).

55. See Maureen Shaw, *13 Times School Dress Codes Made Young Girls Ashamed of Their Bodies*, MIC (Sept. 17, 2014), <http://mic.com/articles/91425/13-times-school-dress-codes-made-young-girls-ashamed-of-their-bodies> (citing instances in which girls were disciplined via dress code standards focused on male needs and/or bodies).

intellectual world, but also to transmit and instruct existing cultural values.⁵⁶ Dominant norms are reproduced through every aspect of the institution, from the selection of curriculum material to the standards of what personnel to hire.⁵⁷ There is nothing inherently problematic about children internalizing the mechanics of society, however, when the mechanics are oppressive or discriminatory, reproduction prevents anyone disadvantaged by dominant society to adequately challenge their subjugation.⁵⁸ The dominant norm of American society is a hetero, cis, white, post-secondary educated, upper-middle-class male.⁵⁹ Because dress codes are formulated to enforce dominant norms, the standards reflect what fits the “stereotypical” white male the best.⁶⁰ Dress codes are not created to alter or challenge social norms; rather, they exist as a maintenance mechanism to preserve the status quo.⁶¹

Dress codes that reproduce gender paradigms based on sex presuppose that there are inherent differences for appropriateness in men and women dress.⁶² Through this mechanism, women are held to a particular standard of dress related to the notion of being “lady-like” and men are required to dress “manly” instead of dress standards that are appropriate for students in general.⁶³ For example, a determination of what behavior is appropriate for

56. See generally Pierre Bourdieu & Jean-Claude Passeron, *REPRODUCTION IN EDUCATION, SOCIETY, AND CULTURE* 55 (Richard Nice, trans., Sage Publications 1990) (1977) (explaining that the structure of schools are constrained by the culture that spawned them and thereby perpetuate that particular culture).

57. *Id.* at 57-66.

58. See Morris, *supra* note 52, at 39, 41-42 (arguing that discipline as a result of a lack of cultural capital increases negative attitudes towards education thereby reinforcing a systematic lack of cultural capital).

59. See DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW* 108 (2011) (listing norms that social movements have critiqued as part of the disciplinary power provided by such social norms).

60. Cf. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 104-05 (Vintage Books, 2d ed. 1995) (1975) (discussing societal determinations of delinquency and finding that the term is applied to those who cannot conform to the white heteronormative male standard); see also *id.* at 104 (applying Foucault’s analysis to disciplinary power as a tool for social control).

61. See SPADE, *supra* note 59, at 109-11 (explaining how discipline is used as a form of population control; those who are able to conform best to norms receive better life chances).

62. See Graham, *supra* note 10, at 531 (quoting one administrator in a hair-length case who justified the gender based rule on the notion that girls can “safely handle their hair, but not boys”).

63. See Jennifer L. Levi, *Some Modest Proposals for Challenges Established Dress Code Jurisprudence*, 14 *DUKE J. GENDER L. & POL’Y*, 243, 243-44 (2007) (citing a litany of cases that have upheld gender-based dress codes that require women to

women, specifically not being overly enticing to the male gaze, can regulate the length of a girl's skirt, rather than a determination based on comfort or safety.⁶⁴

Through dress codes, schools reproduce the social expectation that enforcing and protecting these differences are essential to the functions of schools, and thereby society, and that gender can only be performed within these socially approved norms.⁶⁵ Despite these assertions both sex and gender are significantly more fluid concepts that are not as static as school policies might imply.⁶⁶ Dress codes and gender are both social constructions, and therefore, there is nothing inherent about them.⁶⁷ Ultimately, these justifications are simply an ex post facto understanding of gender and have no rational basis to the function of schools other than reproducing the dominant narrative.⁶⁸

III. THE GENDERIZATION OF DRESS CODES AND THE TRANS* SCHOOL TO PRISON PIPELINE

Part of the privilege of being cis-gendered is the privilege to not recognize the negative consequences of a binary gender division.⁶⁹ Trans* students must make calculated choices of which bathroom to use, which locker room to change in, and which half of a gendered dress code to follow.⁷⁰ In trying to determine which gender dress code to follow, a

conform to stereotypes of femininity and men to conform to masculine stereotypes).

64. See Marinda Valenti, *What Do Dress Codes Say About Girls' Bodies?*, MS.BLOG (May 24, 2013), <http://msmagazine.com/blog/2013/05/24/what-do-dress-codes-say-about-girls-bodies/> (analyzing dress code rules geared towards girls and finding that many of the regulations focus on the potential sexualization and the effect on male students).

65. See SPADE, *supra* note 59, at 107 (explaining how norms operate to discipline behavior and punish those that deviate from dominant norms).

66. See JUDITH LORBER, *PARADOXES OF GENDER* 15 (1994) (discussing the various ways to "do" gender, noting that gender role and expectations are not static but change depending on culture and time period).

67. *Id.* at 13-14 (discussing how society constructs gender over a person's lifetime).

68. See Morris, *supra* note 52, at 45-46 (noting the difficulty of passing on cultural capital through public schools because of the reliance on discipline risks pushing students away).

69. See Julia R. Johnson, *Cisgender Privilege, Intersectionality, and the Criminalization of CeCe McDonald: Why Intercultural Communication Needs Transgender Studies*, 6(2) J. OF INT'L & INTERCULTURAL COMM. 135, 138 (2013).

70. See THE RIGHT TO BE YOURSELF, *TRANSGENDER STUDENTS*, http://beyourself.aclu-il.org/?page_id=70 (last visited Apr. 11, 2015) (listing dress codes, bathrooms, and locker rooms as three school areas in which trans* students can have difficulty accessing safely).

trans* student not only has to consider which option reflects their gender identity and expression, but also whether the administration and student body will recognize their gender, and how that relates to their safety.⁷¹ The increased rigidity in school disciplinary systems and the collateral consequences of violating them complicates one's ability to navigate these decisions.⁷² Trans* students who do not "correctly" navigate these decisions risk entering the school to prison pipeline.⁷³

A. *The School to Prison Pipeline: An Overview*

The school to prison pipeline is a term developed to explain the relationship between the policies that push at-risk youth "out of classrooms and into the juvenile and criminal justice systems."⁷⁴ Because education is, for the most part, governed locally, the particular policies can vary, but generally include an increased use of suspension and expulsion, high-stakes testing, ignoring or bypassing due process protections, and an increased presence of police officers on school campuses.⁷⁵ There is not a single statistic that proves the existence of the pipeline, but when studies of the effects of the individual policies are taken in the aggregate they demonstrate a direct correlation to the inflated risk of incarceration.⁷⁶ The pipeline can act directly, when a student is arrested by an in-school police

71. See Joseph G. Kosciw et al., THE 2013 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCE OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS 39 (2013), http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf (finding that adherence to traditional gender norms can result in punishment, harassment, and bullying for trans* students that do not conform to gendered expectations).

72. See ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 12 (2005), https://b3cdn.net/advancement/5351180e24cb166d02_mlbrqgxlh.pdf [hereinafter LOCKDOWN] (discussing the rise of zero tolerance policies and the negative social effects that result from their enforcement).

73. See Grant et al., *supra* note 3, at 44 (finding a correlation between being harassed at school and being incarcerated later in life).

74. See *What Is the School to Prison Pipeline?*, ACLU, <https://www.aclu.org/what-school-prison-pipeline?redirect=racial-justice/what-school-prison-pipeline> (last visited Apr. 11, 2015).

75. See *id.*; see also LOCKDOWN, *supra* note 72, at 27, 35, 41 (listing the different policies in a variety of school districts that contribute to the school to prison pipeline).

76. See Marilyn Elias, *School-to-Prison Pipeline: Policies and Practices That Favor Incarceration Over Education Do Us All a Grave Injustice*, 43 TEACHING TOLERANCE 39, 39-40 (2013), <http://www.tolerance.org/sites/default/files/general/School-to-Prison.pdf> (summarizing statistics and policies that convey racial disparities in the criminalization of students).

officer, and indirectly when a student drops out, which is correlated with higher rates of incarceration.⁷⁷ The pipeline is composed of policies which can be arranged into three main categories: achievement, discipline, and safety.⁷⁸ These prongs are an artificial divide; in reality all three act collectively to drastically increase the risk of future incarceration. Although the school to prison pipeline was coined largely to comment on the increased incarceration rates of racial minorities, the policies have the same effect on trans* students who similarly lack the cultural capital to reproduce the dominant norms these policies demand of them.⁷⁹

B. A Trans Specific School to Prison Pipeline: Dress Codes as an Entry Point*

Dress codes are a method of reinforcing gender norms and rely heavily on a binary system which leaves no space for those whose gender identities and expressions do not conform to the two dominant categories.⁸⁰ Trans* students are subjected to harassment and bullying from both students and staff, biased application of disciplinary policies, and push out tactics at rates disproportionate to representation in the school population and higher than that of their LGB counterparts.⁸¹ Gendered dress codes are a specific point of entry for the school to prison pipeline because clothing choice is an integral part of gender identity and expression.⁸²

77. See ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 29 (2010), https://b3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf [hereinafter PUSH OUT] (listing methods of push out which include out of class punishments that make a student more likely to fall into academic trouble, students ashamed of low grades and test scores who act out and are then expelled or sent to alternative schools, and students being held back a grade due to low test schools more likely to drop out).

78. See *Pipeline*, *supra* note 4 (displaying a visual diagram illustrating the prison pipeline’s functions).

79. See Hilary Burdge et al., LGBTQ YOUTH OF COLOR: DISCIPLINE DISPARITIES, SCHOOL PUSH-OUT, AND THE SCHOOL-TO-PRISON PIPELINE 4 (2014), http://www.gsanetwork.org/files/aboutus/LGBTQ_brief_FINAL-web.pdf [hereinafter LGBTQ YOUTH OF COLOR] (finding that LGBT youth of color face a particular set of issues due to the intersection of having two minority identities).

80. See Harris, *supra* note 12, at 152 (noting that transgendered identities inherently “trouble” the male-female binary).

81. See Kosciw et al., *supra* note 71, at 87 (finding that trans* students experience negative reactions even in the absence of overt victimization).

82. See Laurel Grbach, *Transgender Student Dress: Free Speech and Protected Expression in Public Schools*, 22 TEMP. POL. & CIV. RTS. L. REV. 526, 537 (2013) (explaining that transgender students use “clothing to express to others one of the fundamental aspects of who they are”).

1. *Achievement: Academic Success or Failure*

a. *Gender restrictive dress codes bring negative attention to the gender expression of trans* students leading to lowered academic performance*

Clothing choice is intensely personal for all students, but particularly for trans* students who may not yet have access to gender confirming health care.⁸³ When a trans* student wears clothing or accessories that do not match their “biological” sex, both teachers and administrators take notice and discipline students for behavior that typically would not have resulted in punishment for a cisgendered student.⁸⁴ Other students, teachers, and administrators notice the increased attention and thereby become aware of the student’s gender identity and transition. Being called out by teachers in class, called out of class by administrators, and made to wear special school clothing, a trans* student becomes increasingly visible and a target for violence and harassment.⁸⁵ As a result of this increased attention, trans* students no longer feel that school is a safe space.⁸⁶ The lack of acceptance and comfort leads to increases in stress and absences, both of which result in lowered academic performance measured in GPAs and standardized test scores.⁸⁷ In addition to lower performance, such harassment also leads to lowered academic aspirations.⁸⁸

83. See Harris, *supra* note 12, at 162-63 (explaining that trans* youth do not always have access to medical interventions or gender confirming health care because they either cannot consent on their own or it is not safe for them to begin medical interventions, so dress becomes an even more significant expression of their gender identity).

84. See, e.g., Zack Fork, *California School Agrees to Respect Transgender Student Identities*, THINK PROGRESS (Oct. 10 2014), <http://thinkprogress.org/lgbt/2014/10/15/3579989/california-school-transgender-agreement/> (discussing a female-identified trans* student who was punished for wearing makeup, for which her punishment included an apology letter to male students for making them feel uncomfortable, when all while cisgendered female students were allowed to wear makeup without any disciplinary consequences).

85. Greytak et al., *supra* note 3, at 18 (reporting that about 87% of trans* students were verbally harassed and 53% were physically harassed at school due to their gender expression).

86. *Id.* at 14 (noting that 65% of trans* students feel unsafe because of their gender expression and 36% because of their gender identity).

87. *Id.* at 25 (noting that the GPAs of trans* students who experienced harassment were significantly lower than those who were not).

88. *Id.* at 25, 27 (finding that 40% of trans* students who experienced harassment were not planning on pursuing secondary education).

b. Low Grades, Drop Out Rates, and Future Risk of Incarceration

Academic success is one of the, if not the, primary purposes of compulsory education and is a determining factor in a person's future success; particularly in staying out of poverty and out of the criminal justice system.⁸⁹ For many students, the days of school missed, lack of safety or comfort in the school environment, and inability to meet increasingly high standardized test expectations push them out of the school system entirely prior to graduation.⁹⁰ The modern pressures of high-stakes testing results in schools that are more willing to push out low performing students, regardless of why a student is underachieving, via disciplinary measures.⁹¹

Graduating with a low GPA or not graduating at all does not automatically result in incarceration; however, the numerous side-effects vastly increase the risk of future incarceration.⁹² A student who does not graduate is eight times more likely to be incarcerated in the future than a student who does graduate.⁹³ Forty-eight percent of trans* students who leave school experience homelessness, a common entry point into the criminal justice system.⁹⁴ Drug and alcohol abuse are also more common amongst trans* students unable to graduate, which is associated with higher rates of incarceration.⁹⁵ Without an education, particularly a high school diploma, it can be difficult to find sustainable employment which results in trans* people resorting to street economies for survival, thereby increasing their risk of incarceration.⁹⁶ When all these effects are taken together, it is

89. Cf. SYLVIA RIVERA LAW PROJECT, *Systems of Inequality: Poverty and Homelessness*, http://srlp.org/files/disproportionate_poverty.pdf (last visited Apr. 12, 2015) (linking barriers to education to the cycle of poverty for trans* people).

90. See PUSH OUT, *supra* note 77, at 29 (finding students that are "discouraged or ashamed" of their low test scores act out behaviorally resulting in punishments that take students out of the classroom further impacting their academic achievement).

91. *Id.* at 28 (discussing the choice that educators have to make between the interest of the student and their own self-interest on behalf of the school in maintaining test scores). How disciplinary measures result in increased incarceration risks are discussed in the next section.

92. See Grant et al., *supra* note 3, at 32 (noting that those with higher education levels are more able to avoid problems, including incarceration).

93. See Pipeline, *supra* note 4 (explaining for all students, not just trans*).

94. Grant et al., *supra* note 3, at 33 (trans* youth are also overrepresented in the homelessness population).

95. *Id.* at 33 (explaining that substance abuse is often a way to cope with experiencing mistreatment).

96. See *id.* at 51 (noting that trans* people in general had double the unemployment rate of the general population and that 16% of trans* people resorted to underground or street economies for survival).

clear that enforcement of gendered dress codes on trans* students subverts the goals of compulsory schooling and leaves these students without an education that is a crucial element in decreasing or even preventing the risk of incarceration.⁹⁷

2. *Discipline: A Precursor to the Criminal Justice System*

a. *Gender restrictive dress codes increase the amount of administrative discipline trans* students are subjected to*

When a student violates a dress code, the school administration can impose a variety of disciplinary mechanisms including suspension or expulsion.⁹⁸ Trans* students can violate a gendered dress code by either not wearing gender appropriate clothing for their “biological sex” or for wearing clothing that would not result in disciplinary action if it were not worn by a trans* student.⁹⁹ For trans* students, administrators that are transphobic can use dress code violations to punish those who transgress the gender binary.¹⁰⁰ Administrators are often not transphobic, simply trans-ignorant, but still disproportionately discipline trans* students for dress code violations.¹⁰¹ Trans* students that are otherwise not disciplinary issues and therefore do not come into contact with the administration are

97. See ADVOCATES FOR CHILDREN OF NEW YORK, IN HARMS WAY: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS WHO SPEAK ABOUT HARASSMENT AND DISCRIMINATION IN NEW YORK CITY SCHOOLS 5 (2005), http://www.advocatesforchildren.org/sites/default/files/library/in_harmes_way_lgbt_report_2005.pdf?pt=1 (finding over a third of the trans* students not in school left because of harassment and discrimination).

98. See Hilary Burdge et al., GENDER NONCONFORMING YOUTH: DISCIPLINE DISPARITIES, SCHOOL PUSH-OUT, AND THE SCHOOL-TO-PRISON PIPELINE 5 (2014), http://www.gsanetwork.org/files/aboutus/GSA_GNC_FINAL-web.pdf [hereinafter GENDER NONCONFORMING] (listing punishments that deny students educational opportunities including removal from classrooms, suspensions, and involuntary transfers).

99. See, e.g., *Doe v. Yunits*, No. 001060A, 2000 WL 33162199, at *1 (Mass. Super. Ct.), *aff'd sub nom*, *Doe v. Brockton Sch. Comm.*, No. 2000-J-638 (Mass. App. 2000) (noting that a transgirl was not allowed to attend school for wearing female attire); *Fork*, *supra* note 84 (noting that a transgirl was disciplined for wearing makeup while cisgirls were not).

100. See GENDER NONCONFORMING, *supra* note 98, at 6-7 (citing examples of administrators blaming students for their own victimization because they do not follow the gender binary).

101. See Jerome Hunt & Aisha Moodie-Mills, THE UNFAIR CRIMINALIZATION OF GAY AND TRANSGENDER YOUTH: AN OVERVIEW OF THE EXPERIENCES OF LGBT YOUTH IN THE JUVENILE JUSTICE SYSTEM 3 (2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf.

brought into the disciplinary fold via dress code violations.¹⁰² Schools often claim that trans* students' dress caused a disruption to justify the disciplinary action even if no actual disruption took place until the disciplinary action itself.¹⁰³ Unlike students who violate the dress code solely as an anti-authoritarian act, trans* students are seeking, against great difficulty, to live an authentic life.¹⁰⁴ However, their gender nonconformity is seen as a disruption and challenge to authority, resulting in disproportionate levels of disciplinary action.¹⁰⁵ When a trans* student is made to remain outside the classroom due to their gender expression, the school is punishing that trans* student not for their behavior but for their identity.¹⁰⁶ Ultimately, threatened or actual disciplinary action as a result of violating a dress code through one's gender expression forces students to choose between living their gender authentically and their education.¹⁰⁷

b. School Discipline as a Fast Track to Incarceration

Perhaps more than any of the classifications, disciplinary action feeds directly into the school to prison pipeline.¹⁰⁸ Disciplinary actions can range from mild, including a warning, to the extreme, including in-school arrests.¹⁰⁹ The increase in zero-tolerance policies and in-school police officers has resulted, unsurprisingly, in an increased amount of on-campus arrests as a form of school discipline, which directly pushes students into the criminal justice system.¹¹⁰ Push out¹¹¹ occurs where students who face

102. See Harris, *supra* note 12, at 164-65, 167 (listing two cases where trans* students received school discipline for dress code violations but were not otherwise behavior issues).

103. See *Doe*, 2000 WL 33162199, at *3 (principal made student change prior to entering the school every day so it is unknown what effect allowing entrance would have had).

104. See Christine L. Olson, *Transgender Foster Youth: A Forced Identity*, 19 TEX. J. WOMEN & L. 25, 29 (2009) (reviewing the psychological importance of allowing trans* children to express their gender identity).

105. See LGBTQ YOUTH OF COLOR, *supra* note 79, at 6 (recounting stories of trans* youth who were "watched" because of their lack of gender conformity).

106. See GENDER NONCONFORMING, *supra* note 98, at 8 (listing the loss of educational time as a negative challenge trans* students face).

107. See *Doe*, 2000 WL 33162199, at *1 (recounting that the student was told that they would be allowed into school so long as they wore clothes that matched their natal sex, despite a diagnosis of Gender Identity Disorder).

108. See LOCKDOWN, *supra* note 72, at 11 (citing increased, harsh disciplinary measures as a direct track within the school to prison pipeline).

109. See *id.* at 35 (listing various punishment tracks in Chicago public schools).

110. *Id.* at 15-17 (explaining how "zero-tolerance" was a term taken from the war on drugs).

exclusionary disciplinary measures that prevent them from receiving an education or social support eventually drop out of school.¹¹² Trans* students are not only punished for infractions that are not applied to cisgendered students, they are also punished more harshly for infractions.¹¹³ Students who are subjected to disciplinary measures that remove them from the classroom are often left without supervision and without a constructive environment leading to a higher likelihood of interaction with the criminal justice system.¹¹⁴ Disciplinary measures can also include being sent to a special disciplinary school, so the “bad” student will not hold back the success of a “good” student at the general public school.¹¹⁵ These schools, sometimes run by for-profit institutions, are not held to the same educational standards as “normal” schools, so even if a student survives push out forces, they are still left with a substandard education.¹¹⁶

Not all trans* students who are out at school are out to their families at home due to the serious risk of family rejection.¹¹⁷ Disciplinary measures at school, when related to a student’s gender identity can “out” them at home, forcing them to foster care or homelessness, both of which carry increased risks of future incarceration.¹¹⁸ As with achievement, trans* students that are not directly funneled into the criminal justice system via school discipline are left vulnerable to future incarceration due to a substandard education.¹¹⁹

111. See *supra* Part III(b)(i).

112. See GENDER NONCONFORMING, *supra* note 98, at 5.

113. *Id.* at 4 (telling the story of a trans* student who was punished more harshly for arriving late than the other students who matched that gender expression).

114. See *Pipeline*, *supra* note 4 (noting the consequences that children face being out of an educational environment, like falling behind in classes and a greater sense of disengagement).

115. See PUSH OUT, *supra* note 77, at 28-29 (discussing how the modern structure of schools do not allow teachers to use discretion in how they handle behavioral issues and high-stakes testing incentivizes, pushing struggling students to alternative schools).

116. See *Pipeline*, *supra* note 4 (noting that these schools may not have to meet a minimum number of class hours or have particular curriculum requirements).

117. See Grant et al., *supra* note 3, at 88 (stating that 57% of trans* people experience family rejection).

118. See *id.* (noting that trans* people who experience family rejection are three times more likely to experience homelessness).

119. See *id.* at 32 (noting that higher education levels are inversely correlated with risk of incarceration).

3. *Safety: Harassment or Incarceration, Between the Anvil and the Hammer*

a. *Gender restrictive dress codes create an unsafe atmosphere for trans* students who face both discipline and harassment*

Safety is a major concern for trans* people because they face disproportionate levels of violence in essentially all areas of life.¹²⁰ This is no less a serious concern for trans* students, many of whom are just beginning to understand their gender identity or go through transition.¹²¹ Part of the safety analysis a trans* person goes through is determining who to be “out” with and whether people will pick up on incongruities in their gender expression.¹²² When dress codes are gender restrictive, a trans* student must decide whether to violate and face the inevitable harassment or to not violate and live with a gender expression that does not match their gender identity.¹²³ This choice is not idly made as the harassment trans* students are subjected to is both serious and pervasive.¹²⁴ So long as they are viewed as their natal sex by schools, trans* students cannot transition or live with a congruent gender expression and identity without violating dress codes.¹²⁵ Students may delay transitioning or being “out” regarding their gender identity for fear of violating school policies, including dress codes.¹²⁶ When a trans* student is disciplined or called out for violating a dress code, a target is painted on their backs as other students and teachers are made aware that the student will not be protected if and when they are

120. See generally *id.* (finding, in every section of the report, significant rates of violence against trans* people in many areas of life).

121. See *id.* at 26 (finding that the age of transition spikes significantly after age 18 with less than 10% of trans* people entering transition before 18).

122. See Greytak et al., *supra* note 3, at 14 (listing various ways in which trans* students face harassment for their gender identities, including not fitting into traditional masculine and feminine norms, sexual orientation, and the intersection of multiple characteristics).

123. See GENDER NONCONFORMING, *supra* note 98, at 2 (quoting a student who reported that a trans* student’s gender expression “may have contributed to a lot of harassment.”).

124. See, e.g., Grant et al., *supra* note 3, at 33 (listing statistics on harassment that trans* students experience in school, finding that almost all trans* students experience some level of mistreatment).

125. See, e.g., *Doe v. Yunits*, No. 001060A, 2000 WL 33162199, at *2-4 (Mass. Super. Ct. Oct. 11, 2000), *aff’d sub nom*, *Doe v. Brockton Sch. Comm.*, No. 2000-J-638 (Mass. App. 2000) (recounting that a trans* girl was not allowed to attend class because she was not wearing masculine clothing).

126. See Kosciw et al., *supra* note 71, at 39-40 (finding that many trans* students are targeted in ways other students are not, including not being able to use their preferred name or wearing their preferred gender of clothing).

attacked for their gender identity.¹²⁷ Attack is not an understatement, as trans* students face verbal and physical assaults from fellow students, teachers, and administrators regarding their gender identity.¹²⁸ All too often, trans* students themselves are blamed for whatever safety concerns they have, being told they bring it on themselves by “choosing” to deviate from the gender binary.¹²⁹ It also teaches trans* students that administrations will not support any of their other needs, including access to gender segregated places such as bathrooms.¹³⁰

b. Lack of Safety: An Amalgamation of Pathways to Incarceration

Being forced to choose between one’s safety and education is a decision no student should have to make. This calculus is further complicated by the risks of failing to receive an adequate education.¹³¹ For trans* students, the choice is serious seeing as eighty-seven percent report verbal harassment and forty-four percent report physical assaults within the past school year.¹³² Students and faculty alike perpetrate violence and harassment, leaving trans* students with nowhere to turn.¹³³ In response to the lack of safety provided by schools, trans* students will skip classes or stop attending school entirely.¹³⁴ If a trans* student remains in school despite constant harassment and then acts out to stop the harassment, they face disciplinary measures often disproportionate to that faced by their harasser.¹³⁵ As explained in previous sections, this push out prevents students from reaping the benefits of education, particularly gainful

127. See GENDER NONCONFORMING, *supra* note 98, at 7.

128. See Grant et al., *supra* note 3, at 37-38 (finding thirty-five percent of trans* students are physically assaulted by students and five percent are physically assaulted by teachers or administrators).

129. See GENDER NONCONFORMING, *supra* note 98, at 6 (recounting stories where trans* students were blamed for their own harassment and told that it would stop if they conformed to gender norms).

130. See Greytak et al., *supra* note 3, at 1-2, 48 (noting the importance of administrative support for trans* students in accessing gender restrictive places and the negative effects that a hostile climate can create upon their lives).

131. See Grant et al., *supra* note 3, at 44 (linking negative educational experiences with negative effects later in life including unemployment and incarceration).

132. Greytak et al., *supra* note 3, at 18-19.

133. Grant et al., *supra* note 3, at 37-38 (looking at the rates of violence against trans* students by students, teachers, and administrators and finding that harassment by adults had a greater negative impact upon the student).

134. Greytak et al., *supra* note 3, at 14 (nearly half of trans* students will miss a day of school due to safety concerns).

135. See Hunt & Moodie-Mills, *supra* note 101.

employment.¹³⁶ In addition to missing employment opportunities due to lack of an education, trans* people in general face high levels of employment discrimination which leaves the most vulnerable trans* youth to resort to street economies and thereby increases contact with the criminal justice system.¹³⁷ Many trans* students turn to drug or alcohol abuse to cope with the harassment they face, which again increases the risks of future incarceration.¹³⁸ In their attempts to make schools a safer place through dress codes, administrators have actually increased the threat levels to trans* students vis-à-vis enforcement of those gender restrictive dress code policies.

IV. CONCLUSION

Even their proponents will admit that dress codes are a means of enforcing behavior based on social norms and expectations which exist to perpetuate the status quo. However, what their proponents often do not realize, or realize and do not care, is that these social norms are predicated on maintenance of a hierarchy which punishes those unable or unwilling to conform to dominant cultural norms. In particular, gendered dress codes are disproportionately used to “punish” trans* students’ gender identity and expression which leads to negative academic and mental health outcomes. Given the correlation between negative academic and mental health issues, dress codes operate as a means of entry to the school to prison pipeline for trans* students. These forces are intertwined and operate through lowered achievement, increased discipline, and lowered safety simultaneously and separately to produce a confluence of pressures that result in increased incarceration and poverty for the trans* students. Despite the negative atmosphere created, the attitudes of students and administrators are changing, particularly as understanding of trans* identities grows. Greater understanding alone will not cause change but it is reasonable to hope that as understanding grows, so will tolerance and in the process the trans* school to prison pipeline will be demolished.

136. See PUSH OUT, *supra* note 77, at 8 (noting that push out policies lead to unemployment and underemployment, which also leads to incarceration).

137. See Grant et al., *supra* note 3, at 3 (noting that trans* people have double the rate of unemployment as the general population and that 90% of trans* people have faced workplace discrimination).

138. See *id.* at 44 (finding 35% of trans* students harassed or assaulted used drugs to cope and the number is higher for those who were physically assaulted or had to leave school).