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Consequences of Police in Schools: The Criminalization of Children in an Era of Mass Incarceration

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I. INTRODUCTION

The presence of police in schools has become quite common since the first police officer was placed in Flint, Michigan's Bryant Community Junior High School in 1958.[1] Between 2017 and 2018, 51 percent of U.S. public schools were visited by sworn police officers, including 71 percent of middle schools and 76 percent of high schools.[2] In some jurisdictions like Florida, Maryland, North Carolina, South Carolina, Tennessee, and Virginia, 90 percent of high school students report they attended a school that has police presence.[3]

Proponents of police officers on school campuses state that officers make schools safer, and especially protects against active shooting events.[4] However, data suggests that police on school campuses do not actually make schools safer, nor are they effective at intervening in school shootings.[5] In fact, data suggests that the placement of police in schools increases disorder and school crime, increases exclusionary disciplinary practices, increases

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1. Kenneth A. Noble, Policing the Hallways: The Origins of School-Police Partnerships in Twentieth Century American Urban Public Schools 64, 88, 90 (2017) (Ph.D. dissertation, University of Florida) (on file with the University of Florida Digital Collections); *A Brief History of School-Based Law Enforcement*, TEX. SCH. SAFETY CTR. (2016), https://web.archive.org/web/20210420100406/https://txssc.txstate.edu/topics/law-enforcement/articles/brief-history.

2. MELISSA DILIBERT ET AL., CRIME, VIOLENCE, DISCIPLINE, AND SAFETY IN U.S. PUBLIC SCHOOLS: FINDINGS FROM THE SCHOOL SURVEY ON CRIME AND SAFETY: 2017-2018, at 19 (2019), https://nces.ed.gov/pubs2019/2019061.pdf (total number of schools with a sworn police officers, divided by the total number of schools, further broken down by school characteristic, such as school level).

3. Constance A. Lindsay et al., *The Prevalence of Police Officers In US Schools*, URBAN WIRE: CRIME AND JUST. (June 21, 2018), https://www.urban.org/urban-wire/prevalence-police-officers-us-schools.

4. *Cops in Schools: Have We Built a School-to-Prison Pipeline?,* THE BEST SCHOOLS (2020), https://web.archive.org/web/20210426085007/https://thebestschools.org/magazine/cops-schools-built-school-prison-pipeline/; Maya Lindberg, *False Sense of Security, Police make schools safer—right?*, TEACHING TOLERANCE 24 (2015).

5. Humera Nayeb & Amy Meek, *What the Research Shows: The Impact of School Resource Officers*, CHI. LAW. COMMITTEE FOR C.R. (June 23, 2020), https://www.clccrul.org/blog/2020/6/23/research-sros; *see Police Do Not Belong in Our Schools*, HEALTHY SCHOOLS CAMPAIGN (June 16, 2020), https://healthyschoolscampaign.org/blog/police-do-not-belong-in-our-schools/ ("Research does not show that increased presence of law enforcement makes schools safer. Instead, school police officers reinforce the criminalization of young people of color, serving as a key component of the school-to-prison pipeline."); *see also* Lindsay et al., *supra* note 3 ("A 2013 study found that as schools add police, they record more weapons and drugs crimes and report larger numbers of nonserious violent offenses to law enforcement. An earlier study found that the presence of a school resource officer, a sworn law enforcement officer assigned to one more schools after receiving training in school policing, is associated with more arrests for disorderly conduct but fewer arrests for assaults and weapons charges.").

dropout rates, and decreases college enrollment.[6] Data also reflects horrific disparate treatment of students of color, particularly Black students, and students with disabilities, from disciplinary events, referrals to law enforcement and arrests, to physical abuses.[7]

This article proposes the presence of police in schools is not effective at promoting safety, but is in fact a major player in the school-to-prison pipeline phenomenon experienced across the U.S. This article challenges the practice of placing police in schools and calls into question the legitimacy of school police when evaluating the practice's historical roots in the "tough of crime" era and the age of the "superpredator myth." This article draws comparisons and relationships between events that catapulted the U.S. into an era of mass incarceration, and those that led to a pipelining of students from schools into juvenile detention. This article further proposes that students are not adequately protected from police in schools by our courts, and with the absence of adequate standards that prevent disparities in discipline and education, police should be removed from schools completely.

In support of these arguments, Part II of this article provides a recapitulation of the development of police presence in schools and highlights relevant historical eras of corresponding discrimination. Part III provides an assessment of the contemporary school-based police program, (1) how police presence in schools works in theory, (2) how police presence affect schools in practice, (3) the effects of police in schools on safety, discipline, and the criminalization of children, and (4) the effect school police have on communities. Part IV provides a brief assessment of where the law falls short of protecting students from dangerous encounters with school-based police. And finally, Part V concludes that, absent accountability for officers, and in light of the risks police pose for children, police should be removed from schools, and schools should sever their relationship with police departments all together and bring discipline back into the classroom.

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6. *Fail: School Policing in Massachusetts*, STRATEGIES FOR YOUTH, 14 (Sept. 2020), https://strategiesforyouth.org/sitefiles/wp-content/uploads/2020/09/Fail-School-Policing-in-Massachusetts.pdf.

7. *2015-16 Discipline Estimations by Discipline Type: Referrals to Law Enforcement*, C.R. DATA COLLECTION, https://ocrdata.ed.gov/estimations/2015-2016 [hereinafter *Referrals to Law Enforcement*]; *2015-16 Discipline Estimations by Discipline Type: School-Related Arrests*, C.R. DATA COLLECTION, https://ocrdata.ed.gov/estimations/2015-2016 [hereinafter *School-Related Arrests*]; Amanda McGinn, *School discipline Practices That Will Shock You, Literally: A Reevaluation of the Legal Standard for Excessive Force Against Students*, 54 AM. CRIM. L. REV. 627, 627 (2017).

II.   THE HISTORICAL DEVELOPMENT OF POLICE PRESENCE IN SCHOOLS

American schools have historically prioritized control over student behavior and the enforcement of strict student discipline.[8] The prioritization of control over student behavior and student discipline is traced back to the late 19th century and the construction of the first large urban schools, modeled after the design and operation of the asylum.[9] The asylum functioned to control and discipline those housed in the facility through military-like routine and rule enforcement.[10] Institutions that adopted the asylum model have a shared preoccupation with behavior control and discipline over inhabitants.[11]

At the time the asylum model was chosen for the first large urban schools, schools were called upon to impact student behavior and curb delinquency outside of schools and within the communities.[12] Many teachers, administrators, and reformers at the time believed immigrant and poor families were unable to raise their children to be productive members of society.[13] Although the asylum model was not meant to rehabilitate or teach societal norms, "the need for [schools] to serve as a vehicle for controlling the minds and bodies of the youth" is likely why the asylum model was chosen for the first large urban schools.[14] As a result, the asylum model adopted in schools was utilized to (1) obtain social control, (2) "Americanize" immigrant children, and (3) teach poor children to be good

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8. Pedro A. Noguera, *Preventing and Producing Violence: A Critical Analysis of Responses to School Violence*, 65 HARV. EDUC. REV. 189, 194. 196 (1995) (explaining "the need to regiment and control the behavior of students dominated the educational mission" led to the utilization of the asylum construction and operation by school).

9. *Id*. at 194*; see also* David J. Roof, *Through the looking-glass: How nineteenth century asylums shaped school architecture and notions of intellectual abnormality shaped public education*, SAGE PUBL'N 486 (2017), https://journals.sagepub.com/doi/pdf/10.1177/1478210317715795 (explaining school structure and organization was developed shortly after the asylum design was developed: "asylums were the initial apparatuses mediating society's defense but were effectively joined with the development of the public school.").

10. Noguera*, supra* note 8; *see also* Roof, *supra* note 9, at 482 (discussing the use of physical space and regimen of the asylum and school institutions to regulate the bodies of those housed in the institution).

11. Noguera, *supra* note 8, at 193; Roof, *supra* note 9, at 482 ("Two institutions that exemplify abstract space in the manner in which they regulate the body and identity formation are asylums and schools.").

12. Noguera*, supra* note 8, at 194.

13. *Id*.

14. *Id.*; *See also* Roof, *supra* note 9, at 487 (explaining that the school, modeled after the asylum, functioned as an institution with which psychiatry could function within and socialize the inhabitants for society's sake).

laborers for the work force by emphasizing punctuality and rule following, rather than academic performance.[15]

During the 1950s and 1960s, demographics of cities began to change with the arrival of Latinx immigrants and the migration of Black Americans from the South.[16] The adolescent population increased overall significantly, which overwhelmed institutions and their ability to "socialize and control young people."[17] Simultaneously, America experienced political turmoil that stemmed from the Civil Rights Movement.[18] As neighborhood and school de jure segregation was dismantled, structural discrimination increased, as did inequality and poverty.[19] Black and Latinx Americans were faulted for the socioeconomic position their communities were in, rather than the systemic oppression that created the inequity.[20] The issues that challenged Black and Latinx communities were politicized, and white communities advocated for slower desegregation, arguing that Black children would 'bring disorder to white schools.'[21] Instead of creating policies that would promote equitable schooling, public officials adopted programs that promoted social control specifically aimed at policing Black and Latinx youth.[22]

Flint, Michigan's Bryant Community Junior High School was the first school to have a permanently assigned law enforcement officer on campus through Flint's new Police-School Liaison Program.[23] The officer, or PSL, was placed on campus in plain-clothes to patrol hallways, provide security, investigate delinquent acts, assist with discipline, and connect with parents and youth.[24] The role of the PSL was to prevent crime by connecting with youth and creating positive contact between youth and law enforcement to deter delinquent behavior.[25] The first PSL was placed in Bryant Community Junior High School because the school 'represent[ed] the average community with a delinquency rate equal to other communities in the city.'[26] The PSL program in Flint was considered a success both locally and state-wide, and soon after other states created their own school-based proactive policing

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15. Noguera, *supra* note 8, at 194, 196.

16. *Id*. at 196.

17. Noble, *supra* note 1, at 59 (discussing the increase in youth population and quoting Gilbert's *A Cycle of Outrage*).

18. Noguera, *supra* note 8, at 197.

19. Megan French-Marcelin et al., *Bullies in Blue: The Origins and Consequences of School Policing*, ACLU, April 2017, at 3, https://www.aclu.org/report/bullies-blue-origins-and-consequences-school-policing.

20. *Id*.

21. *Id*.

22. *Id*.

23. Noble, *supra* note 1, at 64, 88, 90; TEX. SCH. SAFETY CTR., *supra* note 1.

24. Noble, *supra* note 17, at 89-90.

25. *Id*.

26. *Id*. at 90.

program.[27] By the late 1960s, many of the nation's largest cities had their own youth crime prevention program.[28]

Municipalities that implemented a youth crime prevention program focused policing efforts almost exclusively at poor Black and Brown neighborhoods, despite the recommendation that a uniformed police officer be stationed in every city public school.[29] Police and school officials not only supported the disproportionate policing of poor Black and Brown students, they also believed that poor Black and Brown students were inherently prone to delinquency behavior.[30] New York City Police Department officials described Black and Latinx students from low-income areas as 'undesirables,' 'dangerous delinquents,' and "capable of 'corroding school morale.'"[31] Kansas City, MO teachers and administrators "labeled students as young as nine years old as 'pre-delinquent.'"[32] The classification of Black and Latinx youth as "delinquent" or "potentially delinquent" triggered the expansion of police presence across schools for the sole purpose of crime prevention.[33]

Many local youth crime prevention programs were federally funded through the Omnibus Crime Control and Safe Streets Act of 1968, which supported local programs aimed at encouraging youth to have 'respect for law and order.'[34] The Omnibus Crime Control and Safe Streets Act of 1968

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27. *Id*. at 91-92; TEX. SCH. SAFETY CTR., *supra* note 1.

28. French-Marcelin et al., *supra* note 19, at 5.

29. *Id*. at 3.

30. *Id*. at 3-4*; see supra* note 6, at 6 ("School policing has its own racialized history since the first documented program in the United States, with a common thread: the perception of Black and other students of color as a threat rather than students to protect.").

31. French-Marcelin et al., *supra* note 19, at 3.

32. *Id*. at 5; *see also* PASCO SHERIFF'S OFFICE INTELLIGENCE-LED POLICING MANUAL 13 (2018), https://beta.documentcloud.org/documents/20412738-ilp_manual012918 (The policing manual outlines how the sheriff's office, with the help of Child Protective Investigations (CPI) and the Pasco County School Board, identifies children as "potential offenders," based on: "background risk factors, systemic identifiable risk factors, socio-economically deprived, early age of first conviction, antisocial parents and siblings, history of court appearances, received poor rearing as a child, history of drug usage, coming from broken homes, hanging around in public, low intelligence, having delinquent friends, poor school record, excessive drinking, being truant or excluded from school, being a victim of personal crime." This practice follows David Farrington's beliefs that a "potential offender" can be identified as young as 10 years old.).

33. French-Marcelin et al., *supra* note 19, at 4-5.

34. *Id*. at 5; Omnibus Crime Control and Safe Streets Act, Pub. L. No. 90-351, § 301(b)(3), 82 Stat. 197, 199-200 (1968) ("The Administration is authorized to make grants to States having comprehensive State plans approved by it under this part, for … Public education relating to crime prevention and encouraging respect for law and order, including educational programs in schools and programs to improve public understanding of and cooperation with law enforcement agencies."); *see also* Suzanne Cavanagh & David Teasley, CONG. RSCH. SERV. REP. FOR CONGRESS, 92-633 GOV, JUVENILE JUSTICE AND DELINQUENCY PREVENTION: BACKGROUND AND CURRENT ISSUES 5 (1992), https://www.ojp.gov/pdffiles1/Digitization/139229NCJRS.pdf ("The Omnibus Crime Control and Safe Streets Act of 1968 allowed the use of block grant monies for States for the prevention and control of juvenile crime.").

was enacted following the establishment of the President's Commission on Law Enforcement and Administration of Justice of 1967 which identified youth as "the biggest impediment to overall crime reduction," stating that 'America's best hope for reducing crime is to reduce juvenile delinquency and youth crime.'[35] Shortly thereafter, President Nixon introduced the "War on Drugs," which was used to further justify police presence in low-income neighborhoods of color.[36] Due to the misconception of Black and Latinx students as prone to delinquency, and the available funding for police presence in communities, Black and Latinx youth were overpoliced in their schools and greater communities under the façade of promoting positive relationships between police and youth of color.[37] By 1972, urban schools expanding across 40 states had some form of policing within their schools.[38]

The passage of the Juvenile Justice and Delinquency Prevention Act of 1974 expanded the policing of youth by authorizing law enforcement to engage youth based on an assumption of future behavior.[39] As a result, programs aimed at addressing "pre-delinquent" youth "proliferated throughout major cities."[40] Some school districts lacked a definition for "pre-delinquency," others described "pre-delinquency" as behaviors we now associate with learning or cognitive disabilities.[41] Today, the labeling of students as "pre-delinquent" is identified as being at the origins of the school-to-prison pipeline phenomenon.[42]

The "tough on crime" era of the 1990s encompassed school policies and federal action that significantly changed student discipline.[43] During the 1990s, policymakers and politicians portrayed youth as posing a serious

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35. Nicholas deB. Katzenbach et al., *The Challenge of Crime in a Free Society: A Report by the President's Commission on Law Enforcement and Administration of Justice* 55 (1967), https://www.ncjrs.gov/pdffiles1/nij/42.pdf; French-Marcelin et al., *supra* note 19, at 4.

36. French-Marcelin et al., *supra* note 19, at 6.

37. *Id*. at 3-7.

38*. Id*. at 4.

39. *Id*. at 5; Juvenile Justice and Delinquency Prevention Act, Pub. L. No. 93-415, 88 Stat. 1109 (1974); see also ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, SAFE STREETS RECONSIDERED: THE BLOCK GRANTS EXPERIENCE 1968-1975 28 (1977), https://www.ojp.gov/pdffiles1/Digitization/39010NCJRS.pdf (discussing the increase in funding for juvenile justice and expanded programs, including a division of "juvenile prevention" from "juvenile justice").

40. French-Marcelin et al., *supra* note 19, at 5.

41. *Id*.; *see also* PASCO SHERIFF'S OFFICE INTELLIGENCE-LED POLICING MANUAL, *supra* note 32, at 13 (the policing manual outlines how the sheriff's office, with the help of Child Protective Investigations (CPI) and the Pasco County School Board, identifies children as "potential offenders," based on: "… low intelligence … poor school record … being truant or excluded from school, being a victim of personal crime." Note, this current trend contributes directly to the school-to-prison pipeline.).

42. French-Marcelin et al., *supra* note 19, at 5.

43. Jason P. Nance, *Dismantling the School-to-Prison Pipeline: Tools for Change*, 48 ARIZ. ST. L.J. 313, 328 (2016); TEX. SCH. SAFETY CTR., *supra* note 1.

threat to society.[44] This was in response to criminologists' predictions of a rise in "superpredators," or a group of 'radically impulsive, brutally remorseless' 'elementary school youngsters who pack guns instead of lunches,' and who 'kill or maim on impulse, without any intelligible motive.'[45] Professor Dilulio, who coined the term "superpredators" and was also an advisor to President Bill Clinton, predicted that the number of juveniles in custody would increase three-fold, and by 2010 there would be an estimated 270,000 more young predators on the streets than in 1990.[46] Much of the discussion and prediction of "superpredators" was racially coded.[47] The "superpredator" myth has since been debunked.[48]

Despite youth violence actually declining in the mid 1990s, government officials called for increased policing of schools.[49] In 1994, the Office of Community Oriented Policing Services (COPS) was established, which, among other things, placed officers on school grounds.[50] Simultaneously, the Gun Free Act of 1994 created "zero-tolerance" policies for schools to utilize for disciplinary infractions involving weapons, which result in automatic suspension or expulsion of students from school.[51] Most schools further adopted their own zero-tolerance policies that were much more expansive and included "zero-tolerance" for illegal drugs or alcohol.[52] Additionally, schools adopted overly-punitive disciplinary models during the "tough on crime" movement.[53] Coincidentally, the most obvious individuals to enforce these new policies were law enforcement officers.[54] By 1997, 22 percent of schools in the United States reported law enforcement presence, in contrast to only one percent of schools that reported law enforcement presence in the 1970s.[55]

In 1998, Congress allocated funding for COPS in Schools grants, creating positions for police in schools known as "School Resource

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44. French-Marcelin et al., *supra* note 19, at 7.

45*. Id*.; *The Superpredator Myth, 25 Years Later,* EQUAL JUST. INITIATIVE (Apr. 7, 2014), https://eji.org/news/superpredator-myth-20-years-later/.

46. EQUAL JUST. INITIATIVE, *supra* note 45.

47*. Id.*

48*. Id*.

49. French-Marcelin et al., *supra* note 19, at 7.

50. TEX. SCH. SAFETY CTR., *supra* note 1; *see also* Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322, 108 Stat. 1796 (1994); Nathan James, CONG. RSCH. SERV., COMMUNITY ORIENTED POLICING SERVICES (COPS) PROGRAM (2020), https://crsreports.congress.gov/product/pdf/IF/IF10922.

51. TEX. SCH. SAFETY CTR., *supra* note 1; Gun-Free Schools Act, 20 U.S.C. §7961 (1994).

52. TEX. SCH. SAFETY CTR., *supra* note 1.

53. Nance, *supra* note 43, at 328.

54. TEX. SCH. SAFETY CTR., *supra* note 1.

55*. Id*.; French-Marcelin et al., *supra* note 19, at 10; Holly Kurtz et al., SCHOOL POLICING: RESULTS OF A NATIONAL SURVEY OF SCHOOL RESOURCE OFFICERS 15 (2018).

Officers."[56] In 1999, the tragic Columbine High School shooting signaled a new era in school security.[57] Days after the shooting, President Clinton stated the first round of COPS grants would allow partnerships between schools and police to form and focus on 'school crime, drug use, and discipline problems.'[58] In 1998 and 1999, 'COPS awarded 275 jurisdictions more the $30 million for law enforcement to partner with school entities.'[59] And in 1999, COPS awarded $750 million for the hiring of more than 6,500 School Resource Officers (SRO).[60] In 1999, 54 percent of students reported that security or law enforcement was present in their school.[61]

III. CONTEMPORARY POLICE PRESENCE IN SCHOOLS

In 2013, 70 percent of students reported the presence of security or law enforcement in their school.[62] The presence of law enforcement in schools can be established through a few different, though similar, school-based policing programs. Schools may have their own, individualized security program, or have a relationship with the local police department as well as established policies that define when the school will call police for assistance.[63] Some schools may have School Police Officers (SPO), or sworn police that work for a department that belongs to a school district, specifically.[64] The most common school-based police are School Resource Officers (SROs), which are sworn police officers that are assigned to patrol a school by the local police department.[65]

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56. French-Marcelin et al., *supra* note 19, at 8; *see also* Violent Crime Control and Law Enforcement Act, *supra* note 50; see also Nathan James*, supra* note 50.

57. THE BEST SCHOOLS, *supra* note 4.

58. French-Marcelin et al., *supra* note 19, at 8.

59. *Id.*

60. TEX. SCH. SAFETY CTR., *supra* note 1.

61. *Id*.; Lindberg, *supra* note 4, at 24.

62. TEX. SCH. SAFETY CTR., *supra* note 1.

63. THE BEST SCHOOLS, *supra* note 4 (discussing "The Brownie Incident: Collingswood, NL").

64. *A Toolkit for California Law Enforcement: Policing Today's Youth*, POLICE FOUND., 2016, at 2, http://www.policefoundation.org/wp-content/uploads/2016/10/PF_IssueBriefs_Defining-the-Role-of-School-Based-Police-Officers_FINAL.pdf.

65. *Id.*; Anthony Petrosino et al., *Research in Brief: School-Based Law Enforcement*, REG'L EDUC. LAB'Y W. 1 (2020), https://ies.ed.gov/ncee/edlabs/regions/west/relwestFiles/pdf/4-2-3-20_SRO_Brief_Approved_FINAL.pdf.

A.   The Role of School Resource Officers in Schools

Today, there are about 46,000 full-time SROs and 36,000 part-time SROs that patrol American schools.[66] Between 2017 and 2018, 51 percent of U.S. public schools were visited by sworn law enforcement officers (such as SROs), including 71 percent of middle schools and 76 percent of high schools.[67]

SROs are to be a (1) law enforcer, (2) informal counselor, and (3) educator, and should "function both as a line of defense against criminal behavior… and as a bridge between law enforcement officers and their communities."[68] SROs should not handle routine disciplinary matters, and the National Association of School Resource Officers recommends that school districts and police have agreements which 'prohibit SROs from becoming involved in formal discipline situations that are the responsibility of school administrators.'[69] SROs should receive comprehensive training for working within a school environment.[70] Successful SRO programs involve ongoing collaboration between the school, the law enforcement agency, and officer assigned to the school.[71]

The SRO's role as a law enforcer involves utilizing "specialized knowledge of the law, local and national crime trends and safety threats, people and places in the community, and the local juvenile-justice system combine[d] to make them critical members of schools' policy-making teams when it comes to environmental safety planning and facilities management, school-safety policy, and emergency response preparedness."[72] SROs are to promote safety for schools and provide a safe learning environment for students.[73]

The SRO's role as an informal counselor is to establish a rapport with students, stay informed about students' academic and extracurricular activities, discuss mutual interests, and "provid[e] an attentive ear for

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66. THE BEST SCHOOLS, *supra* note 4.

67. DILIBERT ET AL., *supra* note 2 (total number of schools with a sworn police officers, divided by the total number of schools, further broken down by school characteristic, such as school level); *See also* THE BEST SCHOOLS, *supra* note 4 (data from the 2013 and 2014 school year compared to the 2017-2018 school year reflects a continued trend to increase police presence in schools. In the 2013-2014 school year, 43 percent of U.S. public schools were visited by SRO, including 63 percent of middle schools and 64 percent of high schools).

68. THE BEST SCHOOLS, *supra* note 4.

69. Lindberg, *supra* note 4, at 24.

70. Lindberg, *supra* note 4, at 24; TEX. SCH. SAFETY CTR*., supra* note 1.

71. Lindberg, *supra* note 4, at 24.

72. Maurice Canady et al., *To Protect and Educate: The School Resource Officer and the Prevention of Violence in Schools*, NAT'L ASS'N OF SCH. RES. OFFICERS 21 (2012), https://www.nasro.org/clientuploads/resources/NASRO-Protect-and-Educate.pdf.

73. *Id*. at 27.

whatever is on the students['] mind."[74] The SRO should maintain an "open-door" policy with students, engage in counseling sessions with students, and "refer students to social-services, legal-aid, community-services, and public-health agencies."[75]

As an educator, the role of the SRO in school includes "service as a teacher on law-related topics;" imparting on specialized knowledge with students.[76] As an educator, the SRO builds relationships with students "as they come to understand and respect the officer's knowledge and commitment, and improves students' perceptions of law enforcement in general."[77]

The SRO's primary responsibility is safety.[78] The SRO is one of many members of the child-welfare team, and works with educators, parents, juvenile justice agencies, social service agencies, and community organizations to maintain school safety and the safety of students.[79]

B.   The Reality of School Resource Officers in Schools

Training through the National Association of School Resource Officers is voluntary in many states.[80] The triad model (role as law enforcer, informal counselor, and educator) imposes responsibilities on SROs that are vaguely defined; and should one of the components of the triad model fall through, the program is bound to fail.[81]   Communication between school administration and the officers is a challenge in of itself, which can create obstacles for the program's progress.[82]

Many SROs have little to no training for working with children because they work outside of any central or federally imposed training standards.[83] Also, basic law enforcement certification training has little to no training for working with juveniles depending on the certification program.[84] One study showed that police academies in 37 different states devoted less than one percent of total training hours to juvenile justice issues; "five states did not require training on juvenile justice issues at all."[85] Even so, one study showed that 81 percent of the SROs that participated in the survey believed they had received a sufficient amount of training for working in a school

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74. *Id.*
75. *Id.*
76. *Id.* at 26.
77. *Id.*
78. *Id.*
79. *Id.* at 45-46
80. THE BEST SCHOOLS, *supra* note 4.
81. TEX. SCH. SAFETY CTR., *supra* note 1; Lindberg, *supra* note 4, at 24.
82. TEX. SCH. SAFETY CTR., *supra* note 1.
83. THE BEST SCHOOLS, *supra* note 4.
84. *Id.*
85. *Id.*

environment.[86] The same study showed that fewer than 39 percent of SROs received training on child trauma, and only 37 percent received training on child brain development.[87] However, 93 percent received training for responding to active shooters, the vast majority of which will thankfully never find themselves in a situation to utilize.[88] SROs daily routines include interacting with students and coming across disciplinary incidences, which require the ability to navigate while exercising discretion and thoughtful decision-making, "yet, officers receive little to no training in these areas."[89]

The lack of training related to working with children can account for the criminalization of normal adolescent behavior or behavior that stems from a students' disability.[90] As a law enforcer, the SRO typically addresses "criminal" disorder that is the "type of adolescent conduct that otherwise would be handled through school discipline."[91] The SRO's role as an informal counselor falls short; the SRO does not have any specialized training like that of a school psychologist or social worker, and does not have a duty to keep confidentiality with students, where school counselors do.[92] In fact, SROs may share information confided to them by a student with other law enforcement agencies, or even turn the counseling session into an interrogation which may end with the student's arrest.[93] The SRO's role as

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86. Kurtz et al., *supra* note 55, at 15.

87. *Id.*

88. *Id.*; THE BEST SCHOOLS, *supra* note 4.

89. THE BEST SCHOOLS, *supra* note 4.

90. French-Marcelin, Hinger et al., *supra* note 19, at 22; *see also* PASCO SHERIFF'S OFFICE INTELLIGENCE-LED POLICING MANUAL, *supra* note 32, at 13, 71 (The policing manual outlines how the sheriff's office, with the help of Child Protective Investigations (CPI) and the Pasco County School Board, identifies children as "potential offenders," based on: "background risk factors, systemic identifiable risk factors, socio-economically deprived, early age of first conviction, antisocial parents and siblings, history of court appearances, received poor rearing as a child, history of drug usage, coming from broken homes, hanging around in public, low intelligence, having delinquent friends, poor school record, excessive drinking, being truant or excluded from school, being a victim of personal crime." Further criminogenic risk factors, according to the manual, are history of running away, custody disputes, and lack of parental supervision (truancy, curfew). The manual states that the sheriff's office, CPI, and the school identify children at risk of failing school and combine data that assesses children's ACE scores (trauma) to identify children "at-risk to fall into a life of crime." This manual functions more like a manifesto for criminalizing children, especially those who are victims of abuse or neglect, or come from a modern family outside of a middle-class-two-parent home).

91. French-Marcelin, Hinger et al., *supra* note 19, at 13.

92. *Id.* at 14.

93. *Id. See also* PASCO SHERIFF'S OFFICE INTELLIGENCE-LED POLICING MANUAL, *supra* note 32, at 65-66 ("SROs can offer valuable assistance in areas such as offender identification and intelligence gathering. Often SROs will hear about past, present or future crimes well before others in the law enforcement community. In addition to scanning for information that may assist with active investigations, it is critical that SROs also look to identify students who are at-risk of developing into prolific offenders and engaging those students in an effort to get them back on the right track... An SRO's outreach efforts provide for opportunities to build relationships based on mutual trust, and honest, open communication. These connections, properly cultivated, can help us

an educator serves more of a law enforcement objective rather than an educational one which primarily functions to promote positive views of police by students.[94] Even in cases where these views are fostered, the lack of supervision and regulation of the SRO program can cause the program to become quite problematic:

> In Milwaukee Public Schools, a pilot program for fourth and fifth graders, Students Talking It Over with Police, or STOP, was initiated with the goal of increasing positive perceptions of police among youth. A review caused the school district to abruptly cancel the program. Concerns included 'a classroom skit in which an actual police officer pretends to pull out a gun and threatens to shoot if a student runs away — and then repeatedly yells: 'Bang, bang, bang,'' and a requirement to sign a pledge 'never to run from the police, fight with police, or argue with the police.' According to a member of the review committee, it 'teaches students the police are correct and that the problem is really the youth.'[95]

The SRO programs today are in schools which are demographically similar to those that have historically been assigned police officers. Children of color are more likely to attend schools with SRO programs.[96] Schools that are in urban or high-poverty areas are also more likely to have SROs.[97] Children that attend schools with SROs are more likely to be Black or Latinx children and are more likely to experience "highly restrictive and monitoring learning environments and to be arrested."[98] The consistent placement of law enforcement in schools that serve predominantly students of color or poor communities is quite perplexing. The most recent increase in SROs in schools followed the Sandy Hook school shooting in 2012 with officials wanting to place more officers in schools for school safety against shootings.[99] School shootings are more likely to happen in schools that serve

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develop a clearer picture of the environment, and where the seeds of criminal activity are. This can aid deputies and commanders to more effectively interpret, influence, and impact the criminal environment. Healthy police-community relationships are vital for active crime prevention, officer safety, and solving crimes." Note the discussion about identifying students as prolific offenders and identifying seeds of criminal activity to impact the criminal environment. National Association of School Resource Officers conveys a sense of community, whereas this manual focuses on police presence in school as a way seek out and prevent crime.).

  94. *Id*.; Maurice Canady et al*., supra* note 72, at 3.

  95. French-Marcelin, Hinger et al, *supra* note 19, at 22; Patrick Thomas, *'Horrible' Curriculum Dooms Program Putting Cops in Classes*, MILWAUKEE J. SENTINEL (June 26, 2016), http://archive.jsonline.com/news/education/horrible-curriculum-dooms-program-putting-cops-in-classes-b99746220z1-384458931.html.

  96. Lindberg*, supra* note 4, at 24.

  97. *Id*.

  98*. Id*.

  99*. Id*.

predominantly white students or are in predominantly affluent communities.[100] However, the first schools identified to have an increase in security or assigned SROs are those in low-income areas 'where the demographic is people of color.'[101]

C. Impact of School-Based Police on School Safety

When assessing the impact of SROs on school safety, there is data that reflects the perception of SROs, the perception of the public, the perception of students who attend schools with SROs, and data that has assessed for improved safety in schools.[102] The majority of SROs carry handcuffs (97%), a gun (93%), mace (55%), and a taser (54%) on a typical school day; 30 percent possess body-worn cameras.[103] Most SROs (79%) believe their schools are prepared to handle an active shooter.[104] Public perception seems to be split on whether they believe police officers actually make schools safer.[105] One study shows that 53 percent believe that police officers make schools safer, including 35 percent who believe officers deter school shootings, while 47 percent believe that police do not belong in public schools.[106]

Research shows that the use of SROs and other security measures "generally increase students' fear and negatively impacts students' perceptions of safety."[107] One study showed that the presence of security guards increased the likelihood of white students being fearful, and that the presence of security measures, such as metal detectors, increased fears for all students.[108] Another study showed that 59 percent of Black students and 46 percent of Latinx students do not feel safer or only feel a little safer with the presence of police in schools.[109] In fact, some data suggests that Black and

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100. *Id.*; THE BEST SCHOOLS, *supra* note 4.

101. *Id.*

102. *See generally* Kurtz et al., *supra* note 55, at 24; Nayeb & Meek, *supra* note 5; STRATEGIES FOR YOUTH, *supra* note 6.

103. Kurtz et al., *supra* note 55, at 15; DILIBERT ET AL., *supra* note 2 (among schools with law enforcement officers (including SROs), 91 percent of officers carry restrains (handcuffs), 91 percent of officers carry firearms, and 32.6 percent of officers carry body-worn cameras. Data is further broken down by school characteristic).

104. Kurtz et al., *supra* note 55, at 24.

105. THE BEST SCHOOLS, *supra* note 4.

106. *Id.*; Kurtz et al., *supra* note 55, at 15.

107. Nayeb & Meek, *supra* note 5.

108. Ronet Bachman et al., *Predicting Perceptions of Fear at School and Going to and From School for African American and White Students: The Effects of School Security Measures*, 43 YOUTH & SOC'Y 705, 717 (2011), https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.877.1653&rep=rep1&type=pdf.

109. Jonathan Nakamoto et al., *High School Students' Perceptions of Police Vary by Student Race and Ethnicity: Findings from an Analysis of The California Healthy Kids Survey*, WESTED 4

Brown students feel less safe at schools with SROs.[110] Female students do not feel safer in schools with SROs; there was no link between interaction with an SRO and feeling safer in school.[111]

As it turns out, SROs do not improve school safety, nor do they reduce school violence.[112] There is no data that suggests SROs are actually effective in preventing school violence.[113] A study that assessed 40 years of school policing evaluations showed no positive impact of police on school safety outcomes.[114] A different study in North Carolina found that SROs did not decrease the number of crimes occurring in schools.[115] Even with school shootings (one of the primary purposes for placing police in schools), SROs had little to no effect on prevention or intervention. Criminologists at Texas State University found that out of the 25 identified active shooters that targeted schools in 2013, not one ended as a result of the actions of armed guards or police officers.[116] A larger analysis of about 200 incidents of gun violence in schools found that SROs successfully intervened in only two occasions.[117]

The presence of SROs in some cases can actually make school climate and the sense of safety worse. Punitive school environments can often lead to additional violence and disorder.[118] In 2020, a longitudinal data analysis found that increasing police staffing also increased the number of drug-related and weapon-related offenses at schools.[119] The study involved the comparison of 33 public schools that increased police staffing against 72

(2019),   https://www.wested.org/wp-content/uploads/2019/05/resource-high-school-students-perceptions-of-police.pdf.

110. Nayeb & Meek, *supra* note 5.

111. Mckenna Kohlenberg & Amy Meek, *What the Research Shows: Sexual Misconduct and Gender Discrimination by School Resource Officers*, CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS (Aug. 6, 2020), https://www.clccrul.org/blog/2020/8/6/research-sros-gender.

112. Nayeb & Meek, *supra* note 5. *See also* HEALTHY SCHOOLS CAMPAIGN, *supra* note 5 ("Research does not show that increased presence of law enforcement makes schools safer. Instead, school police officers reinforce the criminalization of young people of color, serving as a key component of the school-to-prison pipeline.").

113. Nayeb & Meek, *supra* note 5; STRATEGIES FOR YOUTH, *supra* note 6, at 3 ("There is no compelling evidence that police make schools safer.").

114. Nayeb & Meek, *supra* note 5. *See also* STRATEGIES FOR YOUTH, *supra* note 6, at 10 ("A meta-analysis of 12 students found that none indicated a positive impact of police presence on school safety outcomes.").

115. DILIBERT ET AL*., supra* note 2, at 10.

116. STRATEGIES FOR YOUTH, *supra* note 6.

117. *Id*.

118. Nance*, supra* note 43, at 326; Bachman et al., *supra* note 108, at 721 (discussing previous study which found security measures actually increased levels of disorder present in schools).

119. STRATEGIES FOR YOUTH, *supra* note 6, at 11; *see* Lindsay et al., *supra* note 3 ("A 2013 study found that as schools add police, they record more weapons and drugs crimes and report larger numbers of nonserious violent offenses to law enforcement. An earlier study found that the presence of a school resource officer, a sworn law enforcement officer assigned to one more schools after receiving training in school policing, is associated with more arrests for disorderly conduct but fewer arrests for assaults and weapons charges.").

public schools that did not increase police staffing.[120] The same study found that increasing police staff increased exclusionary discipline practices.[121]

Other studies suggest that police presence in schools increase suspensions and have a negative impact on graduation rates and students' mental health.[122] One study in Texas, which assessed over 2.5 million students, found that the hiring of more police in schools lead to an increase in suspensions, lower graduation rates, and lower college enrollment rates.[123] A separate study found that exposure to police violence lead to the persistent decrease in grades, increase in emotional disturbance, and lower rates of high school graduation and lower college enrollment for Black and Latinx students.[124]

The presence of police in one school specifically cultivated an environment of fear and distrust, reduced perceptions of police legitimacy, and weakened the school's sense of community.[125] The presence of SROs in some schools can create the very problems they were meant to curb:

> For students with risk factors—that is students living in poverty, without access to healthcare or healthy food, or in places where they are unsafe—police contact at schools can accelerate future misbehavior, truancy, and drop-out rates. Children disengage where they are not safe, and for many, schools have become unsafe places.[126]

Additionally, the most common reason for an SRO to be arrested is for a sex-related crime with a female student.[127] The majority of SROs arrested for a sex-related crime worked in a school for at least two years.[128] The lack of oversight of SROs, the autonomy SROs have in their position, and the responsibility to and encouragement of developing non-policing

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120. STRATEGIES FOR YOUTH, *supra* note 6, at 14.

121. STRATEGIES FOR YOUTH*, supra* note 6*; See also* Sarah Biehl, *School Expulsion: A Life Sentence?*, AM. BAR ASS'N (Mar. 15, 2011), https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2011/school-expulsion-a-life-sentence/ ("'Zero-tolerance discipline policies have fueled the increase [of suspensions and expulsions] in recent years, as has the increasing reliance of school administrators and educators on law enforcement tactics to discipline children.' See Advancement Project, Education on Lockdown: The Schoolhouse to Jailhouse Track (March 2005); American Civil Liberties Union, Dignity Denied: The Effect of "Zero Tolerance" Policies on Students' Human Rights (Nov. 2008).").

122*. Id*.

123*. Id*.

124*. Id*.

125*. Id*. at 15.

126. French-Marcelin et al., *supra* note 19, at 31.

127. Kohlenberg & Meek, *supra* note 111.

128*. Id*.

relationships are considered contributors to the sex-related crimes committed by SROs.[129]

D. The Role of School-Based Police in the School-to-Prison Pipeline, and the Disparate Impact on Children of Color

Although SROs are not supposed to engage in disciplinary practices, nearly 70 percent of school police officers report being regularly involved in disciplinary matters.[130] Officers in schools often end up enforcing zero-tolerance policies.[131] And with the rise in zero-tolerance policies, "more students than ever before are finding themselves in the courthouse rather than the principal's office."[132]

i.   Zero-Tolerance Policies and School-Based Policing Programs

Zero-tolerance policies became popular with schools following the Gun-Free Act of 1994 under the idea that punitive measures would discourage future misbehavior and foster a better learning environment for students.[133] Instead, zero-tolerance policies have been a mechanism for removing children from schools by the thousands each year, resulting in harmful and sometimes lifechanging effects at a disproportionate rate for students of color.[134]

Most disciplinary infraction referrals originate from classroom behavior, "and more times than not, the referrals are for students of color[.]"[135] Black and Brown students are still punished more severely and more frequently than white students.[136] When implementing zero-tolerance

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129. *Id.*

130. THE BEST SCHOOLS, *supra* note 4.

131. Lindberg*, supra* note 4, at 22.

132. THE BEST SCHOOLS, *supra* note 4.

133. TEX. SCH. SAFETY CTR., *supra* note 1; French-Marcelin et al., *supra* note 19, at 29.

134. Dakota Hall & Katherine Terenzi, *From Failure to Freedom: Dismantling Milwaukee's School-to-Prison Pipeline with the Youth Power Agenda*, THE CTR. FOR POPULAR DEMOCRACY 2 (2018), https://static1.squarespace.com/static/59babf0451a584437bcb6f6c/t/5acd2909758d467950cc5229/1523394831500/MKE_STP+%281%29.pdf; *see also School-to-Prison Pipeline Infographic*, ACLU, https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline-infographic; *see also Are Our Children Being Pushed into Prison?*, SCH.-JUST. P'SHIP (2012)*,* https://www.schooljusticepartnership.org/component/mtree/resource-library/partnerships/126-are-our-children-being-pushed-into-prison.html?Itemid=.

135. H. Richard Milner, *Why Are Students of Color (Still) Punished More Severely and Frequently Than White Students?* 48 URBAN EDUC. 483, 483 (2013), https://doi.org/10.1177%2F0042085913493040.

136*. Id.*; *see also K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, U.S. GOV'T ACCOUNTABILITY OFF. 14 (2018) (data reflecting Black students punished disproportionately across disciplinary action classifications: out-of-school suspension, in-

policies, administrators (1) interpret the behavior described by teachers, and (2) interpret how that behavior potentially transgressed rules or policies.[137] One study showed a differential pattern of treatment between Black students and white students in the classroom, where Black students were referred to the office for more subjective infractions, whereas white students were referred for more objective infractions.[138] For example, Black students may be referred to the office for "talking back" or "mouthing off," or for other subjective behaviors that teachers take as offensive, and where students may not have actually meant any malice or disrespect.[139]

There are several "micro- and macro-level reasons for unevenly harsh disciplinary practices of Black and Brown students[.]"[140] At times, the subjective nature of teachers' and administrators' disciplinary practices are centered in issues of implicit bias, race and racism.[141] Some teachers may be afraid of their Black and Brown students and be less likely to work with them in the classroom.[142] Others who are accepting of stereotypes of adolescent Black and Brown students as being threatening or dangerous "may overact to relatively minor threats to authority, especially if their anxiety is paired with a misunderstanding of cultural norms or social interaction."[143] Or, the school itself may practice institutional and individual racism if the implementation of zero-tolerance policies are constructed to enforce white-normative

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school suspension, referral to law enforcement, expulsion, corporal punishment, school-related arrest), https://www.gao.gov/assets/700/690828.pdf.

137. Milner, *supra* note 135, at 483 (citing "Administrators…have the power to suspend or expel students based on (a) their interpretation of the behavior described by teachers in the classrooms and (b) their interpretation of rules and policy violation").

138. Milner, *supra* note 135, at 484; U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 136, at 4 (citing study which showed "Black girls were disproportionately disciplined for subjective interpretations of behaviors, such as disobedience and disruptive behavior.").

139. Milner, *supra* note 135, at 484; *see also* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 136, at 4 (citing study which showed "Black girls were disproportionately disciplined for subjective interpretations of behaviors, such as disobedience and disruptive behavior.").

140. Milner, *supra* note 135, at 485; *see also* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 136, at 4-5 ("A separate study used eye-tracking technology to show that, among other things, teachers gazed longer at Black boys than other children when asked to look for challenging behavior based on video clips. The Department of Health and Human Services (HHS) reported that this research has highlighted implicit bias as a contributing factor in school discipline and may shed some light on the persistent disparities in expulsion and suspension practices, even though the study did not find that teacher gazes were indicative of how they would discipline students.").

141. Hall & Terenzi, *supra* note 134, at 13; *see also Black Boys Viewed as Older, Less Innocent Than Whites, Research Finds*, AM. PSYCH. ASS'N (2014), https://www.apa.org/news/press/releases/2014/03/black-boys-older (discussing findings that reflect Black children are mistaken for being about 4.5 years older than their actual age, are viewed as more culpable than their white peers, and are more likely victims of use of force by police when police 'dehumanize' them).

142. Milner, *supra* note 135, at 485.

143. *Id.*

behavior that excludes or punishes the behavioral and interactional styles and practices of non-white people.[144]

Zero-tolerance discipline not only involves automatic suspension or expulsion, but it also often involves contact with "law enforcement as a central authority to school discipline," contrary to NASRO's triad model for school-based policing.[145] Most administrators of secondary schools say that SROs are involved in discipline, even when no crime was committed.[146] Police involvement in school discipline has had the effect of "transforming school administrators, teachers, guidance counselors, and other members of the school community into 'agents of the criminal justice system.'"[147] Additionally, for SROs who do not intend to be involved in disciplinary infractions, the line between issues of safety and issues of discipline is further blurred as teachers are often "too quick to appeal to on-site SROs in situations that have traditionally been the disciplinary province of teachers, principals, and guidance counselors."[148]

Suspensions and expulsions or referrals to law enforcement are not limited to prohibiting acts involving guns, drugs, or overt violent acts; schools can create their own policies for suspending, expelling, or referring students to law enforcement officials which can cover an array of behaviors, including "disrespectful" or "inappropriate" behavior.[149] In fact, one study showed that general office referrals were not out of concern of a threat of safety, but rather due to noncompliance/insubordination, or disrespect.[150]

The use of zero-tolerance policies and SROs have a severe effect on students in general, and a compounded effect on students of color: "Students suspended or expelled for discretionary violations are nearly three times more likely to be in contact with the juvenile justice system the following year."[151]

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144. *Id.*

145. French-Marcelin et al., *supra* note 19, at 29; Lindberg*, supra* note 4, at 24.

146. Nayeb & Meek, *supra* note 5.

147. French-Marcelin et al., *supra* note 19, at 29.

148. THE BEST SCHOOLS, *supra* note 4; *see also* Biehl, *supra* note 121 ("'Zero-tolerance discipline policies have fueled the increase [of suspensions and expulsions] in recent years, as has the increasing reliance of school administrators and educators on law enforcement tactics to discipline children.' See quoting Advancement Project, Education on Lockdown: The Schoolhouse to Jailhouse Track (March 2005); American Civil Liberties Union, Dignity Denied: The Effect of "Zero Tolerance" Policies on Students' Human Rights (Nov. 2008).").

149. *Administrative Policy 8.28: Student Discipline*, MILWAUKEE PUB. SCH. (2021), https://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/MPS-Rules-and-Policies/Administrative-Policies/Chapter-08/Administrative_Policy_08_28.pdf (not citing directly, rather using the policy as an illustration. The policy largely discusses students' "inappropriate behavior" and "disruptions," and then follows with a 4 level disciplinary structure, which included suspension at level 2 and expulsion at level 4); French-Marcelin et al., *supra* note 19, at 17-22; THE BEST SCHOOLS, *supra* note 4 (citing incident with 16-year-old female student from Columbia, SC).

150. Milner*, supra* note 135.

151. SCHOOL-TO-PRISON   PIPELINE,   ACLU,   https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline-infographic?redirect=racial-justice/infographic-school-prison-pipeline (last visited Nov. 25, 2021).

Black students are three-and-a-half times more likely to be suspended than white students, and make up 40 percent of student expulsions.[152] The presence of SROs in schools lead to more suspensions and expulsions of students in general, and to more suspensions and expulsions of Black students, particularly.[153]

Some jurisdictions have worse discipline disparities between Black and white students. In Wake County, North Carolina, Black students make up for 39 percent of the student population, yet account for 76 percent of short-term suspensions and 92 percent of long-term suspensions.[154] No evidence suggests that Black students misbehave more frequently or more severely than white students, however Black students are punished more frequently and more severely than other students.[155] For example, 40 percent of Black students caught with cellphones were suspended, while only 17 percent of white students caught with cellphones were suspended.[156] In Milwaukee, Wisconsin, Black students are about 53 percent of the student population, but accounted for 80 percent of the 10,267 suspensions in the 2015-2016 school year.[157] The 10,267 suspensions and 181 student expulsions equated to 65,740 cumulative school day absences.[158]

ii.   The Criminalization of Children in American Schools

Not only are we witnessing an increase in law enforcement in schools, we are also witnessing an increase in confrontations between law enforcement personnel and unarmed, underaged students, and the criminalization of normal adolescent behavior.[159] Students' confrontations with SROs can "lead to their first brushes with the criminal justice system."[160] Students who might be treated as behavior problems and disciplined within the school's internal disciplinary mechanisms are instead "shuttled into the juvenile justice or criminal justice systems;" this is particularly true for students who attend urban and predominantly non-white schools.[161]

Police officers are more likely to arrest children than adults who engage in similar behavior.[162] Police officers are also more likely to exercise authority over children than adults for disrespect.[163] Additionally, students

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152. SCH.-JUST. P'SHIP, *supra* note 134.
153. Nayeb & Meek, *supra* note 5.
154. THE BEST SCHOOLS, *supra* note 4.
155. French-Marcelin et al., *supra* note 19, at 22.
156. THE BEST SCHOOLS, *supra* note 4.
157. Hall & Terenzi*, supra* note 134, at 15.
158*. Id*. at 11.
159. THE BEST SCHOOLS, *supra* note 4; French-Marcelin, Hinger et al, *supra* note 19, at 17.
160. THE BEST SCHOOLS, *supra* note 4.
161*. Id*.
162. French-Marcelin et al., *supra* note 19, at 20.
163*. Id*.

who attend schools with SROs are five times more likely to be arrested than students who attend schools without SROs.[164]

Students who attend schools with SROs or security are more likely to be arrested or receive a court referral for trivial forms of student misconduct.[165] Students subjected to school-related arrests are often arrested for behaviors that is not necessarily criminal but rather behavior that may annoy adults but are a typical part of adolescent development.[166] Student behavior is not just criminalized, but it is often treated as a serious-sounding criminal transgression when the actual behavior was not-so-serious.[167] Student behavior that has been criminalized and resulted in criminal charges include: "assault" for throwing a baby carrot; "assault" for throwing a paper airplane; "disrupting school" for fake burping; "disrupting school" for not following directions; "disrupting school" for criticizing a police officer; "drug possession" for carrying a maple leaf; "indecent exposure" for wearing sagging pants.[168] Over a seven year period, 42,850 children under 10 years old were arrested by law enforcement.[169]

In some jurisdictions, the bulk of juvenile cases stem from school-based arrests and referrals from schools to law enforcement.[170] For example, in one county in North Carolina, two-thirds of delinquency cases came from public schools.[171] San Bernardino City Unified School District makes more juvenile arrests than other police departments in some of California's most populated cities; 91 percent of San Bernardino City Unified School District's arrests were for misdemeanors such as "disorderly conduct."[172] These arrests accompany the growing trend of states utilizing the juvenile justice systems since the mid-2000s stemming from school-based referrals and arrests.[173]

During the 2011-2012 school year, 260,000 students were referred to law enforcement and 92,000 were subjected to school-based arrests.[174] That

164. THE BEST SCHOOLS, *supra* note 4.

165. Nayeb & Meek, *supra* note 5.

166. THE BEST SCHOOLS, *supra* note 4; French-Marcelin et al., *supra* note 19, at 20.

167. French-Marcelin et al., *supra* note 19, at 20.

168. *Id*.

169. *Statistical Briefing Book: Arrests by Offense, Age, and Gender,* OFF. OF JUV. JUST. AND DELINQUENCY PREVENTION (2019), https://www.ojjdp.gov/ojstatbb/crime/ucr.asp?table_in=1&selYrs=2013&rdoGroups=1&rdoData=c (data log; select data by year, subtracting arrests of children between ages 10-17 years old from the total number of arrests of children ages 0-17 years old); *see also* Bill Hutchinson, *More than 30,000 children under age 10 have been arrested in the US since 2013: FBI*, ABC NEWS (Oct. 1, 2019), https://abcnews.go.com/US/30000-children-age-10-arrested-us-2013-fbi/story?id=65798787 (discussing the total number of children arrested between 2013 and 2018. 30,467 children under 10 years old were arrested, and 266,321 students between ages 10 and 12 were arrested. Note, this article includes arrests beyond in-school arrests).

170. French-Marcelin et al., *supra* note 19, at 17.

171. *Id*.

172. *Id*.

173. *Id*.

174. Lindberg, *supra* note 4, at 22.

same year, Black students made up 16 percent of U.S. public school enrollment, however they represented 27 percent of those referred to law enforcement, 31 percent of which resulted in school-related arrests.[175] Additionally, 70 percent of students involved in "in-school" arrests or referrals to law enforcement were Black or Latinx.[176]

In the 2013-2014 school year, 222,541 students were referred to law enforcement and 69,782 students were placed under arrest.[177] Black students made up 15.5 percent of overall enrollment yet represented 33.4 percent of arrests.[178] That same year, Native Hawaiian students made up 0.4 percent of enrollment yet represented 0.8 percent of arrests and 4.1 percent of total referrals to law enforcement.[179] The breakdown of data by states reflects further disproportionate arrests of Black students, with 28 states arresting Black students at a rate that is 10 percentage-points higher than the enrollment of Black students in schools, and in 10 of those states Black students are arrested at a rate that is 20 percentage-points higher than enrollment.[180] For example, Black students make up 39 percent of enrollment in Virginia public schools, yet make up 75 percent of student arrests.[181] In Louisiana, Black students make up 40 percent of enrollment yet make up for 69 percent of student arrests.[182] The trend continued during the 2015-2016 school year, with Black and Latinx students accounting for 55 percent of referrals to law enforcement and 60.1 percent of arrests, compared to white students accounting for 36.7 percent of referrals to law enforcement, and 33.1 percent of arrests.[183] Additionally, Students with Disabilities accounted for 28.2 percent of referrals to law enforcement and 27.5 percent of arrests.[184]

175. THE BEST SCHOOLS, *supra* note 4; TEX. SCH. SAFETY CTR., *supra* note 1.

176. Rachel Wilf, *Disparities in School Discipline Move Students of Color Toward Prison, New Data Show Youth of Color Disproportionately Suspended and Expelled From School*, CTR. FOR AM. PROGRESS (Mar. 13, 2012), https://americanprogress.org/article/disparities-in-school-discipline-move-students-of-color-toward-prison/; *see also* Amir Whitaker et al., *Cops and No Counselors, How the Lack of School Mental Health Staff is Harming Students*, ACLU 18, https://www.aclu.org/report/cops-and-no-counselors.

177. *Policing American Schools: An Education Week Analysis*, EDUC. WEEK RSCH. CTR. (2017), https://www.edweek.org/which-students-are-arrested-most-in-school-u-s-data-by-school#/overview.

178. *Id.*

179. *Id.*

180. Evie Blad & Alex Harwin, *Analysis Reveals Racial Disparities in School Arrests*, PBS (Feb. 27, 2017), https://www.pbs.org/newshour/education/analysis-reveals-racial-disparities-school-arrests.

181. *Id.*

182. *Id.*

183. *Referrals to Law Enforcement*, *supra* note 7; *School-Related Arrests*, *supra* note 7.

184. *Id.*

Encounters with Police have been shown to trigger stress, fear, trauma, and anxiety for youth of color.[185] Presence of SRO's have been shown to cause anxiety and fear specifically for Black and Brown youth who live in overpoliced neighborhoods.[186] SRO's routinely enforce gender norms against girls of color, and have repeatedly stated that girls of color should behave "lady like."[187] Additionally, Black girls are disproportionately disciplined and arrested at school:

> Nationally, Black girls in high school are six times more likely to be suspended than white girls; four times more likely to be arrested; three times more likely to be restrained; and three times more likely to be referred to law enforcement.[188]

iii.   School-Based Police Programs' Impact on Communities

On June 16, 2016, police were dispatched to William P. Tatem Elementary School to respond to a call for assistance: a third grader remarked that brownies were being served during the end-of-year party, and a fellow third grader misconstrued the remark as racist.[189] The nine-year-old was subsequently interrogated by police without the presence of an attorney, parent, or educator.[190] The incident ended with a confrontation between a police officer and the nine-year-old boy.[191]

According to the local police chief, the prosecutor's office instructed the local schools to contact the police for incidents even 'as minor as a simple name-calling incident that the school would typically handle internally.'[192] It remains unclear as to why the prosecutor's office required the implementation of the new policy; there were no existing or rising criminal offenses at the elementary school, nor did there appear to be a particularly aggravating event in the time leading up to the implementation of the new policy.[193]

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185. Nayeb & Meek, *supra* note 5; *see also* STRATEGIES FOR YOUTH, *supra* note 6, at 4-5 ("Youth subjected to aggressive and often persistent involuntary police encounters (ex. stop and frisk) report significantly higher levels of anxiety, trauma and even post-traumatic stress disorder, 21 with 5 similar findings in students stopped by school police.").

186. *Id.*

187. Kohlenberg & Meek, *supra* note 111.

188. *Id*.

189. THE BEST SCHOOLS, *supra* note 4; *See also* Erin Donaghue, *Student's Brownie Comment Highlights School Policing Dispute*, CBS NEWS (July 1, 2016), https://www.cbsnews.com/news/students-brownie-comment-police-racist-highlights-school-dispute/.

190. *Id.*

191. *Id*.

192. *Id.*

193. *Id.*

The policy had detrimental effects on the community both socially and economically.[194] The policy resulted in officers responding to the school on an average of 5 times a day for a district that serves a population of 1,875 students.[195] Additionally, almost every call police respond to on school grounds were reported by police to Child Protection and Permanency.[196] This means that for incidences like the one illustrated above ended with a child having a permanent file in the prosecutor's office, and a call to parents by social services.[197]

In some jurisdictions, SROs and their reporting procedures have been linked to the deportation of students attending the schools they are supposed to serve.[198] Orlando signed off on his own deportation after being held in an immigration facility for over a year.[199] The student was arrested by ICE on his way to work nine months after a school police officer filed a report with the Boston Regional Intelligence Center (BRIC) and indicated he suspected the student was a gang member of MS-13.[200] The school police officer filed a report after another student identified him as possibly having a gang affiliation; Orlando insists he's never been involved in a gang.[201] Another student, Henry, was detained by immigration one year after a school police officer noted in a report (that was subsequently entered into a database shared with ICE) that he suspected Henry was a gang member.[202] And Lucas was detained by ICE and remains in an immigration detention center today after school police saw him with peers who were suspected to be gang members.[203]

Although federal funding has "legitimized and expanded" school-based policing, the majority of funding for municipal and school police comes out of local budgets.[204] The cost of maintaining one school police officer can be more than $100,000 a year, sometimes at the expense of other school resources.[205] For example, when COPS grant funding ran out for the program

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194. THE BEST SCHOOLS, *supra* note 4.

195. THE BEST SCHOOLS, *supra* note 4; *See also* Erin Donaghue, *supra* note 189.

196. *Id.*

197. *Id. See also* PASCO SHERIFF'S OFFICE INTELLIGENCE-LED POLICING MANUAL, *supra* note 32, at 13 (The policing manual outlines how the sheriff's office, with the help of Child Protective Investigations (CPI) and the Pasco County School Board, identifies children as "potential offenders." The collaboration between institutions can be quite costly for both the student and the community.).

198. *See generally* Dilibert et al., *supra* note 2, at 16; Shannon Dooling, *What A Boston Student's Deportation Reveals About School Police and Gang Intelligence* (2018), https://www.wbur.org/news/2018/12/13/east-boston-student-discipline-to-deportation.

199. Dooling, *supra* note 198.

200. *Id.*

201. *Id.*

202. *Supra* note 6, at 16.

203. *Id.*

204. French-Marcetqimlin et al., *supra* note 19; *supra* note 139.

205. French-Marcelin et al., *supra* note 19.

in Anchorage, Alaska, the remaining cost was shifted to the school district.[206] When asked how the school district would cover the cost, a district representative stated 'anything and everything is on the table at this point.'[207] And when the COPS in Schools grant program ended in 2005, the COPS office commission published a guide for maintaining school policing programs which recommended cutting budgets from other school budget items to maintain officers on campuses.[208] For some schools, funding for police increased while funding for teachers and support staff were cut.[209] Today, there are students who attend schools that have officers, but do not have counselors or psychologists:

> 1.7 million students are in schools with cops, but no counselors; 3 million students are in schools with cops, but no nurses; 6 million students are in schools with cops, but no school psychologists; 10 million students are in schools with cops, but no social workers.[210]

Essentially, local municipalities have allocated considerable funding for school police which negatively impact our students, particularly our students of color, especially those who are from urban communities that are already "crippled by high incarceration rates," making it more likely that students land in the juvenile justice system rather than serve detention.[211]

IV. THE THREAT TO STUDENTS' CIVIL RIGHTS BY POLICE PRESENCE IN SCHOOLS

Police in schools pose a serious threat to our students' freedom from unconstitutional seizures and excessive use of force, their right to an education, and their freedom from discriminatory practices. Unfortunately, the lack of training of officers and the lack of protections afforded by our courts have left our students and their constitutional rights vulnerable to violations. One study found that the presence of police in schools led to "increased reliance on surveillance, unreasonable search and seizure, inappropriate sharing of confidential information, and activities to develop student informants in the school."[212]

Police are more likely to use force in interactions with children than with adults.[213] Not only do school police carry handcuffs, guns, tasers, pepper

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206. *Id.*
207. *Id.*
208. *Id.*
209. *Id.*
210. Whitaker et al., *supra* note 176.
211. French-Marcelin et al., *supra* note 19, at 12; THE BEST SCHOOLS, *supra* note 4.
212. *Supra* note 6, at 15.
213. French-Marcelin et al., *supra* note 19, at 22.

spray, and batons, but they have also been known to possess military-grade assault rifles, grenade launchers, and military vehicles.[214] One study suggests that more school police are armed with lethal weapons than they are non-lethal weapons.[215]

The Juvenile Detention Alternatives Initiative, which outline best practices for interacting with children and avoid escalation, prohibit the following use of force within juvenile detention facilities: use of chemical agents, such as pepper spray; use of pressure point control and pain compliance techniques; using physical force, such as hitting youth with a closed fist, throwing youth into walls or the floor, kicking or striking youth, pulling youths' hair, using chokeholds or blows to the head; and using mechanical restraints for punishment, discipline, retaliation, or treatment.[216] Shockingly, all of these use of force techniques have been used by police against children in schools.[217]

Use of force techniques have the potential to inflict serious physical and psychological harm on children.[218] Stun guns can cause irregular heart rhythm or cardiac arrest; pepper spray can induce difficulty breathing and asthma attacks, temporary vision loss, and blistering.[219] Pepper spray has caused death in some children and has been directed to be 'kept away from small children and teenagers.'[220] Handcuffs can become dangerous and painful for children whose wrists are too small, and some physical restrains have caused the deaths of schoolchildren.[221]

Evidence suggests that physical punishment, or use of force, puts children at risk for developing mental illness, such as anxiety, depression, and post-traumatic stress disorder.[222] Research shows that physical punishment does little to improve behavior of children.[223] However, physical punishment seems to make children more likely to become defiant and aggressive in the future.[224]

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214. *Id.*

215. Kurtz et al., *supra* note 55, at 16.

216. French-Marcelin et al., *supra* note 19, at 23; *Juvenile Detention Facility Assessment: A Guide to Juvenile Detention Reform*, JUVENILE DETENTION ALTERNATIVES INITIATIVE 174-75 (2014), http://www.aecf.org/resources/juvenile-detention-facility-assessment/.

217. French-Marcelin et al., *supra* note 19, at 23.

218. Amanda McGinn, *School Discipline Practices That Will Shock You, Literally: A Reevaluation of the Legal Standard for Excessive Force Against Students*, 54 AM. CRIM. L. REV. 627, 627 (2017).

219. *Id.* at 630.

220. *Id.* at 631.

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

Use of force has been disproportionately used against students with disabilities, students from low-income families, and students of color.[225] Students with disabilities represent 12 percent of student enrollment, but account for 75 percent of students physically restrained.[226] Additionally, Black students represent 19 percent of the student population with disabilities, but accounted for 36 percent of those with disabilities who were restrained.[227]

As it stands today, the Supreme Court has yet to address and clearly define use of excessive force in public schools.[228] Ingraham v. Wright established that the Fourteenth Amendment liberty interests were implicated when school authorities "deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain."[229] However, the court left open what the appropriate standard for analyzing excessive force should be.[230]

The absence of the Supreme Court's standard for analyzing excessive force in public schools has left lower courts to develop different approaches which, depending on the jurisdiction, has resulted in some school children being more protected by legal standards than others.[231] Some circuits have developed an objective-reasonableness standard to determine whether the use of force and seizure were reasonable and constitutional under the Fourth Amendment.[232] The standard involves a balancing test which considers the totality of the circumstances, including the severity of the offense at issue, whether the [student] poses a threat, and whether the [student] resisted the officer or attempted to flee.[233] Students have been successful in bringing claims against officials that used restraints in jurisdictions that use the objective-reasonableness standard.[234]

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225. *Id. See also Black Boys Viewed as Older, Less Innocent Than Whites, Research Finds*, AM. PSYCH. ASS'N (2014), https://www.apa.org/news/press/releases/2014/03/black-boys-older (discussing findings that reflect Black children are mistaken for being about 4.5 years older than their actual age, are viewed as more culpable than their white peers, and are more likely victims of use of force by police when police 'dehumanize' them).

226. McGinn, *supra* note 218, at 631-32; THE BEST SCHOOLS, *supra* note 4.

227. *Id.* at 632.

228. *Id.* at 633.

229. *Ingraham v. Wright*, 430 U.S. 651, 674 (1977); McGinn, *supra* note 218, at 634.

230. McGinn, *supra* note 218, at 634.

231. *Id.* at 634-35.

232. *Hines v. Jefferson*, 795 Fed. App'x 707, 711 (11th Cir. 2019) (quoting *Graham v. Connor*, 490 U.S. 386, 388: "Claims that law enforcement officers used excessive force in the course of an arrest or other seizure of an individual are evaluated under the Fourth Amendment's "objective reasonableness" standard."); McGinn, *supra* note 218, at 635.

233. *Hines v. Jefferson*, 795 F. App'x at 712-13 (Concluding that given the facts of the case, it cannot be said that the officer's use of force (placing student in choke hold and carrying her to the office by her neck) was so grossly disproportionate to the situation that every reasonable officer in Deputy Jefferson's position would inevitably conclude that the use of force was unlawful); McGinn, *supra* note 218, at 635.

234. McGinn, *supra* note 218, at 635-36.

In contrast, other jurisdictions require incidents to rise to the level of "shock[ing] the conscience."[235] The standard seems to only give relief for extreme cases (such as when a gym coach chocked, grabbed, and slammed a student's head into bleachers four times) and fails to adequately address excessive use of force that is not particularly egregious, falling short of protecting students from force that is excessive but not particularly heinous (such as restraining students with disabilities or shoving students' shoulders into doors).[236] The differing standards in lower courts that define excessive force has left children unequally protected across America. And some jurisdictions, by only identifying extreme cases of excessive force, have failed to protect children from other forms of excessive force that SROs and other school-based officers engage in regularly against children.

In addition to excessive force, police presence and the combination of zero-tolerance policies threaten the removal and disengagement of students from their education.[237] Punitive school environments, which can include the presence of police, have been associated with lower academic achievement for all students.[238] A study that randomly sampled 25,000 eighth graders in 1,000 schools reflected a connection between disciplinary practices and Black male achievement in middle schools.[239] Disciplinary practices that result in the removal of children from schools, such as suspensions or expulsions, cause children to suffer academically.[240] Another study shows that extensive, low-level police contact significantly reduced test scores for black teenage boys.[241] Not only do the presence of police and punitive police practices have a disparate impact on Black children and their academic performance, but the disproportionate utilization of these disciplinary practices also means that Black children are "disciplined" out of their right to an education. Such practices cause students to be more at risk of not finishing high school, which increases the likelihood that they will remain

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235. *Id*. at 634.

236. *Id.*; *Id.* at 634 n.58 (*Muskrat v. Deer Creek Pub. Sch.*, 715 F.3d 775, 787 (10th Cir. 2013) (holding that slapping and physically restraining student with disabilities does not shock the conscience); *Johnson v. Newburgh Enlarged Sch. Dist.*, 239 F.3d 246, 249, 252 (2d Cir. 2001) (holding gym coach's choking, dragging, and slamming student's head to be conscience-shocking); *Gottlieb ex rel. Calabria v. Laurel Highlands Sch. Dist.*, 272 F.3d 168, 175 (3d Cir. 2001) (holding assistant principal's pushing student's shoulder into door is not conscience-shocking).

237. Biehl, *supra* note 121 ("Every day in the United States, hundreds and possibly even thousands of children are removed from school—for anywhere from a couple of days to a year or more—for offenses ranging from shouting in the hallway, talking back to a teacher, being "insubordinate, or bringing alcohol to school … Draconian school discipline policies are condemning an entire generation of young people").

238. Nance*, supra* note 43, at 326; STRATEGIES FOR YOUTH, *supra* note 6, at 14 (Texas study that found an increase in suspensions and lower graduation and college enrollment rates).

239. Milner*, supra* note 135, at 483.

240*. Id*.

241. Nayeb & Meek, *supra* note 5 (citing The majority of SROs carry handcuffs (97%), a gun (93%), mace (55%), and a taser (54%)).

unemployed or earn less money in the work force and increases the likelihood they will be arrested and enter the criminal justice system.[242]

Despite the disproportionate use of discipline, use of force, arrest, and referrals to court systems against children of color, children have little recourse from our courts for relief for racial discrimination:

> Courts have generally concluded that private entities challenging school disciplinary policies or practices under the Equal Protection Clause, Title VI and section 1981, must prove that their adoption or administration is motivated by discriminatory intent. In rare cases, courts could infer discriminatory intent from statistical evidence. However, the use of the statistical evidence is for establishing discriminatory intent. Disparate impact of disciplinary policies and practices alone does not trigger a finding of discrimination.[243]

As the law stands today, statistics and evidence that reflect disproportionate racial disparities of school discipline policies (such as suspensions, expulsions, or school-police programs) are not enough to establish that such practices are racial discrimination and in violation of the Fourteenth Amendment.[244] It is not enough that children of color face disparate outcomes directly linked to school policies and practices, they must prove that those practices were established with the intent to discriminate against children of color.[245] This bar is extremely high to reach, and by default allows for school policies and practices that have a compounded negative impact on children of color to remain unchecks and persist in American public schools.

V.   RECOMMENDATIONS FOR SCHOOL-BASED POLICING PROGRAMS

Currently, SROs are tasks with numerous, extremely vague, yet highly demanding responsibilities.[246] The lack of required training and clearly defined practical roles for SROs has resulted in SROs playing a significant role in the school-to-prison pipeline, enforcing strict zero-tolerance policies and triggering the juvenile and criminal justice systems for students by the

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242. Biehl, *supra* note 121 (Students who are removed from school are less likely to graduate from high school. Consequences of not finishing high school are severe; those who do not finish high school are 3.5 times more likely to be arrested; there increase likelihood that those who did not finish high school will remain unemployed and earn less money than their peers who do finish high school).

243. Russell J. Skiba et al., *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y. L. SCH. L. REV. 1071, 1111 (2010).

244. *Id*.

245. *Id*.

246. Maurice Canady et al.*, supra* note 72, at 21.

hundreds of thousands every year.[247]   For SROs and other school-based officers to remain in schools, their roles must be redefined to signal a complete removal from student discipline.[248]   SROs must be required to complete training in areas such as de-escalation, mental and behavioral health needs, child and adolescent development and psychology, positive behavioral support, disparate impact school police have had on students of color and students with disabilities, and the historical effects of police in schools on children and the juvenile justice system in general.[249]   Minimal training standards incorporating these areas should be required by federal mandate.[250]   Teachers and administrators must be trained to no longer rely on SROs for disciplinary matters, and school staff and SROs should both be trained to identify genuine issues of safety.[251]

Zero-tolerance policies should no longer be at the disposal of schools or SROs. The elimination of zero-tolerance policies would allow officers to exercise discretion and "take a much more nuanced approach to students interaction."[252]   The elimination of zero-tolerance policies could effectively prevent students from unnecessarily being pipelined from the schoolhouse and into the courthouse.[253]

In one jurisdiction, after eliminating zero-tolerance policies, data reflected an 83 percent drop in the number of students referred to juvenile court after initiating the process of eliminating zero-tolerance policies.[254] School aged children are still in the beginning stages of developing "impulse control, the decision-making process, the ability to check one's emotions, and a capacity to fully consider the consequences of one's actions."[255]   Children, who are "prone to mistakes, irrational behavior, and short-sighted decisions," should be afforded a safe environment to learn from mistakes without the detrimental consequences of the juvenile or criminal justice systems punishing normal child-like behavior.[256]

Even with the elimination of zero-tolerance policies, schools and SROs face challenges with redefining their roles and relationships within

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247. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 136, at 14 (data reflecting Black, students punished disproportionately across disciplinary action classifications: out-of-school suspension, in-school suspension, referral to law enforcement, expulsion, corporal punishment, school-related arrest); *Referrals to Law Enforcement*, *supra* note 7; *School-Related Arrests*, *supra* note 7.

248. THE BEST SCHOOLS, *supra* note 4.

249. TEX. SCH. SAFETY CTR., *supra* note 1; THE BEST SCHOOLS, *supra* note 4.

250. THE BEST SCHOOLS, *supra* note 4.

251. *Id*.

252. *Id*.

253. *Id*.

254. *Id*.

255. *Id*.

256. *Id*.

educational institutions.[257] Today, many schools are prison-like facilities that are still structured and often focused on behavior control and discipline rooted to the nineteenth-century preoccupations of social control, and have a history of over-policing Black and Brown student behavior.[258] Given the current disproportionate treatment of children of color and children with disabilities,[259] and the threat police pose to students as armed officers that can inflict serous physical and psychological harm,[260] it is unlikely that redefinition and training alone will prevent children of color from still experiencing disparate treatment at the hands of both officers and school officials. Therefore, police should be removed from schools.

Since police have been staffed in schools, there has been disproportionate policing and removal of students of color from schools. There is no evidence to support SROs succeed at promoting safety in schools.[261] In fact, there is evidence that suggests SROs make students feel less safe,[262] make school climate worse, and increase drop-out rates and college enrollment rates.[263] Considering the very little protection our courts provide for our students against SROs from using excessive force and participating in racialized discrimination practices, SROs and other school-based police officers should be removed from schools.

It is not enough that permanent police patrols discontinue and be removed from campus; the relationship between schools and police

257. As is evident by the fact that SROs have been in schools since the 1990s, and the National Association of School Resource Officers has stated that SROs are not to be involved in discipline, yet they have been since they were first placed in schools. *See* TEX. SCH. SAFETY CTR*., supra* note 1; Lindberg, *supra* note 4, at 24.

258. Noble, *supra* note 1, at 268-69; *See also* Biehl, *supra* note 121 ("Unwelcoming school environments in many cities and communities treat students more like prisoners than children…").

259. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 136, at 14 (data reflecting Black, students punished disproportionately across disciplinary action classifications: out-of-school suspension, in-school suspension, referral to law enforcement, expulsion, corporal punishment, school-related arrest); *Referrals to Law Enforcement*, *supra* note 7; *School-Related Arrests*, *supra* note 7.

260. McGinn*, supra* note 218, at 627.

261. Nayeb & Meek, *supra* note 5. *See also* HEALTHY SCHOOLS CAMPAIGN, *supra* note 5 ("Research does not show that increased presence of law enforcement makes schools safer. Instead, school police officers reinforce the criminalization of young people of color, serving as a key component of the school-to-prison pipeline.").

262. STRATEGIES FOR YOUTH, *supra* note 6, at 11. *See also* Lindsay et al., *supra* note 3 ("A 2013 study found that as schools add police, they record more weapons and drugs crimes and report larger numbers of nonserious violent offenses to law enforcement. An earlier study found that the presence of a school resource officer, a sworn law enforcement officer assigned to one more schools after receiving training in school policing, is associated with more arrests for disorderly conduct but fewer arrests for assaults and weapons charges.").

263. STRATEGIES FOR YOUTH, *supra* note 6, at 14. *See also* Biehl, *supra* note 121 ("'Zero-tolerance discipline policies have fueled the increase [of suspensions and expulsions] in recent years, as has the increasing reliance of school administrators and educators on law enforcement tactics to discipline children.' See quoting Advancement Project, Education on Lockdown: The Schoolhouse to Jailhouse Track (March 2005); American Civil Liberties Union, Dignity Denied: The Effect of "Zero Tolerance" Policies on Students' Human Rights (Nov. 2008).").

departments that facilitate any call for service from police that does not relate to a genuine concern for safety should be severed completely.[264] Even during the COVID-19 pandemic and in the midst of distance learning (and thus the removal of students away from SROs), school officials still call on police to enforce discipline.[265] In Baltimore County, Maryland, a teacher reported an 11-year-old student to school administration because a BB gun was visible over his camera during the virtual class.[266] The 11-year-old was unaware that the BB gun was visible in the background.[267] Nevertheless, school administrators called the police requesting the home be searched.[268] Later, the teacher and administrator cited a school rule prohibiting students from bringing guns to school, and claimed the rule extended to virtual classes.[269]

The preoccupation with behavioral control and the demand for compliance proliferates both school and policing institutions. Both institutions have a history of racial discrimination and engaging in practices that have a disproportionately negative affect on people of color.[270] The implementation of police in school is in large part a product of the "tough on crime" era and "superpredator" myth, which carries with it a lack of legitimacy and signals a need to remove police from schools altogether.[271] Just as those policies lead to mass incarceration in the U.S., they lead to students being pipelined out of school and into prison themselves.[272]

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264. THE BEST SCHOOLS, *supra* note 4 (illustrating the relationship between school officials, police, and children's services); *See* PASCO SHERIFF'S OFFICE INTELLIGENCE-LED POLICING MANUAL, *supra* note 32 (The policing manual outlines how the sheriff's office, with the help of Child Protective Investigations (CPI) and the Pasco County School Board, identifies children as "potential offenders.").

265. *Teacher Sends Cops to 11-year-old's Home After Spotting BB Gun During Virtual Class*, WORLD TRIB.(Aug. 21, 2020), https://www.worldtribune.com/teacher-sends-cops-to-11-year-olds-home-after-spotting-bb-gun-during-virtual-class/.

266*. Id*.

267*. Id*.

268*. Id*.

269*. Id*.

270*. See Referrals to Law Enforcement*, *supra* note 7; *School-Related Arrests*, *supra* note 7; *See* Alexi Jones, *Police Stops Are Still Marred By Racial Discrimination, New Data Shows*, PRISON PO'Y INITIATIVE (Oct. 12, 2018), https://www.prisonpolicy.org/blog/2018/10/12/policing/ ("Black residents were more likely to be stopped by police than white or Hispanic residents, both in traffic stops and street stops…Black and Hispanic residents were also more likely to have multiple contacts with police than white residents…When police initiated an interaction, they were twice as likely to threaten or use force against Black and Hispanic residents than white residents.").

271. Nance*, supra* note 43, at 328; TEX. SCH. SAFETY CTR*., supra* note 1.

272*. See The United States is the world's leader in incarceration,* THE SENTENCING PROJECT, https://www.sentencingproject.org/criminal-justice-facts/ (A series of law enforcement and sentencing policy changes of the "tough on crime" era resulted in dramatic growth in incarceration. Since the official beginning of the War on Drugs in the 1980s, the number of people incarcerated for drug offenses in the U.S. skyrocketed from 40,900 in 1980 to 452,964 in 2017. Today, there are more people behind bars for a drug offense than the number of people who were in prison or jail for any crime in 1980. The number of people sentenced to prison for property and violent crimes has

The removal of police from schools will affect quick and positive change for students in their learning environment, decrease referrals to the juvenile justice system, and provide an environment free from the threats SROs pose that our courts fail to protect students against.[273] However, the complete removal of SROs and the severing of school-police relationships is a first step. Institutional and individual racism and biases within the school must be addressed to effect long lasting positive changes. Teachers and administrators must learn how to discipline and manage classrooms without zero-tolerance policies and without relying on SROs to wield authority over students. The complete removal of police presence from schools should be the end of an era in school policing, but the beginning of a new era in teaching and school discipline.

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also increased even during periods when crime rates have declined.); French-Marcelin et al., *supra* note 19, at 6.

273. *See* THE BEST SCHOOLS, *supra* note 4 (after a school eliminated zero-tolerance policies, there was an 83 percent drop in the number of students referred to juvenile court).