

**Testimony of Eduardo R. Ferrer**  
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**\*Titles and organizational affiliation for identification purposes only.**

**Metropolitan Police Department Performance Oversight Hearing**  
**Thursday, March 11, 2021**

Good morning, Chairman Allen and members of the Committee on the Judiciary and Public Safety. My name is Eduardo Ferrer. I am a Ward 5 resident and, for identification purposes, the Policy Director at the Georgetown Juvenile Justice Initiative and a Visiting Professor in the Georgetown Juvenile Justice Clinic. The views expressed are based on my research and experience and not given on behalf of Georgetown University. Thank you for the opportunity to testify today.

We need to reimagine the way that we police youth in the District of Columbia. More specifically, we need to stop policing youth and instead invest directly in them – early, often, and wisely. In essence, we need a concerted, intentional public health approach to positive youth development.<sup>1</sup> While our recommendations for how to accomplish this cross a number of agencies, my testimony will focus on our concerns relating to the policing of youth by the Metropolitan Police Department (MPD) and will offer recommendations for addressing these issues. These recommendations fall into three broad categories: (1) reducing the footprint of police in the lives of DC youth, (2) ensuring developmentally appropriate policing for DC youth, and 3) undoing the false and harmful narrative that our youth need to be policed in the first place.

**I. Reducing the Footprint of Police in DC Youth’s Lives**

First and foremost, the District must take smart, bold steps to reduce the footprint of that MPD has on the lives of DC youth, particularly in the lives of DC’s Black youth. Reducing the negative impact that policing has on our District youth involves, among other things, reimagining school safety to create police-free schools and decriminalizing normative adolescent behavior.

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<sup>1</sup> I recognize that this term “public health approach” is used often in the District of Columbia these days and we need to be careful to not overuse the term and to continue to use it with fidelity. However, it is the framework or approach that we should continue adopting on a host of issues in the District. For too long, our government has been designed around reaction. You see this in the oversized amounts spent on agencies whose mission it is to respond to harm once it has happened. We need to shift our focus and our tax dollars into more intentional and strategic approaches that prioritize prevention and intervention. For our youth, such a public health approach would encompass the twin goals of not only reducing the incidence of trauma in the lives of our youth, but also bolstering their resilience by building on their strengths and strengthening their support systems and communities.

## A. Schools as Sanctuaries: Creating Police Free Schools

### The Harms Caused from Over-Policing Youth

According to a U.S. Department of Education analysis, D.C. had the highest percentage of students reporting police in schools in the entire country as of the 2015-2016 school year.<sup>2</sup> This statistic is particularly troubling when one considers the well-documented harms to students posed by police officers in schools, including police intervention for minor misconduct,<sup>3</sup> increased loss of instruction,<sup>4</sup> and lower rates of graduation and college enrollment.<sup>5</sup>

For example, multiple state Chief Judges have expressed concern that the presence of law enforcement in schools is leading to a troubling criminalization of typical adolescent behavior.<sup>6</sup> Even those involved in the school security industry have expressed concerns that SROs could be used inappropriately by school staff to address routine discipline matters.<sup>7</sup> And these concerns are not without basis: studies have confirmed that the presence of SROs in schools “create[s] a climate in which teachers and staff increasingly call on SPOs for minor disciplinary issues and classroom management in general.”<sup>8</sup> Worryingly, 76% of principals in a recent study have reported using SROs to address student discipline issues.<sup>9</sup> In fact, multiple studies have found that the number one reason School Resource Officers put handcuffs on students is to calm them down.<sup>10</sup>

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<sup>2</sup> AMIR WHITAKER, SYLVIA TORRES-GUILLÉN, MICHELLE MORTON, HAROLD JORDAN, STEFANIE COYLE, ANGELA MANN & WEI-LING SUN, COPS AND NO COUNSELORS: HOW THE LACK OF SCHOOL MENTAL HEALTH STAFF IS HARMING STUDENTS 16, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors>.

<sup>3</sup> DANIEL J. LOSEN & PAUL MARTINEZ, LOST OPPORTUNITIES: HOW DISPARATE SCHOOL DISCIPLINE CONTINUES TO DRIVE DIFFERENCES IN THE OPPORTUNITY TO LEARN 33 (2020), <https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/lost-opportunities-how-disparate-school-discipline-continues-to-drive-differences-in-the-opportunity-to-learn/Lost-Opportunities-REPORT-v12.pdf>.

<sup>4</sup> *Id.* at 33.

<sup>5</sup> Denise C. Gottredson, Erin L. Bauer, Scott Crosse, Angela D. Greene, Carole A. Hagen, Michele A. Harmon & Zhiqun Tang, *Effects of School Resource Officers on School Crime and Responses to School Crime*, 19 CRIMINOLOGY & PUB. POL’Y 905, 930 (2020).

<sup>6</sup> Losen, *supra* note 2 at 36.

<sup>7</sup> *Id.* at 35.

<sup>8</sup> Shabnam Javdani, *Policing Education: An Empirical Review of the Challenges and Impact of the Work of School Police Officers*, 63 AM. J. OF CMTY. PSYCH. 253, 260 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6597313/>.

<sup>9</sup> Jennifer Counts, Kristina N. Randall, Joseph B. Ryan & Antonis Katsiyannis, *School Resource Officers in Public Schools: A National Review*, 41 EDUC. AND TREATMENT OF CHILD. 405, 408 (2018).

<sup>10</sup> Javadani, *supra* note 7 at 261.

Researchers have also found that schools that increased the number of SROs on campus were also more likely to report non-violent crimes<sup>11</sup> and more likely to have students arrested.<sup>12</sup> Some student behaviors that have resulted in school arrests include, cursing, fake burping, documenting bullying, throwing a paper airplane, and being in possession of a children's knife.<sup>13</sup> Unsurprisingly, schools that employed SROs have been found more likely to have a greater number of students enter the criminal justice system than those schools that do not employ SROs.<sup>14</sup> The criminalization of school environments with SROs appears to emanate from the SROs themselves, and not an overall philosophy of the school administration. For example, a recent study showed that 83% of school administrators demonstrated more prevention-based philosophies, focusing on bettering school climate, than the SROs in their schools, who were more punishment oriented.<sup>15</sup>

This overuse of the criminal justice system to address common adolescent behavior is not only disturbing as a matter of justice but also as a matter of a child's educational future, as each interaction with this system significantly increases the chances that child will drop out of school<sup>16</sup> and correlates with increased school exclusion.<sup>17</sup> In fact, a 2018 study of 238 middle and high schools found that schools that employ SROs show greater instances of exclusionary discipline than those that do not.<sup>18</sup> These schools demonstrate increased exclusionary discipline immediately after each addition of SROs and still show this effect 11 months afterwards.<sup>19</sup> Exclusionary discipline, in turn, is correlated with a greater likelihood that the student will experience contacts with the criminal justice system both in the short-term and the long-term.<sup>20</sup> Moreover, schools that accepted a federal grant to employ SROs tend to see a decrease in graduation rates and rates of students enrolling in college.<sup>21</sup>

While these harms are significant, they are felt even more acutely by students of color. In fact, "higher security [i]s associated with having more Black students."<sup>22</sup> And, while schools with greater police presence are generally likely to experience higher suspension rates, Black and Latine students face even higher risk of such school exclusion.<sup>23</sup> For example, according the U.S.

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<sup>11</sup> Nathan James & Gail McCallion, CONG. RSCH. SERV., R43126, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS 22 (2013), <https://fas.org/sgp/crs/misc/R43126.pdf>.

<sup>12</sup> Gottredson, *supra* note 4 at 908.

<sup>13</sup> Whitaker, *supra* note 1 at 23, 56.

<sup>14</sup> Javadani, *supra* note 7 at 262.

<sup>15</sup> Gottredson, *supra* note 4 at 921.

<sup>16</sup> Whitaker, *supra* note 1 at 24.

<sup>17</sup> James, *supra* note 10 at 26.

<sup>18</sup> Javadani, *supra* note 7 at 263.

<sup>19</sup> Gottredson, *supra* note 4 at 927.

<sup>20</sup> *Id.* at 909.

<sup>21</sup> *Id.* at 930.

<sup>22</sup> Losen, *supra* note 2 at 35.

<sup>23</sup> *Id.*

Department of Education, Black students are 2.6 more times likely to be suspended than White students.<sup>24</sup> As a result, these students are facing a disproportionate risk of losing time to learn in the classroom. In fact, research has specifically found that a higher security staff-to-student ratio is correlated with Black students' increased lost instruction.<sup>25</sup> This is, unfortunately, not surprising when we consider all of the stories and data that suggest law enforcement officers tend to engage in racial profiling.<sup>26</sup>

And, for students of color, this does not just mean a decreased opportunity to learn in the classroom, though that in itself should be enough. It also means an increased chance of violence against them, as we have seen from videos around the country that show law enforcement officers in schools body-slammings and handcuffing children of color for minor misconduct.<sup>27</sup> In fact, SROs in schools that have a majority of students of color are more likely than SROs in predominately White schools to be focused on school discipline.<sup>28</sup>

These factors together have led to the reality that “[s]tudents of color are more likely to go to a school with a law enforcement officer, more likely to be referred to law enforcement, and more likely to be arrested at school.”<sup>29</sup> For example, Black students are three times more likely to be arrested than White students. Black girls, specifically, were five times more likely to be arrested than White girls. Native American and Pacific Island/Native Hawaiian students are two times more likely to be arrested than White students. Latine students are 1.3 times more likely to be arrested than White students.<sup>30</sup> This disproportionate effect is even greater for Black and Latino boys with disabilities who make up only 3% of the national student population but account for 12% of nationwide student arrests.<sup>31</sup>

Finally, policing our schools as we currently do likely traumatizes youth of color and makes it more likely that they will engage in delinquent behavior. A study on the effects of police interactions on adolescents found that youth with more exposure to law enforcement officials report more emotional distress after each interaction.<sup>32</sup> For Black and Latine youth, this trauma is particularly aggravated if the encounter took place in public due to feelings of “embarrassment” and “stigmatization.”<sup>33</sup> Similarly, African American youth who live in

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<sup>24</sup> Javadani, *supra* note 7 at 254.

<sup>25</sup> Losen, *supra* note 2 at 33.

<sup>26</sup> *Id.* at 35.

<sup>27</sup> *Id.*

<sup>28</sup> Whitaker, *supra* note 1 at 7.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 24.

<sup>31</sup> *Id.* at 30.

<sup>32</sup> See Dylan B. Jackson et. al, *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 *Journal of Adolescent Health* 627, 629,

<sup>33</sup> *Id.*; Dylan B. Jackson et. al, *Low self-control and the adolescent police stop: Intrusiveness, emotional response, and psychological well-being*, 66 *Journal of Criminal Justice*, 2020, at 1, 8.

neighborhoods with a greater police presence report more trauma and anxiety symptoms.<sup>34</sup> The severity of these symptoms is associated with the number and intrusiveness of their interactions with police.<sup>35</sup> Young Black males living in highly-policed areas who have watched friends, family members, or even complete strangers get searched by police officers report symptoms consistent with secondary trauma.<sup>36</sup> Further studies have found that these feelings of fear, embarrassment, and helplessness affect how young people develop into young adulthood; injuring their self-concept and permanently damaging their trust in law enforcement.<sup>37</sup> This trauma from over-policing appears to have criminogenic effects and is associated with higher rates of delinquency after encounters with police.<sup>38</sup> We cannot knowingly continue to create an environment that produces such harms and sets them so significantly on the shoulders of students of color.

### The Policing of District Youth

During the 2018-19 school year, 338 students were arrested in DC schools.<sup>39</sup> This accounted for approximately 15% of all arrests of youth in the District during that time period.<sup>40</sup> Of the 338 arrests, 312 arrests were of Black students and 26 were Hispanic/Latino.<sup>41</sup> Zero were white.<sup>42</sup> Unfortunately, while I do not have the exact data, my understanding is that a substantial percentage of the arrests in schools were for simple assault and custody order/release violations.<sup>43</sup>

Our youth in the District are policed in school on three levels. First and foremost, youth are policed in schools by traditional law enforcement officers, including MPD's patrol bureau officers, MPD detectives, and Metropolitan Transit Police Officers. Indeed, MPD's patrol

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<sup>34</sup> Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 Am. Journal of Pub. Health 2321, 2324 (2014).

<sup>35</sup> *Id.*

<sup>36</sup> Nikki Jones, "The Regular Routine": Proactive Policing and Adolescent Development Among Young, Poor Black Men, in *Pathways to Adulthood for disconnected young men in low-income communities*. New Directions in Child and Adolescent Development, 33, 45 (K. Roy & N. Jones 2014).

<sup>37</sup> Jones, *supra* at 52.

<sup>38</sup> See Juan Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent black and Latino Boys*, 116 PNAS, 8261 (2019) (finding that adolescent black and Latino boys who were stopped by police reported more frequent engagement in delinquent behavior six, twelve, and eighteen months later than boys who were not stopped by the police independent of prior delinquency).

<sup>39</sup> *2019 DC School Report Card and Star Framework Cross-Tabulated Data File*, DC SCHOOL REPORT CARD, at <https://osse.dc.gov/page/dc-school-report-card-resource-library> (last visited Oct. 18, 2020).

<sup>40</sup> See *Biannual Reports on Juvenile Arrests*, Metropolitan Police Department, at <https://mpdc.dc.gov/page/biannual-reports-juvenile-arrests> (reporting 2226 juvenile arrests between September 2018 and June 2019).

<sup>41</sup> *2019 DC School Report Card and Star Framework Cross-Tabulated Data File*, DC SCHOOL REPORT CARD, at <https://osse.dc.gov/page/dc-school-report-card-resource-library> (last visited Oct. 18, 2020).

<sup>42</sup> *Id.*

<sup>43</sup> A breakdown of the reasons for the arrests should be requested from MPD and/or the Office of the State Superintendent for Education.

bureau “takes the lead in safeguarding students outside the schools, and provide support in combating truancy and ensuring the safe travel of students to and from school.”<sup>44</sup> In addition, detectives and officers from both MPD and MTPD regularly arrest students in school for custody orders or offenses that allegedly happened off-campus.

Second, our students are policed by MPD’s Schools Safety Division. According to MPD, “[t]he School Safety Division (SSD) [] coordinates MPD resources related to school safety. These resources include the deployment of contract security guards at DCPS, and School Resource Officers [(SROs)] working with DCPS and DC Public Charter Schools. The SSD coordinates with the Patrol Services Bureau in the Department along with government agencies and community interests in the city.”<sup>45</sup> During the 2019-2020 school year, SROs were deployed to a combination of “short beats and clusters.” Short beats consisted of “no more than four schools with a deployment of up to four SROs” and “[t]he remaining schools in each district will be in a cluster with SROs who will check in daily with these schools and provide safety support.”<sup>46</sup>

Third, our students are policed by security guards within DCPS buildings themselves. “Security Officers (SOs) work for DCPS and MPD through a contract. These Contract officers (also known as contracted security guards) are school-based and support the school principal and staff to ensure the safety of all students.”<sup>47</sup> Security officer responsibilities include: welcoming individuals to DCPS facilities; conducting entrance screenings for individuals and guests; conducting security patrols within the building; provide security coverage at school-based events; prepare incident reports; and some have the ability to detain youth as well.<sup>48</sup>

Policing our schools using contract security and MPD SROs come with a significant price tag. The MPD School Safety Division requested \$36.7 million for Fiscal Year 2021. The \$23.4 million requested to spend on contract guards could instead hire 212 social workers or psychologists; the \$13.2 million requested to pay for SROs could pay for 119 social workers or psychologists.<sup>49</sup> While the DC Council ultimately shifted the control, management, and full budget of the security contract back to DCPS,<sup>50</sup> the Council still approved a budget of nearly \$14

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<sup>44</sup> METRO. POLICE DEP’T., SCHOOL SAFETY AND SECURITY IN THE DISTRICT OF COLUMBIA 2 (2020) [https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20School%20Safety%20Annual%20Report\\_School%20Year%202019-2020%20Final.pdf](https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20School%20Safety%20Annual%20Report_School%20Year%202019-2020%20Final.pdf) [hereinafter 2019-2020 MPD SCHOOL SAFETY REPORT].

<sup>45</sup> *Id.* at 1.

<sup>46</sup> *Id.* at 2.

<sup>47</sup> D.C. PUBLIC SCHOOLS, RESPONSES TO FY2019 PERFORMANCE OVERSIGHT QUESTIONS, Q11, *available at* [https://dccouncil.us/wp-content/uploads/2020/02/dcps\\_Part1.pdf](https://dccouncil.us/wp-content/uploads/2020/02/dcps_Part1.pdf).

<sup>48</sup> *Id.*

<sup>49</sup> Assuming a psychologist and social worker salary of \$110,891/year. D.C. PUBLIC SCHOOLS, RESPONSES TO FY2019 BUDGET OVERSIGHT QUESTIONS, Q12.

<sup>50</sup> Council of the District of Columbia Press Release, Lengthy but Productive Meeting Leads to Unanimous Progress on Budget, Police Reform, Hospital, Local Business Aid, July 8, 2020, *available at* <https://dccouncil.us/lengthy-but-productive-meeting-leads-to-unanimous-progress-on-budget-police-reform-hospital-local-business-aid/>.

million dollars for the School Safety Division.<sup>51</sup> This budget is meant to support 127 FTEs in the Division for FY2021, which represents an increase from 24.7 in FY2019 and 110 in FY2020.<sup>52</sup> Further, this increase comes despite the fact that MPD is no longer responsible for managing the security contract for DCPS and the absence of evidence that a floating patrol of school resource officers makes youth or schools safer.

### The Need for Sanctuary

Youth in the District experience high rates of trauma without even factoring in the trauma they experience from being over-policed. In 2016, 25.3% of youth ages 0–17 in the District had experienced at least one traumatic event in their lifetimes, and 21.8% had experienced two or more traumatic events in their lifetimes.<sup>53</sup> For example, 9.4% of youth in the District had witnessed or been a victim of neighborhood violence,<sup>54</sup> 9.2% had a parent that was either currently or formerly incarcerated,<sup>55</sup> and 5.6% had witnessed domestic violence.<sup>56</sup>

Moreover, school can often be a site of trauma and fear for many students. In 2019, 9.4% of DCPS and public charter high school students<sup>57</sup> and 15% of middle school students reported they had skipped one or more days of school because they felt unsafe.<sup>58</sup> In 2016, 25.3% of youth

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<sup>51</sup> Metropolitan Police Department, FY2021 Approved Budget, at [https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/fa\\_mpd\\_chapter\\_2021a.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/fa_mpd_chapter_2021a.pdf).

<sup>52</sup> *Id.*

<sup>53</sup> *Indicator 6.13: Has this child experienced one or more adverse childhood experiences from the list of 9 ACEs?*, DATA RESOURCE CTR. FOR CHILD & ADOLESCENT HEALTH, <https://www.childhealthdata.org/browse/survey/results?q=5150&r=10> (last visited Oct. 16, 2020).

A “traumatic event” is fully defined as one of the nine following Adverse Childhood Experiences: 1) Experiencing economic hardship; 2) experiencing a parental divorce or separation; 3) living with someone who had an alcohol or drug problem; 4) being a victim of neighborhood violence or witnessing neighborhood violence; 5) living with someone who was mentally ill, suicidal, or severely depressed; 6) witnessing domestic violence; 7) having a parent who was currently or formerly incarcerated; 8) being treated or judged unfairly due to one’s race or ethnicity; and 9) experiencing the death of a parent.

<sup>54</sup> *To the best of your knowledge, has this child ever experienced the following: was a victim of violence or witnessed violence in neighborhood?*, DATA RESOURCE CTR. FOR CHILD & ADOLESCENT HEALTH, <https://www.childhealthdata.org/browse/survey/results?q=5155&r=10> (last visited Oct. 16, 2020).

<sup>55</sup> *To the best of your knowledge, has this child ever experienced the following: parent or guardian served time in jail?*, DATA RESOURCE CTR. FOR CHILD & ADOLESCENT HEALTH, <https://www.childhealthdata.org/browse/survey/results?q=5153&r=10> (last visited Oct. 16, 2020).

<sup>56</sup> *To the best of your knowledge, has this child ever experienced the following: saw or heard parents or adults slap, hit, kick, punch one another in the home?*, DATA RESOURCE CTR. FOR CHILD & ADOLESCENT HEALTH, <https://www.childhealthdata.org/browse/survey/results?q=5154&r=10> (last visited Oct. 16, 2020).

<sup>57</sup> D.C. OFFICE OF THE STATE SUPERINTENDENT OF EDUC., 2019 YOUTH RISK BEHAVIOR SURVEY RESULTS: HIGH SCHOOL SURVEY 5 (2020) [https://osse.dc.gov/sites/default/files/dc/sites/osse/page\\_content/attachments/2019DCBH%20Summary%20Tables.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2019DCBH%20Summary%20Tables.pdf) (last visited October 16, 2020) [hereinafter YRBS HIGH SCHOOL RESULTS].

<sup>58</sup> D.C. OFFICE OF THE STATE SUPERINTENDENT OF EDUC., 2019 YOUTH RISK BEHAVIOR SURVEY RESULTS: MIDDLE SCHOOL 44 (2020)

under 18 years old in DC had experienced at least one traumatic event in their lifetime.<sup>59</sup> Given that schools have contact with most students every day, schools have the potential to transform and play an impactful and positive role in creating real safety in school and supporting students who have experienced trauma.

Research has shown that experiencing trauma can change the structure and function of a person's brain.<sup>60</sup> Experiencing trauma can also cause the overproduction of the hormones adrenalin and cortisol.<sup>61</sup> These hormones can inhibit typical youth cognition, memory, learning, and overall development. They can also make it more difficult for students to get along with their peers. All of this can negatively impact a student's ability to learn and succeed at school, both in the classroom and in the larger social environment.

However, schools have the potential to play an impactful and positive role in supporting students who have experienced trauma and alleviating some of trauma's negative effects. Given that schools have contact with most students every day, providing resources at schools to combat the negative effects of trauma can be more convenient and effective than connecting students to clinics or other community-based services.<sup>62</sup> Maintaining a positive school climate that fosters caring, compassionate, and trusting relationships between staff and students is crucial to supporting students who have experienced trauma.<sup>63</sup> Unfortunately, in 2019 28.8% of high school students<sup>64</sup> and 31% of middle school students<sup>65</sup> in the District reported that they did not feel they could talk to a single teacher or other adult in their school about their problems.

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[https://osse.dc.gov/sites/default/files/dc/sites/osse/page\\_content/attachments/2019DCBM%20Summary%20Tables.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2019DCBM%20Summary%20Tables.pdf) (last visited October 16, 2020) [hereinafter YRBS MIDDLE SCHOOL RESULTS].

<sup>59</sup> Indicator 6.13: Has this child experienced one or more adverse childhood experiences from the list of 9 ACEs?, DATA RESOURCE CTR. FOR CHILD & ADOLESCENT HEALTH, <https://www.childhealthdata.org/browse/survey/results?q=5150&r=10> (last visited Oct. 16, 2020).

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<sup>60</sup> See Sarah Peterson, *Effects*, THE NAT'L CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/what-is-child-trauma/trauma-types/complex-trauma/effects> (last visited Oct 16, 2020).

<sup>61</sup> Eric Rossen & Katherine Cowan, *The Role of Schools in Supporting Traumatized Students*, PRINCIPAL'S RESEARCH REVIEW Nov. 2013, at 4–5, [https://cqrcengage.com/naspweb/file/YEfwxfQ75YH/prr\\_nov13\\_trauma\\_sensitive\\_schools.pdf](https://cqrcengage.com/naspweb/file/YEfwxfQ75YH/prr_nov13_trauma_sensitive_schools.pdf).

<sup>62</sup> Yunsoo Park, *When Students Don't Feel Safe In The Neighborhood: How Can Schools Help?*, D.C. Policy Center (March 3, 2020), <https://www.dcpolicycenter.org/publications/mental-health-supports/>.

<sup>63</sup> Rossen & Cowan, *supra* note 11, at 7.

<sup>64</sup> YRBS HIGH SCHOOL RESULTS at 104.

<sup>65</sup> YRBS MIDDLE SCHOOL RESULTS at 58.



## Recommendations

As a result, DC schools must be a sanctuary for students. To that end, DC should: 1) prohibit the arrest of youth in schools for non-school based offenses or custody orders; 2) prohibit the interviewing or interrogation of youth in schools; 3) eliminate the MPD School Safety Division;<sup>66</sup> 4) prohibit youth and adults from carrying firearms in schools;<sup>67</sup> and 5) implement non-law-enforcement-driven crisis response and safe passage systems.

### **B. Treat Kids as Kids: Decriminalizing Youth Behavior**

In order to reduce the oversized footprint that police have in the lives of DC youth, the District of Columbia also should revisit the manner in which it has criminalized adolescent behavior.<sup>68</sup> For example, youth can be charged in DC with being a person in need of supervision for status offenses – behaviors such as truancy or running away from home that are only unlawful because of the age of the person engaged in such behavior.<sup>69</sup> These offenses bring children into the juvenile legal system as a result of issues that do not have a direct connection to public safety and are more productively and effectively addressed within schools, families, and communities.

In addition, certain offenses – for example, threats, disorderly conduct, loitering, etc. – too often criminalize hallmark characteristics of normative adolescent development, such as emotional speech, impulsivity, high energy, and the seeking of social groups. Indeed, too often youth are stopped or arrested by police for such behaviors despite the lack of any criminal intent behind the behavior.<sup>70</sup> As a result, decriminalizing certain offenses for youth should reduce unnecessary (and often unjust) contact with the police and juvenile legal system.

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<sup>66</sup> Currently, the District spends at least \$14 million on MPD’s School Security Division. This division should be eliminated and the money saved should be reinvested directly in youth and families.

<sup>67</sup> Specifically, officers of all types should disarm prior to stepping foot on a school campus unless they are specifically responding to the *very rare* report of a shooting or armed individual on campus. See David Ropeik. *School Shootings are Extraordinarily Rare. Why is Fear of Them Driving Policy?* Washington Post. (March 8, 2018). Available at: [https://www.washingtonpost.com/outlook/school-shootings-are-extraordinarily-rare-why-is-fear-of-them-driving-policy/2018/03/08/f4ead9f2-2247-11e8-94da-ebf9d112159c\\_story.html](https://www.washingtonpost.com/outlook/school-shootings-are-extraordinarily-rare-why-is-fear-of-them-driving-policy/2018/03/08/f4ead9f2-2247-11e8-94da-ebf9d112159c_story.html) (finding that the statistical likelihood of any given public school student being killed by a gun, in school, on any given day since 1999 was roughly 1 in 614,000,000).

<sup>68</sup> See District of Columbia Juvenile Justice Advisory Group Recommendation to Mayor Bowser: *Create New Opportunities for “Persons in Need of Supervision” (PINS) to Succeed without Legal Intervention*, February 21, 2020, [https://ovsjg.dc.gov/sites/default/files/dc/sites/ovsjg/service\\_content/attachments/JJAG%20PINS%20Alternatives%20Report%20February%202020.pdf](https://ovsjg.dc.gov/sites/default/files/dc/sites/ovsjg/service_content/attachments/JJAG%20PINS%20Alternatives%20Report%20February%202020.pdf).

<sup>69</sup> *Id.*

<sup>70</sup> Analysis of the most recent stop-and-frisk data released by the Metropolitan Police Department (MPD) revealed that of the people under 18 who were stopped by police in the District, Black youths made up 89 percent and were stopped at 10 times the rate of their white peers. See ACLU-DC, *RACIAL DISPARITIES IN STOPS BY THE D.C. METROPOLITAN POLICE DEPARTMENT: REVIEW OF FIVE MONTHS OF DATA*, at [https://www.acludc.org/sites/default/files/2020\\_06\\_15\\_aclu\\_stops\\_report\\_final.pdf](https://www.acludc.org/sites/default/files/2020_06_15_aclu_stops_report_final.pdf).

## II. Ensuring Developmentally Appropriate Policing

Second, in addition to reducing the footprint of policing in the lives of our children in the District, our laws must also reflect the reality that kids are different from adults in ways that must guide the manner in which youth are policed. This is especially true when police officers are asking youth to waive their constitutional rights. As such, we must reform our laws to provide youth more than just the bare minimum constitutional protections, particularly when it comes to youth waiving their rights under the Fourth and Fifth Amendments.

### A. Abolishing Consent Searches for Youth

DC's approach to "consent" searches of youth is not developmentally appropriate. It fails youth by treating them as if they are the same as adults, which they are not. Adolescents are more impulsive, sensation-seeking, likely to make decisions based on "immediate" gains rather than "long-term" consequences, and susceptible to peer pressure than adults.<sup>71</sup> Youth are also less aware of their legal rights.<sup>72</sup>

Additionally, DC's current policy does not account for the personal and cultural context for DC youth, especially Black youth. Black youth – who are grossly overrepresented in DC's juvenile legal system<sup>73</sup> – living in over-policed areas often feel compelled to consent to searches based on their own personal, often traumatic, experiences with law enforcement and the historical experiences of police violence against Black people in DC.<sup>74</sup> They have essentially been conditioned to "consent" without even being asked; when they see an officer, youth lift up their shirts and to display their waistbands unprompted to avoid harassment by the police.<sup>75</sup>

The current legal framework for "consent" is a constitutional floor. DC can and should

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<sup>71</sup> See *J.D.B.*, 564 U.S. at 273; Laurence Steinberg et al., *Are Adolescents Less Mature than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA 'Flip-Flop'*, 64 AM. PSYCHOL. 583, 592 (2009).

<sup>72</sup> Kristin Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 Am. U. L. Rev. 1513, 1536-1537 (2018).

<sup>73</sup> Rights4Girls & Georgetown Juvenile Justice Initiative, *Beyond the Walls: A Look at Girls in DC's Juvenile Justice System*, 30 (March 2018), <https://rights4girls.org/wp/wp-content/uploads/r4g/2018/03/BeyondTheWalls-Final.pdf>.

<sup>74</sup> See Dylan B. Jackson et. al, *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 Journal of Adolescent Health 627, 629; Dylan B. Jackson et. al, *Low self-control and the adolescent police stop: Intrusiveness, emotional response, and psychological well-being*, 66 Journal of Criminal Justice, 2020, at 1, 8; Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 Am. Journal of Pub. Health 2321, 2324 (2014); Nikki Jones, "The Regular Routine": Proactive Policing and Adolescent Development Among Young, Poor Black Men, in *Pathways to Adulthood for disconnected young men in low-income communities*. New Directions in Child and Adolescent Development, 33, 45 (K. Roy & N. Jones 2014); B.M. Tynes et al., *Race-Related Traumatic Events Online and Mental Health Among Adolescents of Color*, 65 Journal of Adolescent Health 371, 376 (2019).

<sup>75</sup> See, e.g. Sam Sanders & Kenya Young, *A Black Mother Reflects On Giving Her 3 Sons 'The Talk' ... Again And Again*, NATIONAL PUBLIC RADIO (June 28, 2020), <https://www.npr.org/2020/06/28/882383372/a-black-mother-reflects-on-giving-her-3-sons-the-talk-again-and-again>; *United States v. Gibson*, 366 F. Supp. 3d 14, 21 n.4 (D.D.C. 2018) "the MPD's rolling roadblock practice is so prevalent in the District of Columbia that individuals living in high-crime neighborhoods sometimes show MPD officers their waistbands 'without [MPD officers] even saying anything.'" (citation and internal quotation marks omitted).

implement a consent search policy which is developmentally appropriate and adequately protects youth from police coercion. The law in DC should be changed so that the fruits of a search are *inadmissible* in any criminal or delinquency proceedings if seized when: (1) the subject of the search is a youth under 18 years old; (2) the justification for the search by sworn members of a DC law enforcement agency is consent; and (3) the search is not executed pursuant to a warrant or another exception to the warrant requirement. This new exclusionary rule would apply even when law enforcement officers did not know the age of the individual when they were searched. Significantly disincentivizing consent searches by making their fruits inadmissible in court will hopefully reduce the harassment youth face on the streets and the trauma they experience as a result of that harassment.

## B. Requiring Counsel Before *Miranda* Waivers

Similarly, the *Miranda* doctrine represents the minimum of what is required under the Constitution to advise a child of their rights, but that does not make it sound policy. For instance, due to their psychosocial immaturity, among other things, young people as a class are far less equipped than adults to waive their *Miranda* rights.<sup>76</sup> Additionally, some adolescents who are questioned by DC police lack the cognitive ability to even understand *Miranda* warnings.<sup>77</sup> Finally, just as the backdrop of police violence against Black people in DC undermines the ability of youth to give meaningful consent for searches, it also creates a powerful force undermining the voluntariness of any waiver Black youths may make.<sup>78</sup> They may waive their *Miranda* rights just to get out of the interrogation room. In this respect, for Black youth *Miranda* warnings do not serve as an effective deterrent against the coerciveness of police interrogation.

As such, DC's policy of police interrogations of youth must also be reformed. The law in DC should be changed so that statements made by youth under 18 during custodial interrogation are inadmissible *unless*: (1) they are read their *Miranda* rights by a law enforcement officer in a developmentally appropriate way; (2) they have the opportunity to consult with counsel before making a waiver; and (3) in the presence of their attorney, they make a knowing, intelligent, and voluntary waiver of their rights.<sup>79</sup> A more mature *Miranda* doctrine for youths in DC that includes the right to counsel before they make a waiver decision preserves the rights of children, cuts down on coerced confessions, and protects the purpose that animated *Miranda* in the first place.<sup>80</sup>

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<sup>76</sup> Thomas Grisso, *Adolescents' Decision Making: A Developmental Perspective on Constitutional Provisions in Delinquency Cases*, 32 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 3, 10 (2006).

<sup>77</sup> See Kerstin Konrad, et al., *Brain Development During Adolescence*, 110(25) DEUTSCHES ARZTEBLATT INT'L 425, 426–27.

<sup>78</sup> Kristin Henning & Rebba Omer, *Vulnerable and Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 ARIZ. STATE L. J. \_\_\_\_ (forthcoming December 2020).

<sup>79</sup> Katrina Jackson & Alexis Mayer, *Demanding a More Mature Miranda for Kids*, D.C. Justice Lab & Georgetown Juvenile Justice Initiative, at [bit.ly/mature-miranda](https://bit.ly/mature-miranda).

<sup>80</sup> Jodi L. Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*, 29(6) LAW AND HUMAN BEHAVIOR 723, 737 (2005).

### **III. We need to build up our youth not perpetuate a false narrative about them**

Third, we need to stop perpetuating the dangerous, false, and too-often-racialized narrative that our youth need to be policed. Most recently, this narrative has taken the form of reporting on the increase in car-related offenses during the pandemic both in DC and nationally and the speculation that youth are the driving force behind this trend. The District generally, and particularly MPD, should be doing more to not only undermine this narrative but support the narrative that our young people need us to “love them, not harm them” as the young people from Black Swan Academy so powerfully remind us.

Car-related offenses do appear to be up over the last 12 months and both adult and youth arrests related to car-related offenses appear to be up as well over the 12 months. However, there does not appear to be sufficient data at this point, at least not data that is publicly reported, to make any conclusions with respect to whether this is more than a short-term pandemic related trend or a longer-term trend, or whether youth are actually driving the increase, and if so, to what extent, as has been reported in the press. A number of unsupported assumptions have to be made in order to make such conclusions at this point.<sup>81</sup> For instance, clearance rates for these types of offenses are relatively low. In FY18, MPD reported clearance rates of 36% for robbery (the category of offense that should include carjackings) and 5.3% for motor vehicle theft.<sup>82</sup> Without a more robust clearance rate, it is very difficult to conclude that youth are driving the increase in incidents as opposed to just being more likely than adults to be arrested for the alleged offense.

More importantly though, focusing on a one-year increase in youth arrests for a few particular categories of offenses ignores the larger context, which shows that youth arrests overall have fallen dramatically over the last 10 years, in favor of reinforcing the harmful narrative that our youth are dangerous. Between 2009 and 2019, youth arrests in the District decreased 32%, from 4086 arrests to 2759 arrests.<sup>83</sup> During 2020 alone, youth arrests in the District decreased an additional 44%, from 2759 to 1534 arrests.<sup>84</sup> This one-year decline was primarily driven by the fact that youth arrests dropped in almost every category not related to cars. For instance, youth arrests for robbery dropped from 398 to 188, simple assault from 429 to 147, and shoplifting from 27 to 2 YoY.<sup>85</sup> Additionally, youth arrests in 2020 for Unauthorized Use of a Vehicle (UUV) are still far below previous levels of UUV arrests (506 youth arrests for UUV in 2007 – the recent peak in reviewed data). We have to be more complete, more nuanced, and more honest about how we discuss crime trends related to youth and we need to be

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<sup>81</sup> John Roman, formerly of the Urban Institute and now with the University of Chicago, provides a powerful critique of the coverage. <https://twitter.com/JohnKRoman/status/1365252896477110272>.

<sup>82</sup> METROPOLITAN POLICE DEPARTMENT, RESPONSES TO FY2019 PERFORMANCE OVERSIGHT QUESTIONS, Q24, Attachment 1, 389-90.

<sup>83</sup> Data retrieved from MPD’s Annual Reports, available at <https://mpdc.dc.gov/page/mpd-annual-reports>.

<sup>84</sup> Data retrieved from MPD’s Biannual Reports on Juvenile Arrests, available at <https://mpdc.dc.gov/page/biannual-reports-juvenile-arrests>.

<sup>85</sup> *Id.*

particularly careful about reinforcing false and harmful narratives about our youth. MPD can and should be a leader in this space.

We also need to be better about highlighting how strong, how powerful, and how resilient our youth are. Last year, CJCC published a thoughtful analysis of the root causes and symptoms of delinquency in the District of Columbia. One of the most powerful and important findings of the report is how incredibly resilient our young people are. For instance, based on a review of data regarding system-involved and non-system involved youth, the report identified the characteristics of young people most at-risk of system involvement based on their experiences. Nearly 90% of the youth in this risk quartile were on Medicaid; 21.5% used TANF; 47% reported neglect; 17.6% reported abuse; over 10% experienced homelessness; and nearly 10% had been removed from their homes, among other challenges including educational disabilities, school pushout, and behavioral health needs. Yet the vast majority of the young people in this risk quartile – nearly 86% – were not system-involved despite these formidable challenges. Let me be clear – our youth should not have to be heroes to survive childhood in the District – but there is so much strength, potential, and power in our youth that we have yet to tap into as a District. Our narrative should shift to that and our policies and practices must follow. I implore the Council to adopt the recommendations that I and others have made with respect to MPD to shift our focus away from policing our youth to building upon their resilience, strength, and power.