

# THE MAKING OF A JUVENILE RECORD: THE INSIDIOUS CONSEQUENCES OF CRIMINALIZING RACE, ADOLESCENCE, DISABILITY, AND TRAUMA\*

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*Although juvenile court was intended to shield youth from the stigma of a criminal conviction and the lifelong impacts of the adult system, the proliferation of youth arrests and the ever-eroding confidentiality of juvenile courts creates a different reality. Youth of color, especially those with disabilities and trauma histories, are more likely to be arrested, prosecuted, and imprisoned for their normal adolescent behaviors than their similarly situated White peers. Once in the system, youth with disabilities rarely have the accommodations they need to advance their cognitive, emotional, and social development, and youth experiencing trauma rarely have the services they need to address their fear, anxiety, and depression. Compounding the problem, disabled youth and those who have experienced trauma are often sent to youth jails, prisons, residential treatment centers, and group homes where they are punished—and even re-arrested—for “acting out” or “failing to comply” with the rules of the facility. The records created from this disparate criminalization of adolescence, disability, and trauma cause a myriad of harms in almost every domain of a child’s life, including mental health, education, employment, economic security, immigration, and further involvement in the legal system. To ensure equal opportunities for youth of color and protect the futures of young people of all abilities, we must decriminalize normal adolescent behaviors and disabilities and eliminate the immediate and long-term harms caused by juvenile records.*

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#### INTRODUCTION: DAMION'S STORY<sup>1</sup>

Damion does not like school. He is a fourteen-year-old African American boy who has learning disabilities and Attention Deficit Hyperactivity Disorder (“ADHD”), which make it hard for him to understand what is going on in the classroom and control behaviors that teachers describe as “disruptive.” Teachers began to notice Damion’s behavior and academic challenges as early as kindergarten. His report cards note that he does not follow directions, gets out of his seat frequently, and talks to other students when he should be working.

Damion also has a history of trauma, including losing his cousin to gun violence and witnessing police pin his father to the ground with guns drawn. Like so many Black youth, Damion suffers from the cumulative trauma of racism in his community where store clerks watch him suspiciously while he buys groceries. Damion’s middle school was supposed to provide him with special services to accommodate his learning disabilities, ADHD, and trauma, but he did not receive those services in any meaningful way. He is still easily triggered by seemingly small disagreements and tends to get into fights at school—with teachers and with other students.

Recently, one of these fights resulted in Damion’s arrest and prosecution for simple assault against a classmate. Now that he is in the court system, he is under constant surveillance, not only by school police and administrators but also a probation officer, judge, and prosecutor. Damion is frustrated by all of the new rules he must follow—many of which he does not understand or cannot remember. When he is late to class, talks back to a teacher, or misses curfew, he violates the conditions of his pretrial release.<sup>2</sup> When he argues with his mother or refuses to do his chores, his mother complains to his probation officer.

As Damion racks up petty infractions with the court, his mother is increasingly overwhelmed. She was already having a hard time managing his ADHD; now every time he breaks a new rule, she must take time off work and find transportation to get them to court. She has other children to care for and worries about being fired. Hoping that a new school would be the answer to their problems, Damion’s mother applied to a full-time special education school with a great reputation. Fortunately, Damion was deemed eligible to attend the

1. This is an anonymized account based on the experience of one of the author’s clients. Interview with Anonymous Client (2024) (on file with author).

2. While the law varies from state to state, courts generally have wide discretion to impose pretrial release conditions aimed at ensuring the child’s return to court and the protection of the person or property of others. *See, e.g.*, D.C. CODE § 16-2310 (2025).

school. Unfortunately, he was put on the waitlist until a spot opens up. While he waits, he struggles more and more with his behavior.

When the judge asks how Damion is doing at his next court hearing, Damion's mother complains about how difficult it is to keep up with his violations. To "help mom out" and "teach Damion the importance of compliance," the judge orders Damion to stay in a group home while he awaits trial.<sup>3</sup> At the group home, Damion has even more rules to follow and more eyes watching him.

One evening, during recreation time at the group home, Damion and three other boys aged twelve, thirteen, and fourteen started horseplaying. As the boys took turns boasting about their strength, one threw a playful punch, and soon they were all chasing each other around the room, ducking and dodging to avoid getting hit. To add to the drama, the boys tried to punch each other in the most humorous and simultaneously vulnerable spot they could find—the groin. Their laughter caught the attention of adults in the next room. As the staff came to check on the noise, Damion hit one of the boys. Of course, it hurt. The boy started crying while the rest continued to laugh.

The adults shouted at the boys to stop and wrote Damion up for violating the rules of the group home. They also sent an "incident report" to the probation officer and judge, who held an emergency hearing to determine whether Damion should be removed from the group home and placed in secure detention.

Damion's story is common in the juvenile legal system. Children with disabilities, especially Black youth, are disproportionately more likely to be arrested or referred to court for behavior that is common for their age, developmental stage, disability, and trauma history.<sup>4</sup> Many of these arrests and referrals come from institutions like schools and group homes which are intended to "help" youth. Instead of helping, these referrals create juvenile records that will follow them for the rest of their lives.

Damion and other youth like him will have to contend with the impact of their juvenile records long after their contact with the court ends. Damion's record may prevent him from joining the military or becoming a firefighter, police officer, ambulance driver, or childcare worker.<sup>5</sup> If he applies for college, his juvenile record may be considered and used to deny him admission.<sup>6</sup> If Damion or his mother applies for public housing, they may be denied because of his record.<sup>7</sup> All of these long-lasting harms flow from juvenile records created

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3. See D.C. CODE § 16-2310(c) (2025); D.C. SUPER. CT. JUV. R. (c) (allowing judges to detain a child who has violated conditions of release).

4. See *infra* Section II.B.

5. See *infra* notes 228–34 and accompanying text.

6. See *infra* notes 225–27 and accompanying text.

7. See *infra* note 29 and accompanying text.

over a decade before Damion's brain reaches the maturity it needs to control impulses, weigh future consequences, and make reasoned decisions in the heat of the moment.<sup>8</sup> Viewed without the nuance required to understand Damion's adolescence, trauma, and disability, Damion's cumulative record conveys a pattern of "criminality" that makes others treat him as a threat to the public and unworthy of opportunity and second chances.

This Article explores the landscape of juvenile records, paying special attention to how they are created, the devastating impact they have, and what we should do to prevent their creation and the resulting collateral consequences. In Part I, we identify the scope of juvenile records and explain how states have eroded confidentiality of court proceedings and records. In Part II, we examine ways youth of color, especially those with disabilities and trauma histories, are more likely than their similarly situated White peers to be drawn into juvenile court for their normal adolescent behaviors.

In Part III, we discuss the ways institutionalizing youth in carceral settings exacerbates trauma and disabilities and contributes to the proliferation of juvenile records. Once in the system, youth with disabilities rarely have the accommodations they need to advance their cognitive, emotional, and social development, and youth experiencing trauma rarely have the services they need to address their anxiety and depression. Compounding the problem, youth experiencing trauma and disabilities are often sent to youth jails, prisons, group homes, and residential treatment centers where they are punished—and even re-arrested—for “acting out” or “failing to comply” with the rules of the facility.

In Part IV, we discuss the myriad harms that flow from this disparate criminalization of adolescence, disability, and trauma, including the barriers juvenile records impose on the child's education, employment, economic security, immigration, and opportunities for rehabilitation once they enter the legal system. In Part V, we propose strategies to decriminalize adolescent behaviors and disabilities and eliminate the immediate and long-term harms caused by juvenile records. These changes are necessary to ensure equal opportunities for youth of color and protect the futures of young people of all abilities.

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8. Laurence Steinberg, Grace Icenogle, Elizabeth Shulman, Kaitlyn Breiner, Jason Chein, Dario Bacchini, Lei Chang, Nandita Chaudhary, Laura Di Giunta, Kenneth A. Dodge, Kostas A. Fanti, Jennifer E. Lansford, Patrick S. Malone, Paul Oburu, Concetta Pastorelli, Ann T. Skinner, Emma Sorbring, Sombat Tapanya, Liliana Maria Uribe Tirado, Liane Pena Alampay, Suha M. Al-Hassan & Hanan M.S. Takash, *Around the World, Adolescence Is a Time of Heightened Sensation Seeking and Immature Self-Regulation*, 21 DEV. SCI. 2, 3 (2018); LAURENCE STEINBERG, *AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE* 26 (2014) [hereinafter STEINBERG, *AGE OF OPPORTUNITY*]; Dustin Albert & Laurence Steinberg, *Age Differences in Strategic Planning as Indexed by the Tower of London*, 82 CHILD DEV. 1501, 1502 (2011); Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCH. 459, 480–82 (2009) [hereinafter Steinberg, *Adolescent Development*].

# I. PROLIFERATION OF JUVENILE RECORDS AND THE EROSION OF JUVENILE COURT CONFIDENTIALITY

When a young person, like Damion, has had contact with the police and the legal system, their “juvenile record” includes not only the paper or digital documentation that the juvenile court keeps of its proceedings and adjudication, but also the entire known history of a child’s system involvement.<sup>9</sup> These records include the youth’s prior contacts with police and the social contexts that brought them before the court.<sup>10</sup> The records contain police reports, including arrest records and other contacts; charging documents (even if they were later amended); disciplinary reports from juvenile detention facilities; reports from probation officers regarding compliance with pretrial release or probation conditions; witness and victim statements; fingerprints; DNA samples; mental health evaluations either ordered by or submitted to the court; and treatment records from residential treatment centers and youth prisons.<sup>11</sup> For many young people with disabilities or trauma histories, like Damion, the records will include background information documenting their mental health, family history and involvement with the child welfare system, and academic information, including special education evaluations, assessments, progress reports, and disciplinary reports.<sup>12</sup>

These records are held independently by a variety of institutions, including law enforcement, social service agencies, schools, treatment centers, and group homes.<sup>13</sup> Depending on state law, the records may be accessed by potential employers, colleges, public housing officials, service providers, residential facilities, and judges who encounter youth in subsequent criminal proceedings.<sup>14</sup> Advances in technology make these records more easily accessible and disseminated than at any point in history.<sup>15</sup>

In creating the nation’s first juvenile courts, progressive reformers in the 1800s intended to shield youth from the stigma of a criminal conviction and the lifelong impacts of the adult system.<sup>16</sup> Because progressive reformers believed protecting confidentiality would maximize a child’s chances of rehabilitation,

9. RIYAH SAHA SHAH & JEAN STROUT, *FUTURE INTERRUPTED: THE COLLATERAL DAMAGE CAUSED BY PROLIFERATION OF JUVENILE RECORDS* 6–7 (2016), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf> [<https://perma.cc/LXV7-9XJR> (staff-uploaded archive)].

10. *Id.*

11. *Id.*

12. *Id.* at 7.

13. *See id.* at 6–7.

14. *See infra* Part IV.

15. *See* Joy Radice, *The Juvenile Record Myth*, 106 GEO. L.J. 365, 365 (2018) (noting that law enforcement agencies can now collect and store a tremendous amount of information, and several states make all juvenile records accessible on public websites).

16. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909).

early juvenile courts were closed proceedings, and their records were confidential.<sup>17</sup> Many decades after the first juvenile court opened in 1899, the United States Supreme Court affirmed in *In re Gault*,<sup>18</sup> the seminal case establishing constitutional rights for youth accused of crimes, that “[t]he policy of the juvenile law is to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.”<sup>19</sup> Yet, it simultaneously acknowledged that this “claim of secrecy . . . is more rhetoric than reality.”<sup>20</sup>

Today, many people still believe juvenile court records are either totally confidential or largely inconsequential.<sup>21</sup> In reality, juvenile arrest and court records originating in childhood may follow young people for the rest of their lives.<sup>22</sup> Laws that allow youth to seal or expunge<sup>23</sup> their juvenile records are often inadequate as written or applied in many states. Fewer than half of states have laws that automatically seal or expunge certain juvenile records under specific circumstances.<sup>24</sup> In states that do not offer automatic sealing or expungement, the procedure is confusing and burdensome for youth and their families.<sup>25</sup> Many youth never learn that sealing or expungement are available to them or how to pursue these options.<sup>26</sup>

State legislatures have also been whittling away at juvenile court confidentiality provisions. Laws that make it easier to transfer youth to adult court for more offenses and at younger ages expose youth to all of the consequences of an adult criminal conviction, including public records.<sup>27</sup> Even

17. Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. REV. 520, 526–27 (2004) [hereinafter Henning, *Eroding Confidentiality*].

18. 387 U.S. 1 (1967).

19. *Id.* at 32.

20. *Id.*

21. See Radice, *supra* note 15, at 365.

22. See *id.* See generally Henning, *Eroding Confidentiality*, *supra* note 17 (arguing for stronger confidentiality protections for juveniles with criminal contacts).

23. ANDREA R. COLEMAN, U.S. DEP’T OF JUST., EXPUNGING JUVENILE RECORDS: MISCONCEPTIONS, COLLATERAL CONSEQUENCES, AND EMERGING PRACTICES 2 (2020), <https://ojdp.ojp.gov/publications/expunging-juvenile-records.pdf> [<https://perma.cc/W6NS-7WN3> (staff-uploaded archive)] (indicating that, while the definitions of “sealing” and “expunging” vary from state to state, generally “expunging” means the record is destroyed and rendered as though it never existed and “sealing” means the record is unavailable to the public but some agencies or individuals may be allowed to access the record).

24. *Automatic Expungement of Juvenile Records*, NAT’L CONF. STATE LEGISLATORS, <https://www.ncsl.org/civil-and-criminal-justice/automatic-expungement-of-juvenile-records> [<https://perma.cc/H26T-QYJA> (staff-uploaded archive)] (last updated Jan. 4, 2024).

25. *Id.*

26. *Id.*

27. See *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT’L CONF. STATE LEGISLATORS, <https://www.ncsl.org/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws> [<https://perma.cc/RS47-Z26G> (staff-uploaded archive)] (last updated Aug. 21, 2024).

when youth remain in juvenile courts, some states have eroded confidentiality for certain serious offenses by allowing public access to juvenile court records and proceedings involving serious youth offenses.<sup>28</sup>

Other states share juvenile court records with schools that may discipline or expel the child after arrest or with public housing authorities that may evict youth and their entire families for a juvenile adjudication.<sup>29</sup> In at least nine states, laws require the child or the court to notify the child's school of their juvenile record, even when the alleged offense has nothing to do with the school and, in some cases, even before the young person has been found guilty.<sup>30</sup> North Carolina, Utah, Texas, Maryland, and Florida require that schools be notified when a student is arrested or taken into custody for certain enumerated offenses.<sup>31</sup> Oregon, South Carolina, and Colorado require courts to notify schools of juvenile records after adjudication, including the student's probation status and the nature of the offense.<sup>32</sup> While most states only require notification to a school administrator, such as the principal or superintendent,<sup>33</sup> some states require that the student's teachers be notified as well.<sup>34</sup> In a concerning new development, parents in Tennessee can now be charged with a class C misdemeanor and fined for not reporting their child's juvenile court adjudication to their child's school.<sup>35</sup>

Youth of color and youth with disabilities and trauma histories are most vulnerable to the harms of these increasingly accessible records. Not only are they arrested at disproportionate rates, but they are also more likely to be pulled deeper into the system and out of their homes and communities.<sup>36</sup> Once in the court system, youth like Damion are under constant surveillance and scrutiny

28. Radice, *supra* note 15, at 374.

29. See Henning, *Eroding Confidentiality*, *supra* note 17, at 520; Radice, *supra* note 15, at 365.

30. VA. CODE § 16.1-301.B (2024); N.C. GEN. STAT. § 7B-3101 (2024); UTAH CODE ANN. § 80-6-103 (2024); TEX. CODE CRIM. PROC. art. 15.27 (2023); MD. CODE ANN. EDUC. § 7-303 (2024); FLA. STAT. ANN. § 985.04 (2024); OR. REV. STAT. § 419A.015 (2024); S.C. CODE ANN. § 59-63-370 (2024); COLO. REV. STAT. § 19-1-304 (2024).

31. N.C. GEN. STAT. § 7B-3101 (2024); UTAH CODE ANN. § 80-6-103 (2024); TEX. CODE CRIM. PROC. ANN. art. 15.27 (2023); MD. CODE ANN., EDUC. § 7-303 (2024); FLA. STAT. § 985.04 (2024).

32. OR. REV. STAT. § 419A.015 (2023); S.C. CODE ANN. § 59-63-370 (2024); COLO. REV. STAT. § 19-1-304 (2024).

33. See FLA. STAT. § 985.04 (2024); N.C. GEN. STAT. § 7B-3101 (2024); OR. REV. STAT. § 419A.015 (2023); S.C. CODE ANN. § 59-63-370 (2024); TEX. CODE CRIM. PROC. art. 15.27 (2023).

34. See N.C. GEN. STAT. § 115C-404 (2024) (mandating that the principal share juvenile records with individuals who have "direct guidance, teaching, or supervisory responsibility for the student"); S.C. CODE ANN. § 59-63-370 (2024) (mandating that the school administrator notify each of the student's teachers or instructors of the conviction or adjudication).

35. TENN. CODE ANN. § 49-6-3051 (2024).

36. Black youth, for example, account for thirty-five percent of cases handled in juvenile court and forty-two percent of all young people sent to out of home placements by juvenile courts. *Easy Access to the Census of Juveniles in Residential Placement: 1997–2023*, NAT'L CTR. FOR JUV. JUST., <https://www.ojjdp.gov/ojstatbb/ezacjrp/> [<https://perma.cc/C5PU-Z97P>] (last updated Mar. 17, 2025).



by court officials and institutional staff, increasing the likelihood of additional records and public stigma in the face of eroding confidentiality.

## II. THE CRIMINALIZATION OF RACE, ADOLESCENCE, DISABILITY, AND TRAUMA: TRAPPING YOUTH IN THE RECORD-MAKING MACHINE

Any meaningful effort to reduce the proliferation of juvenile court records must begin with a careful examination of the pathways into the juvenile legal system and a serious commitment to eliminating unnecessary arrests and referrals of youth to juvenile courts. Over ninety-two percent of young people who are arrested are charged with nonviolent offenses, such as vandalism, simple assault, and drug abuse violations.<sup>37</sup> Violent crimes, like murder, rape, robbery, and aggravated assault, account for only eight percent of all youth arrests.<sup>38</sup> Research explains that delinquent behaviors during adolescence—even those behaviors resulting in serious harm to others—are often an outgrowth of the typical features of adolescent development.<sup>39</sup> Adolescents of all races and abilities are impulsive, susceptible to the influence of their peers, and often fail to appreciate the short- and long-term consequences of their actions.<sup>40</sup> Young people, like Damion, with certain disabilities or trauma histories often have even greater difficulty controlling their impulses, resisting peer pressure, and making well-reasoned decisions.<sup>41</sup> Yet, the vast majority of youth, even those with disabilities and trauma, will grow out of these characteristics as their brains mature without any intervention from the legal system—and without the stigma of a juvenile record.<sup>42</sup>

37. See *Arrests by Offense, Age, and Race*, OFF. JUV. JUST. & DELINQ. PREVENTION (2022), [https://ojjdp.ojp.gov/statistical-briefing-book/crime/faqs/ucr\\_table\\_2](https://ojjdp.ojp.gov/statistical-briefing-book/crime/faqs/ucr_table_2) [<https://perma.cc/8EX2-3QL5>].

38. See *id.* (noting that violent crime makes up only eleven percent of all arrests of Black youth).

39. See Steinberg, *Adolescent Development*, *supra* note 8, at 468–70.

40. *Id.* at 472; see also Laurence Steinberg, Sandra Graham, Lia O'Brien, Jennifer Woolard, Elizabeth Cauffman & Marie Banich, *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 35–36, 39 (2009) (measuring individuals' self-reported ability to plan ahead, anticipate consequences, and time perspective); Angela L. Duckworth & Laurence Steinberg, *Unpacking Self-Control*, 9 CHILD DEV. PERSPS. 32, 34–35 (2015); Brief for the American Medical Association & the American Academy of Child & Adolescent Psychiatry as Amici Curiae in Support of Neither Party at 14–36, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646, 10-9647), 2012 WL 121237, at \*14–36 (describing studies that conclude that adolescent brains have immature cognitive functions and a hyperactive reward drive system that results in impulsive behavior).

41. See generally Stephen P. Becker & Patricia K. Kerig, *Posttraumatic Stress Symptoms Are Associated with the Frequency and Severity of Delinquency Among Detained Boys*, 40 J. CLINICAL CHILD & ADOLESCENT PSYCH. 765 (2011) (finding a correlation between Post-Traumatic Stress Disorder (“PTSD”) symptoms and the frequency and severity of prior arrests in a sample of detained adolescents); Tina Maschi, *Unraveling the Link Between Trauma and Male Delinquency: The Cumulative Versus Differential Risk Perspectives*, 51 SOC. WORK 59 (2006) (finding that cumulative trauma, as well as different types of trauma, predicted delinquency in a community sample of youth).

42. See LILA KAZEMIAN, NAT'L INST. OF JUST., *PATHWAYS TO DESISTANCE FROM CRIME AMONG JUVENILES AND ADULTS: APPLICATIONS TO CRIMINAL JUSTICE POLICY AND PRACTICE 1* (2021), <https://www.ojp.gov/pdffiles1/nij/301503.pdf> [<https://perma.cc/5ESQ-QM49>].

Part II examines the proliferation of juvenile records through the disparate arrest and prosecution of youth with disabilities and trauma histories, especially youth of color. Section II.A considers the criminalization of normal adolescent behaviors, while Sections II.B and II.C consider the criminalization of disability and trauma. Each section sheds light on the unnecessary referral of youth to juvenile courts and the inherently unnecessary and harmful accumulation of juvenile court records.

#### A. *Criminalizing Race and Adolescent Development*

Too often, juvenile records are created when young people are arrested and charged with delinquent offenses for behavior that is the product of their developmental stage. Loitering, curfew violations, disorderly conduct, disturbing schools, unlawful entry in public spaces, threats, theft, and assault are all common juvenile court charges.<sup>43</sup> Prosecutors may charge a fifteen-year-old with threats after they impulsively say they will kill a classmate who teases them, even though the fifteen-year-old has no true intent or means to kill.<sup>44</sup> A group of teenagers who break into their school after hours to toilet paper the locker rooms may face burglary charges.<sup>45</sup> Even crimes that result in serious outcomes for others often start as an act of impulsivity, adolescent bravado, or a failure to stop and think about the possible consequences.<sup>46</sup> Punitive law enforcement responses to these behaviors ignore best practices for developmentally appropriate discipline, accountability, and support.<sup>47</sup> When police are called, the juvenile record begins.

Black youth are at an even greater risk of receiving a juvenile record for their adolescent behaviors. Black youth are referred to juvenile court at a rate

43. See ELIANA BEIGEL & SARAH HOCKENBERRY, U.S. DEP'T OF JUST., DELINQUENCY CASES IN JUVENILE COURT, 2021, at 1 (2024), <https://ojjdp.ojp.gov/publications/delinquency-cases-in-juvenile-court-2021.pdf> [<https://perma.cc/4UYW-TC94>] (presenting data on the prevalence of certain charges in juvenile courts across the nation, including assault, theft, trespassing and the overarching categories of “person offenses,” “property offenses,” and “public order offenses”).

44. This example, and those similar to it, have been shared with us, the authors, as we train youth defenders across the country.

45. This is another example that has been shared with us, the authors, as we train youth defenders across the country.

46. See Steinberg, *Adolescent Development*, *supra* note 8, at 471–73 (stating that the immaturity and impulsivity characteristic of the adolescent brain can lead teens to act in ways that cause harm and that this adolescent immaturity reduces culpability). See generally STEINBERG, AGE OF OPPORTUNITY, *supra* note 8 (stating that delinquency peaks in adolescence and then declines and noting that adolescents are involved in more drownings, deadly car accidents, etc.).

47. See KAZEMIAN, *supra* note 42, at 9–10 (stating that “punitive responses may not be effective in reducing reoffending” and “alternative strategies such as restorative approaches should be considered to address behavioral problems, when appropriate” and that “partnerships between law enforcement and social service agencies can help to divert youth away from arrests and toward social services that may be more conducive to desistance from crime”).

almost three times greater than White youth,<sup>48</sup> despite being no more likely to engage in risky behaviors.<sup>49</sup> Extensive research on implicit racial bias demonstrates that powerful stereotypes create unconscious connections between Blackness and criminality.<sup>50</sup> Racial biases overpower even our long-held beliefs about the inherent innocence and harmlessness of children. In one study of cognitive biases about Black youth, participants were more likely to believe that a common toy, like a baby's rattle, was a threatening object, like a gun, when it was associated with a Black child's face.<sup>51</sup> This held true even for children as young as five years old.<sup>52</sup> Other studies show that adults tend to perceive young Black males as taller, heavier, stronger, more muscular, angrier, and more capable of harm than they actually are.<sup>53</sup> One significant study by Dr. Philip Atiba Solomon (formerly, Goff) found that both police officers and civilians tend to perceive Black boys as more than four-and-a-half years older than their actual age.<sup>54</sup> Similar research has been conducted with girls, finding

48. C. Puzzanchera, A. Sladky & W. Kang, *Statistical Briefing Book: National Racial and Ethnic Disparities (R/ED) Databook Trends*, OFF. JUV. JUST. & DELINQ. PREVENTION (Feb. 8, 2024), [https://ojjdp.ojp.gov/statistical-briefing-book/data-analysis-tools/r-ed-databook/trends?display\\_in=1&off\\_id=1&Point=3&displaytype=rates&show\\_chart=yes](https://ojjdp.ojp.gov/statistical-briefing-book/data-analysis-tools/r-ed-databook/trends?display_in=1&off_id=1&Point=3&displaytype=rates&show_chart=yes) [<https://perma.cc/7DGJ-L4NV>].

49. See RICHARD A. MIECH, LLOYD D. JOHNSTON, MEGAN E. PATRICK, PATRICK M. O'MALLEY & JERALD G. BACHMAN, *MONITORING THE FUTURE: NATIONAL SURVEY RESULTS ON DRUG USE, 1975–2023*, at 24 (2024), <https://monitoringthefuture.org/wp-content/uploads/2023/12/mtf2023.pdf> [<https://perma.cc/P56W-H9U7> (staff-uploaded archive)]; CTRS. FOR DISEASE CONTROL & PREVENTION, *YOUTH RISK BEHAVIOR SURVEY DATA SUMMARY & TRENDS REPORT: 2013–2023*, at 5 (2024), <https://www.cdc.gov/yrbs/dstr/pdf/YRBS-2023-Data-Summary-Trend-Report.pdf> [<https://perma.cc/KB7E-X2LR>].

50. Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 984–85 (1999) (concluding categorization of information provides benefits for human organization); see also Jennifer L. Eberhardt, Phillip Atiba Goff, Valerie J. Purdie & Paul G. Davies, *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCH. 876, 877 (2004) (explaining that these associations help differentiate between important and nonimportant information); L. Song Richardson & Phillip Atiba Goff, *Self-Defense and the Suspicion Heuristic*, 98 IOWA L. REV. 293, 297 (2012) (noting that while cognitive shortcuts allow humans to make sense of the world around them, these shortcuts may lead to errors in judgment).

51. Andrew R. Todd, Kelsey C. Thiem & Rebecca Neal, *Does Seeing Faces of Young Black Boys Facilitate the Identification of Threatening Stimuli?*, 27 PSYCH. SCI. 384, 389 (2016).

52. *Id.* at 385.

53. See, e.g., Phillip Atiba Goff, Matthew Christian Jackson, Brooke Allison Lewis Di Leone, Carmen Marie Culotta & Natalie Ann DiTomasso, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526, 526 (2014); John Paul Wilson, Kurt Hugenberg & Nichols O. Rule, *Racial Bias in Judgments of Physical Size and Formidability: From Size to Threat*, 113 J. PERSONALITY & SOC. PSYCH. 59, 59 (2017); Amy G. Halberstadt, Alison N. Cooke, Pamela W. Garner, Sherick A. Hughes, Dejah Oertwig & Shevaun D. Neupert, *Racialized Emotion Recognition Accuracy and Anger Bias of Children's Faces*, 22 EMOTION 403, 403 (2020); Kurt Hugenberg & Galen V. Bodenhausen, *Facing Prejudice: Implicit Prejudice and the Perception of Facial Threat*, 15 PSYCH. SCI. 640, 640 (2003) [hereinafter Hugenberg & Bodenhausen, *Facing Prejudice*].

54. Goff et al., *supra* note 53, at 541.

that adults tend to perceive Black girls as more mature, less innocent, and more knowledgeable about adult topics than their White peers.<sup>55</sup>

As a result, the normal adolescent behaviors of Black children are even more likely to be viewed as deviant or criminal due to implicit racial bias. Dribbling a basketball in the school hallway becomes an act of defiance, and roughhousing with friends in the park becomes disorderly conduct when adults are more likely to misperceive anger on a Black child's face than a White child's face.<sup>56</sup> Racial bias is compounded when youth congregate in groups, as is so common among teenagers during and after school.<sup>57</sup> Black people are more likely than White people to be stopped, frisked, or searched in groups, even when they are not breaking the law or involved in conflict.<sup>58</sup> In short, normal adolescent behavior is not treated as normal when viewed through the lens of racial bias.

#### B. *Criminalizing Race and Disability*

Youth with cognitive, emotional, and developmental disabilities are even more likely to be drawn into the delinquency system and accumulate juvenile court records. Experts estimate that between sixty-five to seventy percent of youth involved with the juvenile legal system have a disability.<sup>59</sup> Cognitive disabilities impact young people's learning, behavior, social skills, and emotional regulation.<sup>60</sup> Many youth, like Damion, do not receive adequate assistance and instead are surveilled, scrutinized, and criminalized.

55. JAMILIA BLAKE, REBECCA EPSTEIN & THALIA GONZÁLEZ, GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS' CHILDHOOD 7 (2017), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf> [<https://perma.cc/FH5N-56FG>].

56. See Halberstadt et al., *supra* note 53, at 10; see also Hugenberg & Bodenhausen, *Facing Prejudice*, *supra* note 53, at 640; Kurt Hugenberg & Galen V. Bodenhausen, *Ambiguity in Social Categorization: The Role of Prejudice and Facial Affect in Race Categorization*, 15 PSYCH. SCI. 342, 342 (2004) (showing that people are more likely to misinterpret ambiguous facial expressions as aggressive or threatening when associated with the face of a Black person).

57. See Erin Cooley, Neil Hester, William Cipolli, Laura I. Rivera, Kaitlin Abrams, Jeremy Pagan, Samuel R. Sommers & Keith Payne, *Racial Biases in Officers' Decisions to Frisk Are Amplified for Black People Stopped Among Groups Leading to Similar Biases in Searches, Arrests, and Use of Force*, 11 SOC. PSYCH. & PERSONALITY SCI. 761, 766 (2020).

58. See *id.*

59. JESSICA SNYDMAN, NAT'L CTR. FOR LEARNING DISABILITIES, UNLOCKING FUTURES: YOUTH WITH DISABILITIES AND THE JUVENILE JUSTICE SYSTEM 2 (2022), <https://nclld.org/wp-content/uploads/2023/08/NCLD-Unlocking-Futures-Final-7th-Dec-Updated-.pdf> [<https://perma.cc/2FT3-DSU9>] (citing THE ARC NAT'L CTR. ON CRIM. JUST. & DISABILITY, JUSTICE-INVOLVED YOUTH WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES: A CALL TO ACTION FOR THE JUVENILE JUSTICE COMMUNITY (2015)).

60. See Celine Baurain & Nathalie Nader-Grosbois, *Socio-Emotional Regulation in Children with Intellectual Disability and Typically Developing Children in Interactive Contexts*, 6 ALTER EUR. J. DISABILITY RSCH. 75, 77 (2012); *Why Should Students with Significant Cognitive Disabilities Be Included*

Youth with disabilities may draw negative attention as they try to communicate their needs or explain the reasons for their actions. In school, they may have trouble responding to questions and instructions from teachers, counselors, and other adults.<sup>61</sup> On the playground, they may be particularly sensitive to teasing from their peers and lash out to protect themselves. As youth attempt to communicate, they often become frustrated and raise their voices or start a physical fight. Like so many youth with similar disabilities, Damion would often become agitated when classmates made fun of him or teachers accused him of breaking school rules and refused to listen to his perspective. People who are unfamiliar with or insensitive to youth with disabilities may misinterpret their language or behaviors as defiant, malicious, or even a criminal threat.

Legal scholar Jamelia Morgan provides useful insight into how common conceptions of disability contribute to this misinterpretation—and ultimate criminalization—of many behaviors of disabled youth.<sup>62</sup> Morgan argues that disability is most commonly viewed as an “individual medical problem” requiring an “individualized medical solution,” which ignores both the ways society has constructed notions of disability and its role in ameliorating it.<sup>63</sup> Morgan further contends that this “medical model” of disability

fails to appreciate how nonapparent or intermittently apparent disabilities can be misinterpreted as or conflated with criminal conduct, particularly when these traits are presented in individuals with psychiatric disabilities or intellectual and developmental disabilities. The failure to recognize and perceive disabilities makes it easier to perceive non-normative behaviors as criminal, in part due to social meanings, myths, and stereotypes that construct disabled people—particularly

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in the General Education Classroom?, IRIS CTR., <https://iris.peabody.vanderbilt.edu/module/scd/cresource/q1/p01/> [<https://perma.cc/K7N2-GT33>]; *Social Skills and Learning Disabilities*, LEARNING DISABILITY ASS'N OF AM., <https://ldaamerica.org/info/social-skills-and-learning-disabilities/> [<https://perma.cc/82AY-BJJE>]; *Cognitive Disabilities*, FED. COMM'NS COMM'N, <https://www.fcc.gov/cognitive-disabilities> [<https://perma.cc/7J55-2JDP>] (last updated Feb. 5, 2025) (defining cognitive disabilities as “a broad range of conditions that include intellectual disability, autism spectrum disorders, severe, persistent mental illness, brain injury, stroke, and Alzheimer's disease and other dementias”).

61. SNYDMAN, *supra* note 59, at 2.

62. Jamelia N. Morgan, *Policing Under Disability Law*, 73 STAN. L. REV. 1401, 1433 (2021) [hereinafter Morgan, *Policing Under Disability*].

63. *Id.* at 1406 (first citing Elizabeth F. Emens, *Framing Disability*, 2012 U. ILL. L. REV. 1313, 1401; and then citing Bradley Areheart, *When Disability Isn't “Just Right”: The Entrenchment of the Medical Model of Disability and the Goldilocks Dilemma*, 83 IND. L.J. 181, 185–86 (2008)).

those from negatively racialized and historically marginalized groups—as criminals.<sup>64</sup>

Morgan advances an alternative “social model” of disability, which “locates the meaning and importance of [disabled people’s] differences and perceived limitations in societal barriers, attitudes, and responses to disability, not solely in the individual’s biological attributes.”<sup>65</sup> Through this lens, we can see how biases cause systems-actors to view youth’s nonnormative behavior as intentionally disobedient and deviant, rather than related to their disability and requiring specialized support. Common behavioral expectations—such as sitting still in a classroom, remaining calm when a teacher enforces a rule the child does not agree with, and staying silent when a peer begins teasing them—are the very “societal barriers” that set youth like Damion up to be criminalized when adults expect them to comply without necessary accommodations.<sup>66</sup>

Unfortunately, teachers and school administrators often lack the skill and resources to identify and provide students with the services they need to accommodate their disabilities.<sup>67</sup> Although Damion’s teachers began documenting his noncompliant behaviors on his report cards as early as kindergarten, the school never adequately addressed his cognitive and mental health needs. Instead, the school labeled him “disruptive” and “delinquent,” and failed to recognize his behavior as a manifestation of unaddressed learning disabilities. Educators who fail to connect a student’s behaviors to their disability are likely to respond with punitive measures that are not only ineffective but also create additional barriers for the student.<sup>68</sup> Punitive measures that exclude students from the classroom (including in-school and out-of-school suspensions, expulsions, and referrals to law enforcement) can cause students to disengage during the school day and feel disconnected from the school community.<sup>69</sup> These measures also contribute to emotional, social, and academic harm.<sup>70</sup> When students feel disengaged in the classroom, the risk of being drawn into the delinquency system and accumulating juvenile records increases as they become more frustrated, more likely to push boundaries, and less able to regulate their emotions.<sup>71</sup>

64. *Id.* at 1408–09.

65. *Id.* at 1408.

66. *See id.* at 1408–09.

67. *See* SNYDMAN, *supra* note 59, at 2–4.

68. *Id.*; Mahsa Jafarian & Vidhya Ananthakrishnan, *Just Kids: When Misbehaving Is a Crime*, VERA INST. JUST. (Aug. 2017), <https://www.vera.org/when-misbehaving-is-a-crime> [https://perma.cc/8USD-S2R2].

69. SNYDMAN, *supra* note 59, at 2.

70. *Id.*

71. *Id.*; *see also* Julie Gerlinger, Samantha Viano, Joseph H. Gardella, Benjamin W. Fisher, F. Chris Curran & Ethan M. Higgins, *Exclusionary School Discipline and Delinquent Outcomes: A Meta-*

Cognitive and developmental disabilities exacerbate fears and anxieties that young people commonly experience during arrest. The youth's responses during that arrest put them at greater risk for additional charges. For example, autism reduces a child's executive functioning and impacts their working memory, task-management, problem solving, and reasoning skills.<sup>72</sup> Youth on the autism spectrum will likely be overwhelmed in their encounters with police, which reduces their capacity to obey police orders. Police interventions for minor misbehavior often escalate from "0 to 100" in an instant when youth fail to obey police commands.<sup>73</sup> Youth who do not understand why they have been arrested or believe police contact was unfair or racially motivated will resist out of fear, anxiety, and confusion. In turn, police often become louder and more authoritative, and appear even more threatening to a young person with a disability.<sup>74</sup>

Youth who have speech and language impediments may freeze when police officers or school staff attempt to interrogate them. Some of these youth will be unable to process and respond to questions that begin with "who," "what," "where," "when," and "why," which can lead adults to perceive them as evasive and suspicious.<sup>75</sup> Alternatively, they may curse or erupt in outrage because they cannot calmly express their emotions. When officers move closer or touch the child, the child may respond physically or take a protective stance that leads to additional juvenile records for more serious charges like assault and threat. One of the authors of this Article represented a teenager on the autism spectrum who "lost control" and began kicking and screaming at an officer who touched his arm during a routine stop.<sup>76</sup> Police responded by charging him with assault on a police officer.<sup>77</sup> Escalation often occurs when police do not adjust their tactics to account for the unique needs of youth with disabilities.<sup>78</sup>

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*Analysis*, 50 J. YOUTH & ADOLESCENCE 1493, 1501–02 (2021) (finding that "the use of exclusionary discipline—in all forms (i.e., in-school suspension, out-of-school suspension, and expulsion)—is associated with more, rather than fewer, delinquent outcomes").

72. Adrienne Hurst, *Black, Autistic, and Killed by Police*, CHI. READER (Dec. 17, 2015), <https://chicagoreader.com/news/black-autistic-and-killed-by-police/> [<https://perma.cc/V3FS-DAZV>].

73. See Kelly Richards & Kathy Ellem, *Young People with Cognitive Disabilities and Overrepresentation in the Criminal Justice System: Service Provider Perspectives on Policing*, 20 POLICE PRAC. & RSCH. 156, 167 (2019).

74. See, e.g., KRISTIN HENNING, THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH 166–69 (2021) [hereinafter HENNING, RAGE OF INNOCENCE] (describing how police interactions with disabled youth escalate when police touch the young person, give multi-step directions, raise their voices, and generally become more authoritative).

75. *Id.* at 171.

76. SNYDMAN, *supra* note 59, at 2.

77. *Id.*

78. See 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 9 (2019),

Police fail to recognize cognitive disabilities in three-quarters of people with disabilities whom they arrest.<sup>79</sup> When police or other adults know about a young person's disability, they often assume the youth is predisposed to misbehavior.<sup>80</sup> A study published in 2017 reported that nearly twenty percent of young people on the autism spectrum experience a police encounter before they reach age twenty-one, with about half of those encounters occurring before they turn fifteen.<sup>81</sup> Once they have initial contact with the juvenile legal system, youth with disabilities are often caught in a recurring cycle of hyper-scrutiny and re-arrest, accompanied by new juvenile records.<sup>82</sup> Compared to other youth on probation, those with a disability are more likely to receive subsequent charges—and are often unfairly and inaccurately labeled as “recidivists.”<sup>83</sup> They are also more likely to receive a final disposition that includes incarceration.<sup>84</sup>

At school, students with disabilities are almost three times more likely to be arrested—and thus have juvenile court records—than their nondisabled peers.<sup>85</sup> Youth of color with disabilities are even more likely to be referred to law enforcement or arrested than their White peers with disabilities.<sup>86</sup> A 2023 report found that Black students made up over seventeen percent of students with disabilities, but thirty-three percent of the arrests among students with disabilities—meaning they were arrested at nearly double the expected rate.<sup>87</sup>

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<https://www.aclu.org/wp-content/uploads/publications/030419-acluschooldisciplinereport.pdf>  
[<https://perma.cc/RRY2-6WZT>].

79. Edward Polloway, James R. Patton, Tammy Smith, Julia Beyer & Jenevive W. Bailey, *Special Challenges for Persons with Disabilities in the Criminal Justice System: Introduction to the Special Issue*, 19 EXCEPTIONALITY 211, 214 (2011) (“[I]t has been estimated that 75% of persons with intellectual and developmental disabilities who are arrested are not recognized as having a disability.”). More recent data is not available as police experience with disabilities is understudied.

80. SNYDMAN, *supra* note 59, at 2.

81. Julianna Rava, Paul Shattuck, Jessica Rast & Anne Roux, *The Prevalence and Correlates of Involvement in the Criminal Justice System Among Youth on the Autism Spectrum*, 47 J. AUTISM & DEV. DISORDERS 340, 343–44 (2017).

82. See Bo-Kyung E. Kim, Jennifer Johnson, Laura Rhinehart, Patricia Logan-Greene, Jeanette Lomeli & Paula S. Nurius, *The School-to-Prison Pipeline for Probation Youth with Special Education Needs*, 91 AM. J. ORTHOPSYCHIATRY 375, 378–79 (2021); *Supporting Youth with Disabilities in Juvenile Corrections*, U.S. DEP’T EDUC.: OFF. SPECIAL EDUC. & REHAB. SERVS. BLOG (May 23, 2017, 7:37 AM), <https://sites.ed.gov/osers/2017/05/supporting-youth-with-disabilities-in-juvenile-corrections/> [<https://perma.cc/N8LV-XQLB>].

83. Kim et al., *supra* note 82, at 378–79.

84. See *id.*

85. WHITAKER ET AL., *supra* note 78, at 5; see also Benjamin W. Fisher & Amy E. Fisher, *Criminal Justice System Contact of Students with Disabilities by Race and Ethnicity: Examining the Role of School Police*, 149 CHILD. & YOUTH SERVS. REV., June 2023, at 1, 2 (noting that the majority of police in schools have not received special training regarding appropriate engagement with students with disabilities and untrained police are more likely to arrest students for manifestations of their disabilities).

86. Fisher & Fisher, *supra* note 85, at 1.

87. *Id.*



Black students are more likely to be surveilled during school hours by teachers and school police.<sup>88</sup> Racial bias increases the perception and expectation that Black youth will violate school rules.<sup>89</sup> Legal scholar Jyoti Nanda describes this interplay of surveillance and bias experienced by Black youth with disabilities as “a sticky web . . . in which Black . . . children are more likely to be watched, have their actions documented, and be categorized as deviant.”<sup>90</sup> Researchers found that teachers are more likely to use exclusionary punishment in response to misbehavior by Black students with disabilities, whereas they are more likely to offer rehabilitative services to White students with disabilities.<sup>91</sup> Similarly, a 2023 study found that adding police to schools that did not previously have them resulted in higher rates of arrest for Black students with disabilities compared to their White peers.<sup>92</sup>

### C. Criminalizing Race and Trauma

Adolescent and childhood trauma create another unnecessary and unwarranted pathway into the juvenile legal system and the collateral consequences associated with juvenile records. Trauma has followed Damion throughout his young life. He carries with him the fear of violence after losing his cousin in a shooting and witnessing his father’s experience of police brutality. Hearing similar stories in his community and in the news increases the anxiety he feels every time he sees an officer patrolling his neighborhood. This stress impacts almost every aspect of his life. Damion has trouble falling asleep and overreacts to seemingly small conflicts. He is quick to anger, yells, and even throws things when he is upset. He rarely feels calm or at ease. Instead, he is constantly on guard, even in the classroom, making it difficult to focus.

Youth who have experienced trauma like Damion’s may live in a constant state of hypervigilance—or a persistent fear of danger that causes them to be constantly on guard, expecting something bad to happen to them.<sup>93</sup> Their natural “fight-flight-freeze” response may become overactive and cause them to

88. See Jamelia Morgan, *On the Relationship Between Race and Disability*, 58 HARV. C.R.-C.L. L. REV. 664, 679 (2023) (noting that “[t]hough more research is needed to determine the extent of their vulnerabilities, when it comes to disabled people of color, race may even inform whether and how disabilities (diagnosed or not) are perceived by law enforcement in police encounters”).

89. See *id.*

90. Jyoti Nanda, *The Construction and Criminalization of Disability in School Incarceration*, 9 COLUM. J. RACE & L. 265, 292 (2019) (emphasis omitted).

91. Fisher & Fisher, *supra* note 85, at 2.

92. *Id.* at 10.

93. Richard G. Dudley, Jr., *Childhood Trauma and Its Effects: Implications for Police*, NEW PERSPS. POLICING BULL., July 2015, at 1, 6.

perceive threats where none exist.<sup>94</sup> Their corresponding anxiety, anger, and confusion prevent them from regulating their behavior and calming their emotions.<sup>95</sup> Adults may misperceive these trauma responses as aggressive or dangerous.<sup>96</sup> In areas where gun violence is prevalent, young people may even carry firearms as a manifestation of past trauma and persistent hypervigilance as they remain in constant fear for their lives.<sup>97</sup>

Youth with a history of trauma are often prone to unstable moods and may exhibit intense and uncontrollable outbursts of anger.<sup>98</sup> They often focus a great deal of energy on not thinking about their trauma,<sup>99</sup> and when something happens that forces those memories back into their minds, they may become distressed and react in ways that appear extreme or unreasonable.<sup>100</sup> At other times, trauma may cause young people to disassociate from their emotions.<sup>101</sup> These youth may not display remorse in the commonly expected way, or they may appear unfazed by punishment.<sup>102</sup> Police, teachers, and other authority figures may be frustrated by what they believe is either a disproportionate outburst or a nonchalant attitude. For Black youth, implicit racial bias often compounds adults' misperceptions that these traumatized youth are aggressive or hardened.<sup>103</sup>

Trauma can also affect a child's ability to form healthy relationships and attachment to caring adults. These youth may rapidly switch between idealizing teachers, counselors, or others and devaluing them.<sup>104</sup> They may treat these allies poorly because they fear adults will abandon them or do not actually care for them.<sup>105</sup> They may hurl insults and threats at their once beloved teacher or

94. *Id.*; Kirsten Nunez & Timothy J. Legg, *Fight, Flight, Freeze: What This Response Means*, HEALTHLINE, <https://www.healthline.com/health/mental-health/fight-flight-freeze> [https://perma.cc/C7HM-73JX] (last updated Feb. 10, 2023); Kasia Kozłowska, Peter Walker, Loyola McLean & Pascal Carrière, *Fear and the Defense Cascade: Clinical Implications and Management*, 23 HARV. REV. PSYCHIATRY 263, 268–70 (2015).

95. Crosby A. Modrowski, Shannon D. Chaplo & Patricia K. Kerig, *Advancing Our Understanding of the Risk Factors Associated with Crossover Youth in the Child Welfare and Juvenile Justice Systems: A Trauma-Informed Research Agenda*, 25 CLINICAL CHILD & FAM. PSYCH. REV. 283, 291 (2022); RICHARD MENDEL, SENT'G PROJECT, WHY YOUTH INCARCERATION FAILS: AN UPDATED REVIEW OF THE EVIDENCE 21 (2022) [hereinafter MENDEL, WHY YOUTH INCARCERATION FAILS]; Dudley, *supra* note 93, at 11.

96. Dudley, *supra* note 93, at 11.

97. *See id.* at 2.

98. *Id.* at 7.

99. *Id.* at 6.

100. *Id.*

101. *See* Modrowski et al., *supra* note 95, at 292 (noting that youth who have experienced trauma may “cope through adopting an emotionally-detached and callous façade”).

102. *Id.*

103. *See* Goff et al., *supra* note 53, at 527; Wilson et al., *supra* note 53, at 60; Halberstadt et al., *supra* note 53, at 405; Hugenberg & Bodenhausen, *Facing Prejudice*, *supra* note 53, at 643.

104. Dudley, *supra* note 93, at 7.

105. *Id.*

damage property in the school counselor's office. The heartbreaking irony is that these trauma responses often do cause adults to pull away—and even to call the police and create a juvenile record.

Research shows that youth with a history of trauma are more likely to have interactions with police and are thus at greater risk of accumulating juvenile records, compared to youth who have not experienced trauma.<sup>106</sup> Young people who are involved in the juvenile legal system are several times more likely than those who are not involved to have experienced trauma and adverse childhood experiences before entering the system.<sup>107</sup> Experts estimate that between seventy-five and ninety-three percent of youth in the juvenile legal system have experienced trauma,<sup>108</sup> and as many as one-third of incarcerated youth have Post-Traumatic Stress Disorder (“PTSD”).<sup>109</sup>

Police encounters themselves can be traumatizing for young people, especially Black youth who are more likely to feel afraid, unsafe, and angry during stops.<sup>110</sup> A growing body of research shows that Black youth are prone to “anticipatory stress” during police encounters and post-traumatic stress symptoms after.<sup>111</sup> This is especially true for those who live in neighborhoods

106. Jessica Salley Riccardi, Gabriella Celeste & Anastasia Dimitropoulos, *Recognizing and Responding to Traumatized Youth: Preliminary Results and Implications for Police Trainings*, 23 POLICE PRAC. & RSCH. 174, 174 (2021).

107. MENDEL, WHY YOUTH INCARCERATION FAILS, *supra* note 95, at 21.

108. Robin D. Jackson, Sesha Kethineni & Ying Cao, *Hopes for Healing: An Exploratory Study of Trauma-Informed Care Training and the Juvenile Justice System*, 148 CHILD. & YOUTH SERVS. REV. 1, 1 (2023).

109. *Id.*; see also JULIAN D. FORD, JOHN F. CHAPMAN, JOSEPHINE HAWKE & DAVID ALBERT, TRAUMA AMONG YOUTH IN THE JUVENILE JUSTICE SYSTEMS: CRITICAL ISSUES AND NEW DIRECTIONS 1–2 (2007), <https://courts.ca.gov/sites/default/files/courts/default/2024-12/btb25-1g-02.pdf> [<https://perma.cc/F4RR-GU85>].

110. Dylan B. Jackson, Chantal Fahmy, Michael G. Vaughn & Alexander Testa, *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 J. ADOLESCENT HEALTH 627, 628, 631 (2019) (documenting “physical reactions such as sweating, trouble breathing, nausea or a pounding heart” as a measure of PTSD among youth when recalling a police encounter and finding that “youth who have been stopped more frequently were more likely to report heightened emotional distress and posttraumatic stress symptoms after the encounter”); Susan A. Bandes, Marie Pryor, Erin M. Kerrison & Phillip Atiba Goff, *The Mismeasure of Terry Stops: Assessing the Psychological and Emotional Harms of Stop and Frisk to Individuals and Communities*, 37 BEHAV. SCI. & L. 176, 184 (2019).

111. See Lindsey Webb, Dylan B. Jackson, Monique Jindal, Sirry Alang, Tamar Mendelson & Laura K. Clary, *Anticipation of Racially Motivated Police Brutality and Youth Mental Health*, 83 J. CRIM. JUST., Nov.–Dec. 2022, at 1, 1 (finding that “[y]outh with anticipatory stress stemming from both personal and vicarious police brutality had more symptoms of anxiety, depression, and PTSD, as well as lower hope, compared to youth without anticipatory stress”); see also Jackson et al., *supra* note 108, at 2 (discussing the prevalence of PTSD symptoms in youth after encounters with police); Thema Bryant-Davis, Tyonna Adams, Adriana Alejandre & Anthea A. Gray, *The Trauma Lens of Police Violence Against Racial and Ethnic Minorities*, 73 J. SOC. ISSUES 852, 866 (2017) (“The potential psychological consequences for the direct and indirect targets of racially and ethnically motivated police brutality may include . . . distrust, fear, anger, shame, PTSD, isolation, and self-destructive behaviors.”);

with high police presence and have been exposed to direct and vicarious contact with police.<sup>112</sup> Approximately two-thirds of youth stopped by police report feeling disrespected during these encounters.<sup>113</sup> When youth believe police are treating them unfairly, they are less likely to comply, increasing the likelihood they will be arrested and have an additional record.<sup>114</sup>

Implicit racial bias may cause police to misinterpret a Black youth's fight-flight-freeze responses.<sup>115</sup> A young person in a "fight" response may react to police with extreme bravado.<sup>116</sup> Although this is a common defense mechanism youth use to cope with the anxiety of a police encounter, officers view these responses as threatening and defiant.<sup>117</sup> When a young person runs from police in a "flight" response, the officer will often assume they are guilty of some crime and may charge them with evading the police.<sup>118</sup> As part of the "freeze" response, a young person may initially be unresponsive to police.<sup>119</sup> Misperceiving this as a willful disregard of commands, the officer may escalate the encounter with more aggressive and forceful language,<sup>120</sup> which, in turn, may increase the young person's fear and cause them to become verbally hostile and visibly agitated.<sup>121</sup> Ultimately, these escalations can lead to arrest for assaulting an officer and be accompanied by a new juvenile record.<sup>122</sup>

Juvenile court records originate at the time of arrest.<sup>123</sup> Thus, the first step in reducing the proliferation of these records and their attendant harms<sup>124</sup> must be the elimination of unnecessary referrals of youth to the legal system. As evident from this discussion, systems-actors and policymakers must closely examine the ways a child's race, disability, and trauma contribute to unnecessary referrals to juvenile court and the subsequent creation of harmful juvenile records.

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Amanda Geller, Jeffrey Fagan, Tom Tyler & Bruce G. Link, *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321, 2324–25 (2014) (finding young men who experienced more police stops also experienced more trauma symptoms).

112. See Webb et al., *supra* note 111, at 1; see also Jackson et al., *supra* note 108, at 631; Bryant-Davis et al., *supra* note 111, at 866; Geller et al., *supra* note 111, at 2324–25.

113. Riccardi, *supra* note 106, at 175.

114. *Id.*

115. See Goff et al., *supra* note 53, at 526; Wilson et al., *supra* note 53, at 71; see also Halberstadt et al., *supra* note 53, at 413; Hugenberg & Bodenhausen, *Facing Prejudice*, *supra* note 53, at 640.

116. Dudley, *supra* note 93, at 10–11.

117. *Id.*

118. See, e.g., TENN. CODE ANN. § 39-16-603 (2024); D.C. CODE § 22-405.01 (2025).

119. HENNING, RAGE OF INNOCENCE, *supra* note 74, at 171.

120. Geller et al., *supra* note 111, at 2322.

121. See Dudley, *supra* note 93, at 8.

122. See, e.g., D.C. CODE § 22-405 (2025).

123. See, e.g., Joseph P. Ryan, Jane Marie Marshall, Denise Herz & Pedro M. Hernandez, *Juvenile Delinquency in Child Welfare: Investigating Group Home Effects*, 30 CHILD. & YOUTH SERVS. REV. 1088, 1091 (2008).

124. See *infra* Part IV.

## III. INSTITUTIONALIZATION AND THE ACCUMULATION OF RECORDS

Systems-actors and policymakers must also be attentive to the ways in which the juvenile legal system itself creates a pile-on effect that generates new criminal and delinquency records after the child enters the system.<sup>125</sup> Youth in the system are not only deprived of the support and services they need to rehabilitate and thrive after an arrest; they are also surveilled at every stage of the legal system, from arrest to completion of disposition and final termination of the case. Surveillance both in the community and during incarceration increases the risk that the youth will face new and unnecessary charges that either exacerbate or ignore their disabilities and trauma.

Part III examines the ways in which youth accumulate new records when correctional or institutional staff call the police to address behaviors in a youth facility or placement. Section III.A focuses on the failure of group homes, residential treatment centers, and youth prisons and jails to provide children with the resources they need to support their development, accommodate their disabilities, and heal from their trauma. Without these resources, young people may repeat the behaviors that led to their initial arrest. Institutional staff contribute to the accumulation of juvenile records when they criminalize race, adolescence, disability, and trauma. Section III.B highlights the hyper-surveillance and criminalization of youth in facilities that increase the risk of subsequent arrests, court referrals, and the pile-on of juvenile records.

A. *Impeding Development: Compounding Trauma and Disability in Youth Jails, Prisons, and Residential Facilities*

Youth like Damion are not only more likely to be arrested and referred to juvenile court; they are also more likely to be removed from their homes and incarcerated once they enter the system. Research shows that Black youth, youth with disabilities, and youth with trauma histories are disproportionately removed from their homes and confined in carceral congregate care institutions, like youth prisons, residential treatment centers, and group homes.<sup>126</sup> Once they

125. See *infra* Section IV.B.

126. *Easy Access to the Census*, *supra* note 36 (noting that in 2021 Black youth account for forty-two percent of all young people sent to out of home placements by juvenile courts); SNYDMAN, *supra* note 59, at 16 (noting Black youth make up about fifteen percent of youth, but about thirty-five percent of cases handled by juvenile courts); *id.* at 6 (noting that data from a variety of sources indicates the number of justice-involved and incarcerated youth with disabilities is significantly high, and disproportionate to the overall youth population); *Youth with Disabilities in Juvenile Corrections (Part 2): Transition and Reentry to School and Community*, IRIS CTR. (2017), <https://iris.peabody.vanderbilt.edu/module/jj2/cresource/q1/p01/> [<https://perma.cc/6R2M-TJJF>] (“[E]stimates of the percentages of incarcerated youth with disabilities typically range from 30 to 60%, with some estimates as high as 85%.”); *Trauma-Responsive Care for Youths in Correctional Facilities*, NAT’L COMM’N ON CORR. HEALTH CARE (Aug. 2022), <https://www.ncchc.org/position-statements/>

are confined, they rarely get the resources they need to support their healthy development or to manage the symptoms of their trauma or disabilities.<sup>127</sup> Without these resources, youth are unable to control those behaviors that are a manifestation of their trauma and disabilities, and they are more likely to be criminalized by staff who call the police and urge prosecution for new offenses that contribute to the pile-on of more juvenile records.<sup>128</sup>

Institutions housing young people accused or found guilty of crimes are not required to keep and report data on the number of times they call the police, file an incident report with the local probation office, or refer a child back to court as a form of discipline.<sup>129</sup> Without this data, it is difficult to understand the full scope of the pile-on of juvenile records flowing from carceral facilities, but anecdotal evidence from attorneys representing youth across the country suggests that these institutions routinely call the police.<sup>130</sup> Because youth from the delinquency system may be housed in the same residential treatment centers or group homes as youth from the child welfare system, research on the “foster-care-to-prison pipeline” illuminates the prevalence of law enforcement referrals originating in these institutions.<sup>131</sup> This research widely acknowledges that youth placed in group homes or residential treatment centers are at immense risk of arrest, court referrals, and the creation of juvenile records.<sup>132</sup>

It is not uncommon for teenagers incarcerated in youth prisons and jails to be confined to a cell for a large portion of the day, with physical activity

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trauma-responsive-care-for-youths-in-correctional-facilities/ [https://perma.cc/LL4S-M9ZZ] (noting that incarcerated youth are thirty percent to sixty-five percent more likely to have been exposed to childhood trauma than the average adolescent and four times as likely to have experienced four or more traumatic events).

127. See Rachel Anspach, *The Foster Care to Prison Pipeline*, TEEN VOGUE (May 25, 2018), <https://www.teenvogue.com/story/the-foster-care-to-prison-pipeline-what-it-is-and-how-it-works> [https://perma.cc/U7S6-YT3Q (staff-uploaded archive)].

128. See *id.*

129. While these institutions are asked to track and report data relating to the number and characteristics of youth they house, no federal law requires the tracking and reporting of data on police reports, probation violations, or court referrals. See *Census of Juveniles in Residential Placement*, OFF. JUV. JUST. & DELINQ. PREVENTION, <https://ojjdp.ojp.gov/research-and-statistics/research-projects/Census-of-Juveniles-in-Residential-Placement/overview> [https://perma.cc/SRS4-UESJ] (last updated Dec. 17, 2024).

130. The authors train defenders across the country who frequently discuss this issue.

131. See Priority Statement from the Nat'l Foster Care Youth & Alumni Pol'y Council 3–4 (Sept. 2023), [https://drive.google.com/file/d/1RRbNHnG26gg5x2\\_Xlbop\\_njnVUZfZkZv/view](https://drive.google.com/file/d/1RRbNHnG26gg5x2_Xlbop_njnVUZfZkZv/view) [https://perma.cc/YV3M-FVHY]; Anspach, *supra* note 127.

132. J.J. Cutuli, Robert M. Goerge, Claudia Coulton, Maryanne Schretzman, David Crampton, Benjamin J. Charvat, Nina Lalach, Jessica A. Raithel, Cristobal Gacitua & Eun Lye Lee, *From Foster Care to Juvenile Justice: Exploring Characteristics of Youth in Three Cities*, 67 CHILD. & YOUTH SERVS. REV. 84, 93 (2016); Ryan et al., *supra* note 123, at 1094; see also Priority Statement from the Nat'l Foster Care Youth & Alumni Pol'y Council, *supra* note 131, at 3–4 (noting that in one survey, forty-nine percent of young people in foster care reported their caregivers threatened to call police as a form of discipline and thirty percent actually had police called on them).

limited to one or two hours per day or less.<sup>133</sup> Youth who are held in solitary confinement (often called administrative segregation or isolation) have virtually no social contact with others and no opportunity to relieve stress through recreation or exercise.<sup>134</sup> The restrictive and repetitive environments of institutional placements deprive youth of opportunities to develop autonomy and to practice critical-thinking skills, independent decision-making, and resilience.<sup>135</sup> Incarceration increases stress, interrupts important connections youth may have with family and adult mentors or trusted therapists, and interferes with positive socialization that is essential for socio-emotional development.<sup>136</sup>

Youth in congregate care institutions also experience a phenomenon experts call “institutional betrayal trauma.”<sup>137</sup> This occurs when a young person has experienced trauma or abuse perpetrated by individuals affiliated with institutions that should be keeping them safe, helping them heal from past traumas, and treating them fairly.<sup>138</sup> Unfortunately, abuse in youth jails and prisons has been pervasive.<sup>139</sup> Many incarcerated youth report being physically and sexually abused by staff or peers in the facility.<sup>140</sup> Even more report witnessing this abuse—often repeatedly.<sup>141</sup> Children in group homes and

133. Timothy A. Brusseu, Ryan D. Burns & James C. Hannon, *Physical Activity and Health-Related Fitness of Adolescents Within the Juvenile Justice System*, BIOMED RSCH. INT’L, Jan. 2018, at 1, 3.

134. See HUM. RTS. WATCH & ACLU, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 1, 121, 126, 134 (2012).

135. Julia Dmitrieva, Kathryn C. Monahan, Elizabeth Cauffman & Laurence Steinberg, *Arrested Development: The Effects of Incarceration on the Development of Psychosocial Maturity*, 24 DEV. & PSYCHOPATHOLOGY 1073, 1074 (2012).

136. See DEV. SERVS. GRP., INC., LITERATURE REVIEW: FAMILY ENGAGEMENT IN JUVENILE JUSTICE 7–8 (2018), <https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/family-engagement-in-juvenile-justice.pdf> [<https://perma.cc/JL2A-RRWG>]; see also SANDRA VILLALOBOS AGUDELO, VERA INST. OF JUST., THE IMPACT OF FAMILY VISITATION ON INCARCERATED YOUTH’S BEHAVIOR AND SCHOOL PERFORMANCE: FINDINGS FROM THE FAMILIES AS PARTNERS PROJECT 1 (2013), <https://vera-institute.files.svdcn.com/production/downloads/publications/impact-of-family-visitation-on-incarcerated-youth-brief.pdf> [<https://perma.cc/9P55-L6GW>]; JUST. FOR FAMS. & DATA CTR., FAMILIES UNLOCKING FUTURES: SOLUTIONS TO THE CRISIS IN JUVENILE JUSTICE 7 (2012), [https://www.justice4families.org/media/Families\\_Unlocking\\_FuturesFULLNOEMBARGO.pdf](https://www.justice4families.org/media/Families_Unlocking_FuturesFULLNOEMBARGO.pdf) [<https://perma.cc/3B37-VECV>]. See generally HENNING, RAGE OF INNOCENCE, *supra* note 74 (documenting law enforcement injustices encountered by Black American youth).

137. Modrowski et al., *supra* note 95, at 289.

138. *Id.*

139. RICHARD A. MENDEL, THE ANNIE E. CASEY FOUND., NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION 5 (2011), <https://assets.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf> [<https://perma.cc/LLH8-DETQ>].

140. *Id.*; see also Meg Anderson, *Youth Detention Facilities Face Increased Scrutiny Amid a Wave of Abuse Lawsuits*, NPR (May 17, 2024, 4:49 PM), <https://www.npr.org/2024/05/17/1251963778/youth-detention-juvenile-crime-sexual-abuse-lawsuits> [<https://perma.cc/6HDN-JZJS>] (describing “a flurry of legal cases around the country” related to sexual abuse by employees of facilities housing children charged with a crime).

141. See MENDEL, WHY YOUTH INCARCERATION FAILS, *supra* note 95, at 5.

residential treatment centers also report adults yelling, swearing, pushing, grabbing, slapping, or throwing something at them.<sup>142</sup> Sometimes staff hit youth hard enough to leave marks or cause injuries.<sup>143</sup> Other youth are subjected to sexual fondling or touching, repeated demands to have intercourse or oral sex, and rape.<sup>144</sup>

Mistreatment by staff or guards in a youth facility increases a youth's overall distrust of institutions and authority figures.<sup>145</sup> Institutional betrayal trauma compounds pre-existing trauma and can heighten mental health problems into adulthood, which is especially troubling in light of data showing that young people entering youth jails and prisons are already more likely than nonincarcerated youth to have PTSD, suicidal thoughts, and depression.<sup>146</sup> Youth who feel betrayed in institutions may exhibit defiance or aggression toward staff and be less willing to engage in the programming offered in congregate care settings.<sup>147</sup> These responses increase the likelihood that caregivers will call upon police or the court to intervene when they misbehave, resulting in an additional juvenile record.<sup>148</sup>

Many young people who have experienced trauma also have a learning disability called emotional disturbance, which is characterized by anxiety, aggression, and self-injury and is highly stigmatized, putting youth with this diagnosis at great risk of criminalization.<sup>149</sup> Youth in the juvenile legal system are approximately ten times more likely to have emotional disturbance or related conditions compared to youth not involved in the system.<sup>150</sup> The Individuals with Disabilities Education Act ("IDEA") protects the rights of disabled youth.<sup>151</sup> It requires services, accommodations, and individualized, measurable, academic goals for disabled youth to be outlined in Individualized

142. SARAH FATHALLAH & SARAH SULLIVAN, THINK OF US, AWAY FROM HOME: YOUTH EXPERIENCES OF INSTITUTIONAL PLACEMENTS IN FOSTER CARE 102 (2021), [https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96\\_Away%20From%20Home%20-%20Report.pdf](https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96_Away%20From%20Home%20-%20Report.pdf) [<https://perma.cc/A93W-JT38>]; see also Shabnam Javdani, McKenzie N. Berezin & Keisha April, *A Treatment-to-Prison Pipeline? Scoping Review and Multimethod Examination of Legal Consequences of Residential Treatment Among Adolescents*, 52 J. CLINICAL CHILD & ADOLESCENT PSYCH. 376, 388 (2023).

143. FATHALLA & SULLIVAN, *supra* note 142, at 102.

144. *See id.*

145. Modrowski et al., *supra* note 95, at 289.

146. MENDEL, WHY YOUTH INCARCERATION FAILS, *supra* note 95, at 22–24.

147. Modrowski et al., *supra* note 95, at 290.

148. *See id.*

149. Natasha M. Strassfield & Hua-Yu Sebastian Cherng, *Services for Juveniles with Emotional Disturbances in Secure-Care Settings: An Exploratory Analysis of Racial Disparities and Recidivism*, 47 BEHAV. DISORDERS 257, 257 (2022); see also Nanda, *supra* note 90, at 271 (noting the stigma associated with this diagnosis and that Black and Latino children are disproportionately diagnosed with "emotional disturbance," which "gives rise to a form of racial stratification and ultimately, criminalization of students labelled as emotionally disturbed").

150. Strassfield & Cherng, *supra* note 149, at 257.

151. 20 U.S.C. § 1400(d)(1)(B).



Education Programs (“IEPs”).<sup>152</sup> Despite the law, many incarcerated students with disabilities still lack access to the services they need to thrive.<sup>153</sup> The U.S. Department of Education issued formal guidance on correctional facilities’ obligations for students with disabilities pursuant to IDEA in 2014, but IDEA is rarely enforced on behalf of children in youth prisons.<sup>154</sup>

Schools in youth prisons often lack the resources necessary to provide disabled youth with the highly specialized education they need.<sup>155</sup> Some youth prisons will alter IEPs by adding or removing services based on what is already available at the facility.<sup>156</sup> Students who were served by IEPs in their home school may experience extended delays in receiving services while the youth prison waits to receive their education records.<sup>157</sup> Once an IEP is implemented, the frequent use of restraint and seclusion in youth prisons can make students miss instruction time.<sup>158</sup> Additionally, youth prisons often fail to identify children with learning disabilities who would be eligible for services under IDEA.<sup>159</sup> These students would benefit from mental or behavioral health programs specifically designed for youth with emotional disturbance or related conditions.<sup>160</sup>

Youth with disabilities are routinely held in institutions with the most restrictions and the least capacity to accommodate their needs and provide specialized services.<sup>161</sup> The rigid structure of Damion’s group home, for example, could not accommodate or manage his ADHD. In fact, it made it worse. Damion needed time outside after school to burn off energy before sitting down to complete his homework. Instead, he was bussed straight to the group home after his last class, moving from one highly structured environment to another. He also needed a quiet space to complete his homework without distraction so he could focus. Instead, he was placed in a room with peers who were noisy and tempted each other to roughhouse. Although his IEP emphasized his need for individualized assistance with homework, no adult was

152. *Id.* § 1414(d).

153. See SNYDMAN, *supra* note 59, at 2, 18–19; Strassfield & Cherng, *supra* note 149, at 258.

154. See U.S. DEP’T OF EDUC. & U.S. DEP’T OF JUST., GUIDING PRINCIPLES FOR PROVIDING HIGH-QUALITY EDUCATION IN JUVENILE JUSTICE SECURE CARE SETTINGS, at iv (2014), <https://www.ed.gov/sites/ed/files/policy/gen/guid/correctional-education/guiding-principles.pdf> [<https://perma.cc/BZ79-2C87>]; SNYDMAN, *supra* note 59, at 20.

155. See SNYDMAN, *supra* note 59, at 18–19, 28.

156. See *id.* at 19.

157. See *id.*

158. See *id.*

159. See *id.*

160. See Strassfield & Cherng, *supra* note 149, at 259.

161. See FATHALLAH & SULLIVAN, *supra* note 142, at 9; Jamelia Morgan, *Disability, Policing, and Punishment: An Intersectional Approach*, 75 OKLA. L. REV. 169, 189 (2022) (noting that “systemic failures within prisons and jails reflect the failure of prison systems to respond to the needs of disabled people”).

available to help. It is no surprise that when the boys were left alone, Damion abandoned his schoolwork and joined in the roughhousing.

When young people with disabilities and trauma histories are deprived of the services they need to cope with the stress of prison or a residential facility, they may find it challenging to regulate their emotions and behaviors, and thus may be at increased risk for accumulating new juvenile records.<sup>162</sup> As described above in Part II, they often refuse to obey orders, damage property, overreact to perceived threats, or get into fights with peers or staff. Although these behaviors should be expected from youth who are not supported in these settings, staff and guards frequently respond by calling the police or initiating court referrals for new offenses.<sup>163</sup> New charges can extend a child's sentence, revoke opportunities for a "step down" to a less restrictive and more therapeutic setting, and create additional juvenile records that can be used against them in the future.<sup>164</sup>

Depriving disabled youth and youth who have experienced trauma of mental health and special education services while they are detained has long-term impacts not only on their behavior and academic achievements, but also on the likelihood that they will be drawn back into the juvenile legal system and receive new records once they are released. Studies show that youth who receive high-quality educational services while incarcerated are more likely to return to school after reentry and less likely to be charged with a new offense.<sup>165</sup> When surveyed, incarcerated Black youth with disabilities frequently expressed desires to create successful futures for themselves and saw school as an important means by which they could achieve their goals.<sup>166</sup> Unfortunately, Black youth are more likely to be sent to restrictive programs with fewer specialized education and mental health services than White youth.<sup>167</sup> This is due, at least in part, to implicit racial bias of judges and other decision-makers.

162. See MENDEL, *WHY YOUTH INCARCERATION FAILS*, *supra* note 95, at 5, 21.

163. See Javdani, *supra* note 142, at 388–91 (noting that youth are likely to be charged with a legal offense once confined to residential treatment centers, and further noting that these arrests and court referrals often arise out of staff's punitive responses to minor youth behavior that is a reaction to stress or trauma and that "would not be considered criminal outside of these high surveillance settings").

164. See NAT'L COUNCIL OF JUV. & FAM. COURT JUDGES, *ENHANCED JUVENILE JUSTICE GUIDELINES* ch. VII, at 1–7 (Jessica Pearce ed., 2018), [https://www.ncjfcj.org/wp-content/uploads/2021/03/NCJFCJ\\_Enhanced\\_Juvenile\\_Justice\\_Guidelines\\_Final-2.pdf](https://www.ncjfcj.org/wp-content/uploads/2021/03/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final-2.pdf) [<https://perma.cc/H3W8-5PD6>] (noting that judges should take into account prior adjudications when determining disposition on a new adjudication and that judges should consider "graduated responses" taking into account compliance with prior disposition orders); *id.* ch. IX, at 4 (noting that the judge should decide how it will be determined when the youth is ready to be released from an out-of-home placement and that graduated sanctions are incorporated into the plan).

165. Strassfield & Cherng, *supra* note 149, at 259.

166. Taryn VanderPyl, *Incarcerated DisCrit: The Intersection of Disproportionality in Race, Disability, and Juvenile Justice*, 15 JUST. POL'Y J. 1, 9–12 (2018).

167. Strassfield & Cherng, *supra* note 149, at 259.

Black youth with emotional disturbance are also more likely to be re-arrested for a new offense than White youth with this disability.<sup>168</sup>

B. *Accumulating Records in Carceral Settings: Hyper-Surveillance and Intense Scrutiny*

Young people who are incarcerated in youth jails, prisons, group homes, and residential facilities are under constant surveillance. Research suggests that over seventy percent of youth in residential treatment centers are in locked settings.<sup>169</sup> Over eighty percent of the centers use physical restraint and seclusion.<sup>170</sup> Even group homes that exclusively house foster youth surveil, punish, and restrict their behaviors.<sup>171</sup> Experts describe staff in these institutions as mirroring a carceral setting by restricting youth's freedom of movement, listening to all phone calls, reading incoming and outgoing mail, and using extreme disciplinary measures like isolation and denial of family visits.<sup>172</sup>

Researchers note that youth, especially youth of color, frequently experience "physical restraint, surveillance, and problematic power dynamics with staff" in congregate care institutions.<sup>173</sup> In turn, youth may respond aggressively to teasing by staff or other youth or become defensive and oppositional when accused of violating institutional rules, taking food without permission, or refusing to participate in activities.<sup>174</sup> Criminal charges, and their resulting juvenile records, in congregate care institutions often arise out of stressful events, such as disagreements with staff or peers, unexpected changes to routines, or challenges with family.<sup>175</sup> Researchers interviewed young people leaving congregate care and found that many of their charges arose out of incidents in which the youth perceived staff as antagonizing them or treating them disrespectfully.<sup>176</sup> Some youth receive charges as they struggle to adjust to the inflexibility of rules in residential treatment centers.<sup>177</sup> Others reported that their charges arose out of "feelings of powerlessness, lack of trust with social workers, and a belief that the system had given up on them."<sup>178</sup>

168. *Id.* at 258.

169. Javdani et al., *supra* note 142, at 377.

170. *Id.*

171. FATHALLAH & SULLIVAN, *supra* note 142, at 100.

172. *Id.*

173. Javdani et al., *supra* note 142, at 388.

174. *See id.*

175. *Id.* at 380.

176. *Id.*; *see also* Julie Shaw, *Why Do Young People Offend in Children's Homes? Research, Theory, and Practice*, 44 BRIT. J. SOC. WORK, 1823, 1833–34 (2014) (describing a pattern of children leaving care centers after becoming hopeless because of disagreeable and domineering staff).

177. Javdani et al., *supra* note 142, at 380.

178. *Id.*; *see also* Anne-Marie Day, *Hearing the Voice of Looked After Children: Challenging Current Assumptions and Knowledge About Pathways into Offending*, 16 SAFER CMTYS. 122, 127–29 (2017) (finding

Rather than responding to these behaviors that are provoked by traumatic and stressful interactions with staff and peers with the support youth need to heal and experience healthy development, researchers found that staff instead rely “on law enforcement to set a precedent through arrest in order to maintain control of youth behavior.”<sup>179</sup> Staff often call police to intervene when youth are arguing or fighting, throwing their own belongings, running away, or smoking marijuana.<sup>180</sup> Between ten and thirty-five percent of youth are arrested or referred to court during their stay in congregate care facilities.<sup>181</sup> One study found that twenty-eight percent of youth in residential treatment centers were arrested or referred to court during their stay, compared to fourteen percent of youth in therapeutic foster homes.<sup>182</sup> The majority of youth who are arrested or referred to court while in congregate care institutions are charged with property crimes or peer-related offenses, such as threats and misdemeanor assaults.<sup>183</sup> Less serious behaviors are more likely to result in formal charges and the pile-on of juvenile records for youth who are in congregate care compared to youth living in family settings.<sup>184</sup> Youth like Damion are often arrested in a group home for behaviors that would warrant little, if any, discipline by parents or guardians, if they were living at home.<sup>185</sup> Many facilities have policies that mandate the reporting of certain behaviors to the police.<sup>186</sup> The staff at Damion’s group home may have felt obligated to report his incident to the court after they found the other boy crying, even though he was not seriously injured.

Peer dynamics unique to congregate care facilities and youth prisons also contribute to arrests, court referrals, and the creation of new juvenile records. The frequent introduction of new peers into the environment disrupts the trust necessary for healing from trauma and supporting mental health.<sup>187</sup> It can also create frequent pressure for incarcerated youth to assert their status in shifting group dynamics or show their allegiance to certain peers.<sup>188</sup> Incarcerated youth often try to impress each other with “one-upping” behaviors, accepting

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that children feel a “sense of powerlessness, mistrust and hostility towards those who supposedly are the child’s corporate parent” while in group homes).

179. Javdani et al., *supra* note 142, at 388.

180. Anspach, *supra* note 127.

181. Javdani et al., *supra* note 142, at 379.

182. John Robst, Mary Armstrong, Norin Dollard & Lodi Rohrer, *Arrests Among Youth After Out-of-Home Mental Health Treatment: Comparisons Across Community and Residential Treatment Settings*, 23 CRIM. BEHAV. & MENTAL HEALTH 162, 171 (2013) [hereinafter Robst et al., *Arrests*].

183. Javdani et al., *supra* note 142, at 380.

184. *Id.* at 388.

185. *Id.* at 379–80; see also Carol Hayden & Sam Graves, *Patterns of Offending Behavior over Time for Different Groups of Children in Relation to Time Spent in and out of Care*, 23 CHILD & FAM. SOC. WORK 25, 30 (2017) (explaining that children in group homes are less likely to commit serious offenses than those not in care).

186. Modrowski et al., *supra* note 95, at 286.

187. Javdani et al., *supra* note 142, at 380.

188. *Id.*

challenges to break rules, and other risk-taking.<sup>189</sup> Although this behavior is an expected part of adolescent development, it is criminalized in congregate care settings.<sup>190</sup>

When young people enter group homes, residential treatment centers, or youth prisons, staff recognize these placements as a “last resort for young people who are particularly difficult to manage.”<sup>191</sup> Criminalization of the behaviors of young people in these institutions is not unique to the United States. A study examining similar congregate care centers in Australia found that the overuse of police for behavior management, along with insufficient staff training and generally dysfunctional dynamics, increased police and legal system contact for young people.<sup>192</sup> Similarly, congregate care staff surveyed in the United Kingdom believed that arrests were necessary to disincentivize future misbehavior among youth in their care.<sup>193</sup> The same survey found that legal professionals believed the staff “unnecessarily criminalized young people for behaviors that would likely not be considered illegal if youth were in their homes.”<sup>194</sup>

More research needs to be done on the long-term impacts of the criminalization of youth in congregate care institutions. A 2023 study found that twenty-five percent of delinquency offenses in one county originated from charges involving young people at a local residential treatment facility, and ninety-nine percent of those charged from that center were youth of color.<sup>195</sup> A 2013 study found that young people arrested while in out-of-home mental health treatment centers had quadruple the risk of being arrested again following treatment compared to their peers who were not arrested.<sup>196</sup> Several older studies show that when compared to community-based services, residential treatment centers place young people at greater risk of accruing additional juvenile records even after they leave treatment.<sup>197</sup>

189. *See id.* (noting that the frequent introduction of new peers “creates pressure for youth to offend to gain status or identify with peers”).

190. Javdani et al., *supra* note 142, at 380.

191. *Id.*

192. Allison Gerard, Andrew McGrath, Emma Colvin & Kath McFarlane, ‘I’m Not Getting Out of Bed!’ *The Criminalisation of Young People in Residential Care*, 52 AUSTL. & N.Z. J. CRIMINOLOGY 76, 81–84 (2019).

193. Javdani et al., *supra* note 142, at 380; *see also* Julie Shaw, *Professionals’ Perceptions of Offending in Children’s Residential Care*, 17 CHILD & FAM. SOC. WORK 359, 362–63 (2011) (discussing how police often become involved in group home disputes between youth housed there).

194. Javdani et al., *supra* note 142, at 380.

195. *Id.* at 388.

196. Robst et al., *Arrests*, *supra* note 182, at 170.

197. *See id.* at 175; Ryan et al., *supra* note 123, at 1094–95 (finding that when researchers compared the long-term effects of congregate care institutions to foster homes, youth who were formerly in congregate care institutions had two-and-a-half times the risk of having later contact with the juvenile

Incarceration and other out-of-home placements put youth with disabilities and trauma histories at increased risk for the accumulation of new juvenile records. This “pile-on effect” begins when institutions fail to support youth as they heal from trauma and manage their disabilities. Deprived of this support, incarcerated youth struggle to regulate their emotions and comply with authority. When staff at the institutions respond to the resulting disruptive and noncompliant behaviors by calling police or initiating court referrals, new juvenile records are created, and young people are forced to contend with the harmful collateral consequences for many years to come. To eliminate the harms of juvenile records, systems-actors and policymakers must investigate institutionalization’s role in the creation of unnecessary juvenile records.

#### IV. THE INSIDIOUS HARMS OF JUVENILE RECORDS

The criminalization of disability, trauma, and adolescence slowly constructs an image that a child like Damion is a dangerous, repeat offender who is beyond rehabilitation. The cumulative impact of his record, as each charge is listed and the total number is tallied, obscures the full story behind his behavior. No one hears that Damion was just a child, struggling to manage the symptoms of his disability without the supports he needed at school or at his group home. Instead, his lengthy juvenile record becomes the only story.

The collateral consequences of a juvenile record impact almost every domain of a child’s life.<sup>198</sup> These harms begin immediately after the first record is created and follow them into adulthood. For some young people, these consequences can be as extreme as deportation if they are noncitizens<sup>199</sup> and as devastating as eviction if they live in public housing.<sup>200</sup> Even when the fallout appears less extreme, it still has lasting consequences on the young person’s future life trajectory. Part IV provides a closer look at some of the more common and impactful harms of a juvenile record. Section IV.A begins with an examination of the escalating effects of juvenile records in the court system. Sections IV.B through IV.E explore the impact of juvenile records on secondary school exclusion, college and employment, police violence, and adolescent stress and recidivism.

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delinquency system, and that this risk increased by eighty percent for African American youth and by thirty-two percent for Hispanic youth); John Robst, Mary Armstrong & Norin Dollard, *Peer Contagion Among Youth in Medicaid-Funded Residential Mental Health Treatment Programs*, 33 CHILD. & YOUTH SERVS. REV. 651, 654 (2011) (finding that Black youth were more likely to experience police contact after leaving a residential treatment facility than youth of other races).

198. See Radice, *supra* note 15, at 368–69.

199. Rebecca Phipps, *Starting Over: The Immigration Consequences of Juvenile Delinquency and Rehabilitation*, 40 N.Y.U. REV. L. & SOC. CHANGE 515, 536–37 (2020).

200. Henning, *Eroding Confidentiality*, *supra* note 17, at 525–30 (noting that juvenile records are shared with housing authorities).

A. *Cumulative Effects of the Juvenile Court Record*

One of the often-overlooked harms of criminalizing race, adolescence, disability, and trauma is the cascading effect of juvenile records on decisionmakers throughout the legal system. The impact of each new charge is layered on top of the last until the child is facing extraordinary scrutiny and much more serious consequences. This insidious harm occurs even when the teenager's behavior has not actually become more serious or dangerous over time.

In theory, juvenile court is intended to give youth a "second chance." Thus, a child who commits a crime arising out of some adolescent mischief will often be diverted. But a child who looks like a repeat offender or is mislabeled as a violent felon will lose the benefit of diversion and the opportunity to be treated as a child—even if they have been repeatedly and unnecessarily arrested and prosecuted for normal adolescent behaviors or behaviors that are a manifestation of their trauma and disabilities. Damion's artificially inflated record makes him look more criminally involved than he actually is. After every new arrest, the judge is more likely to detain Damion pending trial.<sup>201</sup> The prosecutor is less likely to extend a favorable plea offer.<sup>202</sup> And even though judges are technically not allowed to consider past charges during a trial, they are more likely to find a young person with a prior record guilty if they are unable to do the mental gymnastics required to temporarily "forget" that they have seen the youth before.

Damion's juvenile court record would also follow him if he were ever prosecuted in adult court. In deciding whether to transfer a child from juvenile to criminal court, judges will often evaluate a child's prior record by tallying the number of previous charges and purported severity of the child's record without closely examining the underlying facts or circumstances surrounding the accusations.<sup>203</sup> Judges may not understand how typical adolescent behaviors are exaggerated, criminalized, and mischaracterized as a felony offense at schools,

201. See NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, *supra* note 164, ch. IV, at 8 (noting that the court should have "information regarding the youth's prior involvement with the juvenile justice court" at the start of the detention hearing so the court may consider it in determining whether to release or detain the child); see, e.g., D.C. SUPER. CT. JUV. R. 106 (laying out the factors courts will consider in deciding whether a child is a danger to the public for purposes of pretrial detention).

202. See Carlos Berdejó, *Criminalizing Race: Racial Disparities in Plea-Bargaining*, 59 B.C. L. REV. 1187, 1220–21 (2018) (discussing data showing that prosecutors reduce charges less often when the accused has a prior record and noting that prosecutors reduce charges more often for White people with prior records than similarly-situated Black people).

203. See, e.g., *Kent v. United States*, 383 U.S. 541, 567 (1966); TENN. CODE ANN. § 37-1-134 (2025).

youth prisons, and congregate care institutions.<sup>204</sup> Black youth are particularly disadvantaged by these accumulated records when implicit racial bias causes judges to perceive Black youth as older, less innocent, and more worthy of adult punishment for their behaviors than their White counterparts.<sup>205</sup>

Once a young person is in adult court, many states allow judges to consider juvenile records during sentencing as evidence of prior criminality. California, Oklahoma, and Texas allow judges to consider all juvenile records at sentencing.<sup>206</sup> Arkansas and North Carolina only allow judges to consider delinquency adjudications involving offenses for which the youth could have been tried as an adult.<sup>207</sup> In Virginia, courts treat juvenile records the same as adult records if the defendant was at least fourteen years old when adjudicated delinquent for a charge that would be a felony if committed by an adult.<sup>208</sup> In some states, such as Georgia, juvenile records can be used not only in sentencing in adult court, but also to establish bail conditions and negotiate pleas.<sup>209</sup>

#### B. *School Pushout*

As state laws have eroded the confidentiality of juvenile court records and proceedings,<sup>210</sup> schools are increasingly aware of their students' arrests and prosecutions. Once the school learns about the child's court involvement, the child will be closely watched and highly scrutinized.<sup>211</sup> This, along with the stigma of being court-involved, places youth at greater risk of disciplinary actions and even subsequent arrests or court referrals.

Some states, like Missouri and New Jersey, allow schools to use juvenile records related to out-of-school conduct as the basis for suspensions or expulsions.<sup>212</sup> Students, like Damion, who get sent to detention or group homes for normal adolescent behaviors and manifestations of their disabilities often accrue unexcused absences and lose their spots in full time special education

204. See generally *Applying the Principles of Adolescent Development in Juvenile Delinquency Proceedings*, NAT'L COUNCIL JUV. & FAM. CT. JUDGES, <https://www.ncjfcj.org/bench-cards/applying-principles-of-adolescent-development-in-delinquency-proceedings/> [https://perma.cc/3S8S-6HZP] (encouraging judges to read research studies on adolescent development, recognize the developmental differences between youth and adults, and integrate applicable principles supported by the research at each stage of the case).

205. Goff et al., *supra* note 53, at 536.

206. CAL. CT. R. 4.421(b)(2) (2024); OKLA. STAT. tit. 10A, § 2-6-108(F)(3) (2024); TEX. FAM. CODE ANN. § 51.13(b) (2023).

207. ARK. CODE ANN. § 16-97-103(3) (2024) (noting that the crime must have been committed within ten years); N.C. GEN. STAT. § 7B-3000(f) (2004).

208. VA. CODE ANN. § 16.1-307 (2023).

209. GA. CODE ANN. § 15-11-703 (2024).

210. See *supra* notes 27–35 and accompanying text.

211. HENNING, RAGE OF INNOCENCE, *supra* note 74, at 140 (stating that “for many students, schools have become a literal and figurative extension of the criminal legal system” and describing increased surveillance at school).

212. MO. ANN. STAT. § 167.161(1) (2023); N.J. STAT. ANN. § 2A:4A-60(e) (2024).



schools or programs.<sup>213</sup> Many of these youth will then be sent to alternative schools or drop out entirely.<sup>214</sup> Students who remain in their special education programs may be ostracized and feel unwelcome.

Students who return to school after an arrest also may be excluded from extracurricular activities like student government, drama club, or choir.<sup>215</sup> Some youth with juvenile records may be prohibited from participating in school sports.<sup>216</sup> The North Carolina State Board of Education enacted an official rule prohibiting students found guilty of felony offenses from participating in competitive athletics.<sup>217</sup> Ineligibility is immediate and may last for the student's entire high school career unless the conviction is overturned on appeal or post-conviction review.<sup>218</sup> A similar rule exists in Wisconsin prohibiting a student "charged and/or convicted of a felony" from participating in high school sports until their sentence is served (for example, probation, community service, etc.).<sup>219</sup> Other states are attempting to adopt similar policies.<sup>220</sup>

The exclusion of youth from sports is a particularly insidious harm for youth with a juvenile record, given the rehabilitative and prosocial value that

213. See Sarah Beebe & Dustin Rynders, *Overcoming Barriers to School Reentry for Youth Leaving Juvenile Justice Facilities*, 42 U. ARK. LITTLE ROCK L. REV. 689, 696 (2020) (explaining that there is "often a delay in obtaining appropriate services" for students with disabilities returning to school after incarceration and that changes in placement occur due to a variety of factors, including the fact that schools in youth prisons and detention centers are often overseen by different school districts than the student's home school).

214. *Id.* at 689–90, 696 (explaining that students, including those with disabilities, "transitioning out of juvenile justice facilities face many barriers to reentry into public school[s]" and noting that, while IDEA requires schools to conduct Manifestation Determination Reviews for students with disabilities, they can be placed in alternative schools if the review finds their behavior was not a manifestation of their disability).

215. See HENNING, RAGE OF INNOCENCE, *supra* note 74, at 216 (noting that police involvement is stigmatizing and can lead to exclusion from after-school activities and other opportunities).

216. See, e.g., 16 N.C. ADMIN. CODE 6E.0207(j) (2024); N.C. HIGH SCH. ATHLETIC ASS'N, 2023–2024 HANDBOOK, § 1.2.13 (2023) [hereinafter N.C. HIGH SCH. ATHLETIC ASS'N, HANDBOOK], <https://web.archive.org/web/20240203233145/https://www.nchsaa.org/wp-content/uploads/2024/01/23-24-HANDBOOK-UPDATE-12624.pdf> [https://perma.cc/3HHY-QXJE]; WIS. INTERSCHOLASTIC ATHLETIC ASS'N, 2024–2025 HIGH SCHOOL ATHLETIC ELIGIBILITY INFORMATION BULLETIN 3 (2024) [hereinafter WIS. INTERSCHOLASTIC ATHLETIC ASS'N, BULLETIN], <https://www.wiaawi.org/Portals/0/PDF/Eligibility/eligibilityinfoform.pdf> [https://perma.cc/F5VB-AP9U].

217. 16 N.C. ADMIN. CODE 6E.0207(j) (2024); N.C. HIGH SCH. ATHLETIC ASS'N, HANDBOOK, *supra* note 216, § 1.2.13.

218. *Id.*

219. WIS. INTERSCHOLASTIC ATHLETIC ASS'N, BULLETIN, *supra* note 216, at 3.

220. For example, Florida lawmakers attempted to pass a bill requiring the Florida High School Athletic Association to adopt bylaws prohibiting students who are sentenced as adults for certain crimes from participating in high school sports. See H.B. 545, 2024 Leg., Reg. Sess. (Fla. 2024); see also *HB 545: Florida High School Athletic Association Student Eligibility Requirements*, FLA. SENATE, <https://www.flsenate.gov/Session/Bill/2024/545> [https://perma.cc/R8Q4-VYBY] (showing that the bill failed to make it out of committee).

sports offer to young people.<sup>221</sup> Sports programs support positive youth development by increasing social skills, providing a sense of community, and filling leisure time with safe and healthy activities.<sup>222</sup> As a result, youth who participate in school sports are less likely to be arrested or charged with a delinquent offense.<sup>223</sup> A study of nearly 1,200 public high schools by the University of Michigan found that sports programs reduce the rates of both suspensions and major crimes, such as serious violent behavior and attempted rape.<sup>224</sup>

### C. *College and Future Employment*

After high school, juvenile records continue to impact young people as they apply for college. Although the Common Application no longer asks about criminal records, colleges may still inquire on their supplemental applications.<sup>225</sup> According to a 2023 report from the U.S. Department of Education, “nearly 72 percent of institutions still require applicants to disclose criminal history information.”<sup>226</sup> Even when these applications do not specifically ask about juvenile court records, many applicants disclose information they are not required to because they misinterpret vaguely written questions. For example, a survey of campuses affiliated with the State University of New York found that only one out of sixty had additional instructions clarifying that applicants should answer “no” to a question about criminal history if they were prosecuted as a “Juvenile or Youthful Offender.”<sup>227</sup>

Juvenile records can make it more difficult for a young person to obtain employment,<sup>228</sup> especially when the job requires a fingerprint background check. Fingerprint checks are submitted directly to the Federal Bureau of

221. See generally Anoul Spruit, Eveline van Vugt, Claudia van der Put, Truday van der Stouwe & Geert-Jan Stams, *Sports Participation and Juvenile Delinquency: A Meta-Analytic Review*, 45 J. YOUTH ADOLESCENCE 655 (2016) (noting that participation in sports gives young people opportunities to form prosocial relationships with peers and adult mentors and practice social regulation and may contribute to avoiding risky behavior that would jeopardize their ability to continue to participate in sports).

222. *Preventing Juvenile Delinquency Through Sports*, EUGENE CIVIC ALL. (Jan. 26, 2018), <https://eugenevivicalliance.org/preventing-juvenile-delinquency-through-sports/> [<https://perma.cc/QK9Y-PG2W>].

223. *Id.*

224. Philip Veliz & Sohaila Shakib, *Interscholastic Sports Participation and School Based Delinquency: Does Participation in Sport Foster a Positive High School Environment?*, 6 SOCIO. SPECTRUM, 558, 558 (2012).

225. Emma Steele, *Common App Removes School Discipline Question on the Application*, COMMON APP (Sept. 30, 2020), <https://www.commonapp.org/blog/common-app-removes-school-discipline-question-college-application> [<https://perma.cc/C5G2-HH3U>].

226. U.S. DEP’T OF EDUC., *BEYOND THE BOX 2023*, at 20 (2023), <https://lincs.ed.gov/sites/default/files/2023-04/beyond-the-box.pdf> [<https://perma.cc/VY7Q-Y4WR>].

227. *Id.* at 25.

228. COLEMAN, *supra* note 23, at 6–7.

Investigation's national criminal records database,<sup>229</sup> which can uncover expunged and sealed records. While rules vary greatly, juvenile records may be automatic disqualifiers in some locales for careers in law enforcement,<sup>230</sup> education and childcare,<sup>231</sup> healthcare,<sup>232</sup> firefighting,<sup>233</sup> the military,<sup>234</sup> and other careers requiring fingerprint background checks.

Barriers to employment increase the risk of future court involvement as young people become anxious and cannot secure stable housing and resources to meet their basic needs.<sup>235</sup> Well-established criminology research shows that while most young people will grow out of the behaviors that landed them in juvenile court, factors like education and employment can predict whether they will be charged with new offenses in the future.<sup>236</sup> Youth who are excluded from higher education or viable employment due to a juvenile record may feel they have little choice but to resort to criminal behavior like selling drugs or shoplifting to support themselves.<sup>237</sup>

#### D. *Dehumanization and Justification of State-Sanctioned Violence*

Juvenile records also give state actors—like police officers—the fuel they need to dehumanize young people and justify harsh treatment and violence against people of color, especially those with disabilities. Stories dating back sixty years show how law enforcement's response to minor adolescent behaviors have contributed to the dehumanization and even tragic deaths of youth in need of care and support. In 1962, a police officer shot and killed African American fourteen-year-old David Carson.<sup>238</sup> Detroit media relied on David's juvenile

229. *Criminal Background Check*, DC HEALTH, <https://dchealth.dc.gov/service/criminal-background-check> [<https://perma.cc/3449-DSRX>]; see also *Do Expunged Records Show on FBI Background Checks?*, SAFEHIRING SOLS., <https://www.safehiringsolutions.com/blog/do-expunged-records-show-on-fbi-background-checks> [<https://perma.cc/88RL-ZDMD>] (noting that the Federal Bureau of Investigation may not be able to disclose these records depending on state-specific laws).

230. See *Career Opportunities Frequently Asked Questions*, CITY SAN DIEGO, <https://www.sandiego.gov/police/recruiting/faqs> [<https://perma.cc/FG2S-N53X>].

231. *Applications for a Florida Educator Certificate*, FLA. DEP'T EDUC., <https://www.fldoe.org/teaching/professional-practices/applications-for-a-fl-educator-certifi.shtml> [<https://perma.cc/2C6Q-QX4H>].

232. *Criminal Background Check*, DC HEALTH, *supra* note 229.

233. Brent Collins, *Firefighter Disqualifiers*, DON MCNEA FIRE SCH. (May 19, 2022), <https://fireprep.com/blog/2022/05/19/Firefighter-Disqualifiers> [<https://perma.cc/8NFV-59TL>].

234. See BETTY E. RODRIGUEZ, *MILITARY ACCESS TO JUVENILE RECORDS* 9 (Feb. 28, 2018), <https://juvenilelaw.org/wp-content/uploads/2018/02/02-Military-Access-to-Juvenile-Records.pdf> [<https://perma.cc/GD4A-F4AQ>]; COLEMAN, *supra* note 23, at 7; *General Requirements*, MARINES, <https://www.marines.com/become-a-marine/requirements/general.html> [<https://perma.cc/4DRS-H4EY>].

235. See Radice, *supra* note 15, at 397.

236. KAZEMIAN, *supra* note 42, at 6–7, 17; Radice, *supra* note 15, at 397.

237. Radice, *supra* note 15, at 396.

238. *Police Shooting of Teenagers*, DETROIT UNDER FIRE (2021), <https://policing.umhistorylabs.lsa.umich.edu/s/detroitunderfire/page/shooting-of-juveniles> [<https://perma.cc/AAE5-R3PW>].

record to call him “incorrigible,” while the police department and prosecutor declared his killing to be justified and legal.<sup>239</sup> In 2014, a Chicago police officer shot and killed African American seventeen-year-old Laquan McDonald.<sup>240</sup> A judge granted the officer’s defense attorneys access to Laquan’s very detailed juvenile court records.<sup>241</sup> In that same year, a judge overseeing a wrongful death lawsuit related to the police killing of African American eighteen-year-old Michael Brown in Ferguson, Missouri allowed attorneys to inspect Michael’s juvenile records, despite his parents’ opposition.<sup>242</sup>

Not only are these records used in court proceedings, but they are also widely published in the media to craft narratives that confirm stereotypes about the danger of Black youth and shape public opinion about whether police shootings are justified. A reporter for the *Chicago Tribune* called Laquan McDonald an “often angry teen who embraced the drugs and gangs that saturated his West Side neighborhood.”<sup>243</sup> Although the reporter seemed sympathetic in describing Laquan’s learning disabilities, mental health diagnoses, and psychiatric hospitalizations,<sup>244</sup> disclosure of that sensitive information not only violated Laquan’s privacy, but also stoked fears about people with disabilities and mental health challenges.

Similarly, the Pennsylvania State Police used a 2021 press conference to highlight the juvenile record of Christian Hall, a Chinese American teenager whom troopers shot and killed while Christian raised his hands in the air.<sup>245</sup> At the press conference, a spokesperson alleged that Christian’s juvenile record included reports he robbed people using an airsoft pellet gun.<sup>246</sup> An attorney for Christian’s family responded by saying, “None of that was relevant at all. None of that was ever investigated. And none of that was proven.”<sup>247</sup> The attorney

239. *Id.*

240. Christy Gutowski, *Laquan McDonald’s Juvenile Record Sought by Lawyers of Officer Who Shot Him*, CHI. TRIB., <https://www.chicagotribune.com/2016/07/06/laquan-mcdonalds-juvenile-record-sought-by-lawyers-of-officer-who-shot-him/> [<https://perma.cc/KV7B-PRWT>] (last updated May 24, 2019, 12:57 AM).

241. *Id.*

242. Valerie Schremp Hahn, *Judge Orders Michael Brown Juvenile Records Released to Lawyers*, ST. LOUIS POST-DISPATCH (June 24, 2016), [https://www.stltoday.com/news/local/crime-courts/judge-orders-release-of-michael-brown-jr-juvenile-records/article\\_21d1a31b-5d46-5fa0-bc96-178284ca20ed.html](https://www.stltoday.com/news/local/crime-courts/judge-orders-release-of-michael-brown-jr-juvenile-records/article_21d1a31b-5d46-5fa0-bc96-178284ca20ed.html) [<https://perma.cc/A688-HZ8E> (dark archive)].

243. Gutowski, *supra* note 240.

244. *Id.*

245. Gary Harki, *Pocono Teen Had His Hands Up When Killed by State Police New Videos Show*, POCONO REC. (Nov. 18, 2021, 7:55 AM), <https://www.poconorecord.com/story/news/2021/11/18/unredacted-footage-shows-christian-hall-had-hands-up-when-shot-police/8638670002/> [<https://perma.cc/UC43-P487>].

246. *Id.*

247. *Id.*

accused the police department of using Christian's juvenile record to sway public opinion and discourage anyone from scrutinizing the shooting.<sup>248</sup>

Reporters also noted that Christian spent four years in juvenile detention from age ten to fourteen after he was accused of starting a fire, which Christian's parents said was an accident.<sup>249</sup> Christian's parents believed the district attorney was incentivized to paint Christian as a criminal in order to protect the troopers who shot him.<sup>250</sup> Christian's mother believed her son's race played into the troopers' decision to shoot him, noting implicit beliefs that the lives of Asian Americans do not matter.<sup>251</sup> Police and the media regularly use juvenile records to devalue the lives of youth who are disabled or have trauma histories.

#### E. *Stress and Future Court Contact*

All of these harms, and myriad additional collateral consequences, exacerbate stress for young people who enter the juvenile legal system already burdened with immense mental health needs. These youth are labeled "delinquent," excluded from opportunities to succeed, and "lumped in" with peers who have also been labeled delinquent or criminal.<sup>252</sup> These labels damage a youth's view of themselves, contribute to low self-esteem, and may forever undermine their identity as they prepare for and transition into adulthood.<sup>253</sup>

The stress caused by the cumulative harms and stigma of a juvenile record can also put these youth at higher risk of arrest in the future. While researchers have not yet explicitly studied the psychological impacts of a juvenile record on young people, recent studies show that the psychological distress caused by unwarranted police contact predicts increased delinquent behavior, especially among Black and Latino boys who perceived those contacts as unnecessary and discriminatory.<sup>254</sup> Another study found that the psychological distress caused by police stops leads youth to be less engaged in school the day following the stop.<sup>255</sup> Researchers noted that police stops activate feelings of shame and distrust in youth and lead to defiance toward all authority figures, including

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. See Anne Rankin Mahoney, *The Effect of Labeling upon Youths in the Juvenile Justice System: A Review of the Evidence*, 8 LAW & SOC'Y. REV. 583, 585 (1974).

253. See *id.*

254. Juan Del Toro, Tracey Lloyd, Kim S. Buchanan, Summer Joi Robins, Lucy Zhang Bencharit, Meredith Gamson Smiedt, Kavita S. Reddy, Enrique Rodriguez, Erin M. Kerrison & Phillip Atiba Goff, *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys*, 116 PROCEEDINGS NAT'L ACAD. SCIS. 8261, 8267 (2019).

255. Juan Del Toro, Dylan B. Jackson & Ming-Te Wang, *The Policing Paradox: Police Stops Predict Youth's School Disengagement via Elevated Psychological Distress*, 58 DEVELOPMENTAL PSYCH. 1402, 1403 (2022).

police officers and school officials.<sup>256</sup> Youth likely experience similar shame when a juvenile record labels them “delinquent.”

Once a young person has a juvenile record, they are likely to be recognizable to the police who patrol their schools and neighborhoods. These officers are likely to increase surveillance and contact with young people who are known to have juvenile records. The stress of these police contacts can trigger the fight-flight-freeze responses discussed in Section II.C, leading to verbal outbursts, physical aggression, and potential delinquent acts that result in a “pile-on” of new juvenile records.

Ultimately, juvenile court records impose wide-ranging collateral consequences and limit youth’s future prospects as they enter adulthood. Not only do juvenile records hinder young people’s access to advanced education and gainful employment, but they also increase the likelihood that youth will be drawn deeper into the court system. Systems-actors and policymakers must understand these cascading effects of juvenile records as they seek to eliminate their harms.

#### V. THE WAY FORWARD: DECRIMINALIZING RACE, ADOLESCENCE, DISABILITY, AND TRAUMA

As the harms of juvenile court records are increasingly insidious and modern juvenile courts look more like adult criminal proceedings and less like the paternalistic interventions envisioned by the founders of the nation’s first juvenile courts,<sup>257</sup> advocates have reinitiated old campaigns to protect the confidentiality of juvenile court proceedings and reduce the stigma of a juvenile court record. Advocates are fighting to restore, and even enhance, state statutes and local court rules that shield juvenile court records from public access and to require courts to expunge those records at a designated time after adjudication.<sup>258</sup> Professional organizations like the National Council of Juvenile and Family Court Judges and the Gault Center (formerly known as the National Juvenile Defender Center) provide training and resources to educate

256. *See id.*

257. *See* Radice, *supra* note 15, at 365; Henning, *Eroding Confidentiality*, *supra* note 17, at 522, 526.

258. Radice, *supra* note 15, at 425 (referring to the ABA Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records, and encouraging states to adopt legislation, like the ABA Model Act, to improve confidentiality of juvenile records, including increasing opportunities for automatic expungement); Amelia Tadanier, Note, *Preserving the Futures of Young Offenders: A Proposal for Federal Juvenile Expungement Legislation*, 65 WM. & MARY L. REV. 747, 765–70 (2024) (calling for federal legislation allowing for expungement of all federal convictions of youth and mandating automatic expungement of records for first-time, nonviolent convictions of youth in the federal system).

systems-actors on the harms and stigma of a juvenile court record.<sup>259</sup> Advocacy organizations like the Council of State Governments and the National Employment Law Project lobby state and federal lawmakers to “ban the box” and eliminate the collateral consequences of a juvenile court adjudication.<sup>260</sup>

While these efforts must continue, states must also radically reduce their reliance on juvenile courts to regulate children. Youth justice advocates and scholars have proposed reforms that would raise the minimum age of juvenile court jurisdiction and constrain the court’s reach by reducing unnecessary paternalistic interventions grounded in White, middle-class norms.<sup>261</sup> Section V.A of this Article joins the call to shrink the scope of juvenile court jurisdiction and thereby limit the creation of juvenile records, but focuses uniquely on

259. See *Collateral Consequences of Juvenile Court Involvement: Obstacles to Opportunities*, NAT’L COUNS. JUV. & FAM. CT. JUDGES, <https://www.ncjfcj.org/bench-cards/collateral-consequences-of-juvenile-court-involvement-obstacles-to-opportunities/> [<https://perma.cc/5FMC-ZNVV>]; NAT’L JUV. DEF. CTR., A JUVENILE DEFENDER’S GUIDE TO CONQUERING COLLATERAL CONSEQUENCES 1 (2017), <https://www.defendyouthrights.org/wp-content/uploads/2018/10/Collateral-Consequences-Checklist-for-Juvenile-Defenders.pdf> [<https://perma.cc/5ZFY-5QZ6> (staff-uploaded archive)]; NAT’L GOVERNORS ASS’N, STATE STRATEGIES TO ADDRESS THE NEEDS OF JUSTICE-INVOLVED YOUTH IMPACTED BY COLLATERAL CONSEQUENCES 2 (2023), [https://www.nga.org/wp-content/uploads/2023/02/NGA\\_Juvenile\\_Justice\\_Collateral\\_Consequences\\_Feb2023.pdf](https://www.nga.org/wp-content/uploads/2023/02/NGA_Juvenile_Justice_Collateral_Consequences_Feb2023.pdf) [<https://perma.cc/WMA4-BH59>].

260. See, e.g., Josh Weber, Jacob Agus-Kleinman & Joshua Gaines, *Reducing Structural Barriers to School and Work for People with Juvenile Records*, COUNCIL STATE GOV’TS, <https://csgjusticecenter.org/publications/juvenile-consequences/> [<https://perma.cc/WH3T-45S6>]; Beth Avery & Han Lu, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, NAT’L EMP. L. PROJECT (Oct. 1, 2021), <https://www.nelp.org/insights-research/ban-the-box-fair-chance-hiring-state-and-local-guide/> [<https://perma.cc/U3RP-4XTH>]; Michael Hartman, *Ban the Box*, NAT’L CONF. STATE LEGISLATURES, <https://www.ncsl.org/civil-and-criminal-justice/ban-the-box> [<https://perma.cc/J7YK-VNTU> (staff-uploaded archive)]; Gisselly Perez-Astwood, Comment, *Keeping Criminal Encounters Confidential: Preventing Collateral Consequences for Young Adults*, 73 RUTGERS U. L. REV. 149, 161–63 (2021); Eve Rips, *A Fresh Start: The Evolving Use of Juvenile Records in College Admissions*, 54 U. MICH. J.L. REFORM 217, 277–80 (2020) (calling on Congress to pass the Beyond the Box for Higher Education Act, encouraging colleges and universities to remove or limit their questions on criminal and juvenile records, and calling on states to pass legislation prohibiting inquiries into protected juvenile records and ensuring questions about other criminal records are worded in clear and unambiguous ways).

261. See generally Eduardo R. Ferrer, *Razing & Rebuilding Delinquency Courts: Demolishing the Flawed Philosophical Foundation of Parens Patriae*, 54 LOY. U. CHI. L.J. 885 (2023) (arguing that the juvenile court’s historical commitment to a *parens patriae*—or parent-as-state—philosophy “is chiefly responsible for the delinquency court’s perpetual prioritization of controlling youth over meaningfully caring for them” and calling for “abandoning *parens patriae* . . . and removing its influence on the overall design of the delinquency court”). See, e.g., Laura Cohen, *The Anti-Racist Imperative of Infancy*, 19 NW. J.L. & SOC. POL’Y. 177, 227 (2024) (calling for a minimum jurisdictional age of fourteen for juvenile courts as a means of reducing or eliminating the harms of system involvement and decreasing racial disparities); Peggy D. Nicholson, *The Children Are Our Future (Not Our Future Criminals): Protecting South Carolina’s Youngest Citizens by Setting a Minimum Age of Juvenile Court Jurisdiction*, 75 S.C. L. REV. 883, 918–22 (2024) (calling for a minimum age of juvenile court jurisdiction in South Carolina); Travis Watson, *From the Playhouse to the Courthouse: Indiana’s Need for a Statutory Minimum Age for Juvenile Delinquency Adjudication*, 53 IND. L. REV. 433, 457 (2020) (calling for a minimum age of juvenile court jurisdiction in Indiana).

strategies to decriminalize race, trauma, and disabilities. This section proposes amendments to juvenile court purpose clauses; a reallocation of resources from courts to communities; mandatory training for systems-actors; and protocols for reducing arrests and referrals to juvenile court. Section V.B offers litigation strategies for youth advocates who may request accommodations for youth within the system and urges systems-actors to dismiss delinquency cases involving youth with disabilities. This section invokes provisions in the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and section 504 of the Rehabilitation Act. Section V.C calls for the automatic sealing and expungement of juvenile records to enhance confidentiality protections in the rare circumstances in which law enforcement intervenes in the life of a young person with cognitive, emotional, or developmental disabilities. Section V.C also proposes limits on sharing juvenile records to reduce the stigma and the collateral harms associated with record sharing.

A. *Preventing the Creation of Juvenile Records*

The insidious harms of a juvenile record begin from the moment of arrest or referral to juvenile court. Systems-actors, lawmakers, and advocates can eliminate these harms by clarifying values and goals in juvenile court purpose clauses,<sup>262</sup> funding therapeutic and educational supports for youth with disabilities and trauma histories, and mandating training that will reduce unnecessary youth contact with the legal system.

1. Amending Juvenile Court Purpose Clauses and  
Statutory Exclusion of Certain Offenses

State legislators and policymakers can limit the reach of the juvenile legal system and reduce the proliferation of records by amending existing juvenile court purpose statutes to clearly articulate a commitment to public health strategies that advance youth development, prevent delinquency, and avoid the criminalization of race, disability, and trauma. Purpose clauses are particularly important as they set standards and values and limit the court's jurisdiction.<sup>263</sup> These clauses also provide a lens through which the rest of the code is

262. Purpose clauses clarify the legislature's intention for the state's juvenile justice system and should guide the application of state law from initial determination of whether a case should be formally processed through decisions regarding the long-term maintenance or destruction of juvenile records. See *Purpose Clauses for Juvenile Justice Systems*, OFF. JUV. JUST. & DELINQ. PREVENTION, [https://ojjdp.ojp.gov/statistical-briefing-book/structure\\_process/faqs/qa04205](https://ojjdp.ojp.gov/statistical-briefing-book/structure_process/faqs/qa04205) [https://perma.cc/NZ24-NWSC].

263. See *id.*; Emily K. Pelletier, *U.S. Juvenile Justice Purpose Clauses: Themes and Evaluation Opportunities*, 25 YOUTH JUST. 12, 15 (2025).



interpreted and guide decision-makers in critical decisions like intake, prosecution, and disposition.<sup>264</sup>

Purpose clauses should urge systems-actors to make every effort to divert youth from the delinquency system and prioritize the fair and equitable treatment of all youth. When court intervention occurs, state statutes should hold children accountable for their actions only to the extent appropriate given their mental, physical, and developmental condition. Rules implementing and commentary interpreting juvenile court purpose clauses should explicitly prohibit or severely limit court interventions involving youth with significant trauma histories or cognitive, emotional, and developmental disabilities.

A few jurisdictions have already articulated these limits within their purpose clauses. In Washington, D.C., for example, the juvenile court purpose clause specifically states that the court shall “[take] into consideration the child’s age, education, mental and physical condition, background, and all other relevant factors” when holding the child accountable for delinquent acts.<sup>265</sup> Alabama and Washington have similar language in their purpose clauses.<sup>266</sup> By holding youth accountable consistent with their age and mental condition, the purpose clause centers the child’s history and capacities in the court’s assessment of culpability and decisions about how to address the delinquency allegations and best serve the youth. While these purpose clauses provide an important statement of values and factors to consider in determining accountability, they would benefit from additional commentary that explicitly excludes from court jurisdiction behavior that arises out of a child’s disability or trauma.

## 2. Reallocating Resources

Of course, any statutory reforms aimed at reducing court referrals and juvenile court records must be accompanied by a robust continuum of therapeutic, educational, and other community-based rehabilitative supports. State and local officials will need to shift funds from traditional law-enforcement interventions to programs and services that meet the needs of young people with disabilities and trauma. Because youth of color are at greater

264. *See id.* at 3.

265. D.C. CODE § 16-2301.02(4) (2025).

266. ALA. CODE § 12-15-101(b)(7) (2025) (stating that the purpose of the juvenile code includes “hold[ing] a child found to be delinquent accountable for his or her actions to the extent of the age, education, mental and physical condition, and background of the child, and all other relevant factors”); WASH. REV. CODE § 13.40.010(2)(d) (2025) (stating that the purpose of the juvenile code includes “provid[ing] for punishment commensurate with the age, crime, and criminal history of the juvenile offender”).

risk of criminalization and the accumulation of juvenile records,<sup>267</sup> systems-actors should strategically target increased funding for services to the communities and schools where youth of color are often neglected and under-resourced. With proper resources and statutory limits on juvenile court jurisdiction, Damion likely would not have received his first juvenile record for the school fight, would not have lost his spot at the special education school, and would have been spared the developmental harm and additional trauma of detention.

As a first step, lawmakers should adequately fund schools to ensure that every school has social workers and comprehensive, trauma-informed mental health services. All teachers who serve students with disabilities should have access to a technical support team, well-equipped to meet the academic and behavioral needs of their students.<sup>268</sup> Crisis support should be widely available for all students and should be the first point of contact before police are called. As lawmakers increase funding for school-based services, teachers and support staff can intervene early with services youth need to thrive in school and the community.

States and the federal government should invest additional resources in eliminating the need for group homes, prisons, and other congregate care institutions where many juvenile records originate. Policymakers should ensure that parents, like Damion's mother, can access community-based mental health services and receive funding to assist with the cost of transportation to those services, childcare for younger siblings, and time off work to care for children with disabilities at home. Lawmakers should also increase funding to recruit, train, and support families and organizations that provide therapeutic foster care when out-of-home placement cannot be avoided. While additional research is needed, one study found that youth who were placed in treatment-focused foster homes were significantly less likely to be arrested than youth who were in congregate facilities like therapeutic group homes.<sup>269</sup>

By adequately funding community-based services, systems-actors will not only protect youth from accumulating unnecessary juvenile records, but they will be in better compliance with the Americans with Disabilities Act

267. See *supra* notes 48–49 and accompanying text (noting that Black youth are referred to juvenile court at a rate almost three times greater than White youth despite being no more likely to engage in risky behaviors).

268. See, e.g., *Specialized Instructional Support Personnel*, NAT'L EDUC. ASS'N, <https://www.nea.org/about-nea/our-members/specialized-instructional-support-personnel> [https://perma.cc/VSX9-BGA4] (describing professionals—such as psychologists, counselors, and speech language pathologists—who work with teachers and other education stakeholders to remove learning barriers and provide necessary disability-related services as part of a comprehensive program to meet student needs).

269. John Robst et al., *Arrests*, *supra* note 182, at 175.

(“ADA”).<sup>270</sup> The Department of Justice (“DOJ”) has made clear that states must be proactive in ensuring the delinquency system is not used to provide services that should otherwise be made accessible to disabled youth in their communities without legal system involvement.<sup>271</sup> The results of a 2022 DOJ investigation determined that the State of Maine “violat[ed] the ADA by failing to provide behavioral health services to children in the most integrated setting appropriate to their needs.”<sup>272</sup> Because services were not available in communities, crisis responders often recommended that families of youth with acute mental health needs call the police.<sup>273</sup> Desperate families forced to wait hundreds of days for services frequently felt they had no choice but to involve law enforcement.<sup>274</sup>

The DOJ found that Maine relied on juvenile legal system intervention—namely incarceration in its youth prison and residential treatment facilities—to “[fill] a gap left by Maine’s community-based behavioral health system.”<sup>275</sup> Various state officials reported that “many young people should not be incarcerated at [the youth prison] but remain there because of a lack of other treatment options, and that Maine is improperly using detention to deal with its failure to provide behavioral health services in the community.”<sup>276</sup> Ultimately, the DOJ found that Maine could remedy these ADA violations by

- 1) ensur[ing] access to community-based services; 2) address[ing] the waitlists to ensure timely services and prevent institutionalization; 3) provid[ing] crisis services instead of law enforcement response; 4) allocat[ing] adequate resources to maintain a trained pool of community providers across the State, including Treatment Foster Care parents; and 5) implement[ing] and support[ing] a policy requiring providers to serve eligible children and prohibit refusal of services.<sup>277</sup>

270. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101–213).

271. See U.S. Dep’t Just. C.R. Div., Opinion Letter on United States’ Investigation of Maine’s Behavioral Health System for Children Under Title II of the Americans with Disabilities Act 8–9 (June 22, 2022), <https://www.justice.gov/crt/case-document/file/1514441/dl> [<https://perma.cc/2TZT-C2KF> (staff-uploaded archive)].

272. *Id.* at 1.

273. *Id.* at 2.

274. *Id.*

275. *Id.* at 6–7.

276. *Id.* at 7.

277. *Id.* at 14.

### 3. Mandating Training for Systems-Actors to Limit Arrest, Referral, and Juvenile Court Intake

Training can help systems-actors use their discretion to narrow the pipeline of youth referred to court and limit the proliferation of juvenile records. Police officers often have discretion to choose whether to arrest a child, send a child home with a warning, or issue a citation for behaviors that technically meet the elements of a criminal or delinquent offense.<sup>278</sup> Prosecutors also have discretion to decide whether to file formal charges, refer a child to a diversion program, or otherwise find that the referral does not meet the minimum standards for filing a formal petition. Both prosecutors and police officers would benefit from training to help them identify alternatives to arrest and prosecution for youth with disabilities and trauma histories and recognize and reduce their own implicit biases. Staff at youth-serving institutions, like detention centers and group homes, would also benefit from training that will better equip them to serve youth with trauma and disabilities without police intervention.

#### a. *Police Discretion and Training*

Recognizing that juvenile records start with an arrest, police have significant power to prevent unnecessary stigma by diverting youth with cognitive, emotional, or developmental disabilities to alternatives to arrest. Mental health providers, including those specially trained to serve youth with disabilities, may accompany or replace police officers in response to 911 calls, especially calls from schools and other youth-serving institutions. In Portland, Oregon, police can refer calls to the Portland Street Response team to assist individuals experiencing mental health and behavioral health concerns.<sup>279</sup> In Eugene, Oregon, police have embraced the Crisis Assistance Helping Out on the Streets (“CAHOOTS”) program, which is operated by a community health clinic and funded through an allocation of two percent of the police department budget.<sup>280</sup> When Eugene’s residents call 911 or the city’s nonemergency number to report a mental health crisis, drug-related episode, or threat of suicide, CAHOOTS will send unarmed outreach workers and medics—usually an EMT or a nurse—who are trained in crisis intervention and de-escalation.<sup>281</sup> Although

278. See, e.g., D.C. METRO. POLICE DEP’T, GENERAL ORDER OPS-305.01: INTERACTING WITH JUVENILES 1–2 (2023), [https://go.mpdconline.com/GO/GO\\_305\\_01.pdf](https://go.mpdconline.com/GO/GO_305_01.pdf) [<https://perma.cc/32WN-KDUU>] (“[W]henver possible, [officers] shall consider alternatives to formal arrest while considering the safety of the community, MPD members, and the [youth] involved in the incident.”).

279. *Portland Street Response*, CITY PORTLAND, <https://www.portland.gov/streetresponse> [<https://perma.cc/EA8K-P2NX>].

280. Rowan Moore Gerety, *An Alternative to Police That Police Can Get Behind*, ATLANTIC (Dec. 28, 2020), <https://www.theatlantic.com/politics/archive/2020/12/cahoots-program-may-reduce-likelihood-of-police-violence/617477/> [<https://perma.cc/8UEC-BEVR>].

281. *Id.*

CAHOOTS teams are prohibited from responding when there is “any indication of violence or weapons,”<sup>282</sup> the program estimates it responds to about twenty percent of the mental health calls for the city<sup>283</sup> and three to eight percent of all calls that would otherwise be handled by the Eugene Police Department.<sup>284</sup> Similar programs have begun in New York City, Los Angeles, Oakland, and Denver.<sup>285</sup>

Other cities offer mobile mental health crisis units specifically for youth.<sup>286</sup> In the District of Columbia, the mobile mental health units provide immediate, on-site assistance to stabilize children—in or out of school—and follow up to connect family to necessary supports.<sup>287</sup> Similar youth-specific programs exist in Connecticut, Nevada, and New York.<sup>288</sup> Mobile mental health units can provide an effective alternative intervention for youth who are dealing with trauma in school. Programs like this only work if they are adequately funded and all the systems-actors are trained to use the service—teachers, counselors, 911 dispatchers, congregate care staff, and police officers.

When police do enter schools and congregate care facilities without mental health professionals, law enforcement agencies should send officers who are specially-trained to engage with youth with trauma histories, mental health concerns, and cognitive disabilities.<sup>289</sup> Research shows that police serve youth better when they rely on soft skills like “slowing their actions (physical and speaking rate), using a calmer tone of voice, giving the youth greater time to

282. *Id.*

283. Libor Jany, *L.A. Tests Program to Send Unarmed Civilians Instead of Cops to People in Crisis*, L.A. TIMES, <https://www.latimes.com/california/story/2024-04-05/l-a-launches-new-cahoots-style-mental-health-pilot-program> [https://perma.cc/K5Q4-YMC8] (last updated Apr. 6, 2024, 12:29 PM).

284. EUGENE POLICE DEP’T CRIME ANALYSIS UNIT, CAHOOTS PROGRAM ANALYSIS 2021 UPDATE 7 (2022), <https://www.eugene-or.gov/DocumentCenter/View/66051/CAHOOTS-program-analysis-2021-update> [https://perma.cc/XKQ4-AHQW].

285. See *B-HEARD 911 Mental Health Response*, N.Y.C. MAYOR’S OFF. CMTY. MENTAL HEALTH, <https://mentalhealth.cityofnewyork.us/b-heard> [https://perma.cc/5ALQ-PD7F] (New York City); Jany, *supra* note 283 (Los Angeles); Eric Westervelt, *Oakland Becomes Latest City Looking to Take Police Out of Some Nonviolent 911 Calls*, NPR (May 18, 2021, 10:47 AM), <https://www.npr.org/2021/05/18/997542990/oakland-becomes-latest-city-looking-to-take-police-out-of-nonviolent-911-calls> [https://perma.cc/9DEV-MYEU] (Oakland); Grace Hauck, *Denver Successfully Sent Mental Health Professionals, Not Police, to Hundreds of Calls*, USA TODAY, <https://www.usatoday.com/story/news/nation/2021/02/06/denver-sent-mental-health-help-not-police-hundreds-calls/4421364001/> [https://perma.cc/QQ86-MY5U] (last updated Feb. 8, 2021, 1:36 PM) (Denver).

286. See, e.g., *infra* notes 287–88 and accompanying text.

287. *Children and Youth Behavioral Health Services*, D.C. DEP’T BEHAV. HEALTH, <https://dbh.dc.gov/service/children-youth-and-family-services> [https://perma.cc/L5UH-CJAW].

288. *Mobile Crisis*, MOBILE CRISIS INTERVENTION SERVS. CONN., <https://www.mobilecrisisempct.org/about/> [https://perma.cc/5NFU-94A4]; *Children’s Mobile Crisis Response Team*, KNOW CRISIS, <https://www.knowcrisis.com> [https://perma.cc/3U85-Z2DV]; *Mobile Crisis Services*, N. RIVERS, <https://www.northernrivers.org/mobile-crisis> [https://perma.cc/9R5Q-MD54].

289. Riccardi, *supra* note 106, at 190.

respond, and acting with more patience.”<sup>290</sup> Strategies for Youth, an organization that trains law enforcement in developmentally appropriate, trauma-informed approaches to youth, has found that these approaches can decrease arrest rates<sup>291</sup> and thereby reduce the proliferation of juvenile records.

*b. Prosecutorial Discretion, Training, and Data Tracking*

Prosecutors provide a second essential safeguard against the proliferation of juvenile records after an unnecessary arrest or inappropriate referral to juvenile court. Prosecutors may unilaterally decline to prosecute behavior that is a manifestation of a young person’s disability or trauma history and urge the court to seal the youth’s arrest records. Prosecutors might also hire educational, developmental, and mental health experts to consult on charging decisions or collaborate in the intake process proposed below in Section V.A.4.b.

Prosecutors have the greatest power—and often sole authority—over charging decisions. Prosecutors retain discretion to divert or even dismiss offenses that meet the elements of a crime. In exercising that discretion, prosecutors should resist the paternalistic instinct to pull a youth into the juvenile legal system solely to access “services” to address the youth’s cognitive, emotional, and developmental disabilities. When a young person can receive adequate services outside of the court system, prosecutors should collaborate with other agencies and institutions to make sure the child gets those services in the community and then dismiss or decline to prosecute the delinquency case.

Prosecutors should pay close attention to referrals from schools, group homes, detention facilities, youth prisons, and other congregate care settings that serve youth with disabilities and trauma histories. Prosecuting attorneys should identify referral patterns that demonstrate that staff are not adequately trained to serve youth with these needs. For example, in deciding whether to prosecute Damion for assault in the group home, prosecutors should consider any prior pattern of referrals from his group home for play fighting or roughhousing. By declining to prosecute these cases, prosecutors establish the boundaries of juvenile court jurisdiction, encourage additional training for other systems-actors, and require facilities to identify alternative strategies for engaging youth in their care.

Prosecutors should also track and monitor data on their own decisions at every stage of the juvenile legal system, including data on a youth’s race, disabilities, and trauma history.<sup>292</sup> Data collection would allow prosecutors to analyze trends in charging decisions, diversion referrals, plea offers, disposition

290. *Id.*

291. *Id.* at 180.

292. See Kristin Henning, *Prosecuting Race and Adolescence*, in *THE OXFORD HANDBOOK OF PROSECUTORS AND PROSECUTION* 447, 455–60 (Kay L. Levine, Ronald F. Wright & Russell M. Gold, eds., 2021).

recommendations, and decisions regarding probation violations and other post-disposition matters. Each of these data points helps prosecutors see how their discretionary decisions contribute to the accumulation of juvenile records and disparate impact on youth of color and youth with disabilities.

Once they have collected and analyzed this data, prosecutors will need to hold each other accountable to make decisions that are racially equitable, developmentally appropriate, and trauma informed. Prosecutors not only have significant power to limit the accumulation of juvenile court records by “gatekeeping” at the front end, but they should also work with other systems-actors to create easy and accessible frameworks for sealing and expunging juvenile records, as further discussed further in Section V.C.1. below.

*c. Institutional Training and Referrals*

When youth with disabilities are arrested and incarcerated in group homes, youth detention centers, and residential facilities, every effort must be made to prevent additional referrals to law enforcement and the “pile on” of new records. Administrative protocols and memoranda of understanding should require all institutional staff to complete extensive and recurring training on adolescent development, trauma, disabilities, and racial bias. Institutions should also hire or contract with licensed social workers, psychologists, counselors, and other professional mental health staff to counsel and support youth throughout their stay in the facility, especially in times of crisis. Most facilities that house youth in the juvenile legal system have access to the youth’s mental health and academic records. At intake, facility staff should review records and develop a plan to accommodate and support the child’s disability-related and mental health needs.

Protocols should also require staff to assess a youth’s cognitive and emotional health before deciding how to address behaviors that violate rules of the facility. When intervention is necessary for the safety of staff and other residents, facility protocols and training should provide staff with a range of interventions that seek to de-escalate the youth’s emotions and behaviors and give the youth time to calm down and understand that they will be helped. Staff should consider whether the facility environment or dynamics are contributing to the youth’s behavior and adjust where possible, including changing the youth’s room assignment and mediating the youth’s conflict with other residents.

Police referrals should be the last resort. A campaign led by London’s Howard League for Penal Reform called on system professionals to use diversion and restorative justice whenever possible within congregate care settings, like group homes and residential treatment facilities, and to involve a broad range of agencies, beyond the legal system, to provide the services

necessary to address misbehavior.<sup>293</sup> Protocols urged staff not to criminalize youth for the kinds of minor incidents for which parents would not call police, such as breaking a mug or blowing cigarette smoke in a worker's face.<sup>294</sup> Instead, staff was instructed to call restorative practitioners who may guide youth and staff through conversations aimed at repairing harm and increasing mutual respect.<sup>295</sup> Those efforts contributed to a reduction in the number of children charged with crimes while living in London's residential centers from fifteen percent in 2013–14 to seven percent in 2018–19.<sup>296</sup>

#### 4. Developing Inter-Agency Agreements and Protocols to Limit Juvenile Court Referrals

While all legal systems-actors have a role to play in reducing the harms of juvenile court records, these actors do not operate in silos. Although prosecutors have authority to make the final charging decision in juvenile court, they can collaborate with local agencies and institutions, like schools, that frequently call the police or refer youth to the juvenile court. Prosecutors and other juvenile court administrators may adopt inter-agency memoranda of understanding (“MOU”) with a specific focus on youth with disabilities and trauma histories to prevent unnecessary arrests and referrals from these youth-serving agencies. Systems-actors can also collaborate within the juvenile legal system to develop intake procedures similar to a “manifestation hearing” in the school system to prevent the prosecution of children whose behavior is a manifestation of their disability. When implementing these programs, systems-actors should track demographic data on youth who are diverted from the system to identify racial disparities. If youth of color are more often formally prosecuted compared to their White peers, systems-actors should create further protocols to reduce these disparities.

##### *a. Inter-Agency Memoranda of Understanding for Intake*

To limit juvenile court intervention and prevent the harmful accumulation of records, juvenile court intake teams should craft MOUs with school districts to prevent educators from referring youth to court for behavior that is a

293. *Id.* (citing DEP'T FOR EDUC., THE NATIONAL PROTOCOL ON REDUCING UNNECESSARY CRIMINALISATION OF LOOKED-AFTER CHILDREN AND CARE LEAVERS 27–28 (2018), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/765082/The\\_national\\_protocol\\_on\\_reducing\\_unnecessary\\_criminalisation\\_of\\_looked-after\\_children\\_and\\_care\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765082/The_national_protocol_on_reducing_unnecessary_criminalisation_of_looked-after_children_and_care_.pdf) [https://perma.cc/T8X2-D33Q] [hereinafter DEP'T FOR EDUC., NATIONAL PROTOCOL]).

294. HOWARD LEAGUE FOR PENAL REFORM, ENDING THE CRIMINALISATION OF CHILDREN IN RESIDENTIAL CARE 2 (2020), <https://howardleague.org/wp-content/uploads/2020/03/Victims-not-criminals.pdf> [https://perma.cc/HSQ7-CAYB].

295. DEP'T FOR EDUC., NATIONAL PROTOCOL, *supra* note 293, at 40–42.

296. HOWARD LEAGUE FOR PENAL REFORM, *supra* note 294, at 2.



manifestation of their disability or trauma. A number of states have adopted school offense protocols designed to discourage schools from calling police for low-level, nonviolent misdemeanors.<sup>297</sup> In Clayton County, Georgia, Judge Steven Teske developed an inter-agency agreement with the courts, police, and school system to limit arrests and promote alternative interventions, including restorative justice practices.<sup>298</sup> Fourteen years after its implementation, this interagency agreement reduced school-based arrests by ninety-three percent.<sup>299</sup> Judge Teske, along with the School-Justice Partnership National Resource Center, created a guide to aid other jurisdictions seeking to develop similar MOUs.<sup>300</sup> Seven counties across the State of North Carolina implemented such MOUs, and a 2020 study found that all of them reduced their school-based referrals to juvenile court.<sup>301</sup> Urging more counties in the state to achieve similar outcomes, the North Carolina Judicial Branch Administrative Office of the Court created their own state-specific step-by-step guide.<sup>302</sup> Courts and school systems in other jurisdictions may build upon or adapt these models and protocols to reduce their overreliance on the delinquency system to serve youth with trauma and disabilities. To determine whether a child's behavior is a manifestation of their disability, systems-actors should establish intake procedures as described below in Section V.A.4.b.

Similarly, police departments may enter into memoranda of understanding that severely limit, if not entirely preclude, arrests in special education classrooms or in group homes and residential treatment centers that serve youth with disabilities. Cross-agency MOUs, along with internal regulations, can prevent facility or placement staff from referring youth to law enforcement unless the youth poses a real and immediate risk of physical harm to other youth in the facility. To ensure these MOUs succeed, school and

297. See Steven C. Teske, *Crossing the Intersections Along the Pathways to Reform*, JUV. L. CTR. (May 3, 2018) [hereinafter Teske, *Crossing the Intersections*], <https://jlc.org/news/crossing-intersections-along-pathways-reform> [https://perma.cc/4ZH4-T839] (noting that agreements exist in thirty-nine states); *School-Justice Partnership Project: Keeping Kids in School and Out of Court*, NAT'L COUNCIL JUV. & FAM. CT. JUDGES, <https://schooljusticepartnership.org/about-the-project.html> [https://perma.cc/Y6AA-WH6E] (noting that the School-Justice Partnership Project began in October 2014).

298. Teske, *Crossing the Intersections*, *supra* note 297.

299. *Id.*

300. STEVEN TESKE, SCH.-JUST. P'SHIP NAT'L RES. CTR., DEVELOPING A MEMORANDUM OF UNDERSTANDING (MOU) FOR SCHOOL-JUSTICE PARTNERSHIPS: TECHNICAL ASSISTANCE TOOLS 1 (2017), [https://ncjfcj.org/wp-content/uploads/2017/03/Toolkit\\_for\\_Creating\\_an\\_MOU\\_Clayton\\_County\\_School-Justice\\_Toolkit.pdf](https://ncjfcj.org/wp-content/uploads/2017/03/Toolkit_for_Creating_an_MOU_Clayton_County_School-Justice_Toolkit.pdf) [https://perma.cc/58SE-EXMJ].

301. SCH. JUST. P'SHIP N.C., A STEP-BY-STEP GUIDE TO IMPLEMENTING A SCHOOL JUSTICE PARTNERSHIP 13 (2023), <https://www.nccourts.gov/assets/documents/publications/SJP-Toolkit-revised-03-07-2023.pdf> [https://perma.cc/AP8A-SM23] (citing N.C. JUD. BRANCH, DATA OVERVIEW FOR NORTH CAROLINA SCHOOL-JUSTICE PARTNERSHIPS 1 (2020), <https://www.nccourts.gov/assets/inline-files/SJP-2020-Study-Results-Executive-Summary-rev-Jan-2022.pdf> [https://perma.cc/3M28-4RKQ]).

302. *Id.*

facility administrators must invest in alternative methods for addressing unwanted behavior by the youth in their care and ensure that staff are trained to implement these alternatives.

*b. Manifestation-Like Hearings*

When youth are referred to the juvenile court, state actors may develop a court intake process similar to the “manifestation” determinations that are required whenever a public school seeks to discipline a child with disabilities.<sup>303</sup> When a student with a disability is served through an IEP and accused of breaking school rules, IDEA requires schools to follow special procedures to protect the student’s rights before the school imposes certain disciplinary measures.<sup>304</sup> Schools may not change a student’s placement or remove them from school for ten or more school days—including by suspension or expulsion—without first holding a “manifestation determination review.”<sup>305</sup> During the review, school staff and parents meet to answer two questions: (1) was the student’s behavior caused by or does it have a “direct and substantial relationship to” the child’s disability, and (2) was the student’s behavior a direct result of the school’s failure to implement the student’s IEP.<sup>306</sup> If the group answers yes to either question, the student may not be suspended for ten or more days, expelled, or moved to a different placement.<sup>307</sup>

Parents may appeal if they disagree with the group’s final decision.<sup>308</sup> Manifestation determination reviews protect youth with disabilities from being punished and excluded from school based on those disabilities. These reviews also force schools to take responsibility for their own failures to provide the child with the resources they need to manage their behavior and learn. Although IDEA does not prohibit arrest and prosecution for a delinquent offense, systems-actors in the juvenile legal system should approach decision-making in

303. IDEA’s discipline provisions apply to all public schools and apply to private schools when a public school has placed a disabled student there to meet their educational needs. *See* U.S. DEP’T OF EDUC., QUESTIONS AND ANSWERS: ADDRESSING THE NEEDS OF CHILDREN WITH DISABILITIES AND IDEA’S DISCIPLINE PROVISIONS 14 (2022), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/osers-qa.pdf> [<https://perma.cc/H6BD-2DBN>]. However, the IDEA’s discipline provisions do not apply to disabled children whose parents have independently chosen to place them in private school. *See id.*

304. Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446, § 615, 118 Stat. 2647, 2715–31 (codified at 20 U.S.C. § 1415) (providing a framework for disciplining children with disabilities in schools).

305. *Id.*

306. *Id.* § 615, 118 Stat. at 2727.

307. *Id.* § 615, 118 Stat. at 2726–27.

308. *Id.* § 615, 118 Stat. at 2723.

a similar way to reduce stigma and safeguard the futures of youth with disabilities and trauma histories.<sup>309</sup>

To implement this approach, court intake teams may conduct a thorough review of facts related to a child's disability and trauma history before deciding whether to recommend formal prosecution. With the child's permission after consultation with a defense attorney, intake teams and their experts may consider a child's special education records. Defense counsel's participation is essential to protect the youth's confidentiality, make sure the youth wants to disclose information about their disability, and to collect and share records the court would not otherwise have. Given the sensitive nature of the information, any decision to share records about a youth's disabilities and mental health must be client centered, strategically advantageous for the child in the delinquency case, and only disclosed with the client's permission. Defenders should help youth and their families identify and weigh the benefits and risks of disclosing a disability, including the possibility of dismissal versus the risk of stigma and paternalism that may further entrench a child into the court system.<sup>310</sup> Disclosing disabilities may be especially useful when a prosecutor is sympathetic to the needs of youth with disabilities or when information regarding disabilities is likely to come out later in the case regardless of the client's preferences.

The intake team should review educational records to determine if a child has already been diagnosed with a disability and has an IEP. These records will help the team identify common behaviors, manifestations, and triggers associated with that disability. For example, a child with a learning disability might experience frustration with academic tasks and have behavioral outbursts.<sup>311</sup> A child with ADHD might have difficulty focusing and exhibit impulsivity, fidgeting, and excessive talking.<sup>312</sup> A child with Autism Spectrum Disorder may struggle with social interaction, exhibit repetitive behaviors, and resist change.<sup>313</sup> The IEP should also provide information about what accommodations have been identified and provided—or not provided—for the child, and should include any previous findings at school-based manifestation

309. See 20 U.S.C. § 1415(k)(6)(A) ("Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.").

310. See *supra* Section II.B (describing the biases against youth with disabilities, especially youth of color, and their increased risk for criminalization).

311. See, e.g., Strassfield & Cherng, *supra* note 149 (noting anxiety, aggression, and self-injury as possible characteristics of the emotional disturbance learning disability).

312. *Attention-Deficit/Hyperactivity Disorder: What You Need to Know*, NAT'L INST. MENTAL HEALTH, <https://www.nimh.nih.gov/health/publications/attention-deficit-hyperactivity-disorder-what-you-need-to-know> [https://perma.cc/M5MD-UMUD].

313. *Autism*, CLEV. CLINIC (Oct. 1, 2024), <https://my.clevelandclinic.org/health/articles/autism> [https://perma.cc/N8HH-SU96].

determinations, even if they are not specifically related to the case referred to the juvenile court. These findings can provide insight on the particular challenges a young person faces in regulating their behavior without proper supports.

Even when a child does not have an IEP or diagnosis, patterns of behavior may suggest the child should have been identified as a student with a disability. Similar to the requirements of the “Child Find” provisions of federal education law, the intake team should look for signs of an intellectual disability, emotional disturbance, autism, traumatic brain injury, learning disability, or impairment to their hearing, vision, speech, or language.<sup>314</sup> Evidence of an undiagnosed disability can be found in school or court or interviews with parents, teachers, mentors, or counselors.

The youth’s defense counsel may also collect and provide mental health records that demonstrate that the child’s behavior was a manifestation of trauma. For example, a child with an anxiety disorder may have frequent meltdowns and avoidance behaviors.<sup>315</sup> When the intake team determines that the behavior underlying an alleged delinquency offense was a manifestation of the child’s disability, the team should divert the case away from formal processing to prevent the stigma associated with a juvenile court record and refer the child for services in the community. To protect the child’s confidentiality, any records reviewed by the intake team should remain confidential and be destroyed immediately upon dismissal of the case.

A process like this certainly presents challenges. First, systems-actors must contend with the need to quickly collect and review records. School systems will need to share records promptly after receiving a signed release in accordance with the Family Educational Rights and Privacy Act (“FERPA”).<sup>316</sup> Defense attorneys can assist by asking their clients and parents to sign necessary releases at the initial interview. The court, defense bar, and schools may also create MOUs to streamline the process for submitting releases and agree to timely digital submission of the requested records. Second, because not every child with a disability will have been previously identified by the school system or have an IEP, the team will face the difficult task of deciding whether a charged offense is a manifestation of an undiagnosed disability. Intake teams may hire or consult with special education advocates and mental health experts

314. See 34 C.F.R. §§ 300.111, .8(a)(1) (2024).

315. Caroline Miller, *How Anxiety Leads to Problem Behavior*, CHILD MIND INST., <https://childmind.org/article/how-anxiety-leads-to-disruptive-behavior/> [https://perma.cc/L57Q-CJWH] (last updated Feb. 5, 2025).

316. See 20 U.S.C. § 1232g(b)(1) (requiring a parent or an eligible child to sign a release consenting to the sharing of protected records, unless another exception applies). For further discussion of record sharing pursuant to Family Educational Rights and Privacy Act (“FERPA”) and IDEA, see *infra* Section V.C.2 (noting that IDEA and FERPA allow sharing of special education records without a release in specific circumstances, but this sharing must be done carefully within the limits of the law).

to assist with these decisions and train decision makers to identify patterns of behavior consistent with disabilities common among youth in the juvenile legal system. Third, and most important, team members will need to resist the urge to use information about the child's disability to justify or advance punitive, stigmatizing, and paternalistic interventions that contribute to the proliferation of juvenile records. Intake protocols and MOUs should prioritize the least restrictive and most rehabilitative intervention in a community-based setting.

Prosecutors may also need to delay the charging decisions until the manifestation determination has been made. When a child is released pending that decision, the intake team will generally have some flexibility in the timeline.<sup>317</sup> If a child will be detained beyond the initial court hearing, the prosecutor must comply with constitutional provisions and statutory limits on detention that require the court to find probable cause to believe the child committed an offense before the child can be detained.<sup>318</sup>

#### B. *Defense Advocacy for Youth*

Good defense advocacy is essential to extract youth from the system and prevent the accumulation of unnecessary records. As recognized above, defenders have an important role to play in collecting mitigating information and advocating with prosecutors and intake teams to divert youth from the court system at the time of arrest or referral. If the child is not diverted, defenders should continue to advocate for as many pathways out of the juvenile legal system as possible. By putting systems-actors on notice of the child's disabilities and requesting appropriate accommodation within the system, defense counsel can prevent children from receiving additional charges while on probation or in detention or other congregate care facilities. Youth defenders may also litigate violations of the ADA, IDEA, or section 504 of the Rehabilitation Act when facilities fail to provide those accommodations and consider invoking the ADA in motions to dismiss a delinquency petition or motions to suppress evidence when police violate a young person's rights by either wrongfully arresting them

317. See JEFFREY A. BUTTS, GRETCHEN RUTH CUSICK & BENJAMIN ADAMS, DELAYS IN YOUTH JUSTICE 1 (2009) (noting that rules regarding time limits on trial vary from state to state and can be waived and that, unlike adults in criminal court, youth in juvenile court do not have a Sixth Amendment right to a speedy trial under the U.S. Constitution, but states have "provided something close to juvenile speedy trial rights for juveniles using statutes, court rules, or both" or "have formally endorsed various administrative standards for the timely processing of juvenile cases . . . [that] are seldom mandatory").

318. *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 56–58 (1991) (holding that the state must demonstrate extraordinary circumstances when delaying probable cause determinations beyond forty-eight hours); *Gerstein v. Pugh*, 420 U.S. 103, 125–26 (1975) (holding that the Fourth Amendment entitles a person arrested without a warrant and charged by information to a timely preliminary hearing on probable cause). For a statutory example, see D.C. CODE § 16-2310 (2025) (allowing delay of petition for thirty days for good cause shown); *id.* § 16-2312 (requiring that probable cause must be found before any pretrial detention).

for manifestations of their disability or failing to accommodate their disability in the course of an investigation or arrest.

### 1. Requests for Accommodations at the Initial Court Appearance and Time of Placement

Even when defense counsel are unable to convince the prosecutor or intake team to divert a child from court, they may use information about the youth's disability and trauma to limit the accumulation of additional charges and records after the petition is filed. Defenders may advise the court of a child's specific disability and request accommodations pursuant to the ADA at the initial hearing and again at the beginning of any court-ordered placement or program.<sup>319</sup> If the judge, prosecutor, probation officer, or detention and program staff fails to accommodate the child's needs after notice, or discriminates against the child based on their disability, the youth may litigate the violation. Although formal notice of the need for accommodations is not per se required,<sup>320</sup> notice can strengthen a youth's claim in a subsequent civil suit.

Because most youth who are detained or incarcerated within youth correction facilities will be educated by schools within those facilities, notice of educational disabilities and required accommodations puts those schools on notice of the child's education rights under IDEA and section 504 of the Rehabilitation Act. When facility-based schools fail to implement any aspect of a child's IEP or 504 plan, defenders may challenge the violation against the school within the facility. To support these claims, attorneys may cite to DOJ actions that make clear that facilities incarcerating disabled youth must provide special education services in compliance with IDEA.<sup>321</sup>

319. See 42 U.S.C. § 12132 (providing that qualified individuals with a disability shall not "be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity").

320. See *Montgomery v. District of Columbia*, No. CV 18-1928 2022 WL 1618741, at \*8–11, \*21 (D.D.C. May 23, 2022) (finding that Mr. Montgomery had standing to file suit even though police had not been given formal notice).

321. Press Release, U.S. Dep't of Just., Off. of Pub. Affs., Justice Department Announces Civil Rights Investigation into Conditions at Kentucky Youth Detention Centers (May 15, 2024), <https://www.justice.gov/opa/pr/justice-department-announces-civil-rights-investigation-conditions-kentucky-youth-detention> [<https://perma.cc/ZD6Q-4KC6>] (announcing that the Department of Justice is investigating potential failures to provide special education services for incarcerated youth in Kentucky); Statement of Interest of the United States at 1–2, *Charles H. v. District of Columbia*, No. 1:21-cv-00997 2022 LC 1416645, at \*1 (D.D.C. May 26, 2021) (raising concerns that facilities replaced teacher-led instruction with work packets during the COVID-19 pandemic, violating IDEA); U.S. DEP'T OF JUST. C.R. DIV., INVESTIGATION OF MANSON YOUTH INSTITUTION 15 (2021), <https://www.justice.gov/crt/case-document/file/1458101/dl?inline> [<https://perma.cc/Y872-QA7P>] (highlighting the facility's failure "to provide special education and related services that enable the children to access appropriate educational services that are particularized to their needs and abilities,

Notice of disabilities may also reduce the criminalization of related behaviors by discouraging probation officers or institutional staff from involving law enforcement when the child violates pretrial release conditions, probation requirements, or placement rules. Probation officers and institution staff seeking to avoid IDEA or ADA violations will have greater incentive to accommodate and redirect youth who violate the rules without calling the police. For example, the staff at Damion's group home may have been more creative in responding to the boys' roughhousing with de-escalation techniques and additional supervision in the facility had they been on notice that he needed accommodations pursuant to the ADA and IDEA.

Courts have begun to consider whether the ADA applies to probation and parole revocation proceedings.<sup>322</sup> In the criminal appellate case *Harris v. Commonwealth of Virginia*,<sup>323</sup> Mr. Harris asserted that he was unlawfully punished for violating probation conditions with which his disabilities made it impossible for him to comply without accommodations.<sup>324</sup> Mr. Harris' disabilities included fetal alcohol syndrome, an IQ of 66, and diagnoses of "attention deficit hyperactive disorder, intermittent explosive disorder, mood disorder with psychotic features and hallucinations, bipolar disorder, Asperger's syndrome, organic brain syndrome, tic disorder, and several speech impediments."<sup>325</sup> Although ultimately the court did not find that the trial court erred in revoking Mr. Harris' probation, dicta in the majority opinion notes that the court is not necessarily precluded from applying ADA standards in revocation proceedings.<sup>326</sup>

In his concurrence, Virginia Court of Appeals Judge Raphael further examined the application of the ADA to probation revocation proceedings. He

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as required by the IDEA"). *See generally* Complaint, *United States v. Leflore Cnty.*, No. 4:15-CV-059 (N.D. Miss. May 12, 2015), [https://www.justice.gov/sites/default/files/crt/legacy/2015/07/13/lefllore\\_comp\\_5-12-15.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2015/07/13/lefllore_comp_5-12-15.pdf) [<https://perma.cc/2EU8-BLZW>] (detailing the facility's noncompliance with IDEA requirements); *see* U.S. DEP'T OF JUST., INVESTIGATION OF THE PENDLETON JUVENILE CORRECTIONAL FACILITY, PENDLETON, INDIANA 4 (2012), [https://www.justice.gov/sites/default/files/crt/legacy/2012/08/23/pendleton\\_findings\\_8-22-12.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2012/08/23/pendleton_findings_8-22-12.pdf) [<https://perma.cc/D3M2-UXKM>] (summarizing its finding that the facility fails "to comply with IDEA's requirements for youth with disabilities"); U.S. DEP'T OF JUST., INVESTIGATION OF THE SCIOTO JUVENILE CORRECTIONAL FACILITY, DELAWARE, OHIO 14 (2007), [https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/scioto\\_findlet\\_5-9-07.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/scioto_findlet_5-9-07.pdf) [<https://perma.cc/76L7-Y8XW>] (finding that the facility's "special education program suffers from systemic failure and violates residents' rights under the IDEA by failing to provide adequate special education").

322. Class Action Complaint for Declaratory and Injunctive Relief (Violation of the Rehabilitation Act-Failure to Accommodate Supervisees' Disabilities) at 9, *Mathis v. U.S. Parole Comm'n*, No. 1:24-cv-01312, 2024 WL 4056568, at \*6 (D.D.C. May 6, 2024) [hereinafter *Mathis Complaint*]; *Harris v. Commonwealth*, No. 1126-21-4, 2022 WL 16556488, at \*6 (Va. Ct. App. Nov. 1, 2022).

323. No. 1126-21-4, 2022 WL 16556488 (Va. Ct. App. Nov. 1, 2022).

324. *Id.* at \*4.

325. *Id.* at \*3.

326. *Id.* at \*6 n.4; *see also id.* at 13 (Raphael, J., concurring).

noted that while the procedural posture of the case prevented the court from reaching the ADA questions in Mr. Harris's case, he agreed that the court's prior decisions do not "preclude application of ADA standards to Virginia's probation revocation proceedings where a party has satisfied the threshold proof of being a qualified individual under the ADA entitled to reasonable accommodation."<sup>327</sup> Judge Raphael cited DOJ guidance recognizing that "title II [of the ADA] applies to *anything* a public entity does. Title II coverage . . . is not limited to 'Executive' agencies, but includes activities of the legislative and *judicial* branches of State and local governments."<sup>328</sup> He further highlighted DOJ guidance in the criminal justice context indicating "that public entities covered by [T]itle II include courts when 'setting bail or conditions of release,' when 'sentencing,' and when 'determining whether to revoke probation.'"<sup>329</sup> As to the question of whether the ADA provides only a civil remedy and not a defense, Raphael noted that states are obligated to obey federal statutes that are not otherwise unconstitutional, and states are "not necessarily free . . . to ignore the nondiscrimination requirements of [T]itle II until [they are] successfully enjoined in a civil suit."<sup>330</sup>

In a recent federal civil suit, plaintiffs from Washington, D.C., have alleged that the U.S. Parole Commission and the Court Services and Offender Supervision Agency ("CSOSA") violated the rights of people with disabilities under their supervision by failing to assess their accommodation needs and to provide reasonable accommodations.<sup>331</sup> The plaintiffs in *Mathis v. United States Parole Commission*<sup>332</sup> allege that the agencies' failures create discriminatory impediments for people with disabilities to successfully comply with the terms of their supervision and put them at great risk of sanctions, including incarceration.<sup>333</sup> Although the plaintiffs did not make an explicit ADA claim, they made similar arguments pursuant to section 504 of the Rehabilitation Act

327. *Id.* at \*6 (Raphael, J., concurring) (citing *Wilson v. Commonwealth*, 522 S.E.2d 385, 387 (Va. Ct. App. 1999)).

328. *Id.* at \*8 (alteration in original) (first citing 28 C.F.R. § 35.102 (2021); and then citing U.S. DEP'T OF JUST. & DEP'T OF HEALTH & HUM. SERVS., PROTECTING THE RIGHTS OF PARENTS AND PROSPECTIVE PARENTS WITH DISABILITIES 9 (2015), [https://www.ada.gov/doj\\_hhs\\_ta/child\\_welfare\\_ta.pdf](https://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf) [<https://perma.cc/2GES-2JWB>]).

329. *Id.* at \*9 (quoting U.S. DEP'T OF JUST., EXAMPLES AND RESOURCES TO SUPPORT CRIMINAL JUSTICE ENTITIES IN COMPLIANCE WITH TITLE II OF THE AMERICANS WITH DISABILITIES ACT (2017), <https://www.ada.gov/cjta.html> [<https://perma.cc/JG5Z-2DZE>]).

330. *Id.* at \*9; *see also* U.S. CONST. art. VI, cl. 2 (Supremacy Clause); *Alden v. Maine*, 527 U.S. 706, 755 (1999).

331. *See generally* Mathis Complaint, *supra* note 322 (alleging plaintiffs' rights were violated pursuant to section 504 of the Rehabilitation Act of 1973).

332. No. 1:24-cv-01312, 2024 WL 4056568 (D.D.C. May 6, 2024).

333. *Id.* at \*1; *see also* Judge Orders Supervision System in Washington, D.C. to Accommodate People with Disabilities, ACLU (Sept. 6, 2024, 10:00 AM), <https://www.aclu.org/press-releases/judge-orders-supervision-system-in-washington-d-c-to-accommodate-people-with-disabilities> [<https://perma.cc/25BB-XPXV>].



of 1973 regarding the government's inequitable treatment of persons with disabilities and failure to assess and provide for individuals' reasonable accommodations.<sup>334</sup> As of February 2025, the lawsuit is still ongoing, but the federal court granted a preliminary injunction, ordering the federal agencies to assess what accommodations the two named plaintiffs require and then provide those accommodations.<sup>335</sup> In granting the injunction, the court recognized that "[a]bsent an injunction, the Parolees will be forced to participate in the Government's supervision programs on an unequal footing just because of their disabilities."<sup>336</sup> Although the Supreme Court has not decided whether the ADA can provide a defense in criminal or delinquency matters, the theories of liability explored in these cases may support a defense request for accommodations and a broad range of remedies when police, probation officers, and other systems-actors discriminate against disabled youth, as discussed in Section VI.B.2 below.

## 2. Motions to Suppress Evidence and Motions to Dismiss a Petition Based on the Americans with Disabilities Act

Defenders may invoke the ADA in a motion to suppress evidence or a motion to dismiss a delinquency petition where the underlying arrest or prosecution violates the ADA's prohibition against public entities discriminating against people with disabilities.<sup>337</sup> Professor Jamelia Morgan explores two theories for applying Title II of the ADA to police arrests.<sup>338</sup> One is the "failure to accommodate theory," which allows plaintiffs to seek relief "when officers fail to provide accommodations during the course of an investigation or arrest."<sup>339</sup> The other theory that has been recognized by some courts is the "wrongful-arrest theory," which applies when officers "misperceive lawful conduct caused by [an arrestee's] disability as criminal activity and then

334. Mathis Complaint, *supra* note 322, at \*1 (alleging plaintiffs' rights were violated pursuant to section 504 of the Rehabilitation Act of 1973).

335. *Judge Orders Supervision System in Washington, D.C. to Accommodate People with Disabilities*, *supra* note 333.

336. *Mathis*, 2024 WL 4056568, at \*13.

337. See 42 U.S.C. § 12132 (providing that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity"). Defenders may also invoke section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 794(a), which similarly states that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . or conducted by any Executive agency or by the United States Postal Service." 29 U.S.C. § 794(a).

338. See Morgan, *Policing Under Disability Law*, *supra* note 62, at 1428–29 (noting that while the Supreme Court has not decided whether Title II applies to arrests in civil suits, some federal courts of appeal have identified two theories of liability under which it applies).

339. *Id.* at 1429.

arrest [that person] for the conduct.”<sup>340</sup> In some cases, both a “failure to accommodate” and a “wrongful arrest” may occur. For example, a police officer might trigger a child with PTSD by being verbally aggressive, touching them in a threatening manner, or otherwise failing to accommodate their disability. The officer might then misinterpret their “fight-flight-freeze” response as an assault on a police officer or resisting arrest.

In a motion to dismiss a petition or suppress evidence, the youth’s counsel must first establish that the police officer’s conduct during the investigation or arrest violated Title II of the ADA either as a “failure to accommodate” or a “wrongful arrest.”<sup>341</sup> Defenders may then argue to suppress evidence if the officers obtained that evidence after failing to accommodate a defendant’s disabilities during an investigation.<sup>342</sup> Consistent with the “wrongful arrest” theory of liability, a motion to suppress might also be appropriate when police did not have probable cause to arrest or reasonable, articulable suspicion to stop a child, but instead misinterpreted a child’s disability-related behaviors, such as fidgeting or aggressive speech patterns, as suspicious. Much like the deterrent effect of the Fourth and Fifth Amendment’s exclusionary rule, the remedies proposed here are necessary to hold police accountable and discourage law enforcement from violating the ADA in the future.

A recent civil lawsuit affirms that police officers are state actors who have obligations under the ADA and may bolster defense arguments that officers’ failure to accommodate a known or apparent disability should be grounds for suppression or dismissal. In *Montgomery v. District of Columbia*,<sup>343</sup> the United States District Court for the District of Columbia found that Title II of the ADA and section 504 of the Rehabilitation Act apply to police conduct, including in the arrest and interrogation contexts.<sup>344</sup> The court found that Mr. Montgomery, who had been diagnosed with schizophrenia, had standing to sue the District of Columbia for violations of his rights under these laws based on his allegation that the police were aware he had a disability, but nevertheless failed to provide accommodations or even assess whether accommodations were necessary.<sup>345</sup> In denying the District’s motion for summary judgement, the court held that Title II of the ADA requires public entities to “make reasonable modifications . . . necessary to avoid discrimination” and that Mr.

340. *Id.* (citing *Gohier v. Enright*, 186 F.3d 1216, 1222 (10th Cir. 1999)); *see also* *Roberts v. City of Omaha*, 723 F.3d 966, 973 (8th Cir. 2013) (describing the wrongful-arrest theory as when officers “unreasonably mistake an innocent, disability-related behavior for criminal conduct”).

341. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, tit. II, 104 Stat. 327, 337–53 (codified as amended at 42 U.S.C. § 12101–161).

342. *Id.*

343. No. 18-1928, 2022 WL 1618741 (D.D.C. May 23, 2022), *reconsideration denied*, No. 18-1928, 2023 WL 4684897 (D.D.C. July 21, 2023).

344. *Id.* at \*7.

345. *Id.* at \*5.

Montgomery's behavior during the interrogation, namely that "[m]any pages of the transcripts . . . consist of Montgomery angrily ranting at himself or voices in his head," points to his need for accommodations.<sup>346</sup> The court also noted that the police officers themselves suspected Montgomery had a disability, as evidenced by their questioning him about ever having had a mental illness and Mr. Montgomery's response to those questions.<sup>347</sup> Following the rationale articulated in *Montgomery*, a defender may move to suppress a youth's statement when the officers' failure to accommodate the youth's disability contributed to the coerciveness of the interrogation or the involuntariness of the *Miranda* waiver. A defender might then convince a prosecutor to dismiss a petition after excluding the government's key evidence.

Defenders might also move to dismiss the petition if the ADA violation formed the entire basis of the underlying charge. For example, if the child's only offense arises out of the officer's misinterpretation of the youth's disability-related behaviors as a crime or out of the youth's triggered response to the officer's failure to accommodate their disability. In a motion to dismiss, defenders might argue that the court itself would be violating the ADA if it were to allow the continued prosecution of a case that is predicated on a police officer's violation of the ADA. Continued prosecution would subject a disabled youth to ongoing discrimination as they take time away from school or work to attend court dates, comply with pretrial release conditions, and endure the burden of defending themselves during a trial arising out of the criminalization of their disability. Dismissal would offer an important remedy for youth with disabilities, especially youth of color living in heavily policed communities, who are most at risk for having their disability-related behaviors interpreted as criminal because of implicit racial bias.<sup>348</sup>

Defenders can consider invoking the ADA in a motion to dismiss a new case arising out of the state's failure to accommodate a young person's disability while incarcerated in a jail, youth prison, group home, or residential treatment facility. By extension of the rationale in *Montgomery v. District of Columbia*, the concurrence in *Harris v. Commonwealth*, and the complaint filed in *Mathis v. U.S. Parole Commission*, criminalizing behaviors that are a manifestation of the youth's disability puts them on "unequal footing"<sup>349</sup> with their nondisabled peers in the facility.<sup>350</sup> Defense counsel may highlight the ways in which a young person with a disability has much greater difficulty than other children in

346. *Id.* at \*8–9.

347. *Id.* at \*9.

348. See Jamelia Morgan, *Disability's Fourth Amendment*, 122 COLUM. L. REV. 489, 533 [hereinafter Morgan, *Fourth Amendment*]; see also *supra* notes 59–60, 91–92 and accompanying text.

349. *Mathis v. U.S. Parole Comm'n*, No. 1:24-cv-01312, 2024 WL 4056568, at \*13 (D.D.C. Sept. 5, 2024).

350. See *Montgomery*, 2022 WL 1618741, at \*5; *Harris v. Commonwealth*, No. 1126-21-4, 2022 WL 16556488, at \*4 (Va. Ct. App. Nov. 1, 2022); *Mathis Complaint*, *supra* note 322, ¶¶ 27–29.

complying with the rules and supervision in youth facilities. A child like Damion, who did not receive adequate support to comply with the rules of his group home, or who is otherwise discriminated against through arrest or other criminalization of their trauma histories or cognitive, emotional, and developmental disabilities, should not be prosecuted.

Although defenders may not have immediate success in invoking the ADA or addressing disability rights in their motions to dismiss or motions to suppress,<sup>351</sup> these motions will educate judges and other systems-actors and eventually help courts understand the impact of disability and related biases in their analyses. These motions also expose the “cultural attitudes” and stereotypes that portray disabled people—particularly people of color—as criminals, especially when they fail to conform to the social norms and “institutionalized rules, procedures, and practices of private entities and public organizations.”<sup>352</sup> As Professor Morgan argues, adopting a social model of disability “would permit greater protections under the ADA and would do so in a manner consistent with the statute’s text and congressional purpose.”<sup>353</sup>

### 3. Motions to Dismiss a Petition in the Interest of Justice

State law may provide additional grounds for dismissing a petition when a child is criminalized for behaviors that are manifestations of their disability. A few states have laws that allow the court to dismiss a petition “in the interest of justice” even when a child’s behavior meets the elements of a crime.<sup>354</sup> For example, California law allows judges to dismiss a petition “if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal.”<sup>355</sup> In the District of Columbia, judges may dismiss a petition in the interest of justice when a “child is not in need of care and rehabilitation” from the juvenile court.<sup>356</sup> A dismissal may be appropriate under these provisions when the child’s alleged offense is directly related to the child’s trauma or disability or when the child’s disability-related needs will be better served by the school system or community-based providers.

A motion to dismiss in the interest of justice may be especially fruitful when a child with a disability is arrested at school or in a congregate care

351. See Morgan, *Fourth Amendment*, *supra* note 348, at 534–36 (noting that it is “challenging to distinguish what specific disability-related behavior, or behaviors, police impermissibly interpreted as criminal conduct” and describing a case where the court found against a Black man who alleged his speech impediment was wrongfully interpreted as indicative of criminal activity).

352. Morgan, *Policing Under Disability*, *supra* note 62, at 1407–09, 1458 (describing the social model of disability as viewing disability as a social construction and acknowledging the social forces that impact perceptions and treatment of disabled people by a variety of entities, including the police).

353. *Id.* at 1469.

354. See, e.g., CAL. WELF. & INST. CODE § 782(a)(1).

355. *Id.*

356. D.C. CODE § 16-2317(d)(1) (2025); D.C. SUPER. CT. JUV. R. 48(b).

institution that was aware of—or should have been aware of—their disability but failed to accommodate their needs. Even without a direct ADA claim, defenders should detail the ways in which the school or institution failed to meet its obligations under the ADA, IDEA, or section 504 and argue that punishment would be contrary to the interest of justice for a child whose behaviors are a manifestation of the child's unmet needs. Defenders in states without statutory provisions that allow dismissal in the interest of justice should consider filing motions to dismiss pursuant to their state's purpose clause, arguing that to prosecute behavior that is a manifestation of a disability would be contrary to the values and goals of the juvenile court.<sup>357</sup>

To increase the likelihood of dismissal, defenders should advocate for individualized alternatives to prosecution that will achieve the goals of the juvenile legal system without formal case processing.<sup>358</sup> These goals often include public safety, rehabilitation, youth well-being, and accountability consistent with the child's age and cognitive and developmental capacities.<sup>359</sup> For example, defenders helped Damion's mother apply to the special education school where he would receive additional services aimed at improving his self-regulation, reducing his impulsivity, and reducing the likelihood he would return to juvenile court and accumulate more records. The court may be more willing to dismiss a case knowing the child will receive services through their school or behavioral health system.<sup>360</sup>

Each of the strategies to dismiss cases and exclude evidence explored in Section V.B represents an important tool in the effort to dismantle the criminalization of disabilities and trauma and radically reduce juvenile records and their harmful effects. Even when cases are dismissed, the child's records will need to be sealed, expunged, and protected from public access as discussed below.

### C. *Sealing, Expunging, and Increasing Confidentiality of Juvenile Records*

Strategies to prevent arrest and divert youth from the system must be accompanied by efforts to simplify processes for sealing and expunging juvenile records and to limit the sharing of juvenile records before they can be removed. Legal scholars and organizations have developed helpful resources for advocates seeking to implement these reforms.<sup>361</sup> In her law review article *The Juvenile*

357. For a discussion of juvenile court purpose clauses, see Section V.A.1.

358. See Joseph B. Tulman & Douglas M. Weck, *Shutting Off the School-to-Prison Pipeline for Status Offenders with Education-Related Disabilities*, 54 N.Y.L. SCH. L. REV. 875, 890 (2009/2010).

359. See *supra* Section V.A.1.

360. See Tulman & Weck, *supra* note 358, at 890.

361. See, e.g., *Automatic Expungement of Juvenile Records*, *supra* note 24; Coleman, *supra* note 23, at 1; Radice, *supra* note 15, at 365; RIYA SAHA SHAH, LAUREN FINE & JAMIE GULLEN, JUV. L. CTR.,

*Record Myth*, legal scholar Joy Radice presents convincing arguments for more robust confidentiality, expungement, sealing, and nondisclosure statutes.<sup>362</sup> The National Conference of State Legislatures has prepared a comprehensive survey of existing state laws that mandate automatic sealing and expungement.<sup>363</sup> Similarly, the American Bar Association's Model Act Governing the Confidentiality and Expungement of Juvenile Delinquency Records offers language limiting records sharing,<sup>364</sup> and the National Council of Juvenile and Family Court Judges issued its Resolution Regarding Confidentiality, Sealing, and Expungement of Juvenile Records in 2023, which supports legislation that limits access to juvenile records and provides youth with opportunities for automatic sealing and expungement.<sup>365</sup>

### 1. On Sealing and Expungement

To reduce the stigma associated with arrest and prosecution, states must eliminate cumbersome rules and procedures that prevent youth from removing an arrest or adjudication from their records. The most effective framework for clearing records involves expungement laws and regulations requiring immediate automatic destruction of juvenile records by all agencies as soon as the court's jurisdiction over the child ends. The majority of state statutes do not require automatic expungement and instead only allow youth to petition the court to seal their records.<sup>366</sup> In the nine states where expungement requires the total destruction of records, statutes rarely allow for expungement of all offenses, and most require a lengthy waiting period.<sup>367</sup>

Fifteen states have implemented hybrid statutes, combining the benefits of both sealing and expunging juvenile records.<sup>368</sup> Professor Radice notes that "[t]his combination has the potential of protecting records more efficiently and effectively" than either sealing or expungement alone, since expungement is typically not immediate and sealing does not destroy records.<sup>369</sup> For example,

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JUVENILE RECORDS: A NATIONAL REVIEW OF STATE LAWS ON CONFIDENTIALITY, SEALING AND EXPUNGEMENT 6–11 (2014), [https://jlc.org/sites/default/files/publication\\_pdfs/national-review.pdf](https://jlc.org/sites/default/files/publication_pdfs/national-review.pdf) [<https://perma.cc/QAT3-N2FN>].

362. Radice, *supra* note 15, at 399.

363. *Automatic Expungement of Juvenile Records*, *supra* note 24.

364. AM. BAR ASS'N, MODEL ACT GOVERNING THE CONFIDENTIALITY AND EXPUNGEMENT OF JUVENILE DELINQUENCY § 4(C) (2015).

365. NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, RESOLUTION REGARDING CONFIDENTIALITY, SEALING, AND EXPUNGEMENT OF JUVENILE RECORDS 1 (2023), [https://www.ncjfcj.org/wp-content/uploads/2023/08/Resolution-Regarding-Confidentiality-Sealing-and-Expungement-of-Juvenile-Records\\_FINAL-1.pdf](https://www.ncjfcj.org/wp-content/uploads/2023/08/Resolution-Regarding-Confidentiality-Sealing-and-Expungement-of-Juvenile-Records_FINAL-1.pdf) [<https://perma.cc/MUB2-VNE2>].

366. Radice, *supra* note 15, at 412.

367. *Id.* at 410–11 (noting that Ark. Code Ann. § 9-27-309 (2016) offers one of the few examples where the majority of juvenile records are expunged automatically after the youth reaches age twenty-one).

368. *Id.* at 413.

369. *Id.*

North Dakota's statute automatically seals a case once it is closed and then schedules an automatic expungement ten years later or after the child turns eighteen, whichever is later.<sup>370</sup> The child can petition for expungement earlier, if they have good cause and no additional charges are pending.<sup>371</sup>

In jurisdictions where records are not automatically sealed or expunged, youth defenders should inform youth about the process for sealing or expunging records while their case is active and create a calendar reminder system within their offices to notify each youth when their case becomes eligible for sealing. Defenders may move to seal or expunge records themselves or partner with local law schools or legal aid societies to increase record sealing through special programs or events. Defenders should also counsel youth about the rules governing disclosure before and after records are sealed. Many youth will continue to have questions about their obligations to disclose juvenile records on college or job applications after their cases have concluded. Prosecutors may join efforts to reduce the stigma of juvenile court contact by agreeing not to oppose individual requests to seal or expunge juvenile records or by testifying before state legislatures in support of statutory amendments that would increase opportunities for automatic expungement of juvenile records. Prosecutors may also participate in juvenile records expungement clinics and invest resources in ensuring the community is aware of these opportunities.

## 2. On Limiting Record Sharing

Until a child's record can be sealed or expunged, states must limit public access to records in the juvenile legal system. Colleges, potential employers, and the military should simply stop asking about prior juvenile court involvement. Movements like Ban the Box<sup>372</sup> and the Council of State Government's Policy Toolkit on Reducing Structural Barriers to School and Work for People with Juvenile Records<sup>373</sup> are making progress in these areas. Lawmakers should enhance confidentiality protections to prevent courts and related agencies, including law enforcement and congregate care institutions, from sharing juvenile records with schools, housing authorities, and employers.

Currently, state laws govern the disclosure of juvenile court records.<sup>374</sup> Some require all juvenile records to be open to the public, in the same way an adult's criminal record would be, and a few go so far as to make juvenile records available online for free.<sup>375</sup> Many states ensure confidentiality for some records,

370. *Id.* at 413–14 (citing N.D. CENT. CODE § 27-20-54(2) (2016)).

371. *Id.*

372. Avery & Lu, *supra* note 260; Hartman, *supra* note 260.

373. Weber et al., *supra* note 260.

374. Radice, *supra* note 15, at 401.

375. *Id.* at 403, 405.

but allow public access for certain, more serious charges or repeat offenses.<sup>376</sup> Only a handful of states explicitly prohibit public access to juvenile records, and even these states typically include exceptions allowing access for schools, law enforcement, or probation personnel.<sup>377</sup> Lawmakers seeking to increase protections for youth in their states can follow Rhode Island's lead with a statute that provides robust confidentiality for juvenile court records, allowing only the child, his attorney, and his guardian access without any other exceptions.<sup>378</sup>

Additionally, given how closely juvenile court records are intertwined with and arise out of the criminalization of trauma and disability, lawmakers may look to the Health Information Portability and Accountability Act ("HIPAA") and FERPA for guidance in how to protect juvenile court records and reduce stigma and collateral consequences. FERPA governs the privacy of records related to students, including special education<sup>379</sup> and school discipline matters.<sup>380</sup> HIPAA oversees the sharing of medical records, including those relating to mental health and disabilities.<sup>381</sup> Both of these laws prohibit the public disclosure of these records and severely limit sharing of protected information to what is absolutely necessary to provide education and health services.<sup>382</sup> The consequences for agencies that fail to follow the law are potentially severe: HIPAA violations may result in fines ranging from \$100 to \$1.5 million and up to ten years of imprisonment.<sup>383</sup> Schools that violate FERPA may have federal education funding withdrawn.<sup>384</sup> In contrast, as

376. *Id.* at 403–04.

377. *Id.* at 402.

378. *Id.* at 402 (first citing 14 R.I. GEN. LAWS §§ 14-1-30, -1-64 (2017); and then citing 38 R.I. GEN. LAWS § 38-2-2(4)(C) (2017) (stating "records of juvenile proceedings before the family court" are not public records)).

379. IDEA contains additional protections for special education records. *See generally* KALA SHAH SURPRENANT & FRANK MILLER, U.S. DEP'T OF EDUC., IDEA AND FERPA CROSSWALK (2022), [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/IDEA-FERPA%20Crosswalk\\_08242022.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/IDEA-FERPA%20Crosswalk_08242022.pdf) [<https://perma.cc/5FJG-BSP9>] (offering a comprehensive review of the ways IDEA and FERPA work together to protect students' privacy).

380. U.S. DEP'T OF EDUC., A PARENT GUIDE TO THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) 2–4 (2021) [hereinafter PARENT GUIDE TO FERPA], [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/A%20parent%20guide%20to%20ferpa\\_508.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/A%20parent%20guide%20to%20ferpa_508.pdf) [<https://perma.cc/V9JX-MEG2>].

381. *Your Rights Under HIPAA*, U.S. DEP'T HEALTH & HUM. SERVS., <https://www.hhs.gov/hipaa/for-individuals/guidance-materials-for-consumers/index.html> [<https://perma.cc/6XCS-7VML>] (staff-uploaded archive) (last updated Jan. 19, 2022).

382. *See* PARENT GUIDE TO FERPA, *supra* note 380, at 2–5 (noting general prohibition against schools sharing protected information with outside entities, allowing limited exceptions); *Your Rights Under HIPAA*, *supra* note 381 (noting that HIPAA prohibits entities, such as health care providers and insurance companies, from sharing protected health information).

383. *HIPAA Violations & Enforcement*, AM. MED. ASS'N, <https://www.ama-assn.org/practice-management/hipaa/hipaa-violations-enforcement> [<https://perma.cc/2XZR-P8F4>].

384. NAT'L CTR. FOR EDUC. STATS., FORUM GUIDE TO PROTECTING THE PRIVACY OF STUDENT INFORMATION: STATE AND LOCAL EDUCATION AGENCIES § 6 (2004), [https://nces.ed.gov/pubs2004/privacy/section\\_6faq.asp](https://nces.ed.gov/pubs2004/privacy/section_6faq.asp) [<https://perma.cc/YL92-623T>].



explained above, state statutes governing the confidentiality of juvenile records vary greatly and rarely carry significant penalty for a violation.<sup>385</sup>

While HIPAA and FERPA provide greater confidentiality protections than most state laws governing juvenile court records, these laws are not perfect. HIPAA allows medical providers to disclose otherwise protected health information to law enforcement in certain circumstances, including sharing evidence of certain crimes.<sup>386</sup> FERPA does not cover law enforcement records created or maintained by school resource officers or school security guards.<sup>387</sup> FERPA also does not prohibit schools from sharing otherwise protected records with law enforcement when either a state statute allows it to ensure the juvenile legal system can “effectively serve” the student prior to adjudication<sup>388</sup> or when the school determines there is an actual, impending, or imminent health or safety emergency.<sup>389</sup> The federal regulations guiding IDEA’s implementation require schools to share special education and discipline records with law enforcement when reporting an alleged crime committed by a child with a disability, but simultaneously require schools to comply with FERPA,<sup>390</sup> limiting the sharing of otherwise protected records to the aforementioned exceptions. Legal Scholar Najarian Peters has critiqued FERPA for allowing overinclusion of subjective and unnecessary input by school officials about students’ behavior in the records,<sup>391</sup> which negatively impacts Black children

385. Radice, *supra* note 15, at 399–400, 420.

386. U.S. DEP’T OF HEALTH & HUM. SERVS., HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) PRIVACY RULE: A GUIDE FOR LAW ENFORCEMENT 2, [https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final\\_hipaa\\_guide\\_law\\_enforcement.pdf](https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf) [<https://perma.cc/X7JD-KS4S> (staff-uploaded archive)].

387. 20 U.S.C. § 1232g(a)(4)(B)(ii).

388. 34 C.F.R. § 99.38; *see* JARED P. COLE, CONG. RSCH. SERV., THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA): LEGAL ISSUES 12 (2021), <https://crsreports.congress.gov/product/pdf/R/R46799> [<https://perma.cc/K4SA-CBTN> (staff-uploaded archive)] (emphasizing that the purpose of record sharing must be to “effectively serve” the student and noting that “the outer bounds of when a disclosure concerns the juvenile justice system’s ability to serve a student effectively are uncertain” and “disclosure under this exception may require a specific finding of need”).

389. 20 U.S.C. § 1232g(b)(1)(E), (I); *see also* *Information Sharing: Family Educational Rights and Privacy Act (FERPA)*, READINESS & EMERGENCY MGMT. FOR SCHS. TECH. ASSISTANCE CTR., <https://rems.ed.gov/K12FERPA.aspx> [<https://perma.cc/C6G9-3HK3>] (last updated Aug. 13, 2024) (noting that FERPA permits disclosure of otherwise-protected records to law enforcement in a health and safety emergency).

390. 34 C.F.R. § 300.535(b) (2024) (stating that a school “reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime,” and that these records may only be shared to the extent allowed by FERPA).

391. Najarian R. Peters, *The Golem in the Machine: FERPA, Dirty Data, and Digital Distortion in the Education Record*, 78 WASH. & LEE L. REV. 1991, 1997 (2022) (arguing that FERPA should be amended to strengthen student privacy rights and prevent the collection and creation of “subjective, and often biased, observations and interpretations of teachers and administrators” that leads to the “mischaracterization of . . . marginalized student[s]” in their educational records).

whose behaviors are often viewed through the lens of implicit racial bias and contributes to their overrepresentation in school disciplinary actions.<sup>392</sup>

Nonetheless, robust confidentiality provisions that prohibit juvenile courts, law enforcement agencies, and youth facilities from disclosing any records related to a young person's juvenile court involvement or arrest are essential to protect the futures of young people like Damion and the many other youth with disabilities and trauma histories who need care, not criminalization.

### CONCLUSION

The very existence of juvenile court is rooted in the belief that children are different from adults.<sup>393</sup> The juvenile court purpose clauses in many states acknowledge that children should be treated with additional care to protect their futures and guide their healthy development.<sup>394</sup> However, the criminalization of race, adolescence, disability, and trauma, along with the eroding confidentiality of juvenile records, subject children to the same stigma and lifelong consequences as adult criminal records.<sup>395</sup> Youth, especially youth of color, are frequently arrested and prosecuted for behavior arising out of their disability or trauma.<sup>396</sup> After they enter the juvenile legal system, many youth with disabilities and trauma histories are incarcerated in jails, prisons, and congregate care facilities that fail to meet their needs and stunt their cognitive, social, and emotional development.<sup>397</sup> While incarcerated or under court-ordered supervision in the community, youth are further surveilled and at great risk for accumulating additional juvenile records based on behavior that adults should expect from children who do not have the resources they need to manage their emotions or support their growth.<sup>398</sup> The records created from unjust arrest and incarceration follow young people for the rest of their lives.<sup>399</sup>

To ensure equal opportunities for youth of color and protect the futures of young people of all abilities, systems-actors must work together to exclude or divert youth from the system when their behaviors are manifestations of their trauma and disabilities. When these youth are formally prosecuted, youth advocates should invoke the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and section 504 of the Rehabilitation Act to demand accommodations for youth within the system, extract youth from the system as soon as possible, and challenge violations of these statutory

392. *Id.* at 2001–19.

393. *See supra* notes 16–20 and accompanying text.

394. *See supra* notes 265–66 and accompanying text.

395. *See supra* note 36 and accompanying text.

396. *See supra* Sections II.B., II.C.

397. *See supra* Section III.A.

398. *See supra* Section III.B.

399. *See supra* Part IV.

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protections when systems-actors discriminate against these youth or fail to provide necessary accommodations. At the conclusion of every case, advocates should seek to seal or expunge the youth's records.

