

# Juvenile Justice Update™

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## Strategies for Youth's Model Policies Initiative

Founded in 2010 to improve interactions between police and young people, Strategies for Youth (SFY) is a training and advocacy organization probably best known for its "Juvenile Justice Jeopardy" and "Policing the Teen Brain" programs, adopted by many police departments and schools around the nation. In November 2023, SFY released "12 Model Law Enforcement Policies for Youth Interaction," a comprehensive, research- and evidence-based set of guidelines for law enforcement agencies seeking to improve their relationship and outcomes with the young people they encounter in the day-to-day course of policing. SFY carefully drafted the policies based on research, case law, statutes, and U.S. Department of Justice consent decrees. A diverse group of national, regional, and state experts and stakeholders also reviewed the policies. This issue of *Juvenile Justice Update* explores two of these Model Policies—one for establishing an overall approach to dealing with youth, and a second policy specifically devoted to best practices for investigatory stops, non-custodial interviews, and search and seizure.

Most U.S. law enforcement agencies lack any guidelines about how to interact with, interrogate, or arrest young people—but most citizens assume they do. In a survey conducted by SFY, 56% of Americans think agencies "probably" have written policies for youth interactions, a disconnect that leaves both police and communities primed for disappointment and conflict.

The Model Policies presented in this issue are neither radical nor confrontational. They are grounded in experience, understanding, respect, and common sense. They, or something very much like them, should become a part of the charter of every law enforcement agency in the country. ■

## Model Law Enforcement Policies for Youth Interaction

*Strategies for Youth*

### PURPOSE

Provide law enforcement officers with guidance on how to interact with youth (i.e., young people under the age of 18) in developmentally appropriate, trauma-informed, equitable ways that comply with the law.

These policies and procedures are designed to help officers understand the unique developmental differences and vulnerabilities of youth and to equip officers to use the least restrictive, most effective approaches during these interactions. The policies promote positive interactions and partnerships with youth service providers to avoid and reduce system involvement, increase public safety, and enhance support for youth.

### POLICY

Law enforcement agency and officers' interactions with youth shall be guided by an awareness that youth are developmentally different from adults. Officers must understand how these differences affect young people's ability to understand, respond to, and comply with officers' lawful directives. Officers must take additional, affirmative steps when questioning, searching, detaining, or arresting youth to ensure that their constitutional and statutory rights are protected and to minimize any harm to their physical, mental and emotional health.

Research indicates that youths' experience with law enforcement—whether first or second-hand—influence their

attitudes about legal authority and the law well into adulthood. Positive experiences with law enforcement can solidify youths' favorable attitudes toward legal authority, institutions and rules. Conversely, negative experiences with law enforcement can result in anger, fear, higher rates of offending, viewing legal authority as abusive and illegitimate, and reduce incentives to cooperate with law enforcement. It is therefore important that law enforcement officers treat youth with courtesy, professionalism, dignity, and respect, and with a recognition of the long-term impact of their treatment on youths' attitudes and actions.

### REASONS FOR YOUTH-SPECIFIC POLICIES

#### Why Policing Should Be Different for Youth

As documented in scientific research and articulated by the U.S. Supreme Court, youth are developmentally different from adults and must be treated differently.<sup>1</sup> Officers who routinely interact

<sup>1</sup> See *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (youth are "are more vulnerable or susceptible to ... outside pressures" than adults); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) (noting that the Supreme Court has drawn the "commonsense conclusions" that children "characteristically lack the capacity to exercise mature judgment and possess only an

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with youth must use special skills, knowledge, and tactics. Law Enforcement Agencies (LEAs) must train, guide, and supervise officers' interactions with youth to ensure that youths' constitutional and statutory rights are protected and that **all efforts have been made to use the least intrusive, most effective approaches.**

Officers must understand that adolescence is uniquely characterized by:

- risk-taking behaviors,
- limited capacity for self-regulation,
- limited capacity to anticipate consequences accurately,
- limited impulse control,
- susceptibility to manipulation,
- heightened sensitivity to peer influence,
- prioritization of immediate rewards,
- reactive responses (ranging from resistance to feeling coerced) to authority figures.

Officers' decisions about whether to stop, search, make court referrals, detain or

incomplete ability to understand the world around them," and "cannot be viewed simply as miniature adults."); *Miller v. Alabama*, 567 U.S. 460 (2012) (noting "three significant gaps between juveniles and adults": (1) youths' "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking."; (2) youth vulnerability to "negative influences and outside pressures," with "limited control over their own environment"; and (3) youths' less "well formed" character, with youth actions less likely to be "evidence of irretrievable depravity.") See also *Graham v. Florida*, 560 U.S. 48 (2010) and *Montgomery v. Louisiana*, 77 U.S. 190 (2016) (making similar statements and endorsing these principles).

arrest, may have detrimental long-lasting impacts. Youth who are Black, indigenous, and/or of color; youth living in poverty; youth who have immigrated to the U.S.; and youth with substance use/addiction issues, disabilities, and trauma histories experience disproportionately high contact, arrest, and detention rates. Often, these disparate experiences occur when officers do not understand that youths' conduct reflects their experiences, circumstances, developmental capacity, lack of perceived options, and/or need for assistance.

Civil rights investigations and litigation by the U.S. Department of Justice (DOJ) confirm that youth have been subjected to a "pattern or practice" of unlawful treatment by some LEAs and their officers.<sup>2</sup> As of October 2023, DOJ has obtained and is seeking agreements with LEAs to remedy practices such as the use of excessive force on youth,<sup>3</sup> arresting youth without

<sup>2</sup> A federal statute, 34 U.S.C. § 12601, prohibits law enforcement agencies from engaging in a "pattern or practice" of conduct that deprives people of rights protected by the Constitution or laws of the United States, and gives the Attorney General of the United States the authority to bring a civil suit to obtain relief to eliminate the pattern or practice.

<sup>3</sup> See U.S. DEP'T OF JUST., INVESTIGATION OF THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT at 22-24 (2023) (DOJ Minneapolis Investigation Findings) (the Department engaged in "unnecessary, unreasonable, and harmful Uses of force" in interacting with youth, often due to officers' failure to de-escalate these encounters); Consent Decree, *U.S. v. Police Department of Baltimore City*, No. Case 1:17-cv-00099-JKB (2017), (Baltimore Consent Decree) Section VIII (provision to remedy DOJ findings that the Department used excessive force with youth and ignored accepted strategies for youth interactions).

probable cause,<sup>4</sup> and violating the rights of students.<sup>5</sup> DOJ has also documented that the lack of training or guidance for officers about how to interact with youth contributes to unlawful treatment and civil rights violations, and has obtained and is seeking policy and training reforms.<sup>6</sup>

<sup>4</sup> See Settlement Agreement, *U.S. v. City of Meridian*, Case 3:13-cv-00978-HTW-LRA Document 83 (2015) (Meridian Settlement Agreement), Section III (provisions to remedy DOJ findings that officers arrested public school students – often for minor, school-related misbehavior — without probable cause).

<sup>5</sup> See Consent Decree, *U.S. v. City of Ferguson*, No. 4:16-cv-00180-CDP (2016), (Ferguson Consent Decree) Section XI (provisions to address DOJ findings that public school students were subjected to unreasonable force by School Resource Officers). See also DOJ Meridian Settlement Agreement, Section III.

<sup>6</sup> See DOJ Minneapolis Investigation Findings at 22-23 (without "adequate guidance about child and adolescent development and how to approach encounters with young people, officers may be more likely to misinterpret behaviors of youth and potentially escalate the encounter... Youth-specific policies are needed to ensure that officers not only correctly interpret adolescent behavior they encounter, but also that officers know how to react appropriately using the tools and discretion at their disposal.") See also *id.*, at 85 (recommending that the Department "recognize the unique characteristics of youth" and develop responsive policies as a "remedial measure" for identified violations); Baltimore Consent Decree, Section VIII ¶¶ 220-221 (Department agrees to "revise its policies and training as necessary" to provide officers with guidance on "developmentally appropriate responses to, and interactions with, youth," including for during voluntary interactions, stops, searches, arrests, uses of force, and custodial detentions and interrogations, and with "sufficient initial and ongoing training" on youth interactions); Ferguson Consent Decree, Section XI.A, (Department agrees to develop

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*Model Policy*

# Investigatory Stops, Non-custodial Interviews, and Search and Seizure of Youth

*Strategies for Youth***PURPOSE**

Ensure:

1. Young people's constitutional rights are upheld during law enforcement-initiated stops and inquiries, and
2. Officers respond to youth in a constitutional and developmentally appropriate, trauma-informed, equitable manner.

**POLICY**

This policy guides officers in initiating interactions with youth, to:

1. Protect young people's constitutional rights,
2. Limit the use of investigatory stops to situations where officers have reasonable, articulable suspicion of delinquent activity or a status offense,

3. Prohibit officers from conducting searches and arrests without probable cause, and

4. Encourage alternatives to law enforcement contact, stops, searches, and youth arrests when feasible and consistent with public safety.

See *INVESTIGATORY STOPS*, next page

## DEFINITIONS

### DEVELOPMENTALLY APPROPRIATE LANGUAGE

Developmentally appropriate language uses vocabulary, syntax, and speed and complexity of communication that matches an individual's developmental level and capacity for understanding. Developmentally appropriate language is necessary to ensure meaningful communication and increases the likelihood that youth are able to understand and assert their constitutional rights.

### DIVERSION

A decision or program to address a youth's alleged delinquent conduct or status offense without involving the youth formally in the juvenile criminal system, using through programming, supervision, and supports in an effort to prevent reoffending. Diversion aims to address youth behavior informally in the community, in an effort to maintain youth connectedness in the community, and avoid stigma and additional trauma.

### PARENT

The youth's biological or adoptive parent, guardian, or legal custodian.

### WEAPONS PAT DOWN

A brief, non-probing running of the hands over the outside of the youth's clothing feeling for a weapon. A weapons pat down is authorized when the officer has reasonable suspicion that the youth is armed. This can include situations in which the officer reasonably suspects that the youth has committed, is committing, or is about to commit a violent crime or when the officer observes something on the youth that they reasonably suspect is a weapon. A weapons pat down may not be conducted to discover evidence or the proceeds or instrumentalities of a crime. An officer cannot "pat-down" a bag or item of personal property unless: 1) the officer has

a reasonable articulable suspicion that the youth is armed, 2) the officer has a reasonable articulable suspicion that the bag or item could contain a weapon; and 3) the bag or item is within the youth's reach.

### PROCEDURAL JUSTICE FOR YOUTH

Procedural justice is predicated on four core principles. Officers: 1) treat people with dignity and respect regardless of social status, 2) give people voice during interactions, 3) use neutral and transparent decision-making as well as explanations for the officer's actions, and 4) treat people in a lawful and trustworthy manner.<sup>1</sup> SFY believes that an additional two core principles are merited for interactions with youth: 1) express concern and care for the youth's well-being and safety, and 2) do not take advantage of the youth's lack of status and power to their disadvantage.

### RESPONSIBLE ADULT

Any adult related to the youth by blood, adoption, or marriage, or who has an established familial or mentoring relationship with the youth, who does not exhibit adverse interests to the youth. A responsible adult can include, but is not limited to, godparents, clergy, teachers, neighbors, and family friends.

### TRAUMA

As defined by the U.S. Department of Health and Human Services, individual trauma results from an event, series

<sup>1</sup> Tom Tyler is the author of the term procedural justice. His definition was first published in *Why People Obey the Law*. (New Haven, CT: Yale University Press, 1990). He further explained this theory in "Procedural Justice, Legitimacy and the Effective Rule of Law," *Crime & Justice*, vol. 30, 2003, pp.283-357. JSTOR, <https://www.jstor.org/stable/1147701>. The tactical use and impacts of law enforcement's use of Procedural Justice are available on the U.S. Department of Justice website at: <https://cops.usdoj.gov/proceduraljustice>.

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## REASONS FOR YOUTH-SPECIFIC POLICIES

### Why Investigatory Stops, Non-Custodial Interviews, and Searches Should Be Different for Youth

- Youth have difficulty considering the consequences of their actions, and are more likely to engage in risky and dangerous behavior. They are also likely to be heavily influenced by their peers and other external factors. This is normal adolescent development and should not be treated as manifestation of guilt, willful disobedience, or defective character.
- For many youth, being stopped, questioned, or searched by law enforcement is an unfamiliar and stressful situation. Youth may react to these encounters in a distrustful, anxious, and angry manner, even if they have been stopped before.
- In conducting any investigatory stop, officers should be aware that youth may not comply immediately with directives to stop due to heightened stress in the moment and resulting delay in their ability to fully process and integrate external information. Instead, they may respond without thinking by: fleeing, making verbal challenges, freezing or failing to respond, disregarding directives, assuming mistreatment by law enforcement, or screaming for help. These responses may be even more common among youth who have experienced trauma or among youth of color who have been disproportionately in contact with the law enforcement.

- In field or non-custodial interviews, officers should be aware that youth may not understand that the interview is a voluntary encounter, even if an adult would more likely understand that they are free to leave. They may respond with hostility, verbal disrespect, silence, or attempt to leave the interview site.
- In conducting searches, officers should be aware that youth may have been exposed to sexual abuse, physical abuse, or other trauma which may affect the way they respond, including by refusing to consent, physically struggling or resisting, or attempting to flee.
- Youth may be incapable of giving valid consent to searches due to age or developmental stage, potential substance use, mental health crisis, disability, limited English proficiency, fear, stress, or perceived coercion by law enforcement. Youth, particularly youth of color and youth who may have experienced trauma, may believe they have no right to refuse.

Additional source and background information for this policy can be found in the Supplementary Materials on page xxx.

## PROCEDURE

### I. Investigatory Stops

**A. An investigatory stop is only permitted when an officer has reasonable articulable suspicion (RAS)** that the youth has committed, is committing, or is about to commit a delinquent act or status offense. RAS allows the officer to temporarily detain the youth for the purpose of confirming or dispelling that suspicion.

**B. If the officer has no legal basis to detain a youth,** they must immediately inform the youth that they are free to leave at any time, and allow the youth to leave

if they elect to do so. Officers shall not block or attempt to delay the youth's departure with, for example, additional questions, or retaining any property belonging to the youth, once the youth has made their intention to leave known.

**C. A youth's behavioral responses alone cannot provide** basis for reasonable suspicion.<sup>2</sup> Rather, in determining whether reasonable articulable suspicion exists, officers should consider the totality of the circumstances. Officers should not assume the following behaviors, standing alone, are indicative of guilt:

- Fleeing,
- Verbal challenges or hostility toward the officer,
- Freezing or unexpected non-responsiveness,
- Disregard for law enforcement directives,
- Expressing a presumption of law enforcement mistreatment,
- Startled movements or evasive behavior,
- Screaming for help.

**D. When considering whether to arrest and charge youth** with disorderly conduct, disturbing the peace, obstruction of justice, or when the arrest would be based solely on the youth's response to a stop rather than on the behavior that led to the initial law enforcement contact,

1. Officers shall consult a supervisor, where the supervisor is available.
2. The supervisor will determine whether the elements of a suspected offense have been established.

<sup>2</sup> See Cleveland Division of Police General Police Order 5.12.01, Interactions with Youth, Section II, (2021).

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of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.

### TRAUMA-INFORMED

A trauma-informed **officer:** 1) anticipates that exposure to and experience of trauma is widespread, 2) realizes that the impacts of trauma often lead to reactive, survival behaviors;

3) recognizes hallmarks of traumatic responses, which are often shaped by a perspective of powerlessness, and 4) responds by considering the role trauma may play in a person's response while taking steps to avoid re-traumatization. A trauma-informed law enforcement **agency** supports its officers' trauma-informed responses by promoting awareness of and training about trauma, policies that require training for trauma-informed skills with the public and among officers.

### YOUTH

Any person under the age of 18.

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3. If a supervisor finds that there is no justification for the arrest, no further action against the youth will be taken.

**E. Whenever possible, officers should issue warnings**, rather than make arrests, for pedestrian youth who are allegedly in violation of transportation codes (e.g., for jaywalking or riding a bicycle on the sidewalk).

## II. Non-Custodial Interviews of Youth During an Investigatory Stop

### A. Permissible questions

When officers have reasonable articulable suspicion to believe that a youth is or has been involved in criminal activity, officers may ask youth limited questions to ascertain their involvement in a matter under investigation.

However, if at any point a reasonable youth would not feel free to terminate the interview and leave, officers must advise the youth of their *Miranda* rights and otherwise comply with the requirements of Policy 4: Miranda Warnings, Waiver of Rights, and Youth Interrogations.

1. In questioning youth, officers shall inform youth that they are not in custody.
2. Officers shall use developmentally appropriate language. Officers shall take all reasonable steps to ensure that youth understand their questions. Officers shall:
  - Approach youth in a calm, respectful manner,
  - Repeat questions if necessary,
  - Slow down/not rush questions unless it is an emergency situation.

### B. Notification to and presence of parent or other responsible adult

1. The officer must stop questioning and notify a parent or other responsible adult designated by the parent to be present when:
  - The officer intends to physically transport the youth from the scene of the non-custodial interview or
  - The youth requests that a parent or other responsible adult be present.
2. Exceptions When Necessary to Render Aid, or Protect the Youth or the Public:

When circumstances in II.B.1 exist, prior to contacting the youth's parent or other responsible adult designated by the parent, the officer may ask the youth questions related to the need to:

- Render aid
- Protect the youth's safety, or
- Assess the situation to determine there is no imminent threat of harm to the youth or other members of the public (e.g., if the officer encounters an individual who appears to be unconscious on the ground, to render aid, the officer may ask a nearby youth, "What happened?").

3. Officers may interview youth without consent from a responsible adult if:

- **Youth initiated a call for service** or otherwise requested assistance from authorities (e.g., law enforcement, school officials, or other mandatory reporters under law). In this situation, officers must still inform the youth that they can have a responsible adult present if they wish. The officer shall limit the interview to questions about the reason which the youth has requested assistance.
- **The officer has answered a call for service or has other factual basis to suspect that the responsible adult is the perpetrator of an offense against the youth.** Officers must inform the youth that they can have a different responsible adult present if they wish. Officers shall adhere to the Department's policies for child abuse investigations for situations in which the responsible adult is a suspect in the commission of an offense with a youth victim.

4. Limits on Questions

The officer may not ask questions intended to further the investigation of a suspected offense beyond the original scope of the investigatory stop, or to extend the detention.

5. Prohibited actions

Officers may not:

- curse at or use derogatory language to speak or refer to youth, mock youth, or otherwise engage in demeaning, threatening, or humiliating speech or tactics,
- use deception in questioning youth,

- offer leniency or special consideration, including anything of value, during an interview and/or investigatory stop in return for youth agreeing to serve as a confidential informant.

## III. Search and Seizure of Youth Incidental to an Investigatory Stop Agencies and Organizations

Warrantless searches of youth are to be conducted pursuant to the same Fourth Amendment rights as adults using developmentally appropriate, trauma-informed approaches as noted below.

### A. Weapons Pat Downs

A weapons pat down is only permitted when an officer has reasonable articulable suspicion (RAS) that the youth is armed and dangerous.<sup>3</sup> Should an officer choose to conduct a pat down to ensure their personal safety during an investigatory stop, it should last no longer than necessary to effectuate the purpose of the stop. In conducting the pat down, officers should also avoid escalating the situation.<sup>4</sup>

To conduct a pat down of a youth, officers must:

- Explain the legal purpose of the pat down,
- Explain how the pat down will be conducted, e.g. where the officer will touch and why, how the officers will use the back of their hands,
- If feasible, ask the youth to explain the pat down in their own words to ensure the youth's understanding,
- In the rare circumstances when a youth must be handcuffed or flexicuffed to protect the officer or public safety during the pat down, officers must explain that the cuffing does not mean the youth is arrested.

### B. Consent Searches<sup>5</sup>

#### 1. Documenting consent searches of youth

<sup>3</sup> See *Terry v. Ohio*, 392 U.S. 1, 24, 26 (1968)

<sup>4</sup> See Baltimore Police Department Policy 317, Fair and Impartial Policing, at 3-4 (2021).

<sup>5</sup> Several aspects of this Policy's provisions on consent searches of youth are based on the policy of the Baltimore, MD. Police Department. See Baltimore Police Department Policy 1202, Interactions with Youth, at 6-7 (2022).

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Where the officer has a body worn camera, dash camera in the law enforcement vehicle, or any other means of making an audio and video recording, consent searches of youth must be recorded.

## 2. Obtaining the youth's consent

- When possible, an officer must request a supervisor's permission to seek a youth's consent,
- An officer must not seek a youth's consent to search when the youth is under 15 years old,
- An officer will not directly or indirectly threaten a youth with adverse consequences for refusing to consent to a search,
- When an officer requests a youth's consent to search them or their property for contraband or evidence of a suspected offense, the officers shall, in developmentally appropriate language<sup>6</sup>:
  - Inform the youth of the basis for the request to conduct the search,
  - Ask the youth their age,
  - Explain to the youth how the search will proceed, including what parts of the youth's body will be touched,
  - Ask the youth to explain the search and its purpose in the youth's own words,
  - Ask the youth to expressly and verbally consent to the search,
  - Explain to the youth that the youth may refuse, limit, or revoke consent at any time.
- The officer will consider the following factors in determining the youth's capacity to understand the interaction and whether the consent to search has been given voluntarily:
  - The youth's age,
  - Whether the youth appears to be experiencing a mental health crisis,
  - Whether the youth appears to have a disability that would interfere with the ability to understand the interaction,

<sup>6</sup> Ideally, officers will use a written procedure or script that meets these requirements. *See, e.g.,* Baltimore Police Department Policy 1202, Interactions with Youth, at 6.

- Whether the youth is under the influence of drugs or alcohol,
- Whether the youth and the officer can communicate effectively in English or the youth's primary language,
- Other factors that may lead the youth to believe they have no choice but to give their consent to the search, including:
  - The legal immigration status of the youth or their family
  - Perceived risks of saying no, such as risk of arrest, risk of physical harm, or risk that the officer may notify the youth's parent or other responsible adult about the law enforcement encounter.
  - The presence of peers or other witnesses to whom the youth may want to respond, impress, or seek approval,
  - Inadequate understanding of their legal rights.

## 3. Conducting the Search

To conduct a search of a youth, officers must:

- Search the youth's clothing and person without inserting a hand into the youth's underwear,
- Ensure, wherever possible, that the officer conducting the search is the same gender as the youth, and, when possible, allow a youth who is non-binary or gender non-conforming to choose the officer who will conduct the search.

## 4. Strip Searches

Strip searches of youth are **prohibited**.

The following does not constitute a strip search or body cavity search:

- Removal or rearranging of clothing reasonably required to render medical treatment or assistance,
- Removal of articles of outer clothing, such as coats, ties, belts, shoes,
- A weapons search that includes minor manipulation at or around the waistband of the pants, including untucking and shaking out a person's shirt, which may expose the waistband of a person's undergarments only.

## IV. Redirection, Referrals, and Diversion

### A. Where probable cause exists that a youth has committed a nonviolent

**misdemeanor offense**, officers may exercise reasonable discretion and choose alternatives to arrest. These alternatives should be the default unless good reason can be articulated why arrest is the preferred option, given that long-term outcomes tend to be better for youth who are not arrested in discretionary circumstances.

These alternatives should include but not be limited to:

1. **Warn and Release:** Officers may warn and release the youth to their parent or other responsible adult designated by the parent.
2. **Referral for Rehabilitative Services:** Officers may make a referral to a community social service or mental health agency, particularly when problems related to mental illness, suicidal gestures and behaviors, drug use or other substance use, and personal or family crises appear to be involved or influencing the youth's behavior.
3. **Referral to Local Agencies:** Where available and appropriate, officers may make referrals to local agencies for positive youth development supports, including recreational, literacy, vocational, volunteer, mentoring, and/or other activities to positively engage youth and deter unruly and/or delinquent behaviors. However, officers shall not arrest youth with the intent or purpose of obtaining social services or positive youth development supports for the youth.
4. **Diversion:** Where available, officers may make referrals to diversion service providers.
  - Officers and service providers should require knowing and voluntary consent from youth and/or their responsible adult to participate in a diversion program. To facilitate voluntary participation, the officer's demeanor and approach will be key.
  - Law enforcement agencies should support officers by seeking out and developing a wide network of community-based providers which use best practices for diversion programming.
  - Law enforcement agencies should build strong cross-agency partnerships for such purposes, use written diversion agreements, rely

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on strategies to prevent future prosecution, offer one-on-one mentoring, ensure equity and cultural competency in programming, and facilitate expungement of arrest records.

- In exercising discretion to warn and release youth, and in making referrals to service providers, officers shall act consistent with non-discrimination obligations and principles of equity, to avoid the risk of perpetuating racial and ethnic disparities at later stages of the juvenile criminal system.

## V. Interactions to Further Ensure Procedural Justice and Transparency

### A. Officer Conduct During An Investigatory Stop

Officers who stop youth during an investigatory stop will:

- Identify themselves by name, rank, and badge number as soon as it is reasonable and practicable to do so.
- Answer youth's questions about the reason for any stop.
- Ensure that the length of any investigatory or vehicle stop is no longer than reasonably necessary to take appropriate action for the known or suspected offense, as well as any offense that is legitimately discovered during the course of the investigation.
- Provide youth with information about how to raise concerns or file a complaint regarding a stop or custodial interrogation. Information about how to file the complaint should be made available in the native languages used in the community served by the Department.
- Officers who determine that a youth who is stopped was not engaged in any criminal or delinquent activity will provide youth with the officer's contact information, and may engage in other supportive, positive interaction with the youth.

### B. Agency And Officer Stop Data Collection

In any investigatory stop of youth, officers will collect and document the following:

- Rationale for the Stop:
  - All causes for investigatory stop,
  - Whether the stop was in response to a call for service,
  - Whether a pat down was conducted and if so, all reasons for conducting the pat down,
  - Whether the youth consented to a search,
  - Contraband or evidence seized, or the absence of contraband or evidence,
  - Whether the officer called for backup during the stop,
  - The statute or regulation for any warning, citation, or summons issued or for any arrest.
- Additional Characteristics of the Youth Stopped:
  - The youth's observable race, ethnicity, gender, and stated or approximate age, as perceived by the officer,
  - The youth's true age, if disclosed to the officer verbally or through documentation such as a driver's license or identification card,
  - Whether the youth is alone or in a group,
  - The youth's apparent English proficiency,
  - Any reported, observed or perceived physical, mental, or developmental disabilities,
  - Whether the youth appeared to be experiencing a mental or other behavioral health crisis,
  - Whether the youth appeared to be under the influence of drugs or alcohol.

#### Supplementary Materials

This appendix contains additional source and background information for Policy 2: Investigatory Stops, Non-Custodial Interviews, and Search and Seizure of Youth.

#### Diversion programs and approaches, and avoiding formal processing for youth

BALTIMORE POLICE DEP'T, POLICY 1202 INTERACTIONS WITH YOUTH 2 (2022)

<https://www.baltimorepolice.org/transparency/bpd-policies/interactions-with-youth>

"Research has shown that many youth, particularly those accused of low-level offenses, achieve better life outcomes and are less likely to commit future offenses when given an appropriate level of intervention that promotes pro-social behavior while protecting public safety."

*Diversion Programs*, YOUTH.GOV

<https://youth.gov/youth-topics/juvenile-justice/diversion-programs>

This document describes "typical services" for youth and families through diversion programs, and notes among other things that for youth who have committed minor offenses, diversion away from the juvenile criminal system and toward community-based services for the youth and their family "is a more appropriate response than confinement" because it offers "a more productive way of addressing and preventing future delinquency, thus reducing recidivism." This document also asserts that formal processing "does more harm than good by perpetuating delinquency through a stigmatizing 'labeling' process," and argues that because community-based and diversion programs cost "significantly less" than incarceration or other out-of-home placement, diversion "reduces system costs and preserves necessary public resources for the handling of more serious crimes." *See id.*

MASS. JUV. JUST. POL'Y (JJPAD) Bd. COMMUNITY-BASED INTERVENTIONS SUBCOMMITTEE, MASSACHUSETTS YOUTH DIVERSION PROGRAM: MODEL PROGRAM GUIDE (2021),

<https://www.mass.gov/doc/jjpad-cbi-subcommittee-2021-report-massachusetts-youth-diversion-program-model-program-guide/download>

This guide recommends strategies for design and delivery of diversion programs.

N.J. ATT'Y GEN. L. ENF'T DIRECTIVE NO. 2020-12, Directive Establishing Policies, Practices, and Procedures to Promote Juvenile Justice Reform 2-3 (2020)

[https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2020-12\\_Juvenile-Justice-Reform.pdf](https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2020-12_Juvenile-Justice-Reform.pdf)

This directive outlines "five mechanisms available to police officers and prosecutors to divert youth from the juvenile justice system and limit the likelihood of unnecessary detention," including: (1) Curbside warnings, defined as "an informal 'talking to'" by a law enforcement to youth in the community, which "typically arises when an officer observes a juvenile engage in some minor act of delinquency.... Curbside warnings demonstrate to juveniles that officers are present to give guidance, direction, and assistance, and not simply to take them into custody"; (2) Stationhouse adjustments, where "an officer typically asks the juvenile and a parent or guardian/caregiver/designee to come to the police station to discuss an alleged offense and work together to develop an appropriate resolution, which is then memorialized in a written agreement.... The goal is to engage the parent or guardian/caregiver/designee—and, where appropriate, the victim—in any resolution, allowing the family and community resources to address the violation rather than the courts"; (3) Use of "complaint-summons," as the default charging document for youth, which allow the youth to remain in the community until an initial court appearance, rather than "complaint-warrants," where the officer can take custody of the youth and detain them; (4) implementing a presumption against pretrial juvenile detention; and (5) prosecutors' use of "post-charge diversion" for youth. *See id.*

THE SENT'G PROJECT, DIVERSION: A HIDDEN KEY TO COMBATING RACIAL AND ETHNIC DISPARITIES IN JUVENILE JUSTICE 10 (2022)

*See INVESTIGATORY STOPS, next page*

*INVESTIGATORY STOPS, from page 7*

<https://assets.aecf.org/m/resourcedoc/sentencing-project-diversion-2022.pdf>

The report asserts that “the early stages of the process in youth justice, and specifically diversion from formal processing in juvenile court (and ideally diversion from arrests), are key” to addressing racial and ethnic disparities in youth confinement. The report also summarizes information, data and research on diversion, including with respect to racial and ethnic disparities, identifies “promising strategies,” and offers recommendations for reform. *See id.* at 1-4.

ANNIE E. CASEY FOUND., INCREASE SUCCESSFUL DIVERSION FOR YOUTH OF COLOR (2022)

<https://assets.aecf.org/m/resourcedoc/aecf-increasesuccessfuldiversion-2022.pdf>

“This brief presents powerful research showing that youth of color are substantially more likely than non-Hispanic white youth with similar case histories to be arrested and, following arrest, to face formal charges in juvenile court—despite similar delinquency rates.” Research shows that “[w]hite youth are far more likely to be diverted and have their cases handled informally outside the court system. The brief also presents evidence that fewer opportunities for diversion for youth of color play a central role in perpetuating and exacerbating unequal outcomes in later stages of the justice process.” *See id.* at 1.

STRATEGIES FOR YOUTH, FORGING PARTNERSHIPS: A GUIDE TO JUVENILE DETENTION REFORM (2021)

<https://strategiesforyouth.org/sitefiles/wp-content/uploads/2021/04/Forging-Partnerships-Report-Apr2021.pdf>

This report urges the inclusion of law enforcement in Juvenile Detention Alternatives Initiatives (JDAI) work, which works to improve the juvenile legal system, and to make that system more equitable. The authors assert that inclusion of law enforcement in these efforts can help reduce unnecessary arrests, ensure smoother implementation of objective screening for whether youth should be detained, help JDAI sites craft “creative approaches to serving youth involved in domestic disputes or reducing arrests at school for disruptive but non-dangerous behaviors,” and make JDAI efforts more sustainable and permanent. *See id.* at 5.

AARON BETSINGER ET AL., BEST PRACTICES IN YOUTH DIVERSION (2018)

<https://theinstitute.umaryland.edu/media/ssw/institute/md-center-documents/Youth-Diversion-Literature-Review.pdf>

This report summarizes youth diversion programs and practices, including best practices in youth diversion at arrest.

### Impact of developmental immaturity on youth comprehension and exercise of rights

J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011)

The Supreme Court stated that it had previously “observed that children ‘generally are less mature and responsible than adults;’ that they ‘often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them;’ that they ‘are more vulnerable or susceptible to . . . outside pressures’ than adults; and so on.” *See id.* at 272.

NAT’L RSCH. COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 128-30 (WASHINGTON, DC, THE NATIONAL ACADEMIES PRESS N.D.) (2013)

<https://doi.org/10.17226/14685>.

- Juveniles’ “developmental immaturity . . . may affect their ability to exercise their rights and to participate competently” in juvenile and adult proceedings. *See id.*, at 128.
- Adolescents’ “reduced capacity for reasoning and understanding and psychosocial immaturity” may make them “less capable of exercising their rights than are adults,” and research shows that youth are “far more likely” than adults to waive their right to remain silent and to confess to crimes (and even to make false confessions). *See id.*, at 129.
- Youth under 15 and 15- and 16-year-olds with below-average intelligence have a poorer comprehension of their right to remain silent, and youth are more likely to waive their right to an attorney than are adults charged with crimes, despite the fact that they are less capable than adults of protecting their own interests in the justice system. *See id.*, at 129.
- Research indicates that, due to developmental immaturity, about 33% of 11- to 13-year-olds and 20% of 14- and 15-year-olds may not be competent to stand trial under the standard applied to adults, that many younger teens “may simply lack the capacity for understanding and reasoning” to comprehend a trial and its consequences and to assist in their defense, and that even older adolescents may be less capable of making decisions that criminal defendants must make, such as deciding whether to accept a plea offer. *See id.*, at 129.

Barbara Kaban & Judith C. Quinlan, *Rethinking A “Knowing, Intelligent, and Voluntary Waiver” in Massachusetts’ Juvenile Courts*, 5 J. Ctr. for Families, Child. & Cts. 35, 42, 47-48 (2004).

In a study about minors’ comprehension of waiving their right to trial, a group of 50 juveniles, with an average age of 15 years, could correctly define only 5.5% of the common legal terms used in the plea colloquy. *See id.*, at 42. As the study’s authors concluded, this research indicated that “colloquies and waiver forms routinely used in Massachusetts’ juvenile courts are replete with words and phrases that court-involved children do not understand.” *See id.* at 47-48.

Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. Crim. L. & Criminology 137, 169-70 (1997).

“Studies of delinquent youths’ understanding of the trial process and capacity to assist counsel have found important deficiencies, often distinguishing these juveniles from adults and from ‘average’ adolescents. Compared to adults, both delinquent and non-delinquent adolescents who have lower intelligence test scores, problematic educational histories, learning disabilities, and mental disorders have shown poorer comprehension of basic information about the legal process. Other evidence has suggested that delinquent youths’ experience with courts, attorneys, and law enforcement officers does not reliably compensate for these tendencies toward poorer understanding of information related to the trial process and rights.” *Id.*

KRISTIN HENNING, THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH 153-54 (2021)

“Adolescents are more likely than either children or adults to respond impulsively rather than retreat

or remain silent, even when specifically instructed not to respond.”

### Youth responsiveness to peer presence

Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 Developmental Psych. 625, 625-35 (2005)

The findings of this study indicate that the presence of peers makes adolescents and youth, but not adults, more likely to take risks and make risky decisions.

### Youth reactions to being stopped, questioned, or searched by law enforcement officers

Dylan B. Jackson et al., *Unpacking Racial/Ethnic Disparities in Emotional Distress Among Adolescents During Witnessed Police Stops*, 69 J. Adolesc. Health 248, 248-54 (2021)

This study found significant racial/ethnic disparities among youth in feeling angry and unsafe during witnessed police stops emerged, with youth of color more likely to report emotional distress, largely due to the officer intrusiveness and perceived injustices that characterize these stops.

Donna M. Bishop & Michael J. Leiber, *Racial and Ethnic Differences in Delinquency and Justice System Responses*, in *The Oxford Handbook of Juvenile Crime and Juvenile Justice* 444, 460 (Barry C. Feld & Donna M. Bishop eds., 2011).

“Because most juvenile crime involves group offending, encounters with juveniles routinely occur in situations where youths are ‘on stage’ before an audience of their peers. In such settings, ‘copping an attitude’ of toughness or hostility may be a face-saving tactic rather than a harbinger of danger. A hostile attitude may also be a response to real or perceived police prejudice, especially if police concentrate surveillance on underclass areas and differentially stop minority youths. Such practices generate antagonism and perpetuate a vicious cycle.”

Jacinta Gau & Rod Brunson, *Procedural Justice and Order Maintenance Policing: A Study of Inner-City Young Men’s Perceptions of Police Legitimacy*, 27 Just. Quarterly 255, 225-79 (2010)

Based on interviews of urban youth, this study found that youth believed their “socioeconomic status and/or race made them de facto ‘suspicious persons’ in the eyes of officers and that as a result, they were subjected to heightened—and unwarranted—levels of police scrutiny.” The study reported that “participants perceived officers’ widespread use of stop-and-frisks for suspected disorderly behavior as a form of harassment because they sometimes felt that they had done nothing that merited such treatment. . . . The fact that many of the youths’ experiences analyzed in the present study involved stops, frisks, and other activities that fell short of formal arrest is no reason to take these young men’s accounts less seriously. Stops and frisks that do not result in arrest may seem harmless because the citizen is not subjected to formal sanctions. Formal sanctions, however, are but one potential consequence of stops and frisks—there also are a host of informal outcomes such as shame, embarrassment, anger, and feelings that one’s personal integrity has been violated. . . . Overall, young men reported feeling that they were perpetually under officers’ gaze.” *See id.* at 272.

*See INVESTIGATORY STOPS, page 16*



### INVESTIGATORY STOPS, from page 8

Michelle Fine et al., *Anything Can Happen with Police Around: Urban Youth Evaluate Strategies of Surveillance in Public Places*, 59 J. Soc. Issues 141, 141-58 (2003).

In a study of New York City youth, Black and Latino males had the highest rates of adverse interactions and mistrust of police and felt the least safe. *See id.*, at 155. Most young people reported that the cumulative impact of adverse interactions with police, security guards or teachers left them with a sense of betrayal by adults and powerless to challenge the behavior of these adult authority figures. *See id.*, at 155.

HENNING, *supra* at 153-54

“What many officers perceive as disrespect is often just teenagers showing off, enjoying the thrill of a new risk, or deflecting stress, anxiety, and other emotions....” Even when children know it is dangerous to talk back to the police, they often can’t help it, especially in fast-paced, emotionally charged situations like those that occur on the street.... The stress, fear, and anger commonly associated with police contact undermines adolescents’ capacity to control their responses, especially when they have been victimized by or threatened with police violence.” *Id.*

### Youth and consent to searches by law enforcement

Schneekloth v. Bustamonte, 412 U.S. 218, 226 (1973)

The Supreme Court held that the determination of whether a consent to search was truly voluntary involves analysis of “the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation,” including the accused’s age, education, intelligence, experience with the law, and features of the context in which consent was given.

WASH. REV. CODE § 13.40.740(1)(c)

The Washington State statute requires that law enforcement agencies allow youth the opportunity for in-person, telephone, or videoconference access to an attorney before the youth waives any constitutional rights if a law enforcement officer requests that the youth consent to a search of the youth, the youth’s property, the youth’s dwellings, or vehicles under the youth’s control.

Megan Annitto, *Consent Searches of Minors*, 38 N.Y.U. Rev. of L. & Soc. Change 1, 6, 16 (2014)

This article describes the concept of a consent search as “a legal fiction as to minors and adults alike,” and argues that courts must “meaningfully consider age when deciding whether a minor gave consent [to search].” The article argues that the court is required to recognize “that age may be determinative in some cases and that the government must demonstrate that officer behavior was reasonable in light of the accused’s status as a minor.” *See id.* at 6.

HENNING, *supra* at 160-63

The author asserts that Black youth comply with law enforcement requests to be searched out of fear for their physical safety and out of a sense of futility about being able to tell an officer no and walk away. In an interaction between law enforcement and the author’s teenage client, although officers insisted that the youth had “consented” to the search, officers “failed to appreciate that ‘voluntary’ isn’t

quite so voluntary if a child thinks he will get shot if he refuses.” *See id.* at 162.

### Assumptions that certain behaviors, in and of themselves, are indicative of guilt

Illinois v. Wardlow, 528 U.S. 119, 124-25 (2000)

The Supreme Court stated: “Our cases have also recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion, ... [h]eadlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.”

Brown v. Texas, 443 U.S. 47, 52 (1979)

In *Brown*, the Supreme Court held that the officer violated the Fourth Amendment in stopping a man to demand that he identify himself, even though the officer had no objective, specific basis for believing the man was involved in criminal activity. The Court stated, “When such a stop is not based on objective criteria, the risk of arbitrary and abusive police practices exceeds tolerable limits.” *See id.* at 52.

Commonwealth v. Warren, 58 N.E.3d 333, 341-42 (Mass. 2016)

*Warren* explained that unprovoked flight in a high-crime area is only one factor in the reasonable suspicion analysis. Judges should use their discretion to determine whether the flight may have been an innocent and understandable response to police presence. *See also id.*, at 342 (a pattern of racial profiling by police directed at Black men in Boston “suggests a reason for flight totally unrelated to consciousness of guilt. Such an individual, when approached by the police, might just as easily be motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal activity.”)

State v. Hicks, 488 N.W.2d 359, 362 (Neb. 1992)

*Hicks* held that flight from a police officer is sufficient to justify an investigatory stop only when coupled with specific knowledge connecting the person to involvement in criminal conduct.

State v. Nicholson, 188 S.W.3d 649, 660-61 (Tenn. 2006)

*Nicholson* explained that there are innocent reasons for unprovoked flights from police, and running from police, even in a high-crime area, does not necessarily give rise to reasonable suspicion.

Gaddie v. State, 10 N.E.3d 1249, 1255-56, (Ind. 2014)

*Gaddie* found that when there was no evidence the defendant was involved in a crime, defendant’s walking away from police when asked to stop does not give rise to reasonable suspicion.

Washington v. State, 287 A.3d 301 (Md. 2022)

“[T]he circumstances that people, particularly young African American men, may flee police for innocent reasons may be considered in the Fourth Amendment reasonable suspicion calculus.”

State v. Rosario, 162 A.3d 249 (N.J. 2017)

*Rosario* held that a suspect’s furtive gestures were insufficient to give rise to reasonable suspicion.

State v. Gatewood, 182 P.3d 426 (Wash. 2008)

*Gatewood* held that a suspect’s startled reaction to police and furtive movements did not amount to reasonable suspicion.

State v. Weyand, 399 P.3d 530 (Wash. 2017)

*Weyand* held that police claims that the suspect looked “furtive” and was seen leaving an apartment whose residents had been previously convicted for drug offenses did not amount to reasonable suspicion.

### How investigatory stops can become custodial for fifth amendment purposes

Griffin v. United States, 878 A.2d 1195, 1199 (D.C. 2005)

*Griffin* summarized court decisions finding that even a stop that has not yet proceeded to a frisk or arrest can be custodial for *Miranda* purposes, especially when it is accompanied by a show of police force and explicit police questioning.

*In re I.J.*, 906 A.2d 249, 257, 263-64 (D.C. 2005)

“[T]he fact that an encounter may be a *reasonable* seizure within the scope of *Terry* for Fourth Amendment purposes does not automatically and necessarily remove it from *Miranda*’s Fifth Amendment protections.” The court explained that the “Fourth Amendment’s ultimate focus is on the reasonableness of police conduct in detaining a person, while, in the Fifth Amendment analysis, the guiding inquiry is directed to ‘how a reasonable person in the suspect’s situation would perceive his circumstances,’ because the overarching value is the protection of the privilege against compelled self-incrimination safeguarded by *Miranda* warnings.” *See id.*, at 257 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 662 (2004)). Under this analysis, a youth who was questioned by police in a shelter house about alleged possession of marijuana was under custody for Fifth Amendment purposes. The youth was in “an environment with considerable overtones of authority and control”.... “there were no words or actions on the part of the officer to mitigate the compulsive atmosphere,” ... there was no “protective adult or parental presence that, arguably, could have served to mitigate the coercive environment,” the questioning took place “in a private office away from public view,” and the youth was confronted with “obvious evidence” of his guilt. *See id.* at 262-64.

### Pat frisks

Terry v. Ohio, 392 U.S. 1, 24, 26 (1968)

In *Terry*, the Supreme Court held that although officers may, based on reasonable suspicion, conduct a protective search for weapons while investigating an individual at close range to determine whether the individual is “armed and presently dangerous to the officer or to others,” the search is “limited to that which is necessary for the discovery or weapons which might be used to harm the officer or others nearby.”

Smith v. Ohio, 494 U.S. 541, 542-43 (1990)

In *Smith*, the Supreme Court held that where an officer’s reaching for and searching a bag carried by defendant was not a “self-protective action necessary for the officer’s safety,” the search of the bag was unlawful, and the fruits of the search could not be used to justify the defendant’s subsequent arrest.

Minnesota v. Dickerson, 508 U.S. 366, 373 (1993)

In *Dickerson*, the Supreme Court stated that officers “overstepped the bounds of the strictly circumscribed search for weapons allowed under *Terry*”

*See INVESTIGATORY STOPS, page 22*

in a “continued exploration” of defendant’s pockets after determining that defendant did not have a weapon. The Court concluded that “the officer determined that the defendant had a lump of crack cocaine only after ‘squeezing, sliding and otherwise manipulating the contents of the defendant’s pocket’” in a search that was “unrelated to ‘the sole justification the search [under *Terry*] ...the protection of the police officer and others nearby.’” *See id.*, at 378 (quoting *Terry*, 392 U.S. at 29). Finally, the Court held, “[i]f the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed.” *See Id.*, at 366.

*In re Interest of S.J.*, 713 A.2d 45, 48 (Pa. 1998)

*S.J.* held that although the officer had reasonable suspicion to conduct an investigatory stop, the subsequent frisk was unlawful, because the officer had no reason to believe the person he stopped was armed and dangerous.

### **Investigatory detention**

Florida v. Royer, 460 U.S. 491, 500 (1983)

The Supreme Court held that an “investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” The Court stated “the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time. It is the State’s burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.”

### **Data collection**

Traffic Stop Data, NAT’L CONF. OF STATE LEGISLATURES

<https://www.ncsl.org/civil-and-criminal-justice/traffic-stop-data>

NCSL reported that 23 states have enacted legislation for the purpose of identifying possible ethnic and racial profiling, and to inform officials on current law enforcement practice). The four states that have mandated the most comprehensive data collection for traffic stops are California, Connecticut, Illinois, and New Jersey. *See id.*

California also requires the collection of such data for stops of pedestrians in its Stop Data Collection System. *See id.* Across these four states, authorizing legislation directs officers to document the “perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped.” *See id.*

CTR. FOR POLICING EQUITY & POLICING PROJECT AT N.Y.U L. SCH., Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities (2020)

[https://policingequity.org/images/pdfs-doc/COPS-Guidebook\\_Final\\_Release\\_Version\\_2-compressed.pdf](https://policingequity.org/images/pdfs-doc/COPS-Guidebook_Final_Release_Version_2-compressed.pdf)

This publication describes the implementation of California’s Racial and Identity Profiling Act (RIPA), which requires every law enforcement agency in the state to collect data on all vehicle and pedestrian stops, including all citations, searches, arrests, and uses of force. ■

*POLICE-YOUTH INTERACTION, from page 2*

As the initial point of contact between youth and the legal system, officers must be mindful of the collateral, harmful consequences an arrest or formal introduction to the juvenile justice system can have on a young person's development, educational, employment, and housing prospects as well as on their physical and mental health. Harms from arrest and system involvement often reverberate to a youth's family and community.<sup>7</sup>

Given that most youth "age out" of adolescent delinquent behavior, and that the vast majority of youth arrests are for non-violent behavior, youth should be given an opportunity to learn from their mistakes

a "program and operations manual" for school resource officers, and to provide officers with "sufficient training"; Meridian Consent Decree, Section III.A.2 (Department agrees to provide officers with pre-service and annual in-service training on interactions with youth while on public school premises).

<sup>7</sup> See International Association of Chiefs of Police, *Practices in Modern Policing: Police-Youth Engagement*, at 2 (2018) Police-Youth Engagement (theiacp.org) ("Arresting youth for minor offenses or for the purpose of teaching them to respect authority can have harmful, long-term consequences for young people and foster broader negative community perceptions.")

without harming their futures or suffering unnecessarily harsh consequences.

**Arrests should be considered a last resort and the least desirable outcome of law enforcement interactions with youth.**

Youth are not always deterred from wrongdoing by punishment, particularly if they see it as unfair. Sometimes, a more effective strategy for changing a youth's behaviors is an alternative intervention designed to meet the youth's unique needs along with those of their family and community.<sup>8</sup>

This requires law enforcement to seek out, collaborate with, and use the expertise and resources of community-based providers such as family resource centers, youth mentoring, arts, recreational and education providers to avoid unnecessary contact in the first place, to divert youth

<sup>8</sup> See, e.g. Baltimore Police Department Policy 1202, *Interactions with Youth*, at 2 (2022) ("Research has shown that many Youth, particularly those accused of low-level offenses, achieve better life outcomes and are less likely to commit future offenses when given an appropriate level of intervention that promotes pro-social behavior while protecting public safety. Youth who are diverted from formal involvement in the juvenile justice system can still be held accountable for their actions while receiving more Developmentally Appropriate services and support from community-based providers.")

from the legal system and provide youth with needed care.

LEAs should also advocate for agreements with other public agencies, such as crisis response, mental health, substance abuse, disability, and child welfare entities so that officers have support from these agencies in responding to the needs of youth.

For example, where consistent with public safety, interagency agreements can make behavioral providers and emergency medical technicians the primary responders to youth experiencing a mental health crisis or drug overdose.

LEAs should also advocate for a memorandum of understanding (MOU) with schools whenever they anticipate being asked to take law enforcement action with students. Together, agreements to use non-law enforcement responders should make it possible for law enforcement to focus its resources on those situations when a youth poses a true public safety threat to the youth, the officer, or others.

Additional source and background information for this policy can be found in the supplementary materials on page 19.

See *POLICE-YOUTH INTERACTION, next page*

## DEFINITIONS AND KEY CONCEPTS

### DEVELOPMENTALLY APPROPRIATE

Developmentally appropriate policing requires that officers understand the unique social, emotional, physical, neurological, behavioral, and moral aspects of development in a youth under 18 years of age and adjust their policing practices accordingly. This term reflects how youth experience transformative change and growth, particularly in the brain, during this phase of human development, and that these changes impact behaviors in ways that are often beyond a youth's control. As a result of their developmental process, they often interpret information, directives, and commands differently from adults. Therefore, law enforcement officers must use different practices when interacting with youth. Because youth develop at different rates, it is necessary to focus on developmental characteristics instead of age.

### DEVELOPMENTALLY APPROPRIATE LANGUAGE

Developmentally appropriate language uses vocabulary, syntax, and speed and complexity of communication that matches an individual's developmental level and capacity for understanding. Developmentally appropriate language is necessary to ensure meaningful communication and increases the likelihood that youth are able to understand and assert their rights.

### EQUITABLE POLICING

Policing that is free of discriminatory **effect** as well as discriminatory **intent**, and recognizes the historic, legal, institutional, and political sources of inequality that affect current interactions.

### PROCEDURAL JUSTICE FOR YOUTH

Procedural justice is predicated on four core principles. Officers: 1) treat people with dignity and respect regardless of social status, 2) give people voice during interactions, 3) use neutral and transparent decision-making as well as explanations for the officer's actions, and 4) treat people in a lawful and trustworthy manner.<sup>9</sup> SFY believes that an additional two core principles are merited for interactions with youth: 1) express concern and care for the youth's well-being and

<sup>9</sup> Tom Tyler is the author of the term procedural justice. His definition was first published in *Why People Obey the Law*. (New Haven, CT: Yale University Press, 1990). He further explained this theory in "Procedural Justice, Legitimacy and the Effective Rule of Law," *Crime & Justice*, vol. 30, 2003, pp. 283-357. JSTOR, <http://www.jstor.org/stable/1147701>. The operation and impacts of law enforcement's use of Procedural Justice are available on the U.S. Department of Justice website at: <https://cops.usdoj.gov/proceduraljustice>.

See *DEFINITIONS, next page*



*POLICE-YOUTH INTERACTION, from page 17*

*DEFINITIONS, from page 17*

safety, and 2) do not take advantage of the youth's lack of status and power to their disadvantage.

### REHABILITATION

The process of building skills through treatment and education, based upon an individualized assessment of a youth's needs, and, whenever possible, in the least restrictive environment. This is the fundamental concept upon which the juvenile justice system in the U.S. was founded.

### TRAUMA

As defined by the U.S. Department of Health and Human Services, individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life

threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.

### TRAUMA-INFORMED

A trauma-informed **officer**: 1) anticipates that exposure to and experience of trauma is widespread, 2) realizes that the impacts of trauma often lead to reactive, survival behaviors; 3) recognizes hallmarks of traumatic responses, which are often shaped by a perspective of powerlessness, and 4) responds by considering the role trauma may play in a person's response while taking steps to avoid re-traumatization. A trauma-informed law enforcement **agency** supports its officers' trauma-informed responses by promoting awareness of and training about trauma, policies that require training for trauma-informed skills with the public and among officers.

## PROCEDURE

### I. Procedures: General Guidelines for Youth Interaction

#### A. When interacting with youth, officers must:

- Treat youth with courtesy, professionalism, dignity, and respect,
- Approach youth with the assumption that the youth may be confused, stressed, or fearful during an interaction with law enforcement – even if the youth does not express these feelings or appear to be experiencing them,
- Explain the justification for the officer's action to the youth, inquiring community members, and parents,
- Where possible, approach youth conscious of the potential impact of the officer's body language (e.g., whether the officer's stance is physically aggressive), the language used with youth, the speed of the interaction, and the physical environment in which the interaction is taking place.

#### B. Where possible, officers must consider the following factors when evaluating whether to use a law enforcement response:

- Youth's age, intelligence, developmental capacity and physical condition,
- Mental capacity or disability status of the youth, including whether the youth is in a mental health crisis or under the influence of alcohol or drugs, or has failed to take medication,

- Likelihood that the youth can be redirected from allegedly delinquent conduct through warning, station-house adjustment, citation, referral to service providers, or other means of diversion,
- A trauma-informed approach requires officers to understand how trauma compromises a youth's capacity to understand, respond to, and comply with orders,
- Officers using a trauma-informed approach slow down and simplify the interaction to increase the likelihood that the youth can understand and respond, and to decrease the possibility of an unnecessary escalation.
- Officers must act on the knowledge that youth who have been exposed to trauma and chronic traumatic stress are likely to:
  - Perceive authority figures as a threat;
  - Respond to a perceived threat by acting to protect themselves, by:
    - Adopting combative stances, including lashing out verbally,
    - Fleeing or otherwise avoiding an interaction,
    - Freezing, and therefore being unable to follow orders,
    - Display escalated responses if officers don't adjust their body language, verbal responses, and timing to reduce a youth's sensation of being physically overpowered or cornered.

Officers must conduct law enforcement activities without discriminating on the basis of a youth's perceived race, color, ethnicity or national origin, religion, disability, gender, gender identity, or sexual orientation in accordance with the LEA's policies requiring equitable interactions.<sup>10</sup>

### II. Partnerships with Youth-Serving Agencies and Organizations

The law enforcement agency commits to developing strong partnerships with youth-serving, community-based organizations with an eye to building and supporting community-based responses. Such partnerships can be used as alternatives to arrest and system involvement, by working with program staff expert in serving youth.

### III. Regular, Routine, and Rigorous Training for Interacting with Youth

A. Any officer who is likely to interact with youth will be prepared and equipped to follow policies through scenario-based training, role-play exercises, conversations with youth, and lectures by psychologists specializing in adolescent development, and by attorneys

<sup>10</sup> See Policy 6: Fair and Impartial Policing: Race, National Origin, and Immigration Status, Policy 7: Fair and Impartial Policing: LGBTQ+ Youth and Policy 8: Policing of Youth With Disabilities, Experiencing Mental Health Crises, or Impaired By Drugs or Alcohol.

See *POLICE-YOUTH INTERACTION, next page*

*POLICE-YOUTH INTERACTION, from page 18*

familiar with relevant aspects of juvenile law in the jurisdiction.

Training will include, at a minimum, instruction in:

- Law enforcement agency policies for youth interactions,
- Normative behavior during adolescence,
- Impacts of trauma, traumatic stress, and adverse childhood experiences on youth's behavior,
- Procedural justice,
- Developmentally appropriate, trauma-informed, equitable communication and interaction strategies,
- De-escalation practices,
- Bias awareness and legal obligations to treat youth equitably,
- Disability, mental health crises, and substance use among youth,<sup>11</sup>
- Demographic factors that affect youth development and young people's perceived options,
- Youth-serving agencies and community-based organizations available to support youth and family needs in their jurisdiction,
- Diversion and other alternatives to formal system involvement,
- For officers who work in schools, training specific to the school environment and students,<sup>12</sup>
- For officers who are expected to work with youth who have experienced trauma due to their relationships with adults, training specific to those situations,<sup>13</sup>
- A review of juvenile law topics including:
  - Status offenses,
  - Legal developments regarding youths' constitutional and statutory rights, including but not limited to providing *Miranda* warnings, interrogation practices, use of force.

<sup>11</sup> See Policy 8: Interactions with Youth with Disabilities, Youth Experiencing Mental Health Crises, or Impaired by Drugs or Alcohol.

<sup>12</sup> See Policy 10: Law Enforcement Interactions with Students, Section VI.

<sup>13</sup> See Policy 9: Protection of Youth Vulnerable Due to Arrest of Parents or Other Caretakers, Execution of Residential Search Warrants, or Commercial Sexual Exploitation.

**B. Training will be routinely updated to reflect relevant changes** in juvenile law and law enforcement agency policies. Involvement of system stakeholders—including juvenile defenders, prosecutors, detention center staff, juvenile court-judges, probation officers and youth advocates—will be actively solicited to ensure that policies and practices are comprehensive.

**C. Training content and principles will be incorporated into routine supervision,** accountability measures, periodic performance reviews, and promotion criteria.

#### IV. Actions to Promote Procedural Justice and Transparency

**Agencies must gather, regularly report, and make available** to the public on the agency's public website:

- Policies governing law enforcement interactions with youth,<sup>14</sup>
- Information about law enforcement interactions with students,<sup>15</sup>
- Disaggregated data about the agency's interactions with youth,
- Disaggregated complaint data about the agency's interactions with youth.<sup>16</sup>

#### Supplementary Materials

This appendix contains additional source and background information for Policy 1: Overview of Youth Interactions Policies.

#### Procedural justice

BALTIMORE POLICE DEPT., POLICY 325 PROCEDURAL JUSTICE 6-7 (2021)

<https://public.powerdms.com/baltimoremd/documents/855630>

"Youth are particularly attuned to Procedural Justice. A Youth's earliest interactions with law enforcement can have a lasting impact on their perceptions of the legitimacy of the justice system and their likelihood of reoffending."

Amanda Gellar & Jeffrey Fagan, *Police Contact and the Legal Socialization of Urban Teens*, 5 Russell Sage Found. J. Soc. Scis. 26, 29-30 (2019)

"Positive experiences with legal actors can reinforce law; negative experiences can teach the opposite lesson through anger and fear reactions to the unfair or abusive exercise of legal power. These competing and reinforcing processes create a tension between viewing legal authorities as fair and respectful or as abusive and illegitimate. The elements of procedural justice can be thought of as powerful emotional engines that can bind or distance adolescents from the police or other legal actors. When interactions with police are harsh

<sup>14</sup> See Policy 12: Transparency and Accountability.

<sup>15</sup> See Policy 10: Law Enforcement Interactions with Students.

<sup>16</sup> See Policy 12: Transparency and Accountability.

or intrusive, the psychological fallout—stress, stigma, anger—can skew the meaning of legal actors and the laws they stand for. Moreover, the effects of these experiences are cumulative, so the emotional weight of one experience can shape the cognitive frame through which subsequent experiences are evaluated and internalized." *Id.*

Erika K. Penner et al., *Procedural Justice Versus Risk Factors for Offending: Predicting Recidivism in Youth*, 38 L. Hum. Behav. 225, 225-37 (2013)

This study demonstrates that "youth who experience the justice system as fair may be less likely to reoffend, even when other factors related to recidivism are taken into account. For legal and justice professionals, these findings indicate that it is important to treat adolescents impartially and respectfully, enhance their sense of trust in the justice system, and provide them with opportunities to participate in their proceedings." *Id.*

Tom R. Tyler, *Restorative Justice and Procedural Justice: Dealing with Rule Breaking*, 62 J. Soc. Issues 307, 317-18 (2006).

"By using fair processes, the police encourage the activation of the social values that sustain law-abiding behavior over time. In addition, ... fair procedures encourage immediate deference, lessen the likelihood of spirals of conflict, and increase the legitimacy of the police and courts. Hence, fair procedures have both immediate and long-term positive consequences." *Id.*

Tom R. Tyler, *Procedural Justice, Legitimacy and the Effective Rule of Law*, 30 Crime & Just. 283, 283-357 (2003).

Although police "can and often do compel obedience though the threat or use of force, they can also gain the cooperation of the people with whom they deal. ... People are more likely to adhere to agreements and follow rules over time when they 'buy into' the decisions and directives of legal authorities." *Id.*, at 286.

KRISTIN HENNING, THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH 322 (2021).

"Given research showing that adolescents care a lot about fairness, procedural justice is particularly important with young people. Simple changes like explaining the reasons for a stop and responding respectfully to a youth's questions may help improve a youth's perception of justice—especially among Black youth who frequently complain about officers' refusal to give them even basic information before, during, and after a stop. But procedural justice is more than just being nice to kids who ask questions. Deep and lasting improvements in police-community relations will require police to publicly acknowledge the role of policing in past and present racial injustices and to abandon false and harmful narratives about Black youth." *Id.*

#### Impact of encounters with law enforcement on youths' view of legal authority and the law

Juan Del Toro et al., *The Policing Paradox: Police Stops Predict Youth's School Disengagement Via Elevated Psychological Distress*, 58 Developmental Psych. 1402, 1402-12 (2022)

Research indicates that, due in part to psychological distress youth experience from police stops, these stops may lead to increased juvenile delinquency and decreased school involvement.

See *POLICE-YOUTH INTERACTION, next page*

*POLICE-YOUTH INTERACTION*, from page 19

Gellar & Fagan, *supra*, at 29-30, 41-42

This study indicates that adolescents who have been stopped by the police, witnessed police stops, or know people who were stopped report greater levels of legal cynicism [defined as “anomie about law”] than their counterparts without police contact.

Stephanie Wiley & Finn-Aage Esbensen, *The Effect of Police Contact: Does Official Intervention Result in Deviance Amplification?* 62 *Crime & Delinq.* 283, 299-300 (2013)

This study identifies “the negative impact that not only arrest but also simply being stopped by the police has on delinquent behavior and attitudes.” According to the researchers, their results “indicate that youth who have been stopped or arrested report significantly less anticipated guilt, greater agreement with neutralization techniques, greater commitment to delinquent peers, and higher levels of delinquency than youth with no police contact. In addition, our findings show that the negative consequences of police contact are compounded for arrested youth; subsequent to arrest, they report less anticipated guilt and more delinquency compared with stopped youth.” *See id.* These policies “likely decrease perceptions of police legitimacy among citizens who feel that they, or others, have been stopped without justification or treated unfairly. This has implications for deviance amplification, as less perceived legitimacy is associated with defiance or less compliance with the law.” *See id.*

HENNING, *supra*, at 214.

In a 2019 survey of at-risk youth, youth who were stopped more frequently by police “were more likely to report feeling angry, scared, and unsafe, and more likely to experience stigma and shame. Those who experienced more invasive stops like searches, frisks, harsh language, and racial slurs were more likely to report both emotional distress during the stop and post-traumatic stress after the stop. Youth experienced stress regardless of whether they were engaged in delinquent behavior or not. Even youth who had an extensive history of delinquency were not immune from the emotional distress, trauma, and stigma associated with the most intrusive stops.” *Id.*

NAT’L JUV. JUST. NETWORK, CREATING MEANINGFUL POLICE AND YOUTH OF COLOR RELATIONSHIPS 6-7 (2017)

<https://www.njjn.org/uploads/digital-library/Policy%20Platform%202017.pdf?phpMyAdmin=14730ab-3483c51c94ca868bccffa06ef>

In a study of youth-police interactions in the South Side of Chicago, “many law-abiding youth were being stopped by police on a daily basis and often roughly frisked or searched. This both traumatized them and led them to fear rather than trust the police. As one young man described it, he felt “like ‘prey’” when the police came cruising by on the street. All he could do at such moments was to “tr[y] to make himself ‘invisible.’” *Id.*

#### Perceptions of youth of color<sup>1</sup>

REBECCA EPSTEIN ET AL., GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS’ CHILDHOOD, *Geo. L. Ctr. on Poverty & Ineq.* (2017)

<sup>1</sup> *See also* Appendix to Policy 6: Fair and Impartial Policing of Youth: Race, National Origin, and Immigration Status

<https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>

In this study, participants viewed Black girls as older than their stated age, more knowledgeable about sex and other adult topics, more likely to take on adult roles and responsibilities than White girls of their age, and less in need of protection and nurturing than White girls. The authors also noted the potential implications of their findings for disparate treatment of Black girls in the juvenile justice system.

Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 *J. Personality & Soc. Psych.* 526, 529-35, 539-45 (2014)

Law enforcement officers and civilians may view Black boys as several years older than their chronological age.

Donna M. Bishop & Michael J. Leiber, *Racial and Ethnic Differences in Delinquency and Justice System Responses*, in *The Oxford Handbook of Juvenile Crime and Juvenile Justice* 444, 460-61 (Barry C. Feld & Donna M. Bishop eds., 2011).

“Juviles who appeared tough and disrespectful were more often arrested while those who were polite and respectful were more often released. African American youth more often displayed demeanor that prompted officers to view them as ‘potential troublemakers.’ ... Because African American and Hispanic youth tend to be (or are perceived to be) less cooperative, more gang-involved, and more threatening, they are disadvantaged relative to whites. At all stages of police processing, differential treatment of white and minority youths seems to be affected most by behavioral and attitudinal indicators of risk (danger and hostility) and structural factors that are linked to class and race.”

#### Harmful consequences for youth of color from unnecessary involvement in the legal system

U.S. DEP’T OF JUST., INVESTIGATION OF THE LOUISVILLE METRO GOVERNMENT 45 (2023) [hereinafter INVESTIGATION OF THE LOUISVILLE METRO GOVERNMENT].

<https://www.justice.gov/crt/case-document/file/1572951/download>

During the DOJ’s investigation of the Louisville Metro Government, Black youth in Louisville, Kentucky told DOJ that interactions with police officers made them feel “intimidated,” “mad,” “scared,” “panic,” and “paranoia.” *See id.* DOJ also noted research linking frequent and invasive police stops to adverse youth health effects, including trauma, anxiety, psychological distress, substance abuse, and an increased likelihood of the youth disengaging from school and engaging in delinquent behavior. *See id.*

U.S. DEP’T OF JUST., INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 143, 146 (2017) [hereinafter INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT]

<https://www.justice.gov/crt/case-document/file/925771/download>

During the DOJ’s investigation of the Chicago Police Department, “one youth told [DOJ] that the nature of the police presence in his neighborhood makes him feel like he is in ‘an open-air prison.’” *See id.*, at 143. In addition, Black youth told DOJ that they are “routinely called ‘nigger,’ ‘animal,’

or ‘pieces of shit’ by CPD officers. A 19-year-old black male reported that CPD officers called him a ‘monkey.’ Such statements were confirmed by CPD officers.” *See id.* at 146.

Juan Del Toro, et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys*, 116 *Proc. Nat’l Acad. Scis.* 8261, 8266-67 (2019).

In a study of primarily Black and Latino ninth- and tenth-grade boys, researchers found that “the frequency of police stops predicted more frequent engagement in delinquent behavior 6, 12, and 18 months later,” although youths’ self-reported delinquent behavior was “unrelated” to subsequent stops. *See id.* “Regardless of whether a boy had committed any prior delinquent acts, a police stop was associated with more frequent delinquent behavior in the future.... This finding warrants special concern because, in our sample, prior law-abiding behaviors did not protect boys against future police stops, yet being stopped by police was associated with increased engagement in delinquent behavior.... [O]ur findings suggest that the single most common proactive policing strategy—directing officers to make contact with individual boys and young men in “high-crime” areas—may impose a terrible cost. Our findings suggest that police stops are associated with harmful outcomes for young boys in those neighborhoods, and that they may be even more harmful when they occur earlier in boys’ lives.” *Id.*

Wiley & Esbensen, *supra*, at 299-300.

Policing practices such as New York City’s stop and frisk program, “may be responsible for some crime decline,” but “they appear to have negative consequences, particularly for racial and ethnic minority residents who experience disproportionate contact.... Similarly, increasing the number of police officers in schools disproportionately affects youth of color.” *Id.*

HENNING, *supra*, at 205-35

The author describes the traumatic impact on Black youth of constant police interactions, including being subjected to direct acts of police aggression, hearing about or witnessing police aggression directed at others, and seeing images of police violence on viral videos). The author also describes how police killings, arrests, incarceration, and shackling of Black youth can have a variety of negative impacts on parents, siblings, and other family members. *See id.* at 266-97.

ANNIE E. CASEY FOUND., INCREASE SUCCESSFUL DIVERSION FOR YOUTH OF COLOR 3 (2022)

<https://assets.aecf.org/m/resourcedoc/aecf-increasesuccessfuldiversion-2022.pdf>

“Contact with police causes significant negative consequences for young people of color, increasing the likelihood of subsequent arrests and more punitive treatment in the justice system. A longitudinal study of youth in Seattle found that Black teens were more than twice as likely to have a police contact as white teens and more than twice as likely to be arrested, and that youth who had a police contact by eighth grade were five times more likely to get arrested by tenth grade than youth with no police contact. As the study’s authors note, these dynamics provide support for a ‘narrative of injustice’ where ‘early police contacts may have a detrimental effect on youth rather than a preventive impact.’” *Id.*

*See POLICE-YOUTH INTERACTION*, next page



*POLICE-YOUTH INTERACTION*, from page 20

### Why youth should be allowed to learn from their mistakes rather than being subject to unnecessarily harsh consequences

LAURENCE STEINBERG ET AL., PSYCHOLOGICAL MATURITY AND DESISTANCE FROM CRIME IN A SAMPLE OF SERIOUS JUVENILE OFFENDERS (2015)

<https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248391.pdf>

“[T]he vast majority of juvenile offenders grow out of antisocial activity as they make the transition to adulthood; most juvenile offending is, in fact, limited to adolescence (i.e., these offenders do not persist into adulthood)...It is therefore important to ask whether the types of sanctions and interventions that serious offenders are exposed to are likely to facilitate this process or are likely to impede it. When the former is the case, the result may well be desistance from crime. However, if responses to juvenile offenders slow the process of psychosocial maturation, in the long run these responses may do more harm than good.”

Edward P. Mulvey et al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 *Development & Psychopathology* 453, 471 (2010)

“[E]ven most serious offenders report low levels of later antisocial behavior, and only a small proportion report continued high levels of offending.”

HENNING, *supra*, at 12

“Adolescence is a time of trial and error. It is a time when teenagers learn from their mistakes, gradually resist peer pressure, and begin to think about what will happen if they do the wrong thing.”

### Trauma

U.S. DEP’T OF HEALTH & HUMAN SERVICES

Trauma and Violence - What is Trauma and the Effects? | SAMHSA

This website defines individual trauma, and explains, among other things who is affected by trauma and trauma’s lasting adverse effects.

### Exposure to trauma among legal system-involved youth

NAT’L ACAD. SCIS. ENG’G, & MED., PROCEEDINGS OF A WORKSHOP: THE IMPACT OF JUVENILE JUSTICE SYSTEM INVOLVEMENT ON THE HEALTH AND WELL-BEING OF YOUTH, FAMILIES, AND COMMUNITIES OF COLOR 12 (2022)

<https://nap.nationalacademies.org/catalog/26623/the-impact-of-juvenile-justice-system-involvement-on-the-health-and-well-being-of-youth-families-and-communities-of-color>

During these proceedings, a former Arizona Supreme Court Chief Justice stated that trauma is an underlying issue for many juvenile justice system-involved youth, with system involvement contributing further trauma for youth who have already been victimized.

INT’L ASS’N OF CHIEFS OF POLICE, ENHANCING POLICE RESPONSES TO CHILDREN EXPOSED TO VIOLENCE: A TOOLKIT FOR LAW ENFORCEMENT (2017)

<https://www.theiacp.org/sites/default/files/2018-08/CEVToolkit.pdf>

Childhood exposure to violence has the potential to cause trauma, and unrecognized, unaddressed trauma can have “dramatic negative consequences

in both the short and long-term,” including long-term physical, psychological, and emotional harm, and higher risk of engaging in criminal behavior and/or being victimized later in life. *See id.*, at 3.

PHELAN WYRICK & KADEE ATKINSON, Examining the Relationship Between Childhood Trauma and Involvement in the Justice System 2-6 (2021)

<https://www.ojp.gov/pdffiles1/nij/255645.pdf>

This publication describes seven studies finding high levels of previous trauma among justice system-involved youth, as well as continuing trauma during and following justice system involvement.

### U.S. Department of justice investigative findings about youth and law enforcement agency violations of civil rights

Fourth Amendment Violations

- INVESTIGATION OF THE LOUISVILLE METRO GOVERNMENT, *supra*, at 15, 30, 32-33, 35

DOJ discussed incidents involving youth in finding Fourth Amendment violations in street enforcement such as stops, frisks, and arrests, and in the use of excessive force, including deployment of canines.

- INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 1, *supra*, at 33

DOJ discussed incident involving use of tasers on youth in finding officers used excessive force.

- U.S. DEP’T OF JUST., INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 33 (2016) [hereinafter INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT]

<https://www.justice.gov/crt/file/883296/download>

DOJ discussed incident involving youth in finding officers conducted unconstitutional strip searches.

- U.S. DEP’T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 18 (2015) [hereinafter INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT]

[https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson\\_findings\\_3-4-15.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson_findings_3-4-15.pdf)

DOJ discussed incident involving youth in finding officers violated the Fourth Amendment in stops and arrests.

Race Discrimination

- INVESTIGATION OF THE LOUISVILLE METRO GOVERNMENT, *supra*, at 45, 48, 51

DOJ discussed incidents involving youth and data about arrests of Black youth, in finding police department discriminated against Black people on the basis of race.

- INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT, *supra*, at 63

DOJ discussed incidents involving Black youth in concluding that the Baltimore Police Department’s methods of patrolling Black neighborhoods exacerbated community mistrust.

First Amendment Violations

- INVESTIGATION OF THE LOUISVILLE METRO GOVERNMENT, *supra*, at 57

DOJ discussed incident involving youth in finding that the police department violated individuals’ rights under the First Amendment during protests.

Violations of the Americans With Disabilities Act (ADA)

- U.S. DEP’T OF JUST., INVESTIGATION OF THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE

DEPARTMENT 60 (2023) [hereinafter INVESTIGATION OF THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT]

[https://www.justice.gov/d9/2023-06/minneapolis\\_findings\\_report.pdf](https://www.justice.gov/d9/2023-06/minneapolis_findings_report.pdf)

DOJ described officers handcuffing the ankles and wrists of an 11-year-old Black girl who was suspected of overdosing on pills in finding that the police department violates the ADA.

- INVESTIGATION OF THE LOUISVILLE METRO GOVERNMENT, *supra*, at 64 (2023)

DOJ described officers using force against a youth in a residential treatment facility in finding that the police department violates the ADA.

### The need to use developmentally-appropriate language with youth

NAT’L JUV. DEF. CTR., USING DEVELOPMENTALLY APPROPRIATE LANGUAGE TO COMMUNICATE WITH COURT-INVOLVED YOUTH

<https://www.defendyourrights.org/wp-content/uploads/2014/10/Language-HR-10.8.14.pdf>

Using developmentally appropriate language helps ensure meaningful communication and increases the likelihood youth will understand the legal process and can invoke their constitutional protections. *Id.* at 1.

### The need for youth-specific law enforcement policies and training

N.C. G.S. §114-12.1

The North Carolina statute requires “minority sensitivity training” for all law enforcement officers throughout the requires, and requires the North Carolina Department of Justice to ensure that “all persons who work with minority juveniles in the juvenile justice system are taught how to communicate effectively with minority juveniles and how to recognize and address the needs of those juveniles. The Department shall also advise all law enforcement and professionals who work within the juvenile justice system of ways to improve the treatment of minority juveniles so that all juveniles receive equal treatment.”

INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT, *supra*, at 87.

This DOJ investigation found that officers were “not provided guidance on the causes and unique qualities of youth behavior and communication or trained on the skills and tactics necessary for interacting with youth.” *Id.* Interactions demonstrated that the Department “needs to provide detailed and comprehensive policy guidance and training for interactions involving juveniles, and to hold officers accountable if they fail to abide by their training and guidelines.” *Id.*

INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT, *supra*, at 38.

The views of School Resource Officers that increased student arrests were a positive result of their work “suggests a failure of training (including training in mental health, counseling, and the development of the teenage brain), a lack of priority given to de-escalation and conflict resolution, and insufficient appreciation for the negative educational and long-term outcomes that can result from treating disciplinary concerns as crimes and using force on students.” *Id.*

*See POLICE-YOUTH INTERACTION*, next page

*POLICE-YOUTH INTERACTION, from page 21*

Abigail Novak & Vitoria De Francisco Lopes, *What About the Kids? A Multimethod Approach to Understanding Law Enforcement Policies Pertaining to the Arrest of Children in Florida*, 48 Am. J. Crim. Just. 899, 914-15 (2023)

In a study about the arrest of youth under 12 years old in Florida, where there is no minimum age for juvenile court jurisdiction, the authors found “substantial variation” in county-level policies, with law enforcement agencies being “limited in their ability to restrict arrest of young children and lack[ing] guidance as to how to handle these cases, making state-level policy needed to prevent arrests involving children below a certain age... In the absence of state policy, results suggest law enforcement agencies should adopt and imple-

ment clear administrative policies restricting arrest for children, and provide instructive training to officers to better equip them to understand the implications of child development on childhood justice system contact and involvement.”

**Developments in relevant (although not youth-specific) law enforcement training**

H.R. 536, 131st Sess. (Me. 2023)

This 2023 Maine statute requires the Maine Criminal Justice Academy to conduct a study and develop recommendations for an academy program of “trauma-informed training” for law enforcement officers. “As used in this section, ‘trauma-informed training’ means training to recognize the presence of trauma symptoms and to acknowledge the role that trauma can play in people’s lives, including by engaging with individuals with histories of trauma.” *Id.*

*Law Enforcement Legislation: Significant Trends 2022*, Nat’l Conf. of State Legislatures (Aug. 22, 2022)

<https://www.ncsl.org/civil-and-criminal-justice/law-enforcement-legislation-significant-trends-2022>.

Since May 2020, at least 39 states have enacted legislation requiring officer training, including in the areas of crisis intervention, mental health, de-escalation, bias reduction, implicit bias, human trafficking and interactions with specified populations, such as individuals with autism or Alzheimer’s. *See id.* States also prohibited certain types of training, most frequently training on the use of neck restraints. *See id.* At least 11 states—Arizona, California, Colorado, Indiana, Iowa, Minnesota, Nebraska, Tennessee, Utah, Virginia and West Virginia—enacted legislation related to de-escalation training. Indiana required the state training board to incorporate de-escalation training into various mandatory training programs. *See id.* ■