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To Report or Not To Report: Data on School Law Enforcement, Student Discipline, Race, and the 'School-to-Prison Pipeline'

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To Report or *Not* to Report: Data on School Law Enforcement, Student Discipline, Race, and the "School-to-Prison Pipeline"

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The "school-to-prison pipeline" wreaks havoc on the lives of thousands of students each year, particularly with respect to students of color. While the effects of the COVID-19 pandemic on the school-to-prison pipeline remain unclear, the eventual return to full in-person teaching nationwide undoubtedly will renew this long-festering problem. The presence of law enforcement officers in schools is a key component of the school-to-prison pipeline and has generated considerable recent national attention, especially after George Floyd's tragic death in the spring of 2020. Indeed, several robust empirical studies document that the increased presence of school resource (and/or police) officers in a school corresponds with an increased likelihood that a school will report various types of student disciplinary incidents to law enforcement agencies. This trend is troubling. Empirical studies demonstrate that when students become involved in the criminal justice system there are potentially severe implications.

This Article furthers the school-to-prison pipeline scholarly literature in at least two critical ways. First, the current literature's understandable focus on school reporting behaviors entirely ignores school decisions to not *report student incidents to law enforcement agencies. We address this gap by comparing determinants of schools' decisions to report and to not report student disciplinary matters to law enforcement agencies. In so doing we provide greater clarity on how schools exercise their institutional discretion in the student disciplinary context. What we find, on balance, is that schools with a comparatively greater SRO/police presence are systematically more*

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inclined to report than exercise discretion and not report student disciplinary incidents.

Second, this Article provides greater insight into the complexities associated with race, student discipline, and the context for which the pernicious effects of implicit racial bias may have the greatest influence on student disciplinary outcomes. Troubling racial inequalities in the public school system abound — particularly with respect to student discipline. Yet, we find that the overall concentration of students of color in a school largely does not influence the rate at which schools report students to law enforcement or when schools decide to exercise institutional discretion and not report. On its face, this finding is inconsistent with the prominent normative literature. However, it comports with our general understanding of how implicit racial bias operates and its nuanced effects in the school disciplinary context. Specifically, when disciplinary incidents require school officials to subjectively characterize student behavior (e.g., defiance, disrespect, disruption), the effects of implicit racial bias are more pronounced, often producing significant inequitable outcomes. In contrast, when less characterization is required, (e.g., possession of drugs or weapons, fighting, theft), which is the basis for most student referrals to law enforcement, the effects of implicit racial bias are often mitigated, resulting in fewer racial equity concerns.

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INTRODUCTION

The eventual full resumption of in-person school instruction will inevitably lead to a resumption of in-school student disciplinary incidents. A resumption of in-school student disciplinary incidents will renew public focus on, and a growing unease with, how schools address student disciplinary matters, especially non-violent student incidents.[1] At the heart of this debate resides a question of whether and, if so, when school administrators should engage law enforcement agencies.[2] Indeed, George Floyd's tragic death has precipitated a nationwide debate focused on, among many other important national issues, what role police officers should have in schools or whether they belong in schools at all.[3]

[1] *See, e.g.*, Derek W. Black, *Reforming School Discipline*, 111 NW. U. L. REV. 1, 3-4 (2016) (criticizing schools' punitive approach to school discipline); Jason P. Nance, *Dismantling the School-to-Prison Pipeline: Tools for Change*, 48 ARIZ. ST. L.J. 313, 315-317 (2016) [hereinafter *Dismantling the School-to-Prison Pipeline*] (describing the tightened intersection between schools and the criminal justice system for student misbehavior, including for non-violent student offenses).

[2] *See* Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 410-11 (2013) ("Whereas schoolteachers, principals, and school counselors once handled school-based incidents such as fighting, disorderly conduct, and destruction of property in school, school officials now rely on local police or in-house SROs to handle even the most minor of school infractions.").

[3] *Do Police Officers in Schools Help or Hinder Teachers?*, ECONOMIST (July 18, 2020), https://www.economist.com/united-states/2020/07/18/do-police-officers-in-schools-help-or-hinder-teachers [https://perma.cc/W3LH-ZRUT]. Following the death of

Schools addressing a student discipline incident that does not trigger any mandatory reporting obligations to law enforcement agencies — but nonetheless plausibly falls within the school's discretion to report — confront a critical question: to report or not to report the student incident to law enforcement agencies. How school administrators resolve this question potentially poses enormous consequences for a student's future, as well as the school's reputation for safety, crime, and discipline.[4]

A growing empirical "school-to-prison pipeline"[5] literature assessing the consequences of schools' increasingly legalized approach to student discipline typically — and understandably — focuses on *school reports* of student discipline incidents to law enforcement agencies. Given the potentially severe implications for individual students and their futures, the focus on school reports to law enforcement agencies is as predictable as it is warranted.[6] This is especially so if schools' motivations to engage law enforcement include a desire to functionally outsource responsibility for student discipline to law enforcement agencies.[7] Making matters arguably worse is that school referrals of student incidents — particularly "lower-level" non-violent student incidents that historically were handled internally by school officials — often set into motion a series of legal events that can culminate in ways that negatively impact students' lives going forward, as well as schools' reputations (real or perceived) for safety and control.[8] Adding to these

George Floyd and the related protests, several school districts throughout the country severely cut or altogether ended their contracts with police departments. *Id.*

[4] *See infra* Parts I.E., I.F.

[5] The term "school-to-prison pipeline" refers to the tightened intersection between schools and the criminal justice system and the trend of referring students to law enforcement for committing various offenses at school or fostering conditions that facilitate more student involvement in the criminal justice system, such as suspending and expelling students. Jason P. Nance, *Students, Police, and the School-to-Prison Pipeline*, 93 WASH. U. L. REV. 919, 923 (2016) [hereinafter *Students, Police*]; *see also* Hawker v. Sandy City Corp., 774 F.3d 1243, 1245 (10th Cir. 2014) (Lucero, J., concurring) (quoting Jason P. Nance, *School Surveillance and the Fourth Amendment*, 2014 WIS. L. REV. 79, 83 (2014)).

[6] *See* Michael Heise & Jason P. Nance, *"Defund the (School) Police"?: Bringing Data to Key School-to-Prison Pipeline Claims*, 111 J. CRIM. L. & CRIMINOLOGY 717, 720 (2021) [hereinafter *"Defund the (School) Police"?*]; *see infra* Part I.E.

[7] *See, e.g.*, Emma Brown, *Police in Schools: Keeping Kids Safe, or Arresting Them for No Good Reason?*, WASH. POST (Nov. 8, 2015), https://www.washingtonpost.com/local/education/police-in-schools-keeping-kids-safe-or-arresting-them-for-no-good-reason/2015/11/08/937ddfd0-816c-11e5-9afb-0c971f713d0c_story.html [https://perma.cc/73MF-C3TN] (describing an incident where a teacher called a police officer into the classroom to manage a student who was using a cell phone in class).

[8] *See infra* Parts I.E., I.F.

troubling outcomes is the reality that students of color often suffer disproportionately from the tightened intersection between schools and the criminal justice system, further exacerbating racial inequalities in our nation.[9]

When it comes to the growing student resource officer and police officer ("SRO/police") presence and influence in public schools, two general claims dominate the current research literature. One claim is that as a school's SRO/police presence increases, so too does the probability that the school will report student discipline incidents to enforcement agencies.[10] A second claim asserts that school reports to law enforcement distribute unevenly across various student groups, with particularly deleterious consequences for students of color, boys, students from low-income households, and other student sub-groups.[11]

In our prior research, we found generally mixed empirical support when these two general claims are subject to data from the nation's leading cross-sectional dataset on public school crime and safety, the 2016 U.S. Department of Education's 2015–16 School Survey on Crime and Safety ("SSOCS").[12] With respect to the first claim, we found evidence that a school's SRO/police presence corresponds with an increased probability that the school will report student disciplinary incidents to law enforcement agencies.[13] This finding troubles because

[9] *See* Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 1, at 331-36.

[10] *See* Chongmin Na & Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 636-40 (2013); Nance, *Students, Police*, *supra* note 5, at 958-73.

[11] *See e.g.*, Janel George, *Populating the Pipeline: School Policing and the Persistence of the School-to-Prison Pipeline*, 40 NOVA L. REV. 493, 494 (2017) (arguing that "children of color and low-income children . . . are disproportionately targeted for referral and arrest by police in schools"); Amanda Merkwae, *Schooling the Police: Race, Disability, and the Conduct of School Resource Officers*, 21 MICH. J. RACE & L. 147, 180 (2015) (concluding that "there is overwhelming evidence suggesting that students of color and students with disabilities are funneled into the justice system due to the disparate impact of exclusionary discipline polices and discretionary arrests in schools"); Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST. 280, 285-86 (2009) (finding evidence of a relation between school poverty levels and number of student arrests).

[12] *See, e.g.*, Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6 (using 2015–16 SSOCS data set); Michael Heise & Jason P. Nance, *Following Data: The "Defund the Police" Movement's Implications for Elementary and Secondary Schools*, 110 J. CRIM. L. & CRIMINOLOGY ONLINE 63, 67 (2020) [hereinafter *Following Data*] (using 2015–16 SSOCS data set); Nance, *Students, Police*, *supra* note 5, at 958-59 (using 2009–10 SSOCS data set). Various results discussed in this Article also derive from the 2009–2010 and the 2017–2018 restricted-use versions of the SSOCS data series.

[13] *See* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 721-22; *see also* Na & Gottfredson, *supra* note 10, at 626, 642 (using various SSOCS data sets); Nance,

of the severe consequences that flow into the lives of students when they become involved in the criminal justice system.[14]

On the other hand, we did not find persuasive empirical support, at least direct support, for the second claim. Specifically, at the school level, student incidents reported to law enforcement systematically did not distribute unevenly across various student sub-groups, including students of color (e.g., the overall concentration of minority students in a school did not influence the rate at which schools report students to law enforcement).[15] It is important to emphasize, however, that the SSOCS data set does not contain demographic data (e.g., race/ethnicity, gender, socio-economic status) on the *individual* students whose conduct triggered a school referral to law enforcement agencies.[16] Thus, at one level, the persistent claims that school reports to law enforcement agencies systematically distribute unevenly across various student sub-groups certainly remain viable — indeed, supportive anecdotal and related evidence exists.[17] Our narrower point, however, is that as it relates to the specific claim that referrals to law enforcement raises troubling distributional issues at the school level, such an assertion does not — and cannot — find *direct* empirical support from the nation's

Students, Police, *supra* note 5, at 919; Mario S. Torres Jr., & Jacqueline A. Stefkovich, *Demographics and Police Involvement: Implications for Student Civil Liberties and Just Leadership*, 45 EDUC. ADMIN. Q. 450, 466-67 (2009) (using 1999–2000 SSOCS data set).

[14] *See* Nance, *Students, Police*, *supra* note 5, at 952-57; *see also infra* Part I.E.

[15] *See* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 722-23.

[16] *See, e.g.*, *id.* at 722 (SSOCS demographic data presented at the school-level); Na & Gottfredson, *supra* note 10 (same); Nance, *Students, Police*, *supra* note 5 (using 2009–10 SSOCS data); Torres Jr. & Stefkovich, *supra* note 13 (using 1999–2000 SSOCS data).

[17] *See, e.g.*, Nance, *Students, Police*, *supra* note 5, at 973 (noting that while the SSOCS data do not permit identification of the students who were actually referred to law enforcement, it remains "entirely possible" that the school referrals were "disproportionately students of color"); *see also* DANIEL J. LOSEN, NAT'L EDUC. POL'Y CTR., DISCIPLINE POLICIES, SUCCESSFUL SCHOOLS, AND RACIAL JUSTICE 6-7 (2011); Catherine P. Bradshaw, Mary M. Mitchell, Lindsey M. O'Brennan & Philip J. Leaf, *Multilevel Exploration of Factors Contributing to the Overrepresentation of Black Students in Office Disciplinary Referrals*, 102 J. EDUC. PSYCH. 508, 508 (2010) (discovering that after controlling for teacher ratings of students' behavior problems, African-American students were more likely than white students to be referred to the office for disciplinary reasons); Michael Rocque & Raymond Paternoster, *Understanding the Antecedents of the "School-to-Jail" Link: The Relationship Between Race and School Discipline*, 101 J. CRIM L. & CRIMINOLOGY 633, 653-54 (2011) (documenting that African-American students are more likely than white students to be disciplined even after taking into account other salient factors such as grades, attitudes, gender, special education or language programs, and their conduct in school).

leading school safety and violence data set.[18] Moreover, if anything, the weight of existing indirect school-level evidence does not generally hint at any troubling distributional outcomes.[19]

Our finding that the overall concentration of students of color in a school largely does not influence the rate at which schools report students to law enforcement may surprise many, especially because racial inequalities are pervasive in our public school system, criminal justice system, and in many other areas of our society.[20] Yet this finding actually comports with our general understanding of how implicit racial bias influences decision-making, especially in the school disciplinary context. Specifically, when disciplinary incidents require school authorities to subjectively characterize behavior (e.g., defiance, disrespect, disruption), the effects of implicit racial bias are more pronounced, often resulting in significant inequitable outcomes.[21] But when less characterization is required (e.g., possession of drugs, fighting, theft), which is the basis of the vast majority of referrals to law enforcement, the effects of implicit bias often are muted, resulting in fewer racial equity concerns.[22]

The primary motivation for this Article flows from the reality that the empirical school-to-prison pipeline research's focus on school reports of student incidents to law enforcement agencies entirely ignores a potential outcome of equal import: school decisions to *not report*; that

[18] We note that language in at least one published paper, using earlier versions of the SSOCS data set, invites some level of confusion by potentially advancing claims, albeit tentatively, about the disproportionate impacts on minority *student sub-groups* based on data on *schools*' overall racial/ethnic, gender, and special education needs compositions. *See* Na & Gottfredson, *supra* note 10, at 641 ("We conclude that the results of our tests of interaction with percent in special education and percentage minority do not suggest a pattern of disproportionate impact of police use on socially or educationally disadvantaged populations."). While perhaps such analyses provide not-implausible inferential support, without individual-level racial/ethnic, gender, and special education needs data on the actual students referred to law enforcement agencies, more efficacious and helpful conclusions are simply not possible given the data limitations. Contributing to the confusion is that the Na & Gottfredson paper is aware of the unit of analysis limitation in the SSOCS data sets. *See id.* at 641-42 ("However, finer-grained analyses conducted at the individual-level might uncover patterns that our school-level data could not.").

[19] *See, e.g.*, Na & Gottfredson, *supra* note 10, at 626-27, 641 (analyzing 2003–04, 2005–06, and 2007–08 SSOCS data sets); Nance, *Students, Police*, *supra* note 5, at 973 (analyzing 2009-10 SSOCS data).

[20] *See* Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 EMORY L.J. 765, 811-16 (2017) [hereinafter *Student Surveillance*]; Nance, *Students, Police*, *supra* note 5, at 971-73.

[21] *See infra* Part I.H.

[22] *See infra* Part I.H.

is, where school administrators exercise discretion, decide against formally engaging law enforcement, and handle a student disciplinary incident internally. Given the growing SRO/police presence in public schools and its prominence in the "school-to-prison pipeline" debate,[23] we are especially interested in assessing the extent to which, if any, a school's SRO/police presence informs the school administrators' exercise of discretion when it comes to reporting student incidents to law enforcement agencies. In other words, this study's principal scholarly contribution emerges from expanding the analytic sweep of school-to-prison pipeline research to include an assessment of a school's probability of *not* referring student incidents to law enforcement agencies. Indeed, comparing how schools' reporting and non-reporting rates distribute provides helpful insights into how schools exercise institutional discretion in the student discipline context. What we find, on balance, is that schools with a comparatively greater SRO/police presence are systematically more inclined to report rather than exercise discretion and non-report student disciplinary incidents.

A second important contribution of this study is that it further illuminates the complexities associated with race and student discipline. More specifically, because nonreporting contexts invite heightened discretion, and discretion is a key condition that often triggers the effects of implicit racial bias,[24] one might expect to find greater racial disparities relating to nonreporting decisions for various disciplinary offenses. However, similar to the school reporting context, we find that the overall concentration of students of color in a school largely does not influence when schools decide to exercise institutional discretion and not report to law enforcement.[25] Once again, this may occur because offenses normally subject to a potential report to law enforcement typically require more objectively defined judgment (e.g., possession of weapons or drugs, fighting, theft) that is less susceptible to the influences of bias.[26]

Our Article unfolds as follows. Part I briefly summarizes the relevant research literatures. In Part II we set out our data, research design, and

[23] *See infra* Part I.C.

[24] *See* Jerry Kang, Judge Mark Bennett, Devon Carbado, Pam Casey, Nilanjana Dasgupta, David Faigman, Rachel Godsil, Anthony G. Greenwald, Justin Levinson & Jennifer Mnookin, *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1142 (2012) (explaining that "the conditions under which implicit biases translate most readily into discriminatory behavior are when people have wide discretion in making quick decisions with little accountability").

[25] *See infra* Parts III.B., IV.

[26] *See infra* Parts III.B., IV.

empirical strategy. We present our results in Parts III and IV and consider their legal and policy implications. We conclude in Part V and discuss possible next steps for this line of research.

I. LITERATURE REVIEW

While our Article seeks to further the current relevant empirical literature, it also is situated in other related research literatures that provide important context to our empirical findings. Specifically, many scholars have written about schools' increased "legalized" approach to school discipline and safety, explaining its manifestations, the reasons behind this trend, and its consequences to students and our communities. While much less has been written about school officials' decisions to *not* report student wrongdoing to law enforcement authorities, there is much more literature on how educators' discretionary decision-making contributes to racial inequalities in our public school system, including by way of implicit racial bias. The literature also describes how the effects of implicit bias can be more pronounced in certain disciplinary contexts than in others.

A. The Trend Towards a "Legalized" Approach to School Discipline and Safety

Over the last several decades, many policymakers and schools have taken an increased "legalized" approach to school discipline and maintaining safe, orderly campuses.[27] This trend has manifested itself in several ways. First, schools are presently more inclined than in the past to rely on criminal justice-oriented security measures to monitor students and deter wrongdoing.[28] For example, it is not uncommon today for schools to install security cameras, metal detectors, locked gates and doors, have drug-sniffing dogs, hire law enforcement officers and security guards to patrol school grounds, and conduct random searches of students' lockers and belongings for illegal contraband.[29] In fact, many schools rely on various combinations of these criminal

[27] *See* AARON KUPCHIK, THE REAL SCHOOL SAFETY PROBLEM: THE LONG-TERM CONSEQUENCES OF HARSH SCHOOL PUNISHMENT 1-10 (2016); Kelly Welch, *School-to-Prison Pipeline*, *in* THE ENCYCLOPEDIA OF JUVENILE DELINQUENCY AND JUSTICE 765-66 (Christopher J. Schreck ed., 2018).

[28] *See* Jason P. Nance, *Implicit Racial Bias and Students' Fourth Amendment Rights*, 94 IND. L.J. 47, 48-54 (2019) [hereinafter *Implicit Racial Bias*].

[29] *See* MELISSA DILIBERTI, MICHAEL JACKSON, SAMUEL CORREA, ZOE PADGETT & RACHEL HANSEN, CRIME, VIOLENCE, DISCIPLINE, AND SAFETY IN U.S. PUBLIC SCHOOLS 13 tbl.7 (2019).

justice-oriented security measures, which, some argue, can resemble an intense, prison-like environment for students that may be antithetical to students' overall well-being and growth.[30]

Second, many policymakers and schools have increasingly supported exclusionary disciplinary practices to help maintain order and control. For example, many states have enacted statutes that require schools to report students to law enforcement for engaging in various types of criminal activities at school, including possession of weapons, assault, theft, vandalism, possession of drugs or alcohol, and sexual assault.[31] Some states require schools to report students to law enforcement for committing any crime, including misdemeanors.[32] Other states have enacted so-called "disturbing school statutes," which can criminalize common adolescent misbehavior.[33] Still other state statutes require schools to suspend or expel students for engaging in various acts of wrongdoing while at school.[34] Of course, even when school authorities are not statutorily required to suspend, expel, or report students to law enforcement authorities for committing certain acts, school districts and individual schools have their own policies and practices for invoking these exclusionary disciplinary practices.[35] Empirical evidence

[30] *See* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 724-25; Paul J. Hirschfield, *Preparing for Prison?: The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 79-80 (2008); Nance, *Students, Police*, *supra* note 5, at 937-38.

[31] *See, e.g.*, ARIZ. REV. STAT. ANN. § 15-341 (2021) (mandating reports for sexual assault); GA. CODE ANN. § 20-2-1184(a), (b) (2021) (mandating reports for drug possession); HAW. REV. STAT. § 302A-1002(1)(b) (2021) (mandating reporting for theft); KY. REV. STAT. ANN. § 158.154 (2021) (mandating reporting for vandalism).

[32] *See, e.g.*, ALASKA STAT. § 14.33.130(b) (2021) (mandating reports of all crimes to law enforcement); KAN. STAT. ANN. § 72-6143(b)(1) (2021) (mandating reports of all felonies and misdemeanors); MD. CODE REGS. 13A.08.01.15 (2021) (mandating reports of all "delinquent acts . . . which would be crimes if committed by an adult").

[33] *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-2911 (2021) (criminalizing "intentionally, knowingly or recklessly interfering with or disrupting the normal operations of an educational institution"); CAL. PENAL CODE § 415.5 (2021) (criminalizing fights and malicious and willful disturbances by loud and unreasonable noise in schools); FLA. STAT. § 871.01(1) (2021) (criminalizing acts that "willfully interrupts or disturbs any school"); WASH. REV. CODE ANN. § 28A.635.030 (2021) (criminalizing acts that "willfully create a disturbance on school premises during school hours or at school activities or school meetings"); *see also* Josh Gupta-Kagan, *The School-to-Prison Pipeline's Legal Architecture: Lessons from the Spring Valley Incident and Its Aftermath*, 45 FORDHAM URB. L.J. 83, 103 (2017) [hereinafter *The School-to-Prison Pipeline*].

[34] *See, e.g.*, IOWA CODE § 282.4 (2021) (requiring suspension of a student who "commits an assault . . . against a school employee in a school building").

[35] *See, e.g.*, CHI. PUB. SCHS., STUDENTS RIGHTS AND RESPONSIBILITIES 7-13 (2020) (describing disciplinary policies for suspensions, expulsions, and referrals to law

demonstrates that schools presently rely much more on exclusionary discipline policies than in prior years.[36]

Zero tolerance policies are another form of exclusionary discipline that have captured extensive national attention in the media and academic literature over the last two decades.[37] Zero tolerance policies require school officials to administer pre-determined consequences, such as suspending, expelling, or referring students to law enforcement for engaging in certain acts without taking into consideration the severity of, the reasons for, or the consequences of the behavior.[38] Zero tolerance policies, which originated from the Gun-Free Schools Act of 1994, required schools to suspend students for at least one year for possessing a firearm on campus in order to receive federal funding.[39] Following the federal government's implicit endorsement of zero tolerance policies, school districts across the country began extending these policies to conduct well beyond firearm possession at school.[40] For example, schools have enacted zero tolerance policies to apply to such student conduct as possessing drugs and alcohol, tardiness, possessing sharp objects, dress code violations, and fighting.[41] As a result, some students have received extreme forms of discipline for relatively minor incidents, such as bringing over-the-counter medication to school, possessing scissors, fingernail clippers, or a pocketknife, drawing pictures of weapons, writing a violent story, making shooting gestures, or uttering threatening phrases.[42] Scholars have characterized zero tolerance policies as harmful to students and

enforcement); HOUS. INDEP. SCH. DIST., 2019–2020 CODE OF STUDENT CONDUCT 12-13, 16 (2019) (describing disciplinary policies for suspensions, expulsions, and referrals to law enforcement).

[36] *See* Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 1, at 316-17.

[37] *See* F. Chris Curran, *Just What Are 'Zero Tolerance' Policies — and Are They Still Common in American's Schools?*, CONVERSATION (Feb. 14, 2019, 6:48 AM EST), https://theconversation.com/just-what-are-zero-tolerance-policies-and-are-they-still-common-in-americas-schools-111039 [https://perma.cc/HUV9-SX5A]. *See generally* DEREK W. BLACK, ENDING ZERO TOLERANCE: THE CRISIS OF ABSOLUTE SCHOOL DISCIPLINE (2016) (describing the rise of zero tolerance policies and the negative effects such policies have on students).

[38] Am. Psych. Ass'n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCH. 852, 852 (2008).

[39] 20 U.S.C. § 7961 (2021).

[40] *See* Udi Ofer, *Criminalizing the Classroom: The Rise of Aggressive Policing and Zero Tolerance in New York City Public Schools*, 56 N.Y.L. SCH. L. REV. 1373, 1376 (2012).

[41] *See* CATHERINE Y. KIM, DANIEL J. LOSEN & DAMON T. HEWITT, THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM 79-80 (2010).

[42] *See* BLACK, *supra* note 37, at 2-4.

schools and unnecessarily propelling students on a pathway that may lead to deeper involvement in the criminal justice system.[43]

B. Why Schools Have Taken an Increased "Legalized" Approach to School Discipline and Safety

Scholars have proposed several closely tied theories explaining why schools have taken an increasingly "legalized" approach to school discipline and safety.[44] Perhaps the greatest catalyst for an increased legalized approach includes the highly-publicized events of school violence that have occurred over the last two decades, such as the shootings in Columbine High School, Newtown Elementary School, and Parkland High School.[45] These tragic incidents of school violence provoked great fear, sadness, anger, and a collective resolve to make schools safer.[46] In turn, this put enormous pressure on school officials to demonstrate to parents, policymakers, and broader communities that they were taking concrete measures to foster safer learning environments.[47] For many school authorities the most effective way to tangibly demonstrate a commitment to school safety was to hire more police officers and security guards and install other safety measures,

[43] *See* ADVANCEMENT PROJECT & C.R. PROJECT, HARVARD UNIV., OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE 17 (2000); Am. Psych. Ass'n Zero Tolerance Task Force, *supra* note 38, at 857; Derek W. Black, *The Constitutional Limit of Zero Tolerance in Schools*, 99 MINN. L. REV. 823, 837-41 (2014); *see also* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 727-28.

[44] For an extended discussion of these reasons, see Nance, *Students, Police, supra* note 5, at 929-45; Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6 at 732.

[45] *See* Elizabeth S. Scott, Miller v. Alabama *and the (Past and) Future of Juvenile Crime Regulation*, 31 MINN. J. L. & INEQ. 535, 541 (2013) (explaining that after the Columbine shootings "legislatures across the country rushed to pass strict zero tolerance laws, making it a crime to threaten violence in school[s]").

[46] *See* Lynh Bui, *Montgomery County Parents Ask for More School Security, Teacher Training During Budget Hearing*, WASH. POST (Jan. 11, 2013), http://www.washingtonpost.com/blogs/maryland-schoolsinsider/post/montgomery-county-parents-ask-for-more-schoolsecurity-teacher-training-during-budget-hearing/2013/01/11/e8d3dcf4-5aab-11e2-9fa9-5fbdc9530eb9_blog.html [https://perma.cc/LD9N-MTLB]; Motoko Rich, *School Officials Look Again at Security Measures Once Dismissed*, N.Y. TIMES (Dec. 18, 2012), https://www.nytimes.com/2012/12/19/education/after-newtown-shootings-schools-consider-armed-security-officers.html [https://perma.cc/ZB34-LG3U].

[47] *See* Torin Monahan & Rodolfo D. Torres, *Introduction*, *in* SCHOOLS UNDER SURVEILLANCE: CULTURES OF CONTROL IN PUBLIC EDUCATION 2-3 (Torin Monahan & Rodolfo D. Torres eds., 2009); *cf.* Randall R. Beger, *The "Worst of Both Worlds": School Security and the Disappearing Fourth Amendment Rights of Students*, 28 CRIM. JUST. REV. 336, 338 (2003) (discussing public fear about school violence).

such as surveillance cameras, locked doors and gates, and metal detectors.[48]

Scholars also point to the general "tough on crime" mindset that has permeated our society over the last several decades as another driving force behind a more "legalized" approach to school discipline.[49] For decades, legislative and executive bodies have focused on punishment and control instead of rehabilitating adult and youth offenders, especially when youth crime rates escalated from the mid-1980s to 1994.[50] Scholars observe that governing bodies and school authorities took a similar approach to address student offenders.[51] Rather than focusing on rehabilitation, schools relied heavily on punitive and exclusionary discipline practices such as suspension, expulsion, and referring students to law enforcement for wrongdoing.[52]

Other scholars maintain that schools have taken an increased "legalized" approach to school discipline because educators lack resources to adequately address students' needs and create an orderly learning environment.[53] Educators are often charged with teaching students who are malnourished, suffer from trauma and abuse, lack structure in their home environments, have learning disabilities and behavioral disorders, lack support, and do not have access to adequate health care.[54] Other students do not fully understand the purpose of

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[48] *See* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 732-33.

[49] *See* Donna M. Bishop & Barry C. Feld, *Juvenile Justice in the Get Tough Era*, *in* ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 2766, 2768 (Gerben Bruinsma & Davis Weisburd eds., 2014).

[50] *See* BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 189-90 (1999); PATRICIA TORBET, RICHARD GABLE, HUNTER HURST IV, IMOGENE MONTGOMERY, LINDA SZYMANSKI & DOUGLAS THOMAS, STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME, at xi (1996); Elizabeth S. Scott, *"Children Are Different": Constitutional Values and Justice Policy*, 11 OHIO ST. J. CRIM. L. 71, 94 (2013).

[51] *See* KATHLEEN NOLAN, POLICE IN THE HALLWAYS: DISCIPLINE IN AN URBAN HIGH SCHOOL 164 (2011); Henry A. Giroux, *Racial Injustice and Disposable Youth in the Age of Zero Tolerance*, 16 QUALITATIVE STUD. EDUC. 553, 561 (2003); Hirschfield, *supra* note 30, at 90.

[52] *See* Barbara Fedders, *The Anti-Pipeline Collaborative*, 51 WAKE FOREST L. REV. 565, 567-68 (2016); *see also* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 733-34.

[53] *See* Hirschfield, *supra* note 30, at 92; *cf.* Pedro A. Noguera, *Schools, Prisons, and Social Implications of Punishment: Rethinking Disciplinary Practices*, 42 J. THEORY INTO PRAC. 341, 346 (2003) (discussing the use of suspension/expulsion to maintain order in schools).

[54] *See* DIANE RAVITCH, REIGN OF ERROR: THE HOAX OF THE PRIVATIZATION MOVEMENT AND THE DANGER TO AMERICA'S PUBLIC SCHOOLS 290-91 (2013); Linda Darling-Hammond, *Inequality and School Resources: What It Will Take to Close the Opportunity*

education or, even when they do, do not believe that they can be successful even if they fully commit to the academic process.[55] When students fall behind, become frustrated or bored, do not feel that the system is working for them, or are harassed by their peers, they often misbehave.[56] Lacking resources to address struggling students' underlying needs, some schools overly rely on exclusionary discipline tactics, such as referring students to law enforcement, to push difficult, misbehaving students out of school in an attempt to stabilize the learning environment.[57]

Finally, scholars observe that some schools have adopted an increased "legalized approach" in response to external pressures to increase student achievement on standardized exams.[58] Federal education statutes such as the now-defunct "No Child Left Behind Act" and the current "Every Student Succeeds Act" require schools to regularly test students in exchange for federal education dollars.[59] When schools fail to meet certain academic standards, they may be subject to negative labels or sanctions, putting tremendous pressure on school authorities and educators to help students perform adequately on these high-stakes exams.[60] Scholars are concerned that some schools may overly rely on exclusionary discipline to push out disruptive, low performing students to avoid having their low test scores count against their schools and to

Gap, *in* CLOSING THE OPPORTUNITY GAP: WHAT AMERICA MUST DO TO GIVE EVERY CHILD AN EVEN CHANCE 77, 83 (Prudence L. Carter & Kevin G. Welner eds., 2013).

[55] *See* Noguera, *supra* note 53, at 343.

[56] *See* Jason A. Okonofua, Gregory M. Walton & Jennifer L. Eberhardt, *A Vicious Cycle: A Social-Psychological Account of Extreme Racial Disparities in School Discipline*, 11 PERSP. ON PSYCH. SCI. 381, 385 (2016).

[57] *See* Hirschfield, *supra* note 30, at 90; Noguera, *supra* note 53, at 342, 345; *see also* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 734.

[58] *See* FED. ADVISORY COMM. ON JUV. JUST., ANNUAL REPORT 2010, at 10 (2010); Linda Darling-Hammond, *Race, Inequality, and Educational Accountability: The Irony of 'No Child Left Behind*,' 10 RACE, ETHNICITY, & EDUC., 245, 252-55 (2007); Rachel F. Moran, *Sorting and Reforming: High-Stakes Testing in the Public Schools*, 34 AKRON L. REV. 107, 115 (2001); James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 969-70 (2004).

[59] Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1802 (2015) (codified as amended in scattered sections of 20 U.S.C. (Supp. III 2015)) (reauthorizing and amending the Elementary and Secondary Education Act ("ESEA") that was initially enacted in 1965); No Child Left Behind Act, Pub. L. No. 107-110, 115 Stat. 1425 (2002); *see also* Michael Heise, *From No Child Left Behind to Every Student Succeeds: Back to a Future for Education Federalism*, 117 COLUM L. REV. 1859, 1872-73 (2017); Nance, *Student Surveillance, supra* note 20, at 781-82.

[60] Nance, *Student Surveillance, supra* note 20, at 781-82.

conserve their limited resources for students they believe are more likely to perform well.[61]

C. Increased Reliance on Law Enforcement Officers in Schools

A critical component to many schools' "legalized" approach to school discipline is the regular presence of law enforcement officers on school grounds. Also called "school resource officers" or "SROs," regular law enforcement presence is now a common feature in thousands of schools across the nation.[62] While it is unclear exactly how many SROs exist at the present time,[63] survey data suggest that the number of SROs has grown substantially over the last half century. For example, there were less than one hundred police officers in schools in the late 1970s,[64] but by 2007, there were 20,000.[65] More recent survey data estimate that there are over 30,000 in schools today.[66] In addition to the increase of raw number of SROs in schools, the percentage of schools relying on SROs is also increasing. In a prior study, we reported that the 2007–2008 SSOCS weighted data showed that 21.1 percent of the sampled schools indicated that an SRO/police officer was present at least one day a week.[67] The 2015–2016 SSOCS weighted data showed that this percentage more than doubled to fifty percent.[68]

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[61] *See* Darling-Hammond, *supra* note 58, at 252-55; Moran, *supra* note 58, at 115; Ryan, *supra* note 58, at 961; *see also* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 734.

[62] The National Association of School Resource Officers states that school-based policing "is the fastest-growing area of law enforcement." *About NASRO*, NAT'L ASS'N SCH. RES. OFFICERS, https://www.nasro.org/main/about-nasro/ (last visited Jan. 11, 2021) [https://perma.cc/4X5H-RV52].

[63] *See Frequently Asked Questions*, NAT'L ASS'N SCH. RES. OFFICERS, https://www.nasro.org/faq/ (last visited Jan. 11, 2021) [https://perma.cc/DJ2V-NVF7].

[64] Kevin P. Brady, Sharon Balmer & Deinya Phenix, *School-Police Partnership Effectiveness in Urban Schools: An Analysis of New York City's Impact Schools Initiative*, 39 EDUC. & URB. SOC'Y 455, 457 (2007); Paul J. Hirschfield & Katarzyna Celinska, *Beyond Fear: Sociological Perspectives on the Criminalization of School Discipline*, 5 SOCIO. COMPASS 1, 1 (2011).

[65] NATHAN JAMES & GAIL MCCALLION, CONG. RSCH. SERV., R43126, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS 20 (2013), https://fas.org/sgp/crs/misc/R43126.pdf [http://perma.cc/5BJX-M43Z].

[66] *See* LUCINDA GRAY, LAURIE LEWIS & JOHN RALPH, U.S. DEP'T OF EDUC., PUBLIC SCHOOL SAFETY AND DISCIPLINE: 2013–14, at 11 (2015), https://nces.ed.gov/pubs2015/2015051.pdf [https://perma.cc/6NVS-SX5Q] (estimating that there could be 30,000 SROs in the U.S.).

[67] Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 736.

[68] *Id.*

Less clear, however, is whether these increasing trends will continue. On the one hand, following the school shooting in Parkland, Florida in 2018, both the Florida and the Kentucky State Legislatures enacted statutes mandating that every school in their states have at least one SRO.[69] But recent protests against police departments after the killing of George Floyd[70] has caused some school districts to rethink their school resource officer programs and withdraw their partnership with local police departments.[71] For example, Los Angeles Unified School District has significantly cut its school police budget, and school districts in Minneapolis, Minnesota, Portland, Oregon, Denver, Colorado, San Francisco, California, and Oakland, California have ended contracts with police departments.[72]

Scholars theorize that the dramatic expansion of SRO programs nationwide has been a response to highly publicized incidents of school violence of the last two decades and the general "tough on crime" mindset exhibited by many policymakers and authorities.[73] It is also likely that abundant federal and state dollars to support SRO programs have fueled this expansion.[74] Following the tragic shootings in Columbine High School, the U.S. Department of Justice's Office of

[69] *See* FLA. STAT. ANN. § 1006.12 (2021) ("[E]ach district school board and school district superintendent shall partner with law enforcement agencies or security agencies to establish or assign one or more safe-school officers at each school facility within the district."); KY. REV. STAT. ANN. § 158.4414 (2021) ("Local boards of education, school district superintendents, and local and state law enforcement agencies shall cooperate to assign one (1) or more certified school resource officers to each school within a school district as funds and qualified personnel become available.").

[70] *See* Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Mar. 28, 2021), https://www.nytimes.com/article/george-floyd-protests-timeline.html [https://perma.cc/Q3AX-QEZ6].

[71] *See Do Police Officers in Schools Help or Hinder Teachers?*, *supra* note 3.

[72] *Id.* But other large school districts, such as those in Chicago and New York City, have rejected calls to diminish their SRO programs. *Id.*

[73] *See* Ben Brown, *Evaluations of School Policing Programs in the USA*, *in* THE PALGRAVE INTERNATIONAL HANDBOOK OF SCHOOL DISCIPLINE, SURVEILLANCE, AND SOCIAL CONTROL 327, 327 (Jo Deakin, Aaron Kupchik & Emmeline Taylor eds., 2018); F. CHRIS CURRAN, BENJAMIN W. FISHER, SAMANTHA L. VIANO & AARON KUPCHIK, UNDERSTANDING SCHOOL SAFETY AND THE USE OF SCHOOL RESOURCE OFFICERS IN UNDERSTUDIED SETTINGS 16-17 (2020), https://www.ojp.gov/pdffiles1/nij/grants/254621.pdf [https://perma.cc/8GFT-UHRE]; Denise C. Gottfredson, Scott Crosse, Zhiqun Tang, Erin L. Bauer, Michele A. Harmon, Carol A. Hagen & Angela D. Greene, *Effects of School Resource Officers on School Crime and Responses to School Crime*, 19 CRIM. & PUB. POL'Y 905, 906-08 (2020); Josh Gupta-Kagan, *Reevaluating School Searches Following School-to-Prison Pipeline Reforms*, 87 FORDHAM L. REV. 2013, 2015 (2019) [hereinafter *Reevaluating*]; Theriot, *supra* note 11, at 280.

[74] *See* Gottfredson et al., *supra* note 73, at 908.

Community Policing Services began the "COPS in Schools" program, providing grants to schools amounting to almost a billion dollars to hire almost eight thousand SROs throughout the nation.[75] Federal funding from the U.S. Department of Justice, Education, and Health and Human Services provided additional financial support to hire SROs.[76] Furthermore, several state legislatures have also provided funding for schools to develop or expand their SRO programs.[77] Importantly, policymakers and school officials have expanded SRO programs despite a paucity of evidence supporting their effectiveness in decreasing school crime, preventing violence, and promoting school safety.[78]

While the precise roles and responsibilities of SROs vary considerably from school to school,[79] unsurprisingly many school officials routinely rely on SROs to carry out law enforcement activities in schools, such as investigating complaints, monitoring students while patrolling school

[75] *See* MARIEKE BROCK, NORMA KRIGER & RAMÓN MIRÓ, SCHOOL SAFETY POLICIES AND PROGRAMS ADMINISTERED BY THE U.S. FEDERAL GOVERNMENT: 1990–2016, at 78-79, 81 (2018), https://www.ojp.gov/pdffiles1/nij/grants/251517.pdf [https://perma.cc/PNN3-FQ8X].

[76] U.S. Dep't of Educ., *U.S. Department of Education Awards More Than $32.8 Million to Promote Safe Schools, Healthy Students* (July 10, 2009), https://www2.ed.gov/news/pressreleases/2009/07/07102009.html [https://perma.cc/Z86M-DVP2].

[77] *See, e.g.*, ALA. CODE § 41-15B-2.2 (2021) (allocating funding for "[s]afety plans involving the use of metal detectors, other security devices, uniforms, school safety resource officers, or other personnel employed to provide a safe school environment"); 24 PA. CONS. STAT. § 13-1302-A (2021) (authorizing grants to cover costs associated with compensating school resource officers); TENN. CODE ANN. § 49-6-4302 (2021) (mandating that the "Tennessee school safety center . . . establish school safety grants to assist LEAs in funding programs that [include] . . . school resource officers").

[78] *See, e.g.*, JAMES & MCCALLION, *supra* note 65, at 10-11 (observing that the "noticeably limited" available research "draws conflicting conclusions about whether SRO programs are effective at reducing violence"); Gottfredson et al., *supra* note 73, at 909-12 (concluding that "studies still fall short of definitively demonstrating the effect of placing SROs on school crime"); Na & Gottfredson, *supra* note 10, at 624-25 (reviewing the available research and concluding that "there is a dearth of knowledge about the effectiveness of SRO programs"); *see also* Heise & Nance, *"Defund the (School) Police"?, supra* note 6, at 737; Jason P. Nance, *Rethinking Law Enforcement Officers in Schools*, 84 GEO. WASH. L. REV. ARGUENDO 151, 153-54 (2016).

[79] *See* CURRAN ET AL., *supra* note 73, at 18-22; PETER FINN, MICHAEL SHIVELY, JACK MCDEVITT, WILLIAM LASSITER & TOM RICH, COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS 14-18 (2005), https://www.ojp.gov/pdffiles1/nij/grants/209272.pdf [https://perma.cc/9WVA-232T]; AARON KUPCHIK, HOMEROOM SECURITY: SCHOOL DISCIPLINE IN AN AGE OF FEAR 82-95 (2010); LAWRENCE F. TRAVIS III & JULIE KIERNAN COON, THE ROLE OF LAW ENFORCEMENT IN PUBLIC SCHOOL SAFETY: A NATIONAL SURVEY 37-39 (2005), https://www.ojp.gov/pdffiles1/nij/grants/211676.pdf [https://perma.cc/YPR7-3XLA]; *see also* Brown, *supra* note 73, at 329-30.

grounds, maintaining an orderly environment, issuing citations, and making arrests.[80] Furthermore, it appears that SROs have the authority to intervene in all, or almost all, disciplinary events that occur in schools. Even in states that have not enacted "disturbing school statutes,"[81] state legislatures criminalize actions such as "disturbing the peace," "disorderly conduct," and "assault."[82] As a result, the increased presence of law enforcement officers in schools has clouded the roles and responsibilities of those traditionally charged with disciplining students for misbehavior, especially because an SRO can essentially overrule any disciplinary decision a school official renders by deciding to arrest a student for violating the law.[83] This is one reason that several states, government agencies, and public interest entities recommend that schools and law enforcement agencies enter into memorandums of understanding ("MOU") to specify the precise roles and responsibilities of SROs before they work in schools.[84] However, the effectiveness of MOUs remains unclear, and the empirical research suggests that many school authorities either do not have an MOU or are unaware of the specific provisions their MOUs contain.[85] Scholars have consistently

[80] *See* JAMES & MCCALLION, *supra* note 65, at 2; KUPCHIK, *supra* note 79, at 83-89; Gupta-Kagan, *Reevaluating*, *supra* note 73, at 2039; Theriot, *supra* note 11, at 281.

[81] *See supra* note 34 and accompanying text.

[82] *See, e.g.*, CAL. PENAL CODE § 241 (2021) (criminalizing assault); FLA. STAT. § 877.03 (2021) (criminalizing acts that breach the peace and disorderly conduct); VA. CODE ANN. § 18.2-415 (2021) (criminalizing disorderly conduct).

[83] *See* Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, 34 J. CRIM. JUST. 591, 591 (2006); *see also* OFF. OF CMTY. ORIENTED POLICING SERVS., U.S. DEP'T JUST., A GUIDE TO DEVELOPING, MAINTAINING, AND SUCCEEDING WITH YOUR SCHOOL RESOURCE OFFICER PROGRAM 51 (2005), https://popcenter.asu.edu/sites/default/files/Responses/school_police/PDFs/Finn_et_al_2005.pdf [http://perma.cc/235W-UCTT] (providing an example of an SRO who "once had to threaten to arrest a principal for interfering with a police officer in the performance of his duty when the administrator was physically barring [the SRO] from arresting a student").

[84] *See, e.g.*, MD. CODE ANN., EDUC. § 26-102 (2021) (specifying that SROs should be assigned to school districts by way of memorandums of understanding); JAMES & MCCALLION, *supra* note 65, at 11 (endorsing memorandums of understanding); U.S. DEP'T EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE 3 (2014), https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf [https://perma.cc/G5Y5-XYQJ] ("In cases where schools choose to make use of school-based law enforcement officers . . . schools should provide clear definitions of the officers' roles and responsibilities on campus [and] document those expectations in a written agreement or memorandum of understanding . . . .").

[85] *See* MICHAEL JACKSON, MELISSA DILIBERTI, JANA KEMP, STEVEN HUMMEL, CHRISTINA COX, KOMBA GBONDO-TUGBAWA, DILLON SIMON & RACHEL HANSEN, 2015–16 SCHOOL SURVEY ON CRIME AND SAFETY (SSOCS): PUBLIC-USE DATA FILE USER'S MANUAL, at D-34 to

raised concerns over the blurred lines between "enforcing the law" and "disciplining students for misbehaving," observing that the increased presence of law enforcement in schools has been a major step towards criminalizing student misconduct and amplifying the school-to-prison pipeline.[86]

In addition, legal scholars have observed the increased strain on students' constitutional rights from introducing regular law enforcement presence in schools.[87] While the U.S. Supreme Court has maintained that students do not "shed their constitutional rights . . . at the schoolhouse gate,"[88] students unquestionably have diminished constitutional rights while at school and a school's SRO/police presence contributes to this diminishment.[89] In the Fourth Amendment context, the Court has applied a lower standard to evaluate the legality of searches conducted by school officials, holding that school officials do not need to demonstrate probable cause or obtain a warrant before searching a student.[90] Rather, the legality of the search will depend on "'whether the . . . action was justified at its inception,'" and "whether the search 'was reasonably related in scope to the circumstances which

D-37 (2018), https://files.eric.ed.gov/fulltext/ED581663.pdf [https://perma.cc/C3KU-XFQF].

[86] *See, e.g.*, Gupta-Kagan, *The School-to-Prison Pipeline, supra* note 33, at 111-16 (describing law enforcement involving in school discipline); Fedders, *supra* note 52, at 573-74 (describing how normal adolescent misbehavior becomes characterized as criminal activity in the presence of a law enforcement officer at school); Joseph B. Ryan, Antonis Katsiyannis, Jennifer M. Counts & Jill C. Shelnut, *The Growing Concerns Regarding School Resource Officers*, 53 INTERVENTION IN SCH. & CLINIC 188, 188 (2018) (describing the "blurring of lines between duties on administration and those of law enforcement" at school); Kerrin C. Wolf, *Assessing Students' Civil Rights Claims Against School Resource Officers*, 38 PACE L. REV. 215, 222 (2018) (maintaining that SROs are a "feature of a larger trend" towards "the 'criminalization' of American public school students"); *see also* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 732-33.

[87] *See* Gupta-Kagan, *Reevaluating*, *supra* note 73, at 2015-18; Catherine Y. Kim, *Policing School Discipline*, 77 BROOK. L. REV. 861, 861-65 (2012); Nance, *Students, Police, supra* note 5, at 936-40; Michael Pinard, *From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*, 45 ARIZ. L. REV. 1067, 1067-70 (2003).

[88] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969).

[89] *See* Nance, *School Surveillance*, *supra* note 5, at 122-23; James E. Ryan, *The Supreme Court and Public Schools*, 86 VA. L. REV. 1335, 1338-43 (2000) (arguing that courts limit students' free speech, right to privacy, and due process rights in schools because in schools the government acts as an educator, and it would be impossible to "fully protect[] students' constitutional rights while simultaneously ensuring the effective operation of public schools").

[90] *See* New Jersey v. T.L.O., 469 U.S. 325, 340-41 (1985).

justified the interference in the first place.'"[91] The majority of lower courts evaluating the constitutionality of searches conducted by SROs have applied this lower standard, even though evidence obtained from the search can be used for criminal prosecution purposes and even though law enforcement officers would be subject to the higher standard for searching youth outside of schools.[92] Similarly, lower courts also consistently hold that school administrators do not need to provide *Miranda* warnings before interrogating a student,[93] even when SROs are present during in an interrogation.[94]

D. Empirical Studies Measuring SRO/Police Programs' Effects on Schools' Referrals to Law Enforcement for Engaging in Misconduct

We are not aware of any empirical studies examining the relationship between the regular presence of law enforcement officers in schools and *not* reporting student disciplinary matters to law enforcement agencies. However, many studies examine the influence of a school's SRO/police presence on the school's probability of referring students to law enforcement for engaging in certain wrongful acts. The most recent study of which we are aware is our own. Specifically, we investigated the relationships between the magnitude of SRO/police at school and a school's rate of reporting student wrongdoing to law enforcement by exploiting data from the 2015–2016 SSOCS, supplemented by data from state statute mandatory reporting requirements and data on school district-level per pupil spending.[95] We accounted for various school-level and student-focused variables and applied three distinct analytical approaches to better isolate the independent influence of a school's

[91] *Id.* (quoting Terry v. Ohio, 392 U.S. 1, 20 (1968)).

[92] *See, e.g.*, People v. Dilworth, 661 N.E.2d 310, 317 (Ill. 1996) (applying a reasonableness standard to a search of a student at school); R.D.S. v. State, 245 S.W.3d 356, 367 (Tenn. 2008) (applying a reasonable suspicion standard); *see also* Gupta-Kagan, *Reevaluating, supra* note 73, at 2024-30; Kim, *supra* note 87, at 866.

[93] *See, e.g.*, S.E. v. Grant Cnty. Bd. of Educ., 544 F.3d 633, 640-41 (6th Cir. 2008) (stating that a school official may detain a student "if there is a reasonable basis for believing that the pupil has violated the law or a school rule"); C.S. v. Couch, 843 F. Supp. 2d 894, 917-20 (N.D. Ind. 2011) (finding failure of a *Miranda* claim in a school setting).

[94] *See, e.g.*, State v. J.T.D., 851 So. 2d 793, 797 (Fla. Dist. Ct. App. 2003) (arguing for an exception to *Miranda* warnings for school officials); People v. Pankhurst, 848 N.E.2d 628, 633-34 (Ill. App. Ct. 2006) (analyzing *Miranda* issues in school settings); *In re* Tateana R., 883 N.Y.S.2d 476, 477-78 (App. Div. 2009) (denying motion to suppress remarks given under interrogation without *Miranda* warnings); *see also* Heise & Nance, *"Defund the (School) Police"?, supra* note 6, at 739.

[95] Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 743-44.

SRO/police presence (and the magnitude of this presence) on a school's reporting rate.[96] We concluded that "when it comes to either whether a school reports any student disciplinary incidents to law enforcement agencies or a school's rate [per 100 students] of reporting, we find consistent and robust evidence — and across virtually all of our models — that a school's SRO/police presence exerts upward influence on schools' inclination to repot and rate of reporting."[97]

One of the authors of this article conducted a similar study on an earlier SSOCS data set (2009–2010), although he relied on raw data, pursued slightly different empirical methodologies, and did not include data on school district-level per pupil spending.[98] After controlling for state statute mandatory reporting requirements, school-level variables, and student-focused variables, Nance concluded that a "police officer's regular presence at a school is predictive of greater odds that school officials refer students to law enforcement for committing various offenses, including lower-level offenses."[99]

Na and Gottfredson also examined the relationship between a regular presence of law enforcement at school and reporting students to law enforcement using the various SSOCS data sets (2003–2004, 2005–2006, 2007–2008).[100] Similar to prior studies, Na and Gottfredson also found a positive correlation between the number of SROs having regular contact with a school and the probability of reporting students to law enforcement for engaging in various acts of wrongdoing.[101]

Other notable empirical studies have examined the relationship between SRO programs and increased student involvement in the criminal justice system, but these studies are distinct from the above studies in that they measure arrests conducted by SROs or other law enforcement rather than school referrals to law enforcement. Nevertheless, their findings generally comport with the overall trends from the above studies. For example, Owens found that police agencies that received federal grants to hire more SROs were more likely to learn about school-based crimes and arrest students for committing those crimes.[102] Theriot exploited a natural experiment by examining a school district in the southeastern United States that provided SROs to schools

96 *Id.* at 743-51.

97 *Id.* at 762.

98 *See* Nance, *Students, Police*, *supra* note 5, at 958-75.

99 *Id.* at 983.

100 *See* Na & Gottfredson, *supra* note 10, at 626-27.

101 *Id.* at 635, 637.

102 Emily G. Owens, *Testing the School-to-Prison Pipeline*, 36 J. POL'Y ANALYSIS & MGMT. 11, 31-32 (2017).

inside the city's limits but not outside.[103] He observed that students in schools with SROs were more likely to be arrested for lower-level offenses than schools without SROs.[104]

E. Consequences of the Increased "Legalized" Approach to School Discipline and Safety

Significant scholarly attention also has focused on the negative consequences that can flow to students, their families, and our society as a result of schools' "legalized" approach to school discipline. The primary concern is that schools' legalized approach to school discipline directly or indirectly leads to more individuals becoming involved in the criminal justice system, either as students, when these students reach adulthood, or both. Of course, referring students to law enforcement agencies when they engage in criminal activity directly and immediately involves students in the criminal justice system.[105] But suspension and expulsion often can lead to increased student involvement in the criminal justice system as well. Suspended and expelled students are frequently left home unsupervised and become involved in criminal activity outside of school.[106] Empirical studies document that each suspension and expulsion increases the odds that students will have more contact with the juvenile justice system, even after accounting for school campus and individual characteristics.[107] Furthermore, studies elucidate the strong connection between exclusionary discipline practices and adult involvement in the criminal justice system.[108] Studies also show a strong link between exclusionary

[103] Theriot, *supra* note 11, at 282.

[104] *Id.* at 284-85.

[105] It is important to remember that "criminal activity" can be construed as broadly as "interfer[ing] with the education process of any public . . . school." N.M. STAT. ANN. § 30-20-13(D) (2021); *see also* ARK. CODE ANN. § 6-21-606 (2021); FLA. STAT. ANN. § 877.13 (2021).

[106] *See* Am. Acad. Pediatrics, *Out-of-School Suspension and Expulsion*, 112 PEDIATRICS 1206, 1207 (2003).

[107] *See* TONY FABELO, MICHAEL D. THOMPSON, MARTHA PLOTKIN, DOTTIE CARMICHAEL, MINER P. MARCHBANKS III & ERIC A. BOOTH, BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT 26, 31-32, 70 (2011), https://knowledgecenter.csg.org/kc/system/files/Breaking_School_Rules.pdf [https://perma.cc/6JMZ-8NE5].

[108] *See* Tracey L. Shollenberger, *Racial Disparities in School Suspension and Subsequent Outcomes: Evidence from the National Longitudinal Survey of Youth*, *in* CLOSING THE SCHOOL DISCIPLINE GAP: EQUITABLE REMEDIES FOR EXCESSIVE EXCLUSION 31, 36-40 (Daniel J. Losen ed., 2015); Thomas Mowen & John Brent, *School Discipline as a Turning Point: The Cumulative Effect of Suspension on Arrest*, 53 J. RSCH. CRIME & DELINQ. 628, 642-43

discipline practices and failing to graduate from high school,[109] and failing to graduate is another indirect pathway to increased involvement in the justice system.[110] When students are suspended and expelled, they miss class time, cannot build positive relationships with other members of the school community, fail to receive support, get behind, become disengaged, are stigmatized, and drop out.[111]

Involvement in the criminal justice system leads to a host of negative outcomes for youth and adults. Incarcerating youth, the most extreme result, decreases opportunities for employment and housing.[112] Incarcerated youth often cannot access robust educational services, complete their education, or develop skills necessary to secure adequate employment or pursue higher education opportunities upon release.[113] Youth who have been incarcerated are more likely to have mental health

(2016); Kerrin C. Wolf & Aaron Kupchik, *School Suspensions and Adverse Experiences in Adulthood*, 34 JUST. Q. 407, 421-22 (2017).

109 *See, e.g.*, FABELO ET AL., *supra* note 107, at 54-59 (finding that students who were suspended or expelled were more likely to drop out of school); Robert Balfanz, Vaughan Byrnes & Joanna Fox, *Sent Home and Put-Off Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, 5 J. APPLIED RSCH. ON CHILD. 1, 7-9 (2014) ("With each increasing suspension in 9th grade, the odds of dropping out of high school increase while conversely the chances of graduating decrease as do the chances of enrolling and persisting in post-secondary schooling.").

110 *See* CLIVE R. BELFIELD, HENRY M. LEVIN & RACHEL ROSEN, THE ECONOMIC VALUE OF OPPORTUNITY YOUTH 20 (2012), http://youthtoday.org/wp-content/uploads/sites/13/hotdocs/econ_value_opportunity_youth.pdf [https://perma.cc/8323-XKCK]; NAT'L CTR. JUV. JUST., JUVENILE OFFENDERS AND VICTIMS: 2014 NATIONAL REPORT 15 (Melissa Sickmund & Charles Puzzanchera eds., 2014), https://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf [https://perma.cc/65VL-LWEX].

111 *See* Erik J. Girvan, *Towards a Problem-Solving Approach to Addressing Racial Disparities in School Discipline under Anti-Discrimination Law*, 50 U. MEMPHIS L. REV. 995, 1003-06 (2020); Richard O. Welsh & Shafiqua Little, *Caste and Control in Schools: A Systematic Review of the Pathways, Rates, and Correlates of Exclusion Due to School Discipline*, 94 CHILD. & YOUTH SERVS. REV. 315, 319-20 (2018); *see also* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 727.

112 *See* BARRY HOLMAN & JASON ZIEDENBERG, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 9 (2006), https://njdc.info/wp-content/uploads/2017/10/PJDC-Dangers-of-Detention-.pdf [https://perma.cc/2WWN-GQ5Y]; RIYA SHAH & JEAN STROUT, FUTURE INTERRUPTED: THE COLLATERAL DAMAGE CAUSED BY PROLIFERATION OF JUVENILE RECORDS 10-11 (2016), https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf [https://perma.cc/3TSK-VZCG].

113 *See* HOLMAN & ZIEDENBERG, *supra* note 112, at 2; Peter E. Leone, *Doing Things Differently: Education as a Vehicle for Youth Transformation and Finland as a Model for Juvenile Justice Reform*, *in* A NEW JUVENILE JUSTICE SYSTEM: TOTAL REFORM FOR A BROKEN SYSTEM 86, 91 (Nancy E. Dowd ed., 2015).

conditions[114] develop violent attitudes and behaviors,[115] and become involved in the criminal justice system as an adult.[116]

A student arrest, even when the arrest does not lead to incarceration, is also associated with undesirable outcomes. Arrested students can suffer from emotional trauma, stigma, a failure to graduate from high school, and expulsion.[117] Empirical studies also link an arrest alone to such troubling outcomes as increased poverty, unemployment, poor health, and increased involvement in the criminal justice system later in life.[118]

F. Exercising Discretion to Not Report Wrongdoing to Law Enforcement and Reputational Effects

Very little scholarly attention has been devoted to the subject of school authorities exercising discretion to *not* report wrongdoing to law enforcement authorities. Yet, our data indicate that this is a far more common occurrence in public schools than reporting students to law enforcement.[119] As an initial matter, we are careful to use the term

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[114] *See* Christopher B. Forrest, Ellen Tambor, Anne W. Riley, Margaret E. Ensminger & Barbara Starfield, *The Health Profile of Incarcerated Male Youths*, 105 PEDIATRICS 286, 288-89 (2000); Javid H. Kashani, George W. Manning, Donald H. McKnew, Leon Cytryn, John F. Simonds & Phil C. Wooderson, *Depression Among Incarcerated Delinquents*, 3 PSYCHIATRY RSCH. 185, 190 (1980).

[115] *See* Anne M. Hobbs, Timbre Lee Wulf-Ludden & Jenna Strawhun, *Assessing Youth Early in the Juvenile Justice System*, 3 OJJPD J. JUV. JUST. 80, 81 (2013); *cf.* Mark J. Van Ryzin & Thomas J. Dishion, *From Antisocial Behavior to Violence: A Model for the Amplifying Role of Coercive Joining in Adolescent Friendships*, 54 J. CHILD PSYCH. & PSYCHIATRY 661, 661 (2013) (explaining that coercive friendships during adolescent years predict violent behavior in adulthood).

[116] *See* ANTHONY PETROSINO, CAROLYN TURPIN-PETROSINO & SARAH GUCKENBURG, FORMAL SYSTEM PROCESSING OF JUVENILES: EFFECTS ON DELINQUENCY 25-36 (2010); Brent B. Benda & Connie L. Tollett, *A Study of Recidivism of Serious and Persistent Offenders Among Adolescents*, 27 J. CRIM. JUST. 111, 120 (1999); *see also* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 727.

[117] *See* ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 12 (2005); Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462, 463, 477-79 (2006); Theriot, *supra* note 11, at 280-81; *see also* Paul Hirschfield, *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*, 82 SOCIO. EDUC. 368, 384-87 (2009).

[118] *See* HENRY LEVIN, CLIVE BELFIELD, PETER A. MUENNIG & CECILIA ROUSE, THE COSTS AND BENEFITS OF AN EXCELLENT EDUCATION FOR ALL OF AMERICA'S CHILDREN 14-15 (2007); *see also* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 727-28. *See generally* JOHN M. BRIDGELAND, JOHN J. DILULIO, JR., & KAREN BURKE MORISON, THE SILENT EPIDEMIC: PERSPECTIVES OF HIGH SCHOOL DROPOUTS 2 (2006) (presenting consequences of dropping out of high school).

[119] *See infra* Part II.A.1.

"discretion" because many states have enacted statutes mandating that school authorities report certain crimes to law enforcement authorities.[120] Nevertheless, empirical evidence suggests that state reporting statutes overall do not influence school authorities to report criminal actions to law enforcement.[121]

For example, in his 2016 study analyzing SSOCS data, Nance found that reporting statutes were "insignificant predictors of the odds of referring students to enforcement for robbery without a weapon and vandalism, although they are weakly associated in a positive fashion with the odds of referring students for theft."[122] He also found, curiously, that reporting statutes were *negatively* associated with drug- and alcohol-related offenses.[123] He hypothesized that statutes are not a driving force behind referrals to law enforcement because they do not appear to be enforced and, possibly, most schools are unaware of them.[124] Similarly, in a prior study, we found that state-level mandatory reporting requirements did not influence the reporting of violent incidents to law enforcement, and they corresponded with a reduction in the odds of reporting for non-violence incidents.[125] Collectively, these findings suggest that state reporting statutes do not influence school officials to report students to law enforcement authorities when students engage in criminal activities. Rather, many schools and districts have their own policies, practices, and norms governing when school officials will and will not report students to law enforcement for criminal activity.[126]

There are obvious reasons why school authorities choose to not report student misconduct to law enforcement agencies. For example, some officials want to avoid the negative attention these reports may bring to their schools. These school officials do not want parents and the larger community to perceive that their schools are dangerous and disorderly, which may cause parents to enroll their children

120 *See supra* notes 32–33 and accompanying text; *see also* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 743; Nance, *Students, Police, supra* note 5, at 934-36.

121 *See* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 758-63; Nance, *Students, Police*, *supra* note 5, at 973.

122 Nance, *Students, Police*, *supra* note 5, at 973.

123 *Id.*

124 *Id.* Indeed, from personal experience, even as trained lawyers and legal researchers, it was challenging for us to identify all the statutes that mandate schools to report various criminal actions to law enforcement authorities.

125 Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 758-63.

126 *See supra* note 37 and accompanying text.

elsewhere.[127] Relatedly, schools may not have adequate resources to invest in safety measures to satisfy the community if interested parties were to become aware of school criminal activity.[128] School administrators also do not want to be viewed as ineffective by their superiors and lose their jobs.[129] In addition, it is possible that some school officials may understand the significant negative consequences that flow to students and their families when students become involved in the criminal justice system. In short, school officials may see very little upside and reward to reporting and tremendous downside, especially if there are no consequences for failing to report.[130]

Furthermore, school administrators often have other means at their disposal to address student misconduct. For example, it is common for administrators to suspend, expel, or transfer students to alternative schools for engaging in criminal activity.[131] Fewer schools rely on less punitive measures to address misbehavior, but these alternative measures show promise. Restorative justice and tiered behavioral

[127] For example, Rebecca Dahl, a retired school administrator, explained that "if you show you've got all these incidents, parents won't put their children in the school because they think it's not safe. That's really what happens." Scott Travis, Megan O'Matz & John Maines, *Broward School District Failing to Report Many Campus Crimes to State as Required*, SUN SENTINEL (June 8, 2018, 11:10 PM), https://www.sun-sentinel.com/local/broward/parkland/florida-school-shooting/fl-florida-school-shooting-discipline-reporting-20180607-story.html [https://perma.cc/RN78-S2B4]. Mary Fitzgerald, a retired educator, commented, "A lot of principals are afraid . . . You don't report theft because reporting it makes your school look dangerous." Megan O'Matz & Scott Travis, *Schools' Culture of Tolerance Lets Students Like Nikolas Cruz Slide*, SUN SENTINEL (May 12, 2018, 6:35 PM), https://www.sun-sentinel.com/local/broward/parkland/florida-school-shooting/fl-florida-school-shooting-discipline-20180510-story.html [https://perma.cc/S5N3-JVBZ]. School Superintendent Robert Runcie conceded that school officials fail to accurately report criminal activity because "they felt it would weigh negatively on how they are perceived." Scott Travis & John Maines, *Florida Schools Cover Up Crimes: Rapes, Guns and More*, SUN SENTINEL (Dec. 7, 2018, 6:00 PM), https://www.sun-sentinel.com/local/broward/parkland/florida-school-shooting/fl-ne-florida-school-crime-reporting-20181127-story.html [https://perma.cc/W2YB-TWBS]. Kendrick Meek, former U.S. congressman and committee member studying school safety issues following the shootings at Columbine High School, observed that "[j]ust like many cities under-report hate crimes because they don't want to be the city with the most, schools and school boards don't want their schools to be seen as unsafe." *Id.*

[128] *See School Crime Reporting and Underreporting*, NAT'L SCH. SAFETY & SEC. SERVS., https://www.schoolsecurity.org/trends/school-crime-reporting-and-underreporting/ (last visited May 23, 2021) [https://perma.cc/7L6Z-9UA5].

[129] *See* Travis et al., *supra* note 127 (reporting that if school crime reports are too high supervisors of school principals become displeased, and principals "fear for their jobs"); *School Crime Reporting and Underreporting*, *supra* note 128.

[130] *See* Travis et al., *supra* note 127; Travis & Maines, *supra* note 127; *School Crime Reporting and Underreporting*, *supra* note 128.

[131] *See* Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 1, at 316-17.

support initiatives are two evidence-based measures that, if implemented effectively, can promote school safety without overly relying on punitive measures that can do more harm than good.[132] However, these alternative initiatives require sustained resources, time, attention, and energy to work effectively, which may explain why they are less commonly used.[133]

G. Racial Inequalities in Disciplinary Outcomes

A troubling trend that emerges from the literature is that not all student demographic groups experience negative disciplinary outcomes in a proportional manner. Scholars repeatedly have found that racial disparities relating to suspensions, expulsions, and other adverse disciplinary decisions persist even after controlling for student misbehavior, academic achievement, neighborhood context, district and school characteristics, and poverty.[134] But close scrutiny of the empirical studies provides more insight regarding the conditions under which racial disparities are most likely to occur.

For example, Girvan and his colleagues examined the disciplinary records of over 1.15 million students from over 1,800 schools across the nation to understand whether racial disparities were greater in office discipline referrals ("ODRs") that reflected a subjectively defined judgment (e.g., defiance, disrespect, disruption) or an objectively defined judgment (e.g., truancy, fighting).[135] They concluded that the results were "highly consistent"; specifically, that student race explained substantially more variance in the subjectively defined ODRs than in the objective ODRs, even after controlling for various school characteristics such as enrollment and student poverty.[136]

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[132] For an extended discussion of these measures, see *id.* at 352-62.

[133] *See id.*

[134] *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-258, K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES 12-14 (2018); Yolanda Anyon, Jeffrey M. Jenson, Inna Altschul, Jordan Farrar, Jeanette McQueen, Eldridge Greer, Barbara Downing & John Simmons, *The Persistent Effect of Race and the Promise of Alternatives to Suspension in School Discipline Outcomes*, 44 CHILD. & YOUTH SERVS. REV. 379, 380 (2014); Girvan, *supra* note 111, at 10-12; Russell J. Skiba, Robert H. Homer, Choong-Geun Chung, M. Karega Rausch, Seth L. May & Tary Tobin, *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCH. REV. 85, 95-101 (2011).

[135] Erik J. Girvan, Cody Gion, Kent McIntosh & Keith Smolkowski, *The Relative Contribution of Subjective Office Referrals to Racial Disproportionality in School Discipline*, 32 SCH. PSYCH. Q. 392, 394-96, 400-01 (2016).

[136] *Id.* at 400.

Huang and Cornell examined survey data from more than 38,000 students in 236 schools in Virginia to investigate the reasons underlying racial disparities relating to out-of-school suspensions.[137] They discovered that Black and white student suspension rates were similar for fighting, white student suspension rates were higher for alcohol, tobacco, and drug-related offenses, and that Black student suspension rates were higher for verbal misbehavior, including arguing, threatening, or using inappropriate language.[138] They concluded that their findings supported the view that while there "may be cultural and linguistic differences in social behaviors that lead school authorities to react differently to Black students who express their feelings in a manner they do not find acceptable," these findings were "consistent with the view that Black students are suspended disproportionately because of more subjective judgments by school authorities."[139]

Fabelo and his colleagues conducted a longitudinal study involving over 900,000 students in Texas.[140] They carefully examined racial disparities relating to disciplinary actions for two categories of offenses: (1) felony offenses requiring mandatory removal from school under state law (e.g., possession of weapons, aggravated assault, sexual assault, possession of drugs or alcohol); and (2) offenses where school officials had discretion to remove students from school.[141] After controlling for many factors such as student background characteristics, student academic performance, and school characteristics, they found that "African-American students had about a 31 percent higher likelihood of a discretionary school disciplinary action, compared to the rate for otherwise identical white students."[142] In addition, "African-American students had about a 23 percent *lower* likelihood of facing a mandatory school disciplinary action . . . compared to otherwise identical white students."[143]

Skiba and his colleagues examined the disciplinary records of over 11,000 students in nineteen middle schools in a large, urban midwestern public school district to explore factors that explained

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[137] Francis L. Huang & Dewey G. Cornell, *Student Attitudes and Behaviors as Explanations for the Black-White Suspension Gap*, 73 CHILD. & YOUTH SERVS. REV. 298, 300-01 (2017).

[138] *Id.* at 305.

[139] *Id.*

[140] FABELO ET AL., *supra* note 107, at 26, 31-32, 70.

[141] *Id.* at 95-98.

[142] *Id.* at 45.

[143] *Id.*

racial disparities relating to school punishment.[144] They discovered that white students were more likely to be referred to administrative office for punishment for more "objective" offenses, such as smoking, leaving without permission, obscene language, and vandalism.[145] In contrast, Black students were more likely to be referred to the office for offenses that "would seem to require a good deal more subjective judgment on the part of the referring agent," such as disrespect, excessive noise, threat, and loitering.[146]

Empirical studies examining racial disparities in referrals to law enforcement and school-based arrests also are telling. The U.S. Department of Education Office for Civil Rights' Civil Rights Data Collection show racial disparities at a national level for both referrals to law enforcement and school-based arrests,[147] and other analyses of this data show disparities at the state level.[148] However, very little robust empirical analysis has been conducted at the school level, and available studies show mixed results.

For example, Ramey examined the relationship between school- and district-level racial compositions and rates of suspensions, expulsions, referrals to law enforcement, and school-based arrests using data from the 2009–2010 U.S. Department of Education Civil Rights Data Collection and the 2009–2010 National Center for Education Statistics Common Core of Data.[149] Ramey found that schools (but not districts)

144 Russell J. Skiba, Robert S. Michael, Abra Carroll Nardo & Reece L. Peterson, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URB. REV. 317, 323 (2002).

145 *Id.* at 332, 334.

146 *Id.* at 334.

147 *See* U.S. DEP'T OF EDUC. OFF. FOR C.R., CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: SCHOOL DISCIPLINE 1, 6 (2014) https://ocrdata.ed.gov/assets/downloads/CRDC-School-Discipline-Snapshot.pdf [https://perma.cc/PD3P-RUL5] (stating that "[w]hile black students represent 16% of student enrollment, they represent 27% of students referred to law enforcement and 31% of students subjected to a school-related arrest"); *see also* Emily M. Homer & Benjamin W. Fisher, *Police in Schools and Student Arrest Rates Across the United States: Examining Differences by Race, Ethnicity, and Gender*, 19 J. SCH. VIOLENCE 192, 196-99 (2020) (analyzing data from the 2013–2014 Civil Rights Data Collection and concluding that "Black students' arrest rates were higher by 1.22 students per 1,000," and "Hispanic students' arrest rates were higher by 0.55 students per 1,000" in schools with police).

148 *See, e.g.*, Evie Blad & Alex Harwin, *Black Students More Likely to Be Arrested at School*, EDUC. WK. (Jan. 24, 2017), https://www.edweek.org/ew/articles/2017/01/25/black-students-more-likely-to-be-arrested.html?r=1131109146 [https://perma.cc/3GLZ-92MG] ("In 43 states and the District of Columbia, black students are arrested at school at disproportionately high levels . . . .").

149 David M. Ramey, *The Social Structure of Criminalized and Medicalized School Discipline*, 88 SOCIO. EDUC. 181, 187 (2015).

serving higher concentrations of Black students had higher referral rates to law enforcement and arrest rates.[150] However, racial disparities were more pronounced for rates of suspensions and expulsions.[151] Ramey's findings held after controlling for school- and district-level characteristics, but he did not control for the regular presence of law enforcement officers at school or for state statutes mandating reporting to law enforcement.[152]

In a rare ethnographic study, Curran and his colleagues observed personally how SRO programs operated in two mid-sized suburban school districts located in the South, including the frequency of student arrests.[153] All of the approximately fifty schools they studied experienced the regular presence of an SRO.[154] The two school districts primarily served affluent white students, but the individual schools' characteristics varied considerably with respect to student race, student poverty, and the urbanicity of the school.[155] The researchers observed "very little variation in the practices of SROs across these schools" and that "SROs tended to view the risks of threats and their approaches to school discipline similarly, regardless of the racial composition of the school."[156]

In an earlier study using the 2009–2010 SSOCS dataset, one of the authors of this Article examined the relationship between the percentage of minority students a school serves and student referrals to law enforcement for various offenses.[157] After controlling for state statute mandatory reporting requirements, school-level variables, student-focused variables, and whether the school had regular contact with law enforcement, Nance found that "the percentage of minority students a school serves is generally insignificant with respect to all of the offenses except two, where it is a *negative* predictor (robbery without a weapon and alcohol offenses)."[158]

The most recent study in this area of which we are aware is our own. Using the 2015–2016 SSOCS dataset supplemented by data from state

150 *Id.* at 189, 192.

151 *See id.*

152 *See id.* at 188.

153 CURRAN ET AL., *supra* note 73, at 3-4, 7, 31, 32.

154 *Id.* at 7.

155 *Id.*

156 *Id.* at 33.

157 *See* Nance, *Students, Police*, *supra* note 5, at 969, 973.

158 *Id.* at 973 (emphasis added). Nance also emphasized that the SSOCS data did not allow him to examine "the race or ethnicity of the individual students who were actually referred to law enforcement." *Id.*

statute mandatory reporting requirements and data on school district-level per pupil spending, we investigated the effect of the school's percentage of all nonwhite (including Black) and Black students on a school's rate of referrals to law enforcement.[159] We also accounted for various school-level and student-focused variables, as well as for state statutes mandating referral to law enforcement and the regular presence of law enforcement in the school.[160] We observed that a school's percentage of Black students and nonwhite students did not "correspond with any systematic increase in that school's likelihood of reporting student incidents to law enforcement agencies."[161]

H. Discretionary Decision-making and Implicit Racial Bias

Generally, a consistent theme emerges from the above empirical studies measuring racial disparities in school disciplinary outcomes: racial disparities tend to occur and be more pronounced for offenses requiring subjectively defined judgment, such as disrespect, defiance, or disruption, than for offenses that require an objectively defined judgment, such as possession of drugs or alcohol, fighting, or truancy.[162] And because most referrals to law enforcement in the school disciplinary context are for objectively-defined offenses (such as possession of weapons or drugs), it logically follows that generally we should expect to observe fewer racial disparities in rates of referral to law enforcement agencies.

But why do we tend to observe more racial disparities for offenses requiring subjectively defined judgment? As Girvan concludes, "racial disparities are higher for violations of subjectively defined behavior expectations" because they "are more likely to be influenced by biases."[163] Objectively defined offenses, on the other hand, are "more robust to the effects of racial stereotypes and attitudes."[164] While educators' racial biases may not be the only cause of these racial disparities,[165] many scholars who study racial disparities in discipline

[159] *See* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 741-44, 750-51.

[160] *See id.* at 745-51.

[161] *Id.* at 757.

[162] *See* Girvan et al., *supra* note 135, at 394-96, 401.

[163] Girvan, *supra* note 111, at 1011.

[164] *Id.*

[165] *See, e.g.*, Girvan, *supra* note 111, at 1006-07, 1009-10 (proposing student behaviors and administrative discipline policies as additional potential causes of these racial disparities); Girvan et al., *supra* note 135, at 393 (observing that that the reasons for racial disparities relating to discipline are multifaceted); Jason A. Okonofua et al., *supra* note 56, at 382-85 (describing multiple forces driving racial disparities in school

outcomes conclude that educators' racial biases likely contribute to these disparities.[166]

Implicit racial bias theory posits that individuals are prone to making subconscious associations about racial groups unintentionally, automatically, involuntarily, and effortlessly.[167] The driving forces behind implicit racial bias are unconscious attitudes and stereotypes.[168] Scholars theorize that individuals develop unconscious stereotypes and attitudes from repeated exposure to connections between racial groups and various concepts and traits.[169] Because individuals living in the United States have been repeatedly exposed to information associating African-Americans with violence, danger, criminality, and aggression, many unconsciously associate African-Americans with these negative traits.[170] Importantly, empirical research suggests that individuals can hold unconscious attitudes and stereotypes that are inconsistent with beliefs, attitudes, and principles they consciously endorse and can influence behavior, judgments, and decision-making in manners of

discipline); Rocque & Paternoster, *supra* note 17, at 635-39 (describing multiple forces driving racial disparities in school discipline); Russell J. Skiba, Choon-Geun Chung, Megan Trachok, Timberly L. Baker, Adam Sheya & Robin L. Hughes, *Parsing Disciplinary Disproportionality: Contributions of Infraction, Student, and School Characteristics to Out-of-School Suspension and Expulsion*, 51 AM. EDUC. RSCH. J. 640, 644-47 (2014) (discussing various student characteristics that make students more likely to be suspended).

166 *See* Girvan, *supra* note 111, at 1007-10; Okonofua et al., *supra* note 56, at 383-85; Jason A. Okonofua & Jennifer L. Eberhardt, *Two Strikes: Race and the Disciplining of Young Students*, 26 PSYCH. SCI. 617, 618, 622-23 (2015). *See generally* Kent McIntosh, Erik J. Girvan, Robert H. Horner & Keith Smolkowski, *Education not Incarceration: A Conceptual Model for Reducing Racial and Ethnic Disproportionality in School Discipline*, 5 J. APPLIED RSCH. ON CHILD.: INFORMING POL'Y FOR CHILD. AT RISK 1, 4-7 (2014) (urging that racial bias be considered multidimensionally).

167 *See* Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 L. & HUM. BEHAV. 483, 485 (2004). For an extended discussion of implicit racial bias, see Nance, *Student Surveillance*, *supra* note 20, at 816-31.

168 *See* Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 948 (2006). An attitude is a favorable or unfavorable disposition towards concepts such as social groups. *Id.*; *see also* Jerry Kang et al., *supra* note 24, at 1128. A stereotype is a "socially shared set of beliefs about traits that are characteristic of members of a social category." Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCH. REV. 4, 14 (1995).

169 *See* L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in the Public Defender Triage*, 122 YALE L.J. 2626, 2630 (2013).

170 *See* Jennifer L. Eberhardt, Phillip Atiba Goff, Valerie J. Purdie & Paul G. Davies, *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCH. 876, 876 (2004); L. Song Richardson, *Police Efficiency and the Fourth Amendment*, 87 IND. L.J. 1143, 1147 (2012).

which individuals are unaware or not able to control.[171] Implicit biases tend to manifest themselves most acutely in particular situations, such as when individuals "have wide discretion in making quick decisions with little accountability,"[172] when situations are unclear and difficult to understand, and when cognitive resources are strained or limited.[173]

Social scientists have documented the effect of implicit bias in decision-making in various contexts.[174] Not only has evidence of such bias against minorities emerged in police officers,[175] judges,[176] physicians, [177] and the general public,[178] but also in educators. For example, Okonofua and Eberhardt conducted several controlled experiments to measure how implicit racial biases affected educators' decision-making in the disciplinary context.[179] The researchers recruited over 200 teachers from all across the country with varying degrees of experience, backgrounds, and racial and ethnic identities.[180]

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171 *See* Greenwald & Krieger, *supra* note 168, at 951; Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1514 (2005); Darren Lenard Hutchinson, *"Continually Reminded of Their Inferior Position": Social Dominance, Implicit Bias, Criminality, and Race*, 46 WASH. U. J.L. & POL'Y 23, 35 (2014); Jeffery J. Rachlinski, Sheri Lynn Johnson, Andrew J. Wistrich & Chris Guthrie, *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1197 (2009).

172 Kang et al., *supra* note 24, at 1142; *see also* Richardson & Goff, *supra* note 169, at 2628.

173 *See* McIntosh et al., *supra* note 166, at 6; Richardson & Goff, *supra* note 169, at 2628; *see also* Nance, *Implicit Racial Bias*, *supra* note 28, at 58.

174 *See* Nance, *Student Surveillance*, *supra* note 20, at 823-26, for an extended discussion of empirical studies documenting the effects of implicit racial bias.

175 *See, e.g.*, Joshua Correll, Bernadette Park, Charles M. Judd, Bernd Wittenbrink, Melody S. Sadler & Tracie Keese, *Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot*, 92 J. PERSONALITY & SOC. PSYCH. 1006, 1020-22 (2007) (finding evidence of racial bias in the speed with which officers made shoot/don't shoot decisions).

176 *See, e.g.*, Rachlinski et al., *supra* note 171, at 1210 (finding a clear white preference among white judges on the Implicit Association Test).

177 *See*, *e.g.,* Alexander R. Green, Dana R. Carney, Daniel J. Pallin, Long H. Ngo, Kristal L. Raymond, Lisa I. Iezzoni & Mahzarin R. Banaji, *Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients*, 22 J. GEN. INTERNAL MED. 1231, 1235-37 (2007) (finding that the "interaction between implicit anitblack bias and patient race on treatment recommendation was significant"); Janice A. Sabin, Brian A. Nosek, Anthony G. Greenwald & Frederick P. Rivara, *Physicians' Implicit and Explicit Attitudes About Race by MD Race, Ethnicity, and Gender*, 20 J. HEALTH CARE FOR POOR & UNDERSERVED 896, 901 (2009) (finding a strong implicit preference for White Americans over Black Americans for the MD sub-sample).

178 MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE 47 (2013).

179 Okonofua & Eberhardt, *supra* note 166, at 618-22.

180 *Id.* at 620.

Participant teachers viewed the school record of a student who misbehaved twice — once for insubordination and once for a classroom disturbance.[181] The researchers manipulated the race of the misbehaving student by using a stereotypical Black name (Darnell or Deshawn) or white name (Greg or Jake).[182] After reading about the infractions, the teachers were asked to rate on a scale of one (not at all) to seven (extremely) their answers to a series of questions that sought to measure the severity of the student's behavior, the extent to which the student had disrupted the educational process, how irritated they felt by the student's behavior, and how severely the student should be disciplined.[183] They also were asked to rate, on a scale of one to five, their perception on whether the student was a "troublemaker," whether they believed that the student's behavior reflected a pattern of misbehavior, and the extent to which they thought the student should be suspended at some point in the future.[184] The researchers learned that when the student was Black, the teachers "felt significantly more troubled by the second infraction," believed that the student "misbehavior should be met with more severe discipline," more often perceived the student as a "troublemaker," more often perceived that the student's misbehavior was reflective of a negative pattern, and more often "imagined themselves suspending that student in the future."[185] This study is consistent with other uncontrolled studies demonstrating that minority students often receive more frequent and severe punishment than similarly situated white students.[186]

II. DATA AND EMPIRICAL STRATEGY

Our Study analyzes the nation's leading cross-sectional data set on public school crime and safety and supplements those data with complementary information from other long-standing data sets. We test our various hypotheses by estimating fractional response regression models.

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[181] *Id.* at 618.

[182] *Id.*

[183] *Id.*

[184] *Id.* at 620.

[185] *Id.* at 619-22.

[186] *See, e.g.*, Clifton A. Casteel, *Teacher-Student Interactions and Race in Integrated Classrooms*, 92 J. EDUC. RSCH. 115, 119 (2001) (describing how minority students experience more negative interactions than white students).

A. Data

This Study exploits data from the U.S. Department of Education's School Survey on Crime and Safety for the 2015–2016 school year ("SSOCS").[187] We use the restricted-access version of the SSOCS data set as it benefits from more granular school-level counts of the number of incidents that schools reported to law enforcement agencies as well as the number of full- and part-time SRO/police officers at each school.[188] As we have described this particular data set in detail previously, what follows is a condensed description.[189]

To construct its sample, drawn from the universe of American public K-12 schools, the National Center for Education Statistics ("NCES") pulled from the 2013–2014 school year Common Core of Data Public Elementary/Secondary School Universe File ("CCD")[190] to help insure that the weighted SSOCS data set reflects a representative sample of the nation's public K-12 schools.[191] Insofar as our study focuses on "typical" or "regular" schools, those schools described as something other than

[187] Various results discussed in this Article also derive from the restricted-use version of the 2009–2010 SSOCS data series.

[188] INST. OF EDUC. SCI., DATA SEC. OFF., USER LICENSE NO. 19110005. The public version of the SSOCS data set and codebook are available at https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2018109 (last visited Jan. 16, 2020) [https://perma.cc/SQR2-W22B]. The restricted-use version of the 2015–2016 SSOCS data set includes "a higher level of detail in the data compared to public-use data files." *Statistical Standards Program: Getting Started*, NAT'L CTR. FOR EDUC. STATISTICS, https://nces.ed.gov/statprog/instruct_gettingstarted.asp (last visited Jan. 16, 2020) [https://perma.cc/8R6B-5A3U]. To comport with NCES' requirements regarding reporting unweighted results from restricted-use SSOCS data sets, we round all reported "Ns" to the nearest 10 in our tables.

[189] For a more complete description of our data set, see Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 741-50.

[190] The Common Core of Data ("CCD") "is an NCES annual census system that collects fiscal and nonfiscal data on all public schools, public school districts, and state education agencies in the United States." NAT'L CTR. FOR EDUC. STATS., U.S. DEP'T OF EDUC., 2015–16 SCHOOL SURVEY ON CRIME AND SAFETY (SSOCS): RESTRICTED-USE DATA FILE USER'S MANUAL 8 (Nov. 2017) [hereinafter *Codebook*] (on file with author). For additional descriptions of the CCD, see Helen M. Marks & Jason P. Nance, *Contexts of Accountability Under Systemic Reform: Implications for Principal Influence on Instruction and Supervision*, 43 EDUC. ADMIN. Q. 3, 11 (2007) (describing the CCD); Nance, *Students, Police*, *supra* note 5, at 959-60 (describing the CCD).

[191] The total number of public schools sampled was 3,550; of those, 2,092 schools submitted completed questionnaires for an overall response rate of 62.9 percent (weighted sample; 58.9 percent (raw sample)). *See Codebook*, *supra* note 190, at 18; NAT'L CTR. FOR EDUC. STATS., U.S. DEP'T. OF EDUC., 2015–2016 SCHOOL SURVEY ON CRIME AND SAFETY (SSOCS): PUBLIC-USE DATA FILE USER'S MANUAL 1 (2018), https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2018107 [https://perma.cc/FSA8-ARGT].

"regular" were excluded from our analyses.[192] To facilitate inferences to the broader universe of "regular" public schools, the approximately 1,890 schools used in the analyses were weighted to generate population-level estimates.[193]

Unlike most prior studies using earlier versions of the SSOCS data set, our study supplements the SSOCS data set in two important ways that we feel plausibly inform the probability of schools reporting student disciplinary incidents to law enforcement agencies. First, we include state-level information on what circumstances — and for what particular student offenses or incidents — do federal or state laws compel a school to report an incident to law enforcement agencies.[194] Federal law, for example, requires all local education agencies (i.e., school districts) receiving federal education funding pursuant to the Elementary and Secondary Education Act (which includes virtually every "regular" public K-12 school) to implement a policy "requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school."[195] Such statutes, in theory, should eliminate (or substantially reduce) school officials' discretion insofar as they must report certain activities that occur on school property to law enforcement agencies regardless of any mitigating circumstances. At the same time, however, many state statutes go beyond federally-imposed requirements and require that schools also refer to law enforcement agencies for a range of student incidents and offenses that do not involve a firearm or weapon.[196]

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[192] Among the total universe of 2,090 schools in the SSOCS data set, 1,890 (or 90.4 percent) were identified as a "regular public school" as serve as the focus of this study. Most of the "non-regular" schools were either public charter or magnet schools. This Article's focus on "regular" public schools is consistent with parallel empirical work, particularly in the school finance literature. *See, e.g.*, IVY MORGAN & ARY AMERIKANER, FUNDING GAPS 2018: TECHNICAL APPENDIX 3 (2018) (excluding "non-regular" schools from the empirical analysis).

[193] Data in most of our analyses used the final analysis weight ("FINALWGT") variable. Such sample weighting is necessary to "obtain population-leave estimates, to minimize bias arising from differences between responding and nonresponding schools, and to calibrate the data to known population characteristics in a way that reduces sampling error." *Codebook*, *supra* note 190, at 20.

[194] In this way our current study more helpfully aligns with Nance's prior study of 2009–2010 SSOCS data. *See* Nance, *Students, Police, supra* note 5, at 934-36.

[195] 20 U.S.C. § 7151(h)(1) (2021); *see, e.g.*, FLA. STAT. § 1006.07(g) (2021) (mandating that any student who brings a firearm or weapon to any school function will be referred to the juvenile justice system).

[196] *See, e.g.*, *supra* notes 33–34 and accompanying text (describing various state statutes that mandate reports to law enforcement for engaging in certain offenses).

The second way we supplement the school-level SSOCS information is with school district-level data on current per pupil spending.[197] Specifically, we matched district-level spending data from the 2016 U.S. Census Bureau's publicly-available annual survey of public elementary and secondary schools onto the SSOCS data set.[198] Finally, we adjusted the school district-level current per pupil spending data for cost-of-living variations across the more than 13,000 public school districts with data from the Comparable Wage Index.[199]

1. Dependent Variables

This Article's main analytic focus centers on comparing schools' rates of reporting and non-reporting student incidents to law enforcement agencies partly as a function of the magnitude of a school's SRO/police presence. To this end, school officials reported the total number of student disciplinary incidents that took place at their school during the 2015–16 school year, as well as the sub-set of those incidents that resulted in school reports to law enforcement. The student "incident" types that schools reported to law enforcement range from rapes and robberies with a weapon to the distribution, possession, or use of prescription drugs and "vandalism."[200]

From these data we developed two dependent variables of interest in parallel fashion. One involves a school's rate of all school reports of student disciplinary incident, if any, to law enforcement agencies. Insofar as the types of student incidents that schools reported include both violent (e.g., rape and armed robbery) as well as non-violent (e.g.,

197 For a discussion, see, for example, Michael Heise, *Per Pupil Spending and Poverty's Persistent Penalty: An Empirical Analysis of 2016 District-Level NCES Data*, 45 J. EDUC. FIN. 149, 154-57 (2019).

198 *2016 Public Elementary-Secondary Education Finance Data*, U.S. CENSUS BUREAU, https://www.census.gov/data/tables/2016/econ/school-finances/secondary-education-finance.html (last visited July 28, 2021) [https://perma.cc/S8NR-QLFD].

199 For a detailed description and explanation of the Comparable Wage Index, see generally LORI L. TAYLOR & WILLIAM J. FOWLER, JR., U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STATS., A COMPARABLE WAGE APPROACH TO GEOGRAPHIC COST ADJUSTMENT (2006), https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2006321 [https://perma.cc/8NQA-4DYX]. For a discussion of some of the limitations of the CWI adjustment, see Thomas A. DeLuca, *Instructional Spending Metrics: A Multilevel Analysis Using NCES Data*, 44 J. EDUC. FIN. 23, 42 (2018); Heise, *Per Pupil*, *supra* note 197, at 154-57.

200 The SSOCS data derive from school administrators' reports on, for example, "recorded student incidents." As such, while instructions describing how such variables were intended to be operationalized were included with the surveys to promote consistency across schools, to some unknown degree these data inevitably reflect school administrators' interpretations of what constitutes a "student incident" warranting "recording."

vandalism and possession of alcohol) incidents, we felt that the sub-set of non-violent incidents warranted closer, independent inspection. This is especially true to the extent that some schools may have been systematically less inclined to report non-violent incidents to law enforcement agencies. To this end we constructed a separate variable capturing a school's rate of reports to law enforcement for the subset of non-violent student incidents.

Our second dependent variable of interest, constructed similarly to our first, involves the rate of a school's *non*-reports for all student disciplinary incidents as well as a rate for non-violent student incidents. School non-report counts derive from subtracting for each school the number of school reports to law enforcement agencies from the total number of recorded student incidents. We indexed each schools' raw report and non-report counts to generate rates to better account for variation in school size or scale (expressed in terms of student enrollment) across the 1,890 schools.[201]

Table 1 illustrates that schools' mean disciplinary reporting rate falls below one (0.77) per 100 students.[202] By contrast, the mean rate of school reports to police involving non-violent incidents is well under one-half (0.33) per 100 students.[203]

Results in Table 1 also make clear that attention to schools' exercise of discretion in this context is warranted as schools' *non*-reporting rates exceed their reporting rates. For example, when it comes to all student disciplinary incidents, the mean rate of school non-reporting (1.97 per 100 students) easily surpasses the rate of reporting to law enforcement (0.77 per 100 students). Similarly, the mean rate of school non-reporting for non-violent student incidents (0.41 per 100 students) also exceeds, albeit only by a small margin, the mean rate of school reports (0.33 per 100 students). Notwithstanding federal, state, and district- or

[201] Unreported alternative specifications exploring schools' rates of incident reports to police using the square root of the rate as its distribution is less distorted by schools that reported no such incidents. Results from these unreported analyses do not materially differ from our results that derive from non-transformed rates. *See infra* Table 3.

[202] Thus, as the mean student enrollment in our school sample is just under 600 students (595.4), on average, each school reported just over four (4.6) incidents. Of course, because only forty-nine percent of schools reported *any* incidents, the effective mean number of incident reports to law enforcement is approximately nine incidents among those schools that reported any incidents.

[203] Similarly, as the mean student enrollment in our school sample is just under 600 students (595.4), on average each school reported just under two (1.98) non-violent incidents. Of course, because only forty-nine percent of schools reported *any* incidents, violent or non-violent, the effective mean number of non-violent incident reports to law enforcement is approximately four non-violent incidents among those schools that reported any incidents.

school-level mandatory reporting policies, which vary in important ways, when it comes to disciplining student incidents, school *non*-reporting emerges as important and a more common occurrence.[204]

We note at the outset that some coding protocols likely help explain some of the disparity between schools' report and non-report rates. For example, the U.S. Department of Education codes student "attacks without a weapon" and "threats of an attack without a weapon" as two (among many) types of "violent" student incidents.[205] Given the nature of such incidents' descriptions, particularly in light of their physical (and threat of physical) dimension, such coding decisions remain entirely understandable and, indeed, defensible.

At the same time, however, while we yield to the SSOCS' coding characterization decisions, we also understand that these two specific incident codes likely include the proverbial student "fight" or "threat of a fight" (or some such physical altercation). It is our hunch that schools remain comparably more confident in handling such "traditional" student incidents internally. Indeed, closer inspection of these two incident codes reveals wide gaps in school referral and non-referral rates. Thus, to the extent that school administrators continue to exercise some level of discretion in deciding between student incidents that warrant a formal law enforcement referral and those that do not, we are not surprised to find evidence of considerable discretionary activity clustered on these two student incident codes.

2. Independent Variables

As our key analytical focus centers on the possible relation between a school's reporting and non-reporting behaviors and SRO/police presence,[206] one key independent variable of interest examines the magnitude a school's SRO/police presence, if any. As Table 1 illustrates, the mean SRO/police presence was just under one (0.84) per school.[207] Insofar as a school's student disciplinary reporting practice is certainly

[204] *See infra* notes 213–214 and accompanying text for a brief discussion on how various mandatory reporting policies vary. See *supra* Part I.F for several possible explanations for why it is more common for school officials to exercise discretion not to report wrongdoing to law enforcement.

[205] In the SSOCS Codebook, the relevant incident codes include C0330 and C0338, respectively. *Codebook*, *supra* note 190, at C-53 to C-54.

[206] A school's SRO/police presence reflects the number of school resources officers or sworn police officers present at a school at least once a week.

[207] Again, however, insofar as only one-half of the schools in our sample report *any* SRO/police officials present at least once a week, the effective number of law enforcement officials at schools that report any is approximately 1.6 per school.

the function of a complex interaction of a host of other factors, our models include an array of control variables. Our various control variables loosely organize into two general categories: school- and student-level factors.

3. School-Level Variables

As we seek to assess the probability of a school reporting (and not reporting) student disciplinary incidents to law enforcement agencies, factors such as a school's base "disorder" level, student enrollment "turbulence," urbanicity score, and an assessment of the general crime level where the school is located are likely relevant controls. To measure a school's base "disorder" level, we constructed a school disorder variable by indexing a school's total number of recorded student disciplinary actions (per 100 students). Student enrollment turbulence measures the total percentage of students who either transferred into or out of the school during the 2015–16 school year. A school urbanicity score construes a school's geographic location on a four-point scale, ranging from "rural" to "urban." Finally, a three-point scale assessing a school's general crime level measure derives from school administrators' reported perceptions of general crime levels in the area in which the school is located.

While we indexed many key variables to better account for variation in student enrollment across schools, we include raw student enrollment as a separate independent variable to help explore whether school scale effects (measured by student enrollment) exert any influence on school reporting decisions. To the extent that small schools are arguably more likely to facilitate the emergence of a comparatively healthier school "climate" or "culture,"[208] one plausible hypothesis is that the rate of reporting student disciplinary incidents to law enforcement agencies is likely to be higher in the larger and presumably more impersonal school environments. For similar — though distinct — reasons, we also include a variable measuring each school's student-to-teacher ratio.

A school's fiscal strength is another plausible factor contributing to a school's general climate and culture. Higher spending schools are comparatively better positioned to make critical financial investments in additional personnel, equipment, and programs that can enhance a school's overall efficacy. To operationalize a school's fiscal strength, we

[208] *See generally* William J. Fowler, Jr. & Herbert J. Walberg, *School Size, Characteristics, and Outcomes*, 13 EDUC. EVALUATION & POL'Y ANALYSIS 189 (1991) (discussing the link between school size and educational outcomes).

turn to a standard proxy, annual (2015–16) current per pupil spending. Specifically, we wonder whether variation in student investment distributions might influence a school's student discipline reporting decisions. And even if such a relation or its direction are not obvious, per pupil spending may capture other unobservable aspects of a school that require controlling for.

To accomplish this, and to extend existing research in this manner, we exploit the leading sources of school district-level per pupil spending data: U.S. Census Bureau's annual survey of public elementary and secondary schools for financial information[209] supplemented by the U.S. Department of Education's National Center for Education Statistics Comparable Wage Index that adjusts for cost-of-living variation across the nation for the more than 13,000 public school districts.[210] We settled on current expenditures partly as it facilitates comparisons of student investment across the widest array of studies in the school finance literature.[211] As Table 1 makes clear, across all the schools in our sample, mean current per pupil spending exceeded $11,000 in 2015–16.

Complicating slightly our decision to include per pupil spending data is that our data include school *district*-level means. The total (raw) number of "regular" schools in our sample (1,890) derive from 1,490 different school districts. Thus, 400 schools in our sample come from a district that includes at least one or more other schools in the sample. For those schools that share a school district, however, the district-level current per pupil spending value does not vary. While admittedly not ideal, to the extent that attention to per pupil spending discrepancies typically focuses on variation *across* — rather than *within* — school districts, the district-level per pupil spending data should not unduly distort our results.[212]

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[209] *See* U.S. CENSUS BUREAU, *supra* note 198.

[210] For a detailed description and explanation of the Comparable Wage Index, see generally TAYLOR & FOWLER, JR., *supra* note 199. For a discussion of some of the limitations of the CWI adjustment, see, for example, DeLuca, *supra* note 199, at 42; Heise, *Per Pupil*, *supra* note 197, at 162-63.

[211] For a discussion, see, for example, Heise, *Per Pupil*, *supra* note 197, at 154-57.

[212] *But see, e.g.*, Ary Amerikaner, *States Are Burying Damning Data About School Funding*, N.Y. TIMES (Jan. 30, 2020), https://www.nytimes.com/2020/01/29/opinion/school-district-funding-data.html [https://perma.cc/6MZX-9DUT] (describing the unfair distribution of resources within some school districts). *See also* Simon Ejdemyr & Kenneth A. Shores, *Pulling Back the Curtain: Intra-District School Spending Inequality and its Correlates* 1 (Stanford Univ. & Univ. of Pa., Working Paper, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009775 [https://perma.cc/FY8X-VHJE].

Insofar as mandatory school reporting obligations for various student incidents by design bear squarely on our dependent variables of interest, our models also control for whether officials at each school were statutorily obligated to report various incident types to law enforcement agencies under prevailing state law.[213] To do so we draw from the relevant statutes and regulations in all fifty states (and the District of Columbia). Where a clear and relatively unambiguous mandatory reporting obligation existed, our dummy variable is coded as "1." To facilitate our more focused analyses of the sub-pool of non-violent student incidents we include two separate mandatory reporting variables: one for violent student incidents; the other for non-violent incidents. For our supplemental analyses on student incidents involving drug use, possession, or distribution, we also include a dummy variable for any state mandatory reporting requirements for student drug violations.[214]

Finally, even though the majority of public schools in the United States are elementary schools and, as Table 1 illustrates,[215] our sample reflects this (59 percent of the sampled schools are elementary schools), the majority of school violence occurs in middle and high schools. Despite the uneven distribution of school violence across school levels, we remain mindful that the Sandy Hook (CT) Elementary School tragedy in December 2012, unfolded only a few years prior to the data gathering efforts that culminated in the 2015–2016 SSOCS data set.[216] Consequently, we approached our Study with a particular curiosity about how, if at all, elementary schools might systematically differ from middle and high schools in terms of their proclivity to report (and not report) student incidents to law enforcement agencies. To explore this possibility, we include a dummy variable coded for "1" for elementary schools.[217]

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[213] Our focus on state-specific mandatory reporting statutes implicitly acknowledges that application of relevant federal reporting requirements, by definition, should not have varied across the schools in our sample. State-level mandatory reporting requirements, by contrast, did vary.

[214] *See infra* Table 3.

[215] For purposes of this study, an "elementary" school is defined to include a regular school whose grade levels range from pre-kindergarten through, but not higher than, eighth.

[216] For a brief description of the Sandy Hook Elementary School tragedy, see Zachary Posess, *A Shot in the Dark: How the Sandy Hook Plaintiffs Established Legal Standing Against the Gun Industry*, 51 SETON HALL L. REV. 563, 563-64 (2020).

[217] For purposes of this study, a school facility was coded as an "elementary" school if the highest grade level present in the school facility was at (or below) the eighth grade or lower *and* if the lowest grade level present was at (or below) the third grade.

4. Student-Focused Variables

Along with various school- (and district- and state-) level variables summarized above, key student-focused factors, especially those factors reflecting possible student marginalization, plausibly influence a school's approach towards law enforcement agency reporting.[218] Factors aligned with various student marginalization theses, and inserted into our models, include each school's percentage of all nonwhite (including Black) and Black students, as well as the percentage of students in poverty.[219] Moreover, as boys are more likely than girls to trigger school discipline matters, we also control for a school's percentage of male students.[220] Table 1 presents basic summary statistics on all the variables considered in our various models.

Table 1: Summary Descriptive Statistics

	Mean	*S.D.*
Dep. vars:		
School Reports:		
Rate of sch. reports (per 100 students) [all]	0.77	1.92
Rate of sch. reports (per 100 students) [non-vio.]	0.33	0.79
School Non-Reports:		
Rate of sch. non-reps. (per 100 students) [all]	1.97	3.41
Rate of sch. non-reps. (per 100 students) [non-vio.]	0.41	0.88

[218] *See, e.g.*, DAVID CANTOR & MAREENA MCKINLEY WRIGHT, U.S. DEP'T OF EDUC., SCHOOL CRIME PATTERNS: A NATIONAL PROFILE OF U.S. PUBLIC HIGH SCHOOLS USING RATES OF CRIME REPORTED TO POLICE 8 (2002), https://www2.ed.gov/offices/OUS/PES/studies-school-violence/school-crime-pattern.pdf [https://perma.cc/ZHB5-5CFK] (finding that large high schools located in urban areas serving a high percentage of minority students tend to experience more school crime); TRAVIS III & COON, *supra* note 79, at 20 (observing that crime is more common in schools that serve students from disadvantaged background); *see also* Aaron Kupchik & Geoff Ward, *Race, Poverty, and Exclusionary School Security: An Empirical Analysis of U.S. Elementary, Middle, and High Schools*, 12 YOUTH VIOLENCE & JUV. JUST. 332, 341-42 (2014); Nance, *Dismantling the School-to-Prison Pipeline*, *supra* note 1, at 360-65.

[219] Students in poverty include those students eligible to participate in a free or reduced-lunch program. For a general discussion of various student poverty measures, see Heise, *Per Pupil*, *supra* note 197, at 158.

[220] *Compare* Skiba et al., *supra* note 144, at 320, 326 (explaining that males have consistently been found to be suspended and expelled at higher rates than females), *and* J. M. Wallace, Jr., Sara Goodkind, Cynthia M. Wallace & Jerald G. Bachman., *Racial, Ethnic, and Gender Differences in School Discipline Among U.S. High School Students: 1991-2005*, 59 NEGRO EDUC. REV. 47 (2008) (explaining that research indicates that Black males have the highest suspension rates), *with* Nance, *Students, Police, supra* note 5, at 972-73 (reporting "mixed" results as it relates to the influence of various student background characteristics of school incident reports to law enforcement).

Ind. vars:		
Number of full- and part-time SRO/police at sch.	0.84	2.44
Sch. student:teacher ratio	17.79	23.58
Sch. student mobility % (in/out)	15.05	14.02
Sch. urbanicity scale (rural-to-urban; 1-4)	2.51	1.14
Sch. disorder report rate (per 100 students)	1.57	3.10
Sch. area crime scale (low-to-high; 1-3)	1.31	0.58
Sch. student enrollment	595.4	413.9
Elementary school (1=yes)	0.59	0.49
Mand. sch. violent incident report req.(1=yes)	0.90	0.30
Mand. sch. non-violent incident report req. (1=yes)	0.69	0.46
Mand. sch. drug incident report req. (1=yes)	0.69	0.46
Sch. student poverty %	56.15	27.29
Sch. student nonwhite %	43.1	32.92
Sch. student Black %	12.46	20.91
Sch. student male %	49.7	9.1
Sch. dist. mean per pupil spending (2016 $s)	11,196	5,153

NOTES: Reported means and standard deviations derive from the SSOCS weighted sample; N (unweighted)=1,890.

SOURCES: U. S. Dept. Educ., Nat'l Ctr. Educ. Statistics, 2015–16 School Survey on Crime and Safety (SSOCS); U.S. Dept. Comm., Census Bureau, 2016 Public Elementary-Secondary Education Finance File (2016).

B. Empirical Strategy

We first assess whether variation in the number of SRO/police officials present at each school systematically informs schools' rates of law enforcement agency reporting and non-reporting. To do so, we estimate fractional response regression models of a continuous variable — the rate of school incident reports (and non-reports) to law enforcement agencies — bounded between zero and one.[221]

[221] Insofar as our dependent variable is a rate (or fraction) bounded between zero and one (inclusive), we preferenced fractional response regression models. Owing to the possibility of over-dispersion, and in an abundance of caution, however, we also considered two alternative specifications in an effort to ensure that our core results were robust to model specification. Unreported results from a binomial regression model as well as a negative binomial regression model using actual raw school-level count data do not materially differ from results presented in Table 2. *See infra* Table 2. As well, to account for possible selection effects we also estimated Heckman models. Once again, the unreported results do not materially differ from those presented in Table 2. *See id.* For examples of a similar empirical strategy, see, for example, Daniel Hamlin & Angran Li, *The Relationship Between Parent Volunteering in School and School Safety in Disadvantaged Urban Neighborhoods*, 19 J. SCH. VIOLENCE 362, 366-68 (2020).

C. Data and Empirical Strategy Limitations

Despite the SSOCS data set's obvious strengths, it is not without limitations. In particular, while data exist on a variety of school- and student-level measures, including a school's gender and racial/ethnic profiles, the data set does not include gender or racial information on the students involved in the disciplinary incidents that triggered school reports to law enforcement agencies or non-reports. The absence of such information, of course, functionally precludes inferences about whether school incident reporting policies distribute in ways that skew at the individual-level against, for example, boys or racial/ethnic minorities, or both.

Similarly, given the absence of particularized and follow-up data on those students who engaged in incidents that resulted in school reports to law enforcement agencies, we cannot know what actually happened to those students reported. The absence of more particularized data on the law enforcement referrals' outcomes, however, does not deflect from the larger point that any student referral to law enforcement is important and, to some extent, likely changes that student's future for the worse.[222] Regardless of (or in addition to) any formal legal consequences, a school's referral to law enforcement itself can also culminate with, in the school context, student discipline, suspensions, or expulsions.[223]

In terms of our empirical strategy, we remain mindful that research design limitations preclude the findings from supporting any causal claims. In a more "perfect" world, to assess any possible causal relations between a school's reporting behavior and the magnitude of its SRO/police presence we would, for example, want to randomly assign SRO/police officers to otherwise identical schools (that is, "identical" as it relates to our various dependent variables of interest). In so doing, we could better isolate potential causality, and its direction, in our models.

As we do not possess any control over randomization, we therefore cannot assess with precision whether the number of SRO/police officers at a school's is a product of pre-existing student disruption or crime levels ("incidents"). It is also plausible that the presence of SRO/police officers at the school itself influences a school's reporting decisions.

As an admittedly "second best" empirical strategy, we exploit a rich array of control variables designed to help disentangle the complex

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[222] *See supra* Part I.E.

[223] *See supra* Part I.E. *See generally* Hawker v. Sandy City Corp., 774 F.3d 1243, 1245-46 (10th Cir. 2014) (describing the negative repercussions of the intersection between the criminal justice system and schools).

relations between and among our dependent and key independent variables of interest. For example, as it specifically relates to our hypotheses on a relation between SRO/police officers at a school and that school's student disciplinary reporting behavior, our models seek to control, as best that existing data permit, for other likely factors that bear on a school's probability of reporting incidents to law enforcement. While these important data and research design factors preclude strong causal claims, at a descriptive level we nonetheless feel that our results are positioned to contribute to the existing knowledge base on school crime and safety and the school-to-prison pipeline literature.[224]

III. RESULTS AND DISCUSSION

To explore whether variation in the number of SRO/police officials present at a school informs the school's law enforcement agency reporting (and non-reporting) behaviors, we estimate fractional response regression models of a continuous rate (or fractional) variable — specifically, the rate of school student disciplinary reports to law enforcement agencies (models 1 and 2) and non-reports (models 3 and 4). The sweep of results presented in Table 2 — specifically, a comparison across models 1 and 2 and models 3 and 4 — uncovers three general themes that run throughout our analyses. One involves the SRO/police presence's inconsistent — or at least uneven — influence across school reporting and non-reporting behaviors. A second relates to an overall paucity of evidence that would help scaffold any distributional concerns when it comes to schools' reporting and non-reporting behaviors in the student discipline context. Third, the suite of various control variables generally behaves with consistency and in a manner that comports with expectations.

A. The SRO/Police Presence's Uneven Influence Across the School Reporting and Non-Reporting Contexts

As results in Table 2 for models 1 and 2 make clear, an increase in the magnitude of a school's SRO/police presence corresponds with a systematic increase in the school's rate of student discipline referrals to law enforcement agencies. While a school's SRO/police presence influenced schools' reporting rates, results in models 3 and 4 imply that

[224] As well, the data and empirical strategy factors that limit the force of the claims in this study are similar to limitations that attach to prior studies on this topic. *See, e.g.*, Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 752 (noting the data and empirical strategy limitations); Nance, *Students, Police*, *supra* note 5, at 974 (explaining the limitations of the empirical study).

a school's SRO/police presence did not, however, influence its non-reporting rates in a similar manner. In isolation, of course, the null findings in models 3 and 4 do not offer much in terms of interpretative force. But when considered in relation to results for the same variable in models 1 and 2, the absence of statistically significant results for the SRO/police presence influence in the non-reporting context likely takes on a bit more meaning.

The clear thrust of prior research (including our own), along with results in models 1 and 2, make clear that increases in a school's SRO/police presence correspond with increases in the school's probability of reporting student discipline incidents to law enforcement agencies.[225] Indeed, such a finding largely comports with common sense given that SRO/police officers come into schools with professional ties to, experiences with, and commitments to law enforcement.[226] Indeed, it is this very finding that helps fuel long-standing (and growing) critiques leveled against schools' increasingly "legalized" posture toward student discipline.[227] While it is persistently clear that a school's SRO/police officer presence increases the likelihood of the school reporting, results in models 3 and 4 suggest that variation in a school's SRO/police presence did *not* systematically influence the school's decision to *not* report.

What might explain the asymmetric influence of a school's SRO/police presence is not immediately clear and certainly warrants deeper exploration. One possible explanation for this divergence is that school administrators may be acting strategically and, perhaps, in coordination with SRO/police officers in terms of when — and under what conditions — to exercise reporting discretion.[228] Insofar as decisions about whether to report student disciplinary incidents to law

[225] *See supra* Part I.D.

[226] *See* KUPCHIK, HOMEROOM SECURITY, *supra* note 79, at 83-89; JAMES & MCCALLION, *supra* note 65, at 2; Gupta-Kagan, *Reevaluating*, *supra* note 73, at 2039; Theriot, *supra* note 11, at 281.

[227] *See, e.g.*, Fedders, *supra* note 52, at 573-74 (referencing the rise of student referrals to law enforcement); Gupta-Kagan, *The School-to-Prison Pipeline, supra* note 33, at 103 (explaining that officers have arrested students for non-violent conduct that should not be classified as a delinquency matter); Ryan et al., *supra* note 86, at 188 (documenting the growing concerns regarding school resource officers); Wolf, *supra* note 86, at 222 (introducing SROs as a feature of the trend of "criminalization" of American public school students).

[228] *See* KUPCHIK, HOMEROOM SECURITY, *supra* note 79, at 158 (observing, in an ethnographic study, that school officials often relied on SROs as "legal adviser[s] of sorts" to determine when offenses should be reported to law enforcement for processing).

enforcement rest with senior school administrators rather than individual SRO/police officers, the absence of any statistical significance in models 3 and 4 implies that something other than a school's SRO/police presence corresponds with decisions to not report.[229] And this something, we hypothesize, includes school administrators exercising their discretion and deciding to keep some student disciplinary incidents "in-house."

But why would senior school administrators elect to exercise their professional discretion, decide to not report, and, instead, address a student disciplinary incident internally rather than formally engage local law enforcement professionals? The admittedly complex incentives run along institutional and individual-level dimensions and in potentially different directions. At the institutional-level, schools that address student disciplinary matters internally and outside the purview of law enforcement agencies are better positioned to contain potentially harmful information that can degrade a school's reputation (real or perceived) as a "safe," "secure," or "orderly" school.[230] At the same time, however, we also can easily envision how some school administrators seeking to enhance their schools' reputation for "security" and "order" may be *more* inclined to report to law enforcement agencies, as it plausibly sends a signal to various school constituencies that such schools are "tough on crime" and take student misconduct "seriously."

It is also plausible that school administrators may feel comparatively better positioned to efficiently, fairly, and efficaciously handle certain student discipline matters than law enforcement professionals. After all, educators likely have far more experience dealing with student conduct issues. Moreover, given the potential reach of many state penal statutes, what school administrators may deem to be a "minor scuffle" may fall within the technical ambit of a criminal misdemeanor assault.[231] If so, this may influence how school administrators formally "characterize" (and formally code) a student discipline incident.

Similarly, a related — though distinct — possibility is that school administrators' decisions to not report student disciplinary incidents

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[229] While school officials may determine when to refer students to law enforcement, it is important to acknowledge that if SRO/police observe or encounter evidence justifying the arrest of a student, SRO/police may arrest a student over the objection of a school official. *See* Brown, *Understanding and Assessing School Police Officers*, *supra* note 83, at 591; *see, e.g.*, OFF. OF CMTY. ORIENTED POLICING SERVS., *supra* note 83, at 51 (describing an incident where an SRO arrested a student over a school administrator's objections).

[230] *See* O'Matz & Travis, *supra* note 127; Travis et al., *supra* note 127.

[231] *See supra* note 82 and accompanying text.

may reflect their concerns about the individual-level costs to students that invariably attach after a formal engagement with the criminal justice system.[232] That is, school administrators, informed by their professional experience with students (and their transgressions), may feel that formally engaging law enforcement agencies imposes too many costs on students (above and beyond any discipline meted out by the schools). A school's impulse to decline to report may be especially acute where the nature of the student incident involves conduct that schools had typically dealt with internally in the past. Finally, where public and political opposition to schools' increasingly legalistic student discipline posture has grown — possibly in response to the potentially significant costs borne by students thrust into the criminal justice system — one institutional reaction would involve school administrators' exerting greater discretion and not reporting various student incidents, especially for those student incidents located at the margins.

A final complicating wrinkle pivots on the possibility that variation in the type (and nature) of the student misconduct itself may inform whether schools are more (or less) inclined to report to law enforcement agencies. To better explore this possible distinction, we report separate results in Table 2 for "all" student disciplinary incidents (models 1 and 3) as well as a subset of non-violent incidents (models 2 and 4). What results in Table 2 make clear, however, is that in general schools treated the subset of non-violent student incidents (models 2 and 4) and the universe of student incidents (models 1 and 3) more-or-less similarly.

B. A Paucity of Support for Distributional Concerns

A second general theme that emerges with clarity in Table 2 relates to distributional concerns. That is, widespread public sentiment suggests that school decisions to report and not report student disciplinary incidents to law enforcement agencies likely distribute unevenly across various student sub-groups and in ways to disadvantage vulnerable students.[233] In terms of these distributional concerns, two points warrant emphasis. First, the results in Table 2 are, on balance, notable for a general *absence* of any statistically significant findings that would give rise to traditional equity concerns. Second, in a few of the small number of instances where a distributional variable achieves statistical significance, the coefficient points in a direction that, if anything, *dampens* these traditional distributional concerns.

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[232] *See supra* Part I.E.

[233] *See supra* note 11 and accompanying text.

While each of the two points, alone, is instructive, the cumulative weight of both points is even more so. First, as it relates to school reporting rates, aside from one exception, none of the results imply any disadvantages for vulnerable student sub-groups of students. The only exception is that for non-violent student incidents (model 2), we note that an increase in a school's percentage of students in poverty corresponds with an increased rate of reports to law enforcement agencies. Not only do our results relating to school reporting behavior (models 1 and 2) tilt in a direction that reduce traditional distributional concerns, but they comport with prior empirical research that exploits SSOCS data sets.[234]

Second, findings relating to school non-report rates — and these discrete exercises of school administrators' discretion — similarly fail to raise any troubling distributional concerns. Moreover, in all of the (few) instances where distributional variables achieve statistical significance in models 3 and 4, their coefficients point in a direction that *dampens* distributional worries — at least as it relates to traditional distributional worries. For example, increases in the proportions of male students and students in poverty correlate with increases in the school's decision to *not* report non-violent student disciplinary matters to law enforcement agencies. Similarly, in terms of all student incidents, increases in a school's percentage of Black students corresponds with a systematic increase in the school's decision to *not* report. Again, while the race, ethnicity, and gender of those students who engaged in the reportable incidents are not included in the SSOCS data set, what the results in Table 2 imply is that at the school-level unit of analysis the distribution of schools exercising discretion and not reporting does not fuel traditional equity concerns.

While these results may surprise some, especially because racial inequalities persist in so many other areas of school discipline, educational outcomes, the criminal justice system, and society generally, our findings are consistent with other empirical studies examining racial disparities in school disciplinary outcomes and with our current understanding of when implicit racial bias tends to exert the most influence.[235] Specifically, when disciplinary incidents require school officials to subjectively characterize student behavior, the effects of implicit racial bias are more pronounced.[236] But objectively-defined

[234] *See, e.g.*, Heise & Nance, *"Defund the (School) Police"?, supra* note 6, at 762 (reporting a lack of obvious distributional concerns based on SSOCS data sets); Nance, *Students, Police, supra* note 5, at 969 (same).

[235] *See supra* Part I.H.

[236] *See id.*

offenses, which are the basis of the vast majority of referrals to law enforcement (e.g., possession of drugs and weapons, fighting, theft), are more robust to the effects of implicit racial bias, resulting in fewer distributional concerns.[237]

C. Various School Characteristics

As it relates to the suite of school characteristic variables, one notable finding involves school size. School size is important because it achieves statistical significance across all four models and, even more importantly, it is the only other (aside from SRO/police presence) institutional control variable that behaves differently in the school report and school non-report contexts. Specifically, when it comes to the probability of a school reporting a student incident to a law enforcement agency (models 1 and 2), an increase in a school's size (construed here in terms of student enrollment) corresponds with an increased probability of the school reporting. When it comes to a school electing to not report (models 3 and 4), however, school size's influence runs in the opposite direction. That is, a *decrease* in a school's size corresponds with an increase in the probability of the school not reporting a student disciplinary incident.

Taken together, these results imply that to the extent that school non-reporting rates reflect school administrator's exercise of discretion in a manner favorable to its students, such discretion is more likely to emerge in comparatively smaller school settings. We attribute this to smaller schools' comparative advantages in developing greater school cohesion and community.[238] Our results suggest that a school's scale, and the related implications for a school's climate and the student/teacher interactions that implicitly flow from a smaller school environment, provide a setting more conducive for school administrators to act in ways that reduce the likelihood that student disciplinary incidents will be reported to law enforcement agencies.

Aside from school size, while the remaining control variables capturing various aspects of school characteristics behave generally unremarkably, some complicating (or perplexing) wrinkles emerge. For example, elementary schools were systematically less likely to both report *and* non-report than non-elementary schools. While the former

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[237] *See* Girvan, *supra* note 111, at 1007-08; *see also supra* Part I.H.

[238] *See generally* KATHLEEN COTTON, SCHOOL SIZE, SCHOOL CLIMATE, AND STUDENT PERFORMANCE (1996), https://educationnorthwest.org/sites/default/files/SizeClimateand Performance.pdf [https://perma.cc/TA68-FSBJ] (summarizing research on the benefits of smaller schools).

strikes us as far more predictable than the latter, we also note that elementary schools in general behave quite differently than non-elementary schools in the school disciplinary space largely owing to elementary schools' materially different experiences with student discipline issues.[239] Likely contributing to elementary schools' peculiar influence in the student discipline context is that the comparatively younger students generate a fewer number of disciplinary incidents. Among those disciplinary incidents that do arise, they are less severe than student disciplinary incidents occurring in middle- and high schools.[240] Each of these factors, and their complex interactions, help explain elementary schools' comparatively smaller footprint when it comes to formally engaging law enforcement in student discipline.

Similarly, aside from one exception (model 2; non-violent mandatory reporting requirements), none of the various mandatory student incident reporting statutes achieve statistical significance. The deep penetration of such statutes across the nation reduces the observable variation across individual schools and, as such, dampens the potential for achieving statistical significance. As well, such null results for these variables generally comport with prior research.[241]

Finally, it remains truly perplexing that increases in a school's disorder rate correspond with increases in the probability of both school reports *and* non-reports. While evidence of school disorder's influence is clear, its causal direction is not. That is, does increased school reporting contribute to a net deterioration in a school's overall climate, which, in turn, fuels more disorder?[242] Or, in contrast, does increased school disorder lead to more school referrals to law enforcement by which schools seek more control? Similarly, our findings also imply that we need to consider whether school *non*-reporting contributes to a

[239] *See, e.g.*, Heise & Nance, *"Defund the (School) Police"?, supra* note 6, at 764-69 (analyzing student and school characteristics that are related to referrals to law enforcement in the elementary school context).

[240] For a fuller account of the elementary school context, see *id.*

[241] *See id.* at 757; *see also* Nance, *Students, Police*, *supra* note 5, at 973.

[242] *See* Matthew P. Mayer & Peter E. Leone, *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools,* 22 EDUC. & TREATMENT CHILD. 333, 350, 352 (1999) (finding that student victimization and school disorder were higher in schools using intense surveillance measures); Matthew P. Steinberg, Elaine Allensworth & David W. Johnson, *What Conditions Support Safety in Urban Schools?: The Influence of School Organizational Practices on Student and Teacher Reports of Safety in Chicago*, *in* CLOSING THE SCHOOL DISCIPLINE GAP: EQUITABLE REMEDIES FOR EXCESSIVE EXCLUSION, 118, 127-29 (Daniel J. Losen ed., 2015) (observing that teachers and students reported lower levels of perceived safety in schools relying on more punitive measures to maintain order and control).

deterioration in school climate. If so, does such a deterioration fuel more school disorder or, in contrast, is more disorder associated with less reporting because they both are associated with general dysfunction? Another — perhaps even more likely — alternative is that school reporting, non-reporting, and disorder levels interact and flow in both (or multiple) directions concurrently.[243] It is also possible that this potentially confusing finding may be a statistical artifact flowing from the fact that schools that experience elevated rates of disorder are among those forced to make a greater number of decisions about whether to report or not.

Table 2: Fractional Response Regression Models of School Report and Non-Report Rates for All and Non-Violent Student Discipline Incidents to Law Enforcement Agencies

	School Reports				School Non-Reports			
	(1) All Incidents		(2) Non-violent Incidents		(3) All Incidents		(4) Non-violent Incidents	
Ttl. SRO/police at school	0.03**	(0.01)	0.02**	(0.01)	0.01	(0.01)	-0.01	(0.02)
Student:teacher ratio	-0.01	(0.01)	-0.00	(0.00)	-0.00	(0.00)	0.00	(0.00)
Student mobility %	0.02*	(0.01)	0.01*	(0.00)	0.01	(0.00)	0.00	(0.00)
Sch. urban. scale (rural-to-urban)	-0.08	(0.08)	-0.03	(0.05)	-0.01	(0.05)	-0.06	(0.08)
Sch. disorder rate	0.06**	(0.02)	0.03**	(0.01)	0.08**	(0.02)	0.03**	(0.01)
Sch. area crime (lo-to-hi)	0.07	(0.11)	0.19*	(0.09)	0.12	(0.10)	0.24*	(0.10)
Sch. student enroll.	0.00**	(0.00)	0.00**	(0.00)	-0.00**	(0.00)	-0.00*	(0.00)
Elem. sch. (1=yes)	-1.23**	(0.26)	-2.21**	(0.19)	-0.31**	(0.12)	-1.18**	(0.13)
Vio. incid. rep. req. (1=yes)	-0.52	(0.32)	0.04	(0.17)	-0.43*	(0.21)	0.22	(0.20)

[243] *See* Mayer & Leone, *supra* note 242, at 351 (concluding that "disorder and restrictive management of the school premises may go hand in hand and may feed off each other").

Non-vio incid. rep. req. (1=yes)	-0.16	(0.13)	-0.35**	(0.11)	-0.01	(0.13)	-0.11	(0.13)
Sch. poverty %	0.00	(0.00)	0.00*	(0.00)	0.00	(0.00)	0.01*	(0.00)
Sch. nonwhite %	0.00	(0.00)	0.00	(0.00)	-0.00	(0.00)	0.00	(0.00)
Sch. black %	-0.00	(0.00)	-0.01	(0.00)	0.01**	(0.00)	-0.00	(0.00)
Sch. male %	-0.02	(0.01)	-0.00	(0.01)	0.01	(0.01)	0.02**	(0.01)
Sch. dist. mean per pup. Spend.	-0.00	(0.00)	-0.00	(0.00)	-0.00	(0.00)	-0.00	(0.00)
Constant	-3.25**	(0.85)	-5.57**	(0.36)	-3.99**	(0.41)	-6.33**	(0.37)
Pseudo R^2	0.08		0.09		0.05		0.04	
N (unweighted)	1,890		1,890		1,890		1,890	

NOTES: The dependent variables include (model 1) the rate of school reports for all incidents to law enforcement, (model 2) the rate of school reports for only non-violent incidents to law enforcement, (model 3) the rate of school non-reports for all incidents to law enforcement, and (model 4) the rate of school non-reports for only non-violent incidents to law enforcement. Robust standard errors, clustered on school district, in parentheses. The models were estimated using the "fracreg logit" command in Stata (v.16.1) and SSOCS weighted data. * $p<0.05$; ** $p<0.01$.

SOURCES: U.S. Dept. Educ., Nat'l Ctr. Educ. Stats., 2015–16 School Survey on Crime and Safety (SSOCS); U.S. Dept. Comm., Census Bureau, 2016 Public Elementary-Secondary Education Finance File (2016).

IV. A CLOSER LOOK AT SCHOOL DISCRETION AND DECISIONS TO REPORT AND NOT REPORT

We noted previously that variation in the type (and nature) of the student disciplinary incident itself may inform whether schools are more (or less) inclined to report to law enforcement agencies.[244] While in prior analyses we isolate non-violent student disciplinary incidents for closer inspection, we nonetheless felt that variation across student disciplinary incident codes likewise warrants more careful scrutiny. This is particularly so if, as we hypothesize, exercises of school administrative discretion are more likely for certain student disciplinary incidents than others.

To explore this possibility we compare results for two distinct student disciplinary incident codes: Drug (possession and/or distribution) and threat of assault (without a weapon).[245] We selected these two specific

[244] *See supra* Part III.A.

[245] *See infra* Table 3.

student disciplinary incident codes because the former (drug possession and/or distribution) is an unambiguous criminal act that falls squarely within mandatory state (and federal) reporting statutes. That is to say, in most states, schools confronting a student caught possessing or distributing illicit drugs stare at an uncontested affirmative formal duty to report such a matter to law enforcement agencies. School administrators confronting a student *threat* of an assault without a weapon, by contrast, likely find themselves in far more nuanced and ambiguous terrain, especially as it relates to how best to characterize such an incident as well as any law enforcement agency reporting obligations.

In addition, we were interested in whether there were any distributional concerns with respect to these two specific incidents. Prior research suggests that we were less likely to find racial disparities relating to drug possession, because this is an objectively-defined offense that is more robust to the effects of implicit racial bias.[246] But the literature provides far less guidance regarding whether such distributional concerns would exist regarding incidents involving threats to attack another student without a weapon, which arguably require somewhat more subjective judgment by a school official and may trigger the effects of implicit racial bias.[247] Nevertheless, it is also possible that a "threat of physical attack" is more objective than a determination that a student is "defiant," "disrespectful," or "disruptive," all of which require a great deal of subjective judgment and all of which normally lead to more racially disparate disciplinary outcomes.[248]

As it pertains to school reporting rates, (models 1 and 2), results in Table 3 make clear that while a school's reporting behavior for student drug and threat incidents share many influences, important differences emerge as well. Consistent with past findings, increases to a school's SRO/Police presence correspond with increased reporting rates, and this finding holds for both drug and threat of assault incidents. Similarly, student mobility, school disorder, elementary schools, and, to some degree, mandatory reporting requirement variables behave consistently across the drug and threat of assault contexts.

Regarding school reporting rates, where differences between the drug and threat of physical attack contexts emerge, they focus on

[246] *See supra* Parts I.G., I.H.

[247] *See supra* Parts I.G., I.H. Of the variables available to us, we judge "threat of physical attack" as the variable that would be most likely to invite subjective judgment by a school official.

[248] *See supra* Part I.G.

distributional variables. Once again, however, these variables' directions point in competing directions. For example, for drug offenses, increases in a school's percentage of Black students correspond with a *reduced* likelihood of a school to report. This finding is consistent with prior empirical studies examining racial disparities in school disciplinary outcomes involving illegal substances.[249] Findings consistent with more traditional, commonly-held distributional concerns, however, include that increases in a school's percentage of students in poverty and nonwhite students correlate with an increased likelihood of the school reporting a student drug incident. Similarly, higher per pupil spending schools were systematically less likely to report drug matters.

By contrast, none of the distributional variables achieve statistical significance for threat of physical attack (with no weapon) incidents. Again, it is possible that this offense, which plausibly invites more subjectivity than possession of drugs, still invites far less subjectivity than other incidents, such as defiance, disrespect, and disruption, where racially disparate outcomes are more common.[250] In addition, one must not forget the potential negative attention a referral to law enforcement can bring to a school.[251] Such forces may motivate many school officials to avoid referring students to law enforcement for relatively minor incidents, such as threats without using a weapon,[252] and this inclination may operate equally across all student groups.

Results for school non-reporting (models 3 and 4) imply a slightly different overall picture. First, a school's SRO/police presence, while important when it comes to school reporting, is not statistically important for school non-reporting decisions. Taken together, these findings imply the possibility that when schools exercise discretion to not report such student incidents, school administrators effectively either remove the SRO/police from the reporting decision, work in concert with SRO/police, or functionally override any SRO/police inclination to report.

Second, unlike what we discovered in the school reporting context (models 1 and 2), in the school non-reporting context, no material

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[249] *See* FABELO ET AL., *supra* note 107, at 45 (finding that African-American students had about a twenty-three percent lower likelihood of facing mandatory school disciplinary actions relating to mandatory removal from school under state law); Huang & Cornell, *supra* note 137, at 305 (finding that white student suspension rates were higher for alcohol, tobacco, and drug-related offenses); *see also* Nance, *Students, Police*, *supra* note 5, at 973 (finding the percentage of minority students a school serves to be generally insignificant as to most offenses).

[250] *See supra* Parts I.G., I.H.

[251] *See supra* Part I.F.

[252] *See supra* Part II.A.1.

differences emerged between the drug and threat of assault incidents that give rise to any traditional distributional worries. Thus, the results in models 3 and 4, overall, dampen any standard distributional concerns when it comes to school non-reports.[253]

Overall, a closer look at two discrete student incident codes reveals some plausibly interesting and more granular wrinkles. However, nothing in Table 3 fundamentally or materially dislodges our two core findings from analyses of school reporting and non-reporting behaviors in the broader student disciplinary space. Specifically, the salience of a school's SRO/police presence is comparatively more important in the school reporting than non-reporting context. Second, traditional distributional worries do not, on balance, find strong empirical support either in terms of when schools report, but also when schools decide to not report.

Table 3: Fractional Response Regression Models of School Report Rates to Law Enforcement Agencies and Non-Report Rates for Student Drug and Threat of Assault (With No Weapon) Incidents

	School Reports				School Non-Reports			
	(1) Drugs		(2) Threat, with no weapon		(3) Drugs		(4) Threat, with no weapon	
Ttl. SRO/police at school	0.02**	(0.01)	0.04*	(0.02)	-0.03	(0.02)	0.02	(0.01)
Student:teacher ratio	-0.00	(0.00)	-0.03	(0.02)	0.00	(0.00)	-0.00	(0.00)
Student mobility %	0.01**	(0.00)	0.03**	(0.01)	0.00	(0.01)	0.01*	(0.01)
Sch. urban. scale (rural-to-urban)	-0.04	(0.06)	-0.02	(0.13)	0.03	(0.12)	0.05	(0.09)
Sch. disorder rate	0.04**	(0.01)	0.07**	(0.02)	0.04**	(0.01)	0.06**	(0.01)
Sch. area crime (lo-to-hi)	0.16	(0.10)	-0.21	(0.25)	0.46*	(0.20)	0.02	(0.14)
Sch. student enroll.	0.00**	(0.00)	0.00	(0.00)	0.00	(0.00)	-0.00*	(0.00)
Elem. sch. (1=yes)	-3.01**	(0.37)	-0.89*	(0.38)	-2.13**	(0.43)	-0.47**	(0.18)
Vio. incid. rep. req. (1=yes)	---	---	-1.16*	(0.49)	---	---	-0.62	(0.34)
Non-vio. incid. rep. req. (1=yes)	---	---	0.11	(0.31)	---	---	0.15	(0.20)
Drug incid. rep. req. (1=yes)	-0.34**	(0.12)	---	---	0.20	(0.24)	---	---

[253] We note, however, that increases in the percentage of a school's black students corresponds with a reduced likelihood of the school electing to not report a student drug incident. *See supra* Table 3.

Sch. poverty %	0.01**	(0.00)	0.00	(0.01)	0.00	(0.01)	0.00	(0.00)
Sch. nonwhite %	0.01*	(0.00)	-0.00	(0.00)	0.01	(0.01)	-0.00	(0.00)
Sch. black %	-0.01**	(0.00)	0.00	(0.01)	-0.01*	(0.01)	0.00	(0.00)
Sch. male %	-0.00	(0.01)	-0.02	(0.01)	0.00	(0.01)	-0.00	(0.01)
Sch. dist. mean per pup. Spend.	-0.00*	(0.00)	0.00	(0.00)	-0.00	(0.00)	-0.00	(0.00)
Constant	-6.69**	(0.37)	-4.93**	(1.02)	-8.55**	(0.55)	-4.94**	(0.60)
Pseudo R^2	0.11		0.09		0.07		0.04	
N (unweighted)	1,890		1,890		1,890		1,890	

NOTES: The dependent variable in models 1 and 2 is the rate of school reports to law enforcement agencies for student drug and threat of assault with no weapon incidents, respectively. The dependent variable in models 3 and 4 is the rate of school non-reports for student drug and threat of assault with no weapon incidents, respectively. Robust standard errors, clustered on school district, in parentheses. The models were estimated using the "fracreg logit" command in Stata (v.16.1) and SSOCS weighted data. * $p<0.05$; ** $p<0.01$.

SOURCES: U.S. Dept. Educ., Nat'l Ctr. Educ. Stats., 2015–16 School Survey on Crime and Safety (SSOCS); U.S. Dept. Comm., Census Bureau, 2016 Public Elementary-Secondary Education Finance File (2016).

CONCLUSION

Engaging the criminal justice system in the student disciplinary context invokes an array of important consequences on both individual students and schools. Given these consequences, attention to, and focus on, rates of school reporting incidents to law enforcement agencies, as well as rates of school non-reports and how they distribute across subgroups, warrant close consideration. School non-reporting behaviors, and what they might imply about how schools exercise institutional discretion when it comes to student misconduct, are important and, until this study, were virtually ignored in the empirical scholarly literature.

When we submit two persistent and key pillars of the school-to-prison pipeline hypothesis to data, comparisons of schools' reporting and non-reporting behaviors reveal both differences and similarities. One key difference is that the salience of a school's SRO/police presence is comparatively far greater in the school reporting context than in the non-reporting context. One explanation for this potential divergence is the possibility that school officials act strategically and, perhaps, in

coordination with SRO/police officers in terms of when — and under what conditions — to exercise reporting discretion.[254]

Second, the school reporting and non-reporting contexts share a relative absence of strong empirical support for traditional distributional worries. Specifically, an increase in the percentage of various traditionally vulnerable sub-groups of students at a school does not, in general, correspond with a systematic increase in the school's likelihood of reporting student misconduct to law enforcement agencies. While our findings comport with past research using SSOCS data sets, such findings generally cut against the prominent normative literature.[255] Even though the precise factors that account for school decisions to either report or not report student misconduct remain opaque, the distribution of these decisions' outcomes does not appear to skew in any traditionally troubling directions. As we note in prior work, direct evidence of these claims from the SSOCS data set is not possible owing to the absence of any demographic data (e.g., race/ethnicity, gender, socio-economic status) on the students whose conduct triggered a school decision to either report or not to law enforcement agencies.[256] Despite the absence of more helpful student-level demographic data, however, our *school*-level findings do not raise any obvious distributional worries.

Instead, our distributional findings comport with more nuanced studies of racial disparities in the school disciplinary context. Specifically, racial disparities tend to occur and be more pronounced for offenses requiring subjectively defined judgment, such as disrespect, defiance, or disruption, than for offenses that require an objectively defined judgment, such as possession of drugs or alcohol, fighting, and, perhaps, threats of physical attack.[257] And because most referrals to law enforcement in the school disciplinary context are for objectively-defined offenses that are more robust to the effects of implicit racial bias, it follows that we should and do observe fewer distributional concerns in this area.[258]

Going forward, future research on these and other related school-to-prison pipeline claims would obviously benefit from more, and richer, individual-level data, especially as it relates to the individual students whose conduct triggered a possible school referral to law enforcement agencies. Another current data deficit relates to information on the

254 *See* KUPCHIK, HOMEROOM SECURITY, *supra* note 79, at 158.

255 *See* George, *supra* note 11, at 494; Merkwae, *supra* note 11, at 180.

256 *See* Heise & Nance, *"Defund the (School) Police"?*, *supra* note 6, at 771.

257 *See* Girvan et al., *supra* note 135, at 394-96, 401; *see also supra* Parts I.G., I.H.

258 *See* Nance, *Students, Police*, *supra* note 5, at 968-69.

criminal justice outcomes for those students whose conduct triggered a school referral to law enforcement agencies. While it is certainly plausible to assert that *any* adverse interaction between a student and a law enforcement agency is, on balance, negative,[259] more granular data on the formal legal dispositions of these interactions would provide helpful information for a broader sweep of related research questions.

Finally, as Table 1 makes clear, when it comes to student misconduct, school *non*-reporting rates to law enforcement agencies greatly exceed school reporting rates. As such, and given the obvious and non-obvious consequences to students as they become involved in the criminal justice system, closer scholarly and public attention to the contours of school non-reporting behaviors is warranted. This attention is particularly crucial given that the student disciplinary reporting context provides helpful insights into exercises of school discretion more generally.

[259] *See supra* Part I.E.