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Law Enforcement Officers, Students, and the School-To-Prison Pipeline: a Longitudinal Perspective

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Law Enforcement Officers, Students, and the School-to-Prison Pipeline: A Longitudinal Perspective

Jason P. Nance* and Michael Heise**

ABSTRACT

Recent data indicate that a majority of schools now have regular contact with law enforcement officers, transforming the educational experience for hundreds of thousands of students nationwide. The proper role of police officers in schools, if any, has been hotly debated for years. But this debate was elevated to an unprecedented level during the summer of 2020 following the tragic deaths of George Floyd and others, precipitating national calls to “defund the police” and leading many school districts to reconsider their relationships with law enforcement agencies. This debate over whether police officers belong in schools continues today. While proponents argue that a police presence is necessary to keep students safe, the existing empirical literature assessing the efficacy of school police officer programs in creating safe environments is mixed, at best. The legal and policy implications for students, however, are more established. An increased law enforcement presence in schools has tightened the intersection between schools and the criminal justice system, a phenomenon known as the “school-to-prison pipeline,” and can lead to severe outcomes for students.

This Article contributes to the scholarly literature on the school-to-prison pipeline in several ways. Most importantly, we are the first researchers to examine data spanning a decade, uncovering critical longitudinal trends. We find that both the percentage of schools relying on law enforcement and the magnitude of law enforcement presence in schools increased significantly from 2009 to 2018. Furthermore, we find that regular contact with law enforcement is strongly connected to the increased rate at which school officials report students to law enforcement agencies for committing various offenses over this entire time period, including for non-violent offenses. Given these findings, it would be logical to assume that the rate of reporting

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students to law enforcement also increased. However, we find that the opposite is true—reporting rates actually decreased quite significantly. While the data do not reveal the reasons for this unexpected decline, we suspect that it is attributable to a combination of factors, including requiring schools to publicly disclose the number of referrals to law enforcement and a failure to accurately report all referrals, in violation of federal law.

In addition, our study highlights the complexities associated with race and student discipline. We find that the overall concentration of students of color in a school largely did not influence the rate at which schools reported students to law enforcement at any point during the time span. While this finding on its face may seem inconsistent with the prominent normative literature, it actually comports with our general understanding of the nuanced ways that implicit racial bias influences school officials' decisions in the school disciplinary context. Specifically, implicit racial bias appears to wield more influence when disciplinary incidents require educators to subjectively characterize behavior, such as determining whether a student has acted in a defiant, disruptive, or disrespectful manner. However, for objectively-defined disciplinary incidents that require less characterization (e.g., theft, physical altercations, or possession of drugs)—which are the bases for most law enforcement referrals—the effects of implicit bias are mitigated, often resulting in fewer racial equity concerns.

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INTRODUCTION

Law enforcement officers are transforming the educational experience for hundreds of thousands of students across our nation.¹ While uncommon decades ago, recent data indicate that law enforcement officers now have a sustained presence in the majority of American public schools.² There are many forces fueling the expansion of partnerships between law enforcement agencies and schools. For example, school officials wish to minimize school crime, create orderly learning environments, and deter students from harming members of the school community.³ Furthermore, several highly-publicized events of school violence have roiled our nation over the last twenty-three years, including the tragic incidents that occurred at Columbine, Newtown, and, most recently, Parkland.⁴ These horrific events have put pressure on school officials to tangibly demonstrate to parents, community members, and others that they are taking concrete steps to keep children safe.⁵ In addition, millions of dollars of federal and state aid have been funneled to schools to support school resource officer (SRO) programs.⁶

Proponents of SRO programs contend that a sustained law enforcement presence is an effective way to keep students safe from harm and lower school crime levels.⁷ But the available research provides conflicting conclusions regarding the overall efficacy of SRO programs in reducing school crime and violence internally.⁸ It is also unclear whether a law enforcement presence effectively deters outside intruders from harming members of the school community.⁹

The legal and policy implications for students, however, are much more established. Regular contact with law enforcement is a dynamic that has significantly tightened the intersection between schools and the criminal

1. See, e.g., AARON KUPCHIK, HOMEROOM SECURITY 78–116 (2010); Shabnam Javdani, *Policing Education: An Empirical Review of the Challenges and Impact of the Work of School Police Officers*, 63 AM. J. CMTY. PSYCH. 253, 256–64 (2019).

2. See *infra* Table 1; see also Denise C. Gottfredson et al., *Effects of School Resource Officers on School Crime and Responses to School Crime*, 19 CRIMINOLOGY & PUB. POL'Y 905, 906–07 (2020).

3. See NATHAN JAMES & GAIL MCCALLION, CONG. RSCH. SERV., R43126, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS 3–4 (2013).

4. See *infra* Section I.B.

5. See *infra* Section I.B.

6. See *infra* Section I.B.

7. See JAMES & MCCALLION, *supra* note 3, at 2, 3–4; Gottfredson et al., *supra* note 2, at 908.

8. See, e.g., NATHAN JAMES & KYRIE E. DRAGOO, CONG. RSCH. SERV., R45251, SCHOOL RESOURCE OFFICERS: ISSUES FOR CONGRESS 6–10 (2018).

9. *Id.* at 10.

justice system, a phenomenon known as the “school-to-prison pipeline.”¹⁰ Observational studies reveal that having law enforcement officers in schools influences how student disciplinary issues are managed.¹¹ For example, rather than being viewed as social challenges or opportunities for growth and improvement, disciplinary issues become redefined as criminal justice issues that require a criminal justice orientation.¹² Indeed, the presence of a police officer can transform a routine disciplinary situation from one that would be handled by a teacher or school official into a criminal justice situation handled by a police officer resulting in an arrest.¹³ Empirical studies also confirm this phenomenon. When schools have regular contact with law enforcement officers, they are more likely to report students to law enforcement agencies for disciplinary events, including lower-level offenses that arguably should be addressed using more pedagogically-sound methods.¹⁴

The negative outcomes that flow into the lives of students who are involved in the criminal justice system can be severe.¹⁵ Students who are arrested are less likely to graduate from high school and more likely to be involved in the criminal justice system as adults, even if the arrest does not lead to an immediate conviction and detainment.¹⁶ Incarcerating youth is connected to an array of undesirable outcomes, such as failure to graduate from high school, mental health concerns, the development of violent behavior and attitudes, unemployment, and future involvement in the criminal justice system.¹⁷

While the debate over the proper role of law enforcement officers in schools has persisted for years, it was elevated to an unprecedented level during the summer of 2020.¹⁸ The tragic deaths of George Floyd, Breonna

10. See AARON KUPCHIK, *THE REAL SCHOOL SAFETY PROBLEM: THE LONG-TERM CONSEQUENCES OF HARSH SCHOOL PUNISHMENT* 31–33 (2016).

11. See F. Chris Curran et al., *Do Interactions with School Resource Officers Predict Students’ Likelihood of Being Disciplined and Feelings of Safety? Mixed-Methods Evidence from Two School Districts*, 43 *EDUC. EVALUATION & POL’Y ANALYSIS* 200, 201 (2021).

12. See KUPCHIK, *supra* note 1, at 115.

13. *Id.*

14. 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, 723 (2021); Jason P. Nance, *Students, Police, and the School-to-Prison Pipeline*, 93 *WASH. U. L. REV.* 919, 969 (2016).

15. See Jason P. Nance, *Dismantling the School-to-Prison Pipeline: Tools for Change*, 48 *ARIZ. ST. L.J.* 313, 319–24 (2016).

16. *Id.* at 321.

17. *Id.* at 319–20.

18. See, e.g., Dana Goldstein, *Do Police Officers Make Schools Safer or More Dangerous?*, *N.Y. TIMES* (Oct. 18, 2021), <https://www.nytimes.com/2020/06/12/us/schools-police-resource-officers.html> [<https://perma.cc/8WQG-ZWHS>].

Taylor, and other victims by police officers precipitated national calls to “defund the police.”¹⁹ Soon thereafter, many turned their attention to school police officers, causing several school districts nationwide to rethink their SRO programs.²⁰ Several school districts elected to curtail their SRO programs or withdraw their partnership with local police departments altogether.²¹ The debate over the proper role of law enforcement officers in schools (if any) rages on today and will continue in the foreseeable future.²²

We contribute to the scholarly literature on school police officers, the school-to-prison pipeline, and education law by providing much needed data drawn from the U.S. Department of Education’s School Survey on Crime and Safety (SSOCS), the nation’s leading cross-sectional database on public school crime and safety.²³ We are the first scholars to examine data on law enforcement officers and schools at three junctures spanning a decade (SSOCS 2009–2010, SSOCS 2015–2016, and SSOCS 2017–2018).²⁴ Furthermore, our various models include supplemental data on (1) state-level mandatory reporting requirements (e.g., statutes that require schools to report students to law enforcement for engaging in certain acts) and (2) district-level per pupil spending information.²⁵

Our analyses provide a critical longitudinal perspective revealing several important trends. First, we find that both the percentage of schools relying on law enforcement and the magnitude of law enforcement presence in schools increased significantly from 2009 to 2018.²⁶ Second, consistent with prior research, at every juncture of the data gathering stage we find that regular

19. See Deena Zaru & Tonya Simpson, ‘Defund the Police’ Movement 6 Months After Killing of George Floyd, ABC NEWS (Nov. 25, 2020, 5:49 AM), <https://abcnews.go.com/US/defund-police-movement-months-killing-george-floyd/story?id=74296015> [https://perma.cc/2B4D-5V33].

20. See Goldstein, *supra* note 18; see also Jessica Bakeman, *In Florida, Schools Under Pressure To Get Rid of Police Officers*, NPR (Sept. 14, 2020, 7:18 AM), <https://www.npr.org/2020/09/14/911478446/in-florida-schools-under-pressure-to-get-rid-of-police-officers> [https://perma.cc/F3PN-RG3Z].

21. See *One Year into Police-Free Schools: Three Trends To Know*, NEPC NEWSLETTER (Nat’l Educ. Pol’y Ctr., Boulder, Colo.), June 29, 2021, <https://nepc.colorado.edu/sites/default/files/publications/Newsletter%20police-free.pdf> [https://perma.cc/F8ZK-Z4YG]; *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/FQ8Z-A3PC].

22. See Melissa Gomez, *L.A. School Board Cuts Its Police Force and Diverts Funds for Black Student Achievement*, L.A. TIMES (Feb. 16, 2021, 10:04 PM), <https://www.latimes.com/california/story/2021-02-16/lausd-diverting-school-police-funds-support-black-students> [https://perma.cc/5EDG-SEC8]; Nat’l Educ. Pol’y Ctr., *supra* note 21.

23. See *infra* Section II.A.

24. See *infra* Section II.A.

25. See *infra* Section III.A.

26. See *infra* Section III.A.

contact with law enforcement officers is strongly associated with reporting students to law enforcement agencies for committing various offenses.²⁷ Furthermore, the data reveal that the magnitude of law enforcement presence is also connected to higher reporting rates.²⁸

Because (1) the percentage of schools having regular contact with law enforcement increased over time and (2) there is a strong connection between regular contact with law enforcement and schools' rate of reporting students to law enforcement agencies, we hypothesized that the rate of reporting students to law enforcement also increased over time. However, our analyses revealed that the opposite is true. Strikingly, the overall reporting rate of students to law enforcement actually *decreased* quite significantly from 2009 to 2018.²⁹

Disaggregating the data further reveals that not only did the referral rate decline at schools that did not have regular contact with law enforcement (which was less surprising), but it also declined significantly, albeit at a slightly lower rate, at schools that had regular contact with law enforcement.³⁰ While the data do not reveal the reasons for this unexpected result, we suspect that it may be attributable to a combination of factors, including requiring schools to publicly disclose the number of student referrals to law enforcement and schools failing to accurately report all referrals, in violation of federal law.³¹

In addition, our study highlights the complexities associated with race and student discipline and may shed more light on the nuanced influence that implicit racial bias wields on school officials' decision-making. Interestingly, the concentration of students of color attending schools largely did not influence the rate at which schools reported students to law enforcement at each juncture of the data gathering stage.³² We emphasize that the SSOCS data sets do not contain demographic data (e.g., race, ethnicity, gender, socioeconomic status) on the individual students who were referred to law enforcement.³³ Rather, the SSOCS data sets only provide demographic information on the collective student populations at the school level (e.g., the percentage of students at a school who are Black, male, etc.).³⁴ Thus, it is certainly possible that marginalized students in a school were referred to law enforcement at disproportionate rates. Our narrower point, however, is that

27. *See infra* Section III.B.

28. *See infra* Section III.B.

29. *See infra* Section III.B.

30. *See infra* Section III.B.

31. *See infra* Section III.B.

32. *See infra* Section III.C.

33. *See infra* Section II.E.

34. *See infra* Section II.E.

at least at the school level, the SSOCS data do not indicate racial disparities relating to student referrals to law enforcement.³⁵

Our finding that the overall concentration of students of color in a school largely did not influence the rate at which schools reported students to law enforcement may surprise some, especially because it is well-documented that racial inequalities are pervasive in many areas of school discipline, public education, criminal justice, and other areas of society.³⁶ Yet our findings comport with our general understanding of the nuanced ways that implicit racial bias influences school officials' decisions in the disciplinary context.³⁷ Specifically, when a disciplinary incident requires an educator to subjectively characterize student behavior (e.g., determining if a student has engaged in defiant, disrespectful, or disruptive behavior), the effects of implicit racial bias are more pronounced, often resulting in racially disparate outcomes.³⁸ But for disciplinary incidents requiring less characterization (e.g., drug possession, fighting, vandalism)—which are the bases for the vast majority of referrals to law enforcement—the effects of implicit bias often are muted, resulting in fewer racial equity concerns.³⁹

This Article proceeds in three parts. Part I briefly summarizes the relevant research literatures. In Part II we describe our data, research design, and empirical strategy. In Part III, we present our results and consider their legal and policy implications. We also provide recommendations for reform based on our findings.

I. LITERATURE REVIEW

The regular presence of law enforcement officers in schools is an important component of the tightened intersection between schools and the criminal justice system.⁴⁰ To provide context for our empirical findings, in this part we discuss the various manifestations of the tightened intersection, the forces driving this movement, and the critical role of law enforcement officers. We then discuss the tightened intersection's harmful consequences to students. We also explain that not all student groups have experienced the negative consequences of this movement in the same manner. Rather,

35. *See infra* Section II.C.

36. *See* Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 EMORY L.J. 765, 811–16 (2017).

37. *See infra* Section I.E–F.

38. *See infra* Section I.E.

39. *See infra* Section I.E.

40. *See* KUPCHIK, *supra* note 10, at 27–33.

marginalized student groups have suffered disproportionately. We then discuss the role that racial bias may play in driving some of these racial inequalities and the circumstances under which racial bias wields more and less influence.

A. Manifestations of a Tightened Intersection Between Schools and the Criminal Justice System

The manifestations of a tightened intersection between schools and the criminal justice system can be loosely categorized into two major groups: (1) schools' heightened use of criminal justice-oriented security measures and (2) schools' increased reliance on exclusionary and punitive discipline policies. These manifestations are closely related and, concurrently, have led to more student involvement in the criminal justice system.⁴¹

Criminal justice-oriented security measures in some form are now prevalent in most schools.⁴² As we explain in more detail below, both the percentage of schools that have regular contact with law enforcement and the magnitude of SROs nationwide have increased significantly, even over the last decade.⁴³ Schools also commonly rely on other types of criminal justice-orientated security measures, such as security cameras, metal detectors, drug-sniffing dogs, "random sweeps for contraband," and monitoring or locking doors and gates.⁴⁴ While less common, some schools have even installed facial recognition systems.⁴⁵ In addition, it is not uncommon for schools to rely on many of these measures simultaneously,

41. *Id.*; see also Nance, *supra* note 14, at 952–57; Nance, *supra* note 36, at 788–89.

42. See Samantha J. Brown et al., *Education Versus Punishment? Silo Effects and the School-to-Prison Pipeline*, 57 J. RSCH. CRIME & DELINQ. 403, 405–06 (2020).

43. See *infra* Section III.A.

44. See MELISSA DILIBERTI ET AL., U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STAT., CRIME, VIOLENCE, DISCIPLINE, AND SAFETY IN U.S. PUBLIC SCHOOLS: FINDINGS FROM THE SCHOOL SURVEY ON CRIME AND SAFETY: 2017-18, at 13 tbl.7 (2019); JILL F. DEVOE ET AL., U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STAT., INDICATORS OF SCHOOL CRIME AND SAFETY: 2005, at 106 tbl.20.1 (2005).

45. See, e.g., Davey Alba, *Facial Recognition Moves into a New Front: Schools*, N.Y. TIMES (Feb. 6, 2020), <https://www.nytimes.com/2020/02/06/business/facial-recognition-schools.html> [<https://perma.cc/J9YC-SC78>]. Facial recognition systems alert school officials when unauthorized individuals, such as suspended students, sex offenders, and suspected gang members, enter school grounds. See Ava Kofman, *Face Recognition is Now Being Used in Schools, but It Won't Stop Mass Shootings*, THE INTERCEPT (May 30, 2018, 12:36 PM), <https://theintercept.com/2018/05/30/face-recognition-schools-school-shootings/> [<https://perman.cc/EDT7-9P9D>].

which some argue contributes to a quasi-prison-like environment.⁴⁶ Such an environment may harm students' interests by deteriorating the school climate and potentially contributing to further disorder.⁴⁷

Lawmakers and school officials have also increasingly relied on exclusionary and punitive discipline policies.⁴⁸ We observe this trend in several ways. For example, federal and state lawmakers have enacted statutes that require schools to report students to law enforcement for committing certain acts.⁴⁹ In connection with the federal Gun-Free Schools Act, all school districts that have received federal funds pursuant to the Elementary and Secondary Education Act must develop a policy "requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school."⁵⁰ The majority of states have gone further by requiring schools to report students for various types of violent and non-violent offenses, such as illegal drug possession,⁵¹ alcohol possession,⁵² vandalism,⁵³ theft,⁵⁴ violent attacks,⁵⁵ and sexual assault.⁵⁶ A few states require school officials to report students for committing *any* felony or misdemeanor.⁵⁷

46. See Jason P. Nance, *Implicit Racial Bias and Students' Fourth Amendment Rights*, 94 IND. L.J. 47, 48–52 (2019); Paul J. Hirschfield, *Preparing for Prison? The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 79–85 (2008).

47. See Matthew J. Mayer & Peter E. Leone, *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools*, 22 EDUC. & TREATMENT CHILD. 333, 349 (1999); Randall R. Beger, *The "Worst of Both Worlds": School Security and the Disappearing Fourth Amendment Rights of Students*, 28 CRIM. JUST. REV. 336, 340–41 (2003).

48. See JACOB KANG-BROWN ET AL., VERA INST. OF JUST., A GENERATION LATER: WHAT WE'VE LEARNED ABOUT ZERO TOLERANCE IN SCHOOLS 2 (2013) (reporting increased use of exclusionary discipline in schools).

49. See Nance, *supra* note 14, at 934–36.

50. 20 U.S.C. § 7961(h)(1) (2021).

51. See, e.g., ALA. CODE § 16-1-24.1(b) (2021); GA. CODE ANN. § 20-2-1184(a), (b) (2021).

52. See, e.g., IDAHO CODE § 33-210(1) (2021); NEB. REV. STAT. §§ 79-262, -267, -293 (2021).

53. See, e.g., KY. REV. STAT. ANN. § 158.154 (West 2021); 24 PA. CONS. STAT. § 13-1303-A(b)(4.1) (2021).

54. See, e.g., HAW. REV. STAT. § 302A-1002(1)(B) (2021); N.H. REV. STAT. ANN. § 193-D:4(I)(a) (2021).

55. See, e.g., ARK. CODE ANN. § 6-17-113(b)(1) (2021); CAL. EDUC. CODE § 48902(a) (West 2021).

56. See, e.g., ARIZ. REV. STAT. ANN. § 15-341(A)(30) (2021); FLA. STAT. § 1012.799 (2021).

57. See, e.g., KAN. STAT. ANN. § 72-6143(b)(1) (2021); MD. CODE REGS. 13A.08.01.15(A) (2021).

In addition, at least twenty states have enacted statutes that criminalize acts that disrupt the school environment in some fashion.⁵⁸ These so-called “disturbing school statutes” have enabled criminal charges to be brought against students who engage in common adolescent misbehavior, such as texting and refusing to hand over a cell phone, burping, using perfume, throwing a paper airplane, stealing a beef patty, writing on desks, and inquiring why another student was being arrested in school.⁵⁹ Other laws require schools to suspend or expel students for engaging in certain types of misconduct at school.⁶⁰ In addition, school districts have enacted their own behavior codes that require school officials to invoke exclusionary discipline under various circumstances.⁶¹

“Zero tolerance” policies are a particularly harsh form of exclusionary discipline that have garnered significant national attention over the last two decades.⁶² When students commit certain acts, these policies require school officials to administer pre-determined consequences without considering the harm caused, surrounding circumstances, or mitigating factors.⁶³ Zero tolerance policies originated in the 1990s.⁶⁴ They were reinforced by the Gun-Free Schools Act, which compels states receiving federal education funds to enact a law requiring school districts to expel students for at least one year for bringing a firearm to school.⁶⁵ Following the passage of the Gun-Free Schools Act, school districts throughout the country enacted zero tolerance policies to address other areas of misbehavior, such as possessing sharp objects, drugs, or alcohol, fighting, tardiness, and violating the dress code.⁶⁶ Many experts, including psychologists, lawyers, and scholars, have criticized these policies for being ineffective, unjust, and potentially unconstitutional,

58. For an extended discussion of these statutes, see 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, 102–07 (2017).

59. *See id.* at 103–04.

60. *See, e.g.*, IOWA CODE § 282.4 (2021); 105 ILL. COMP. STAT. 5/31-3 (2021).

61. *See, e.g.*, CHI. PUB. SCHS., 2020–2021 STUDENT RIGHTS & RESPONSIBILITIES 11–13 (2020); HOUS. INDEP. SCH. DIST., 2020–2021 CODE OF STUDENT CONDUCT 14–16 (2020).

62. *See, e.g.*, DEREK W. BLACK, *ENDING ZERO TOLERANCE: THE CRISIS OF ABSOLUTE SCHOOL DISCIPLINE* 1–6 (2016).

63. 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).

64. Nathan L. Essex, *Zero Tolerance Approach to School Violence: Is It Going Too Far?*, 29 *AM. SECONDARY EDUC.* 37, 37 (2000).

65. *Id.*; 20 U.S.C. § 7961 (2020).

66. *See* BLACK, *supra* note 62, at 3; CATHERINE Y. KIM ET AL., *THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM* 79–80 (2010).

as well as for unnecessarily putting more students on a pathway from school to prison.⁶⁷

B. Drivers of the Tightened Intersection

Scholars propose several related theories explaining the forces driving the tightened intersection between schools and the criminal justice system. First, scholars maintain that highly-publicized acts of school violence, such as the atrocities that occurred at Columbine, Sandy Hook, and Parkland, have motivated school officials to rely on criminal justice-oriented security measures and punitive discipline polices.⁶⁸ These horrific events provoked deep feelings of sadness, fear, and anxiety and caused parents and other community members to demand that schools take action to ensure the safety of children.⁶⁹ Criminal justice-oriented security measures and punitive discipline polices were concrete actions that school officials could implement to demonstrate to various constituencies that they were responding to calls to create safe, orderly schools.⁷⁰

Second, scholars observe that the tightened intersection proliferated during a larger “tough on crime” movement that has engulfed various regions of the United States since the 1980s.⁷¹ When juvenile violent crime rates climbed from the mid-1980s to 1994, some lawmakers responded by shifting from a rehabilitative to a punitive approach to address youth offenders.⁷² Paralleling this policy shift, some lawmakers and school officials also

67. See Am. Psych. Ass’n Zero Tolerance Task Force, *supra* note 63, at 857; Derek W. Black, *The Constitutional Limit of Zero Tolerance in Schools*, 99 MINN. L. REV. 823, 837–41, 866 (2015).

68. See, e.g., Curran et al., *supra* note 11, at 204; Elizabeth S. Scott, *Miller v. Alabama and the (Past and) Future of Juvenile Crime Regulation*, 31 L. & INEQ. 535, 541 (2013).

69. 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/markland-schoolsinsider/post/montgomery-country-parents-ask-for-more-schoolsecurity-teacher-training-during-budget-hearing/2013/01/11/e8d3dcf4-5aab-11e2-9fa9-5fbdc9530eb9blog.html> [https://perma.cc/SWQ2-LJ46]; 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/54QM-NJRY].

70. See generally KUPCHIK, *supra* note 1.

71. See Brown et al., *supra* note 42, at 404–05; Daniel P. Mears et al., *The Benefits, Risks, and Challenges of Get-Tough and Support-Oriented Approaches to Improving School Safety*, 30 CRIM. JUST. POL’Y REV. 1342, 1344–45 (2019).

72. See BARRY C. FELD, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* 189–90 (1999); PATRICIA TORBET ET AL., NAT’L CTR. FOR JUV. JUST., *STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME*, at xi, 1 (1996).

adopted a punitive model to address school crime and violence, manifested by intensive surveillance mechanisms and exclusionary discipline practices.⁷³

Third, some scholars maintain that increased pressure to boost student scores on state standardized tests has motivated some school officials to push low-performing and misbehaving students out of school.⁷⁴ Federal education statutes, such as the now defunct No Child Left Behind Act and the current Every Student Succeeds Act, require states to administer standardized tests in exchange for federal funds.⁷⁵ If a school fails to meet certain criteria, it may receive a negative label or other sanctions, thereby potentially upsetting parents and school board members and putting school officials' jobs at risk.⁷⁶ Scholars theorize that some school officials may push low-performing and disruptive students out of school to avoid having their poor test scores count against the school and to create more optimal learning environments that will allow teachers to prepare less disruptive students to perform well on these high-stakes exams.⁷⁷

Fourth, scholars observe that schools rely on intense surveillance practices and punitive discipline policies because they do not have adequate resources to create positive school climates that lead to safe, productive learning environments.⁷⁸ Many educators work with youth who suffer from abuse, trauma, and malnourishment.⁷⁹ They also teach students with significant learning disabilities, mental health challenges, and behavioral disorders.⁸⁰ It is common for youth who struggle in school to misbehave.⁸¹ Schools that lack counselors, behavioral and mental health specialists, adequate resources to

73. See KATHLEEN NOLAN, *POLICE IN THE HALLWAYS: DISCIPLINE IN AN URBAN HIGH SCHOOL* 24–26 (2011); Barbara Fedders, *The Anti-Pipeline Collaborative*, 51 WAKE FOREST L. REV. 565, 567–68 (2016).

74. 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, 252–255 (2007); James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 969–70 (2004).

75. Nance, *supra* note 36, at 781–82, 782 n.94.

76. See Jason P. Nance, *School Surveillance and the Fourth Amendment*, 2014 WIS. L. REV. 79, 94 (2014).

77. See Ryan, *supra* note 74, at 969–70; Darling-Hammond, *supra* note 74, at 252–55.

78. See Paul J. Hirschfield, *supra* note 46, at 92; Pedro A. Noguera, *Schools, Prisons, and Social Implications of Punishment: Rethinking Disciplinary Practices*, 42 THEORY INTO PRAC. 341, 344–46 (2003).

79. See DIANE RAVITCH, *REIGN OF ERROR: THE HOAX OF THE PRIVATIZATION MOVEMENT AND THE DANGER TO AMERICA'S PUBLIC SCHOOLS* 111–13 (2013); Linda Darling-Hammond, *Inequality and School Resources: What It Will Take to Close the Opportunity Gap*, in CLOSING THE OPPORTUNITY GAP: WHAT AMERICA MUST DO TO GIVE EVERY CHILD AN EVEN CHANCE 77, 80, 83 (Prudence L. Carter & Kevin G. Welner eds., 2013).

80. See RAVITCH, *supra* note 79, at 111–13; Darling-Hammond, *supra* note 79, at 83.

81. Noguera, *supra* note 78, at 342, 345.

engage students, and robust classroom management training often resort to strict, punitive measures in an attempt to control the environment and push misbehaving students out of school.⁸²

Fifth, scholars maintain that abundant federal and state funding has fueled the expansion of criminal justice-orientated security measures in schools.⁸³ In the wake of several high-profile incidents of school violence, U.S. Congress and many state legislatures responded by passing laws that appropriated funds to schools for purchasing security measures and hiring law enforcement officers.⁸⁴ For example, following the Columbine High School shooting, the U.S. Department of Justice's Office of Community Policing Services implemented the "COPS in Schools" (CIS) grant program.⁸⁵ This initiative was active from 1999 to 2005 and provided over \$800 million to schools to hire over seven thousand SROs throughout the country.⁸⁶ In place of CIS, the federal government has supported the COPS Hiring Program (CHP), which has also funded hundreds of SRO positions throughout the United States.⁸⁷ Other federal funding sources include a joint effort between the U.S. Departments of Justice, Education, and Health and Human Services resulting in the "Safe Schools/Healthy Students" program.⁸⁸ This initiative has provided more than \$2.1 billion to support several school safety initiatives, including those that provide criminal-justice oriented security measures to schools.⁸⁹ In addition, several states have passed

82. *Id.* at 342, 346; *Hirschfield, supra* note 46, at 92.

83. *See* Gottfredson et al., *supra* note 2, at 907–08.

84. *Id.*

85. Chongmin Na & Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 620–21 (2013).

86. *Where Does Funding for School Resource Officers Come From? Three Federal Programs Explained*, NEPC NEWSLETTER (Nat'l Educ. Pol'y Ctr., Boulder, Colo.), July 13, 2021, at 1–2, <https://nepc.colorado.edu/sites/default/files/publications/Newsletter%20sro-funding.pdf> [<https://perma.cc/MX72-YH7J>]; MARIEKE BROCK ET AL., LIBR. OF CONG., SCHOOL SAFETY POLICIES AND PROGRAMS ADMINISTERED BY THE U.S. FEDERAL GOVERNMENT: 1990–2016 at 78, 79 (2017).

87. Nat'l Educ. Pol'y Ctr., *supra* note 86, at 2; BROCK ET AL., *supra* note 86, at 80–81.

88. Press Release, 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/HBX9-L9ZT>]; KELLIE ANDERSON ET AL., NAT'L CTR. FOR MENTAL HEALTH PROM. & YOUTH VIOLENCE PREV., LAW ENFORCEMENT: SNAPSHOTS FROM THE SAFE SCHOOL/HEALTHY STUDENTS INITIATIVE 9 (2013).

89. Press Release, U.S. Dep't of Educ., *supra* note 88.

legislation providing funds to schools to purchase an array of security measures, including SROs.⁹⁰

C. *The Growth of Law Enforcement Officers in Schools*

The regular presence of law enforcement officers in schools is arguably the most salient component of the tightened intersection between schools and the criminal justice system. Law enforcement officers are now common features in many schools throughout the United States.⁹¹ While it is unclear exactly how many SROs exist nationally,⁹² their numbers have grown significantly over the last fifty years.⁹³ The National Association of School Resource Officers maintains that “[s]chool-based policing is the fastest-growing area of law enforcement.”⁹⁴ In the late 1970s, there were fewer than 100 SROs.⁹⁵ By 2007, there were nearly 20,000.⁹⁶ More recent estimates place the number of SROs at over 30,000.⁹⁷ Complementing the rapid increase is the percentage of schools that now experience regular contact with law enforcement. For example, recent data indicate that during the 2017–2018 school year well over half of all traditional schools (54%) experienced a sustained law enforcement presence.⁹⁸

While the rapid growth trends are clear, the forces driving these trends are less clear. Scholars point to several of the forces we describe above, which include high-profile acts of school violence,⁹⁹ the “tough on crime” response

90. See, e.g., ALA. CODE § 41-15B-2.2(b)(2)(b)(2)(v) (2021) (providing 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(c.1)(1) (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”).

91. See KUPCHIK, *supra* note 1, at 14.

92. See *Frequently Asked Questions*, NAT’L ASS’N SCH. RES. OFFICERS, <https://www.nasro.org/faq> [<https://perma.cc/Z7TJ-CAAW>].

93. MAURICE CANADY ET AL., NAT’L ASS’N SCH. RES. OFFICERS, TO PROTECT AND EDUCATE: THE SCHOOL RESOURCE OFFICER AND THE PREVENTION OF VIOLENCE IN SCHOOLS 9 (2012).

94. *About NASRO*, NAT’L ASS’N SCH. RES. OFFICERS, <https://www.nasro.org/main/about-nasro> [<https://perma.cc/6TYQ-9LFC>].

95. Paul J. Hirschfield & Katarzyna Celinska, *Beyond Fear: Sociological Perspectives on the Criminalization of School Discipline*, 5 SOC. COMPASS 1, 1 (2011).

96. See JAMES & MCCALLION, *supra* note 3, at 20.

97. See LUCINDA GRAY & LAURIE LEWIS, U.S. DEP’T OF EDUC., PUBLIC SCHOOL SAFETY AND DISCIPLINE: 2013–14, at 11 (2015).

98. See *infra* Table 1.

99. Gottfredson et al., *supra* note 2, at 908; Mears et al., *supra* note 71, at 1344; JAMES & DRAGOO, *supra* note 8, at 1.

to rising juvenile crime rates,¹⁰⁰ and the availability of ample federal and state funds to hire law enforcement officers.¹⁰¹ It is also unclear whether this growth will continue, as some additional forces are now in motion. In a spillover effect from the recent protests against police departments following the death of George Floyd and other victims of police officers, some school districts across the country scaled back their partnerships with local police departments or severed those ties altogether.¹⁰² For example, according to a recent report from the National Education Policy Center, “since June 2020, at least 38 school districts in 15 states ended the use of SROs.”¹⁰³ On the other hand, “[n]early just as many districts opposed changes to SRO programs.”¹⁰⁴ Furthermore, recent highly-publicized school shootings in Florida and Texas have generated additional support for increasing law enforcement presence in schools.¹⁰⁵ In the aftermath of these shootings, the state legislatures of Florida, Kentucky, and Maryland passed statutes mandating that every school have at least one SRO on campus,¹⁰⁶ and Texas Governor Greg Abbott published a “School and Firearm Safety Action Plan” that strengthened collaborations between schools and law enforcement agencies.¹⁰⁷

SROs’ responsibilities vary considerably from school to school.¹⁰⁸ SRO programs are embedded within a fragmented and decentralized apparatus composed of various federal, state, and local agencies.¹⁰⁹ These agencies report to various constituencies and have different funding sources and

100. See Gottfredson et al., *supra* note 2, at 907–08; Mears et al., *supra* note 71, at 1344; Crosse et al., *Are Effects of School Resource Officers Moderated by Student Race and Ethnicity?*, 68 CRIME & DELINQ. 381, 382 (2022).

101. Gottfredson et al., *supra* note 2, at 908; Samantha Viano et al., *Kindergarten Cop: A Case Study of How a Coalition Between School Districts and Law Enforcement Led to School Resource Officers in Elementary Schools*, 43 EDUC. EVALUATION & POL’Y ANALYSIS 253, 254 (2021); Crosse et al., *supra* note 100.

102. See Lauren Camera, *The End of Police in Schools*, U.S. NEWS & WORLD REP. (June 12, 2020, 6:00 AM), <https://www.usnews.com/news/the-report/articles/2020-06-12/schools-districts-end-contracts-with-police-amid-ongoing-protests> [<https://perma.cc/WP6K-VVRW>]; *Do Police Officers in Schools Help or Hinder Teachers?*, *supra* note 21.

103. Nat’l Educ. Pol’y Ctr., *supra* note 21, at 1.

104. *Id.*

105. See Viano et al., *supra* note 101, at 254–55.

106. See FLA. STAT. § 1006.12 (2021); KY. REV. STAT. ANN. § 158.4414 (West 2022); MD. CODE ANN., EDUC. § 7-1508(e)(2) (West 2022).

107. See Press Release, Off. of the Tex. Governor, Governor Abbott Unveils Plan To Address School Safety in Texas (May 30, 2018), <https://gov.texas.gov/news/post/governor-abbott-unveils-plan-to-address-school-safety-in-texas> [<https://perma.cc/7LQG-EFTT>].

108. See JAMES & MCCALLION, *supra* note 3, at 2.

109. See Ben Brown, *Evaluations of School Policing Programs in the USA*, in THE PALGRAVE INTERNATIONAL HANDBOOK OF SCHOOL DISCIPLINE, SURVEILLANCE, AND SOCIAL CONTROL 327, 328–29 (Jo Deakin et al. eds., 2018).

responsibilities.¹¹⁰ Scholars who have observed SRO programs report that SROs provide a multitude of services and engage in a wide range of activities that include teaching courses on responsibility and citizenship, serving as informal counselors and liaisons to community resources, and providing safety expertise.¹¹¹ Nevertheless, while SROs' roles and responsibilities vary, one common responsibility that consistently emerges is "law enforcement activities."¹¹² These activities include investigating complaints, minimizing disruption, patrolling school grounds, maintaining order, issuing citations, and making arrests.¹¹³

Scholars believe that SROs' law enforcement activities, particularly those related to maintaining order and minimizing disruption, have caused confusion over whether educators or SROs are responsible for disciplining students when they misbehave.¹¹⁴ This is because almost all types of student misbehavior can be characterized as "disruptive" and "disorderly," which are conditions that law enforcement officers are trained to address.¹¹⁵ Furthermore, SROs have the legal authority to intervene when a student misbehaves. An SRO's authority derives from a "disturbing school statute"¹¹⁶ or from several other statutes that criminalize assault, disorderly conduct, and disturbing the peace.¹¹⁷ Thus, as one scholar concludes, SROs are the "new authoritative agents" of school discipline because law enforcement officers potentially "transform[] student misconduct into a matter to be dealt with by the criminal justice system."¹¹⁸

110. *Id.*

111. See F. CHRIS CURRAN ET AL., UNDERSTANDING SCHOOL SAFETY AND THE USE OF SCHOOL RESOURCE OFFICERS IN UNDERSTUDIED SETTINGS 18–22 (2020); KUPCHIK, *supra* note 1, at 82–95; LAWRENCE F. TRAVIS III & JULIE K. COON, THE ROLE OF LAW ENFORCEMENT IN PUBLIC SCHOOL SAFETY: A NATIONAL SURVEY 37–39 (2005).

112. See CURRAN ET AL., *supra* note 111, at 20–21; KUPCHIK, *supra* note 1, at 84–90; TRAVIS III & COON, *supra* note 111, at 37–39.

113. See JAMES & MCCALLION, *supra* note 3, at 2; KUPCHIK, *supra* note 1, at 84–90; Josh Gupta-Kagan, *Reevaluating School Searches Following School-to-Prison Pipeline Reforms*, 87 *FORDHAM L. REV.* 2013, 2039 (2019).

114. See, e.g., Gupta-Kagan, *supra* note 58, at 102–07; Kerrin C. Wolf, *Assessing Students' Civil Rights Claims Against School Resource Officers*, 38 *PACE L. REV.* 215, 222 (2018); Fedders, *supra* note 73, at 573–74; Joseph B. Ryan et al., *The Growing Concerns Regarding School Resource Officers*, 53 *INTERVENTION SCH. & CLINIC* 188, 188–89 (2018).

115. Na & Gottfredson, *supra* note 85, at 4–5; Andrea N. Montes et al., *Blurred and Confused: The Paradox of Police in Schools*, 15 *POLICING* 1546, 1555 (2021).

116. See *supra* note 58 and accompanying text.

117. See, e.g., CAL. PENAL CODE § 241 (West 2022) (criminalizing assault); FLA. STAT. § 877.03 (2021) (criminalizing acts that breach the peace and disorderly conduct); VA. CODE ANN. § 18.2-415 (2022) (criminalizing disorderly conduct).

118. Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, 34 *J. CRIM. JUST.* 591, 591, 596 (2006).

To clarify the disciplinary roles of SROs and educators and deter SROs from becoming involved in routine disciplinary events, several government agencies and advocacy groups have encouraged schools and law enforcement agencies to enter into Memoranda of Understanding (MOUs) before initiating an SRO program.¹¹⁹ MOUs specify the student misconduct that SROs should address and what should be reserved for educators.¹²⁰ Scholars who evaluated nineteen SRO programs maintain that “[w]hen SRO programs fail to define the SROs’ roles and responsibilities in detail before—or even after—the officers take up their posts in the schools, problems are often rampant—and often last for months and even years.”¹²¹ Scholars and government agencies also emphasize the importance of providing robust training to SROs and educators to avoid students becoming unnecessarily involved in the criminal justice system.¹²² Currently it is unclear exactly how much training SROs receive before assuming their roles.¹²³ However, the limited research that is available suggests that SROs receive too little training in important areas such as how to appropriately de-escalate student conflict and interact with students with disabilities.¹²⁴

Scholars also observe that an increased presence of law enforcement officers in schools further strains students’ already limited constitutional rights.¹²⁵ For example, the U.S. Supreme Court has held that school officials do not need to obtain a warrant or have probable cause to lawfully search a student.¹²⁶ Rather, courts should determine the reasonableness of a search by examining (1) “whether the . . . action was justified at its inception” and (2) “whether the search as actually conducted ‘was reasonably related in scope to the circumstances which justified the interference in the first

119. *See, e.g.*, IND. CODE § 20-26-18.2-2(b) (2021); TEX. EDUC. CODE ANN. § 37.2121 (2021); MD. CODE ANN., EDUC. § 26-102 (West 2022); U.S. DEP’T OF EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE 3, 9–10 (2014) [hereinafter GUIDING PRINCIPLES]; JAMES & MCCALLION, *supra* note 3, at 11.

120. GUIDING PRINCIPLES, *supra* note 119, at 9–10.

121. PETER FINN ET AL., COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS 2 (2005); *see also* JAMES & MCCALLION, *supra* note 3, at 11–12.

122. *See* GUIDING PRINCIPLES, *supra* note 119, at 7–8; PETER FINN & JACK MCDEVITT, NATIONAL ASSESSMENT OF SCHOOL RESOURCE OFFICER PROGRAMS 44 (2005); Javdani, *supra* note 1, at 260–61.

123. *See* Javdani, *supra* note 1, at 260.

124. *Id.* at 260–261.

125. *See* Gupta-Kagan, *supra* note 113, at 2015–18; Nance, *supra* note 14, at 936–40; Catherine Y. Kim, *Policing School Discipline*, 77 BROOK. L. REV. 861, 861–65 (2012); 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).

126. *See* *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985).

place.”¹²⁷ The majority of courts also apply this lower standard of review when SROs participate in a search with school officials or search students on their own, even when the evidence an SRO obtains is used for prosecution purposes.¹²⁸ Likewise, courts have determined that school officials are not required to provide *Miranda* warnings before interrogating a student,¹²⁹ and courts commonly apply this rule even when (1) school officials relay the evidence they obtain to law enforcement for prosecution purposes¹³⁰ or (2) an SRO is present during the interrogation.¹³¹

D. The Consequences of an Increased Law Enforcement Presence in Schools

A recent Congressional Research Service report noted that SRO programs “have emerged as one of the most popular strategies for increasing school safety.”¹³² Proponents of SRO programs argue that a law enforcement presence deters wrongful student behavior not only through surveillance and law enforcement activities, but also because students share information with SROs.¹³³ Proponents also claim that SROs deter school shootings and can serve as first responders if a shooter attacks.¹³⁴ However, the available empirical research assessing the efficacy of SRO programs in creating safe learning environments is mixed at best.¹³⁵

First, as of now there are no rigorous empirical studies that have examined whether a law enforcement presence effectively deters school attacks or minimizes harm once an attack begins.¹³⁶ The limited data available suggest that a law enforcement presence at school does not prevent all school attacks. For example, a recent Congressional Research Service report observed that of the nearly two hundred school shootings that occurred between 1999 and 2018, at least sixty-eight of these schools employed an SRO, including at four

127. *Id.* at 341 (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)).

128. *See, e.g.,* *People v. Dilworth*, 661 N.E.2d 310, 317 (Ill. 1996); *R.D.S. v. State*, 245 S.W.3d 356, 369 (Tenn. 2008); *see also* Gupta-Kagan, *supra* note 113, at 2024–30.

129. *C.S. v. Couch*, 843 F. Supp. 2d 894, 917–20 (N.D. Ind. 2011); *Boynton v. Casey*, 543 F. Supp. 995, 997 (D. Me. 1982).

130. *See* *S.E. v. Grant Cnty. Bd. of Educ.*, 544 F.3d 633, 640–41 (6th Cir. 2008).

131. *See, e.g.,* *State v. J.T.D.*, 851 So. 2d 793, 797 (Fla. Dist. Ct. App. 2003); *In re Tateana R.*, 883 N.Y.S.2d 476, 477–78 (App. Div. 2009); *J.D. v. Commonwealth*, 591 S.E.2d 721, 723–25 (Va. Ct. App. 2004).

132. JAMES & DRAGOO, *supra* note 8, at 1.

133. *See* Gottfredson et al., *supra* note 2, at 908.

134. *Id.*

135. *See* JAMES & DRAGOO, *supra* note 8, at 6–10.

136. *Id.* at 6.

of the five schools where the “worst rampages” took place.¹³⁷ In fact, it is well known that a law enforcement officer was present during the recent shooting at Parkland and failed to intervene.¹³⁸ Furthermore, as the Congressional Research Service report points out, if a school does not employ a full-time SRO, a shooter could attack when the SRO is absent.¹³⁹

Second, it is unclear whether a law enforcement presence effectively deters students from engaging in criminal activities at school. Researchers examining the available empirical research conclude that findings related to whether SRO programs effectively control school crime are conflicting.¹⁴⁰ Conclusions from a recent study by Denise Gottfredson and her colleagues are illustrative. They compared a sample of thirty-three schools that increased SRO levels with a matched sample of seventy-two schools that did not increase SROs levels over the same time period.¹⁴¹ Subsequently, they examined the disciplinary offenses and actions at both sets of schools eleven and twenty months after the increase. They discovered that when SRO staffing levels increased, weapon- and drug-related offenses escalated after eleven months and continued to persist after twenty months. They determined that their study “largely replicated findings from prior research that found that schools whose SROs focused primarily on law enforcement recorded more crimes than non-SRO schools.”¹⁴² They further determined that it would be “difficult to argue that schools are becoming safer when recorded crimes and exclusionary responses persist for so long after the introduction of SROs.”¹⁴³

While the safety benefits associated with an increased law enforcement presence are unclear, the legal and policy implications for students are more established. For example, as demonstrated in Gottfredson et al.’s study, an

137. *Id.* at 10 (citing John Woodrow Cox & Steven Rich, *Scarred by School Shootings*, WASH. POST (Mar. 25, 2018), <https://www.washingtonpost.com/graphics/2018/local/us-school-shootings-history/> [<https://perma.cc/U8ZG-68RN>]).

138. See Gottfredson et al., *supra* note 2, at 931.

139. JAMES & DRAGOO, *supra* note 8, at 10. We are aware, however, of at least one instance where a school shooter decided to attack an elementary school over a middle school because the middle school had an armed security officer. *Id.*

140. See KUPCHIK, *supra* note 10, at 27–31; JAMES & DRAGOO, *supra* note 8, at 6–9 (stating that the “research that is available draws conflicting conclusions about whether SRO programs are effective at reducing school violence”); JAMES & MCCALLION, *supra* note 3, at 8–11 (same); Gottfredson et al., *supra* note 2, at 910–912 (concluding that the available research “fall[s] short of definitively demonstrating the effect of placing SROs on school crime and responses to school crime”); Javdani, *supra* note 1, at 264 (concluding that “the results of studies on the influence of [SROs] on school safety, crime, and arrests are consistent with prior reviews in suggesting a null effect on safety and increases in crime and arrest”).

141. Gottfredson et al., *supra* note 2, at 913–915.

142. *Id.* at 927.

143. *Id.* at 930.

increased law enforcement presence leads to more student arrests, even for nonviolent offenses.¹⁴⁴ A study conducted by Emily Owens also confirmed this trend, although she pursued a different methodological approach.¹⁴⁵ Owens analyzed the relationship between the timing and size of federal grants to fund SRO positions and school-based arrests rates for teenagers and young children.¹⁴⁶ Owens found that the receipt of federal grants was associated with higher school-based arrest rates not only for violent- and weapon-related offenses, but also for non-violent offenses, such as drug and alcohol offenses and property offenses (theft and vandalism).¹⁴⁷ She also discovered that these grants increased the likelihood of: (1) school-based arrests and bookings of young adults (fifteen to nineteen years old) for drug/alcohol offenses; (2) school-based arrests of minors (seven to fourteen years old) for property and drug/alcohol offenses; and (3) school-based arrests and bookings of minors for property offenses.¹⁴⁸ Along similar lines, empirical studies demonstrate the strong connection between a sustained law enforcement presence and schools reporting students to law enforcement for committing various offenses, including lower level offenses.¹⁴⁹

As one may predict, student involvement in the criminal justice system leads to an array of severe negative outcomes.¹⁵⁰ Becoming incarcerated limits students' future education, employment, and housing opportunities.¹⁵¹ Incarcerated youth often do not have access to robust educational opportunities, including job skills training to obtain suitable employment upon their release.¹⁵² In addition, they are more likely to develop violent

144. *See id.*

145. *See* Emily G. Owens, *Testing the School-to-Prison Pipeline*, 36 J. POL'Y ANALYSIS & MGMT. 11, 13 (2016).

146. *Id.*

147. *Id.* at 32.

148. *Id.*

149. *See* Heise & Nance, *supra* note 14; Nance, *supra* note 14, at 969; Na & Gottfredson, *supra* note 85, at 635, 637; Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST. 280, 284–85 (2009); *see also* KUPCHIK, *supra* note 10, at 32 (“I observed many instances where caring SROs worked hard to define misbehavior as a criminal act so they could make an arrest.”).

150. *See* Nance, *supra* note 15, at 319–24.

151. *See* RIYA SHAH & JEAN STROUT, *FUTURE INTERRUPTED: THE COLLATERAL DAMAGE CAUSED BY PROLIFERATION OF JUVENILE RECORDS* 10–11 (2016); BARRY HOLMAN & JASON ZIEDENBERG, *THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES* 9 (2006).

152. *See* HOLMAN & ZIEDENBERG, *supra* note 151, 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).

attitudes and behaviors,¹⁵³ suffer from mental health conditions,¹⁵⁴ and become involved in the criminal justice system in the future.¹⁵⁵ Arresting a student, even if the arrest does not lead to a conviction, is also associated with troubling outcomes. A student arrest can lead to emotional trauma, stigma, and expulsion.¹⁵⁶ It is also associated with lower academic performance and failing to graduate from high school.¹⁵⁷ Failing to graduate from high school, of course, leads to other detrimental outcomes, such as unemployment, poor health, poverty, and increased involvement in the criminal justice system.¹⁵⁸

Furthermore, a sustained law enforcement presence may severely impair a school's climate.¹⁵⁹ Scholars maintain that a healthy school climate is fundamental to providing robust learning opportunities for youth and leads to several positive outcomes, such as lower rates of absenteeism, improved physical and mental health, fewer substance abuse issues, lower rates of suspension, higher academic achievement, and improved graduation rates.¹⁶⁰ Several scholars have observed that a law enforcement presence can alter a school's climate from one that emphasizes rehabilitation to one that is punitive and that emphasizes a criminal justice orientation¹⁶¹ For example,

153. See Anne M. Hobbs et al., *Assessing Youth Early in the Juvenile Justice System*, 3 J. JUV. JUST. 80, 81 (2013); Mark J. Van Ryzin & Thomas J. Dishion, *From Antisocial Behavior to Violence: A Model for the Amplifying Role of Coercive Joining in Adolescent Friendship*, 54 J. CHILD PSYCH. & PSYCHIATRY 661, 661 (2013).

154. See Christopher B. Forrest et al., *The Health Profile of Incarcerated Male Youths*, 105 PEDIATRICS 286, 288–89 (2000); Javid H. Kashani et al., *Depression Among Incarcerated Delinquents*, 3 PSYCH. RES. 185, 190–91 (1980).

155. See ANTHONY PETROSINO ET AL., 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, 113 (1999).

156. See THE ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 12 (2005); Theriot, *supra* note 149, at 281.

157. See Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462 (2006); Paul J. Hirschfield, *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*, 82 SOCIO. EDUC. 368 (2009).

158. See JOHN M. BRIDGELAND ET AL., THE SILENT EPIDEMIC: PERSPECTIVES OF HIGH SCHOOL DROPOUTS 2 (2006); HENRY LEVIN ET AL., THE COSTS AND BENEFITS OF AN EXCELLENT EDUCATION FOR ALL OF AMERICA'S CHILDREN 14 (2006).

159. “[S]chool climate” refers to “the extent to which a school community creates and maintains a safe school campus; a supportive academic, disciplinary, and physical environment; and respectful, trusting, and caring relationships throughout the school community.” GUIDING PRINCIPLES, *supra* note 119, at 5.

160. See Ron Avi Astor et al., *A Call for the Conceptual Integration of Opportunity Structures Within School Safety Research*, 50 SCH. PSYCH. REV. 172 (2021); Matthew J. Cueller, Samantha Coyle & Karly S. Weinreb, *Dealing with the Day-to-Day: Harnessing School Climate To Address the Effects of Student Victimization on Academic Performance*, 58 PSYCH. SCHS. 1799, 1802; Amrit Taylor et al., *A Review of School Climate Research*, 83 REV. EDUC. RES. 357, 357–60 (2013).

161. See KUPCHIK, *supra* note 1, at 115–16; Astor et al., *supra* note 160.

SROs sometimes encourage a heightened disciplinary approach to address student misbehavior,¹⁶² and after SROs arrive, school officials and teachers may expect SROs to address disciplinary events in a criminal justice-oriented manner.¹⁶³ Relatedly, empirical studies reveal that a sustained law enforcement presence is associated with a school's increased reliance on suspensions and expulsions.¹⁶⁴ After conducting ethnographic observations in multiple schools for several months, Aaron Kupchik provided this sobering summary of how a regular law enforcement presence can alter a school's climate:

Having an officer can escalate disciplinary situations; increase the likelihood that students are arrested at school; redefine situations as criminal justice problems rather than social, psychological, or academic problems; introduce a criminal justice orientation to how to administer, prevent and respond to problems; and socialize students to expect a police presence in their lives.¹⁶⁵

E. Racially Disparate Outcomes Associated with the Tightened Intersection

Not all student demographic groups have experienced the tightened intersection between schools and the criminal justice system in the same manner. For example, one of the authors of this Article exploited data from the SSOCS 2009–2010 to examine the characteristics of schools more likely to rely on various combinations of criminal justice-oriented security measures.¹⁶⁶ After controlling for various conditions, such as school crime, school officials' perceptions of neighborhood crime, school disorder, and other school and student characteristics, Nance found that “as the school's percentage of minority students increase[d], the odds of using combinations of security measures also increase[d].”¹⁶⁷ Similarly, Jeremy Finn and Timothy Servoss examined the relationship between race and security measures using data from the Common Core of Data, the Civil Rights Data

162. See KUPCHIK, *supra* note 1, at 94–95; KUPCHIK, *supra* note 10, at 30.

163. See KUPCHIK, *supra* note 1, at 94–95; Theriot, *supra* note 149, at 285 (explaining that “teachers more often are turning to police officers to handle difficult situations”).

164. Benjamin W. Fisher & Emily A. Hennessy, *School Resource Officers and Exclusionary Discipline in U.S. High Schools: A Systematic Review and Meta-Analysis*, 1 ADOLESCENT RES. REV. 217, 229 (2016); Javdani, *supra* note 1, at 263.

165. KUPCHIK, *supra* note 1, at 115; see generally NOLAN, *supra* note 73; VICTOR M. RIOS, PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS (NYU Press 2011).

166. See Jason P. Nance, *Students, Security, and Race*, 63 EMORY L.J. 1, 40 (2013).

167. *Id.* at 40, 41.

Collection, and the Educational Longitudinal Study of 2002.¹⁶⁸ After controlling for various student and school characteristics, they discovered that “the percentage of Black students enrolled [in a school] was more highly related to security levels than was any other characteristic.”¹⁶⁹

We recently conducted a study to identify the characteristics of schools more likely to have regular contact with law enforcement officers.¹⁷⁰ After controlling for conditions, such as school disorder, school officials’ perceptions of neighborhood crime, school size, and other school characteristics, we found that the concentration of African Americans at a school was predictive of regular contact with law enforcement officers among secondary schools during the 2009–2010 and 2015–2016 school years.¹⁷¹ During the 2017–2018 school year, however, when a sustained law enforcement presence become even more prevalent, the concentration of African-American students at a school was no longer a statistically-significant predictor.¹⁷²

In addition, scholars have repeatedly observed racial inequalities with respect to suspensions, expulsions, and other disciplinary measures, even after controlling for student misbehavior, academic achievement, neighborhood context, district and school characteristics, and poverty.¹⁷³

168. Jeremy D. Finn & Timothy J. Servoss, *Security Measures and Discipline in American High Schools*, in CLOSING THE SCHOOL DISCIPLINE GAP: EQUITABLE REMEDIES FOR EXCESSIVE EXCLUSION 44 (Daniel J. Losen ed., 2015).

169. *Id.* at 49. See also Timothy J. Servoss, *School Security and Student Misbehavior: A Multi-Level Examination*, 49 YOUTH & SOC. 755, 767 (2014) (examining the Education Longitudinal Study of 2002 and finding that “students in high security schools are 11.78 times more likely to be African American than White”); Thomas J. Mowen & Karen F. Parker, *Minority Threat and School Security: Assessing the Impact of Black and Hispanic Student Representation on School Security Measures*, 30 SEC. J. 504, 514–19 (2016) (finding that the percentage of American-Americans students was positively connected to the use of intense surveillance measures); Katarzyna T. Steinka-Fry, Benjamin Fisher & Emily E. Tanner-Smith, *Visible School Security Measures Across Diverse Middle and High School Settings: Typologies and Predictors*, 11 J. APPLIED SEC. RES. 422, 424 (2016) (finding that higher concentrations of low-income and African-American students were positively associated with the use of intense surveillance measures).

170. See Jason P. Nance & Michael Heise, *Students, Threat, Race, and Police*, 50 FLA. ST. U. L. REV. (forthcoming 2022).

171. *Id.*

172. *Id.*

173. See U.S. GOV’T ACCOUNTABILITY OFF., K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES 12–14 (2018); Yolanda Anyon et al., *The Persistent Effect of Race and the Promise of Alternatives to Suspension in School Discipline Outcomes*, 44 CHILD. & YOUTH SERVS. REV. 379, 380 (2014); Russell J. Skiba et al., *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCH. 85, 95–101 (2011); Erik J. Girvan, *Towards a Problem-Solving Approach to Addressing Racial Disparities in School Discipline Under Antidiscrimination Law*, 50 MEM. L.R. 995, 1000–03 (2020).

Careful scrutiny of these studies reveals a consistent pattern that explains the context regarding when we should expect to observe greater racial disparities related to disciplinary outcomes.

For example, Eric Girvan and his colleagues analyzed the disciplinary records of over 1.15 million students from over 1,800 schools across the nation.¹⁷⁴ They discovered that racial disparities were more pronounced in office discipline referrals (ODRs) that reflected subjectively defined judgment (e.g., defiance, disruption, disrespect) than for ODRs reflecting objectively defined judgment (e.g., truancy, fighting).¹⁷⁵

Similarly, Francis Huang and Dewey Cornell analyzed over 38,000 student records from 236 schools in Virginia.¹⁷⁶ They found that while Black student suspension rates were higher for verbal misbehavior characterized as arguing or threatening, white student suspension rates were higher for drug, alcohol, and tobacco-related offenses.¹⁷⁷ Black and white student suspension rates were similar for fighting.¹⁷⁸ Huang and Cornell acknowledged that 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.”¹⁷⁹ Nevertheless, they also concluded that their results were “consistent with the view that Black students are suspended disproportionately because of more subjective judgments by school authorities.”¹⁸⁰

Tony Fabelo and his colleagues conducted a comprehensive longitudinal study that involved over 900,000 student records in Texas.¹⁸¹ They analyzed racial disparities involving disciplinary actions for (1) felony offenses requiring mandatory removal under state law (e.g., weapon possession, aggravated assault, sexual assault, drug or alcohol possession) and (2) offenses where school authorities had discretion whether or not to remove students from school.¹⁸² They found that “African-American students had about a 31[%] higher likelihood of a discretionary school disciplinary action,

174. Erik J. Girvan et al., *The Relative Contribution of Subjective Office Referrals to Racial Disproportionality in School Discipline*, 32 SCH. PSYCH. Q. 392, 396 (2016).

175. *Id.* at 400–02.

176. Francis L. Huang & Dewey G. Cornell, *Student Attitudes and Behaviors and Explanations for the Black-White Suspension Gap*, 73 CHILD. & YOUTH SERVS. REV. 298, 301 (2017).

177. *Id.* at 305.

178. *Id.*

179. *Id.*

180. *Id.*

181. TONY FABELO ET AL., *BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW STUDENT DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT* 26, 31–32, 70 (2011).

182. *Id.* at 143.

compared to the rate for otherwise identical white students.”¹⁸³ However, “African-American students had about a 23[%] *lower* likelihood of facing a mandatory school disciplinary action . . . compared to otherwise identical white students.”¹⁸⁴

Likewise, Russell Skiba and his colleagues analyzed disciplinary records of approximately 11,000 students from nineteen middle schools in a large, urban, midwestern public school district.¹⁸⁵ They found that white students were more likely to be referred to school officials for punishment related to more objective offenses, such as smoking, vandalism, leaving without permission, and using obscene language.¹⁸⁶ Black students, on the other hand, were more likely to be referred to school officials for offenses that required more subjective judgment, such as exhibiting threatening behavior, acting disrespectfully, and being too loud.¹⁸⁷

Collectively, these studies suggest that we tend to observe higher levels of racial disparities for offenses that require more subjective judgment, such as offenses based on disrespect, defiance, or disruption. In contrast, we observe fewer racial disparities for offenses that demand less subjective judgment, such as drug and alcohol possession, fighting, and truancy. Accordingly, because most referrals to law enforcement in the school disciplinary context are for objectively defined offenses (e.g., possession of weapons, possession of drugs and alcohol, vandalism, physical altercations),¹⁸⁸ we should expect to observe fewer racial disparities in this area.¹⁸⁹

F. The Effects of Implicit Racial Bias on Decision-Making

Implicit racial bias theory maintains that individuals are inclined to create subconscious associations about certain racial groups automatically,

183. *Id.* at 45.

184. *Id.*

185. Russell J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URB. REV. 317, 323 (2002).

186. *Id.* at 332, 334.

187. *Id.*

188. *See infra* Section II.B.

189. We acknowledge that racial disparities relating to referrals to law enforcement and school-based arrests exist at the national and state levels. *See infra* notes 292–293 and accompanying text. However, as we explain in greater detail in Section III.C, the fact that secondary schools with higher concentrations of African Americans were more likely to have regular contact with law enforcement officers from 2009 (and perhaps earlier) to 2016, *see supra* notes 168–169 and accompanying text, may reconcile why we observe racial disparities at the national and state levels but not at the school level. *See infra* Section III.C.

unintentionally, and effortlessly.¹⁹⁰ Unconscious attitudes and stereotypes can be powerful drivers that influence decision-making.¹⁹¹ Researchers theorize that we develop unconscious attitudes and stereotypes through repeated exposure to connections between racial groups and various traits and concepts.¹⁹² Those living in the United States have been repeatedly exposed to information from various sources associating African Americans with crime, danger, violence, and aggression.¹⁹³ Accordingly, many associate this racial group with these and other negative traits.¹⁹⁴ Empirical research also indicates that individuals can be influenced by unconscious attitudes and stereotypes even when they are inconsistent with their consciously endorsed beliefs, attitudes, and values.¹⁹⁵ Furthermore, implicit bias tends to influence decision-making in situations where individuals “have wide discretion in making quick decisions with little accountability,” when cognitive resources are strained or limited, and when situations exceed an individual’s cognitive ability to fully understand a situation.¹⁹⁶

Researchers have documented the effects of implicit bias on decision-making in several contexts, including in the areas of education and discipline.¹⁹⁷ For example, Jason Okonofua and Jennifer Eberhardt conducted several controlled experiments to measure how decision-making influences decisions related to school discipline.¹⁹⁸ In their experiments, teachers examined a school record of a student who misbehaved once for

190. See Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 L. & HUM. BEHAV. 483, 485 (2004).

191. See Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 946 (2006). An attitude is “an evaluative disposition—that is, the tendency to like or dislike, or to act favorably or unfavorably toward, someone or something.” *Id.* at 948. 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).

192. See L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in the Public Defender Triage*, 122 YALE L.J. 2626, 2628 (2013).

193. *Id.* at 2630.

194. *Id.*; Jennifer L. Eberhardt et al., *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).

195. See Greenwald & Krieger, *supra* note 191, at 951; Jeffery J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1197 (2009); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1514 (2005).

196. See Kent McIntosh et al., *Education Not Incarceration: A Conceptual Model for Reducing Racial and Ethnic Disproportionality in School Discipline*, 5 J. APPLIED RSCH. ON CHILD. 1, 6 (2014); Richardson & Goff, *supra* note 192, at 2628; Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1142 (2012).

197. See Nance, *supra* note 46, at 60–63.

198. See Jason A. Okonofua & Jennifer L. Eberhardt, *Two Strikes: Race and the Disciplining of Young Students*, 26 PSYCH. SCI. 617, 617–18 (2015).

insubordination and once for a classroom disturbance.¹⁹⁹ The race of the misbehaving student was manipulated by using a stereotypical Black name or white name.²⁰⁰ The teachers were then asked a series of questions about the severity of the student's behavior and how the student should be disciplined.²⁰¹ The researchers discovered that when the student was Black, the teachers "felt significantly more troubled by the second infraction," responded that his "misbehavior should be met with more severe discipline," more frequently perceived the student as a "troublemaker," and likely could see themselves suspending the student at a future time.²⁰²

Although educators' implicit biases are most likely not the sole cause for racial disparities related to school discipline,²⁰³ many scholars agree that implicit biases contribute to these disparate outcomes in some form.²⁰⁴ However, as explained above, implicit racial bias is more likely to influence educators' subjectively defined behavior judgments.²⁰⁵ Offenses that require objectively defined judgment, on the other hand, are "more robust to the effects of racial stereotypes and attitudes" and are less likely to result in racial imbalances.²⁰⁶

II. DATA AND EMPIRICAL STRATEGY

We are the first scholars to analyze the nation's leading cross-sectional data set on public school crime and safety at three different junctures spanning a decade, providing a critical longitudinal perspective that reveals important trends. Furthermore, we supplement that data with complimentary

199. *Id.* at 618.

200. *Id.*

201. *Id.*

202. *Id.* at 619–22.

203. See, e.g., Girvan, *supra* note 173, at 1006–10; Skiba et al., *Parsing Disciplinary Disproportionality: Contributions of Infraction, Student, and School Characteristics to Out-of-School Suspension and Expulsion*, 51 AM. EDUC. RES. J. 640, 644–47 (2014); Girvan et al., *supra* note 174, at 393; Jason A. Okonofua et al., *A Vicious Cycle: A Social-Psychological Account of Extreme Racial Disparities in School Discipline*, 11 PERSPS. ON PSYCH. SCI. 381, 382–85 (2016); 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, 635–39 (2011).

204. See Girvan, *supra* note 173, at 1010–12; Okonofua et al., *supra* note 203, at 383–85; Okonofua & Eberhardt, *supra* note 198, at 622–23; McIntosh et al., *supra* note 196, at 4–7; Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 LAW & HUM. BEHAV. 483, 485 (2004). For an extended discussion of implicit racial bias, see Nance, *supra* note 46, at 54–65.

205. Girvan, *supra* note 173, at 1008, 1011.

206. *Id.* at 1011.

information from other long-standing data sets. We test our various hypotheses by estimating fractional response regression models.

A. Data

We exploit data from the SSOCS collected at three stages from 2009 to 2018: the academic years of 2009–2010, 2015–2016, and 2017–2018. We analyze data from restricted-access versions of these three data sets because they provide more detailed variables important to this study, including: (1) the total number of disciplinary acts that occurred at schools during the school year; (2) the total number of incidents reported to law enforcement agencies relative to those acts and (3) more precise student demographic information.²⁰⁷

The National Center for Education Statistics (NCES) created samples for all three SSOCS data sets by drawing from various versions of the Common Core of Data Public Elementary/Secondary School Universe File (CCD),²⁰⁸ which is an “annual collection of fiscal and nonfiscal data on all public schools, public school districts, and state education agencies in the United States.”²⁰⁹ Drawing the samples from the CCD helps ensure that the weighted SSOCS data sets reflect representative samples of the total population of the nation’s public schools.²¹⁰ We exclude from our analyses schools that NCES

207. For a more detailed description of “restricted-use data” see *Restricted Use Data Licenses*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/statprog/instruct.asp> [<https://perma.cc/U464-36D5>]. While the restricted-use data sets are not available to the general public, the public-use files may be downloaded. See *School Survey on Crime and Safety*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/surveys/ssocs/data_products.asp#2016 [<https://perma.cc/S2F6-RA6R>].

208. NAT’L CTR. FOR EDUC. STAT., U.S. DEP’T OF EDUC., 2017–18 SCHOOL SURVEY ON CRIME AND SAFETY (SSOCS): RESTRICTED-USE DATA FILE USER’S MANUAL 13 (2020) [hereinafter 2017–2018 SSOCS MANUAL]; NAT’L CTR. FOR EDUC. STAT., U.S. DEP’T OF EDUC., 2015–16 SCHOOL SURVEY ON CRIME AND SAFETY (SSOCS): RESTRICTED-USE DATA FILE USER’S MANUAL 15 (2018) [hereinafter 2015–2016 SSOCS MANUAL]; NAT’L CTR. FOR EDUC. STAT., U.S. DEP’T OF EDUC., 2009–10 SCHOOL SURVEY ON CRIME AND SAFETY: RESTRICTED-USE DATA FILE USER’S MANUAL 8 (2015) [hereinafter 2009–2010 SSOCS MANUAL].

209. 2017–2018 SSOCS MANUAL, *supra* note 208, at 13.

210. Regarding the SSOCS 2017–2018 data set, the total number of sampled schools was 4,803; of those sampled, 2,762 schools submitted completed questionnaires for an overall weighted response rate of 61.7% (raw response rate of 57.5%). 2017–2018 SSOCS MANUAL, *supra* note 208, at 1. Regarding the SSOCS 2015–2016 data set, the total number of sampled schools was 3,553; of those sampled, 2,092 schools submitted completed questionnaires for an overall weighted response rate of 62.9% (raw response rate of 58.9%). 2015–2016 SSOCS MANUAL, *supra* note 208, at 1. Lastly, regarding the SSOCS 2009–2010 data set, the total number of sampled schools was 3,476; of those sampled, 2,648 schools submitted completed questionnaires for an overall weighted response rate of 80.8% (raw response rate of 76.2%). 2009–2010 SSOCS MANUAL, *supra* note 208, at 1.

classified as anything other than a “regular” public school²¹¹ to facilitate comparability with other empirical work in the education field.²¹² To reduce sampling error, minimize bias that may arise as a result from differences between responding and nonresponding schools, and enhance our ability to draw inferences to the broader universe of “regular” public schools, we weight the data using the final analysis weight variables provided in the SSOCS data sets.²¹³

In addition, we supplement the SSOCS data in two important ways to account for other plausible factors that may influence school officials’ decisions to report student disciplinary events to law enforcement. First, we include state-level information regarding for which specific incidents schools were statutorily obligated to report students to law enforcement officers. As explained in Part I, states have enacted statutes that require schools to refer students to law enforcement for committing a range of actions, such as sexual assault, drug possession, alcohol possession, vandalism, and theft.²¹⁴ These statutes, at least in theory, reduce school officials’ discretion to decide whether to report students to law enforcement for engaging in certain acts regardless of the circumstances.²¹⁵

Second, we include school district-level data on current per pupil spending to facilitate comparisons of financial investments in public education.²¹⁶ To accomplish this, we match district-level spending data from the U.S. Census Bureau’s publicly-available survey of public education and secondary schools to the SSOCS data.²¹⁷ In addition, we adjust the school district-level current per pupil spending data using information from the Comparable Wage

211. NCES defines a “regular public school” as a “public elementary/secondary school providing instruction and education services that does not focus primarily on special education, vocational/technical education, or alternative education, or on any of the particular themes associated with magnet/special program emphasis schools.” 2017–2018 SSOCS MANUAL, *supra* note 208, at 13 n.6.

212. *See, e.g.*, IVY MORGAN & ARY AMERIKANER, THE EDUC. TR., FUNDING GAPS 2018: TECHNICAL APPENDIX 3 (2018) (focusing on “regular” schools in the school finance context).

213. *See, e.g.*, 2017–2018 SSOCS MANUAL, *supra* note 208, at 19–20. For a more detailed description of the characteristics of the final analysis weight variable, see MORGAN & AMERIKANER, *supra* note 212.

214. *See supra* Section I.A.

215. *See supra* Section I.A.

216. Per pupil spending is the most prominent form of facilitating comparisons of student investment in the school finance literature. *See* 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) (assessing leading per pupil spending measures).

217. 2016 *Public Elementary-Secondary Education Finance Data*, U.S. CENSUS BUREAU (2016) [hereinafter U.S. CENSUS BUREAU 2016], <http://www.census.gov/data/tables/2016/econ/school-finances/secondary-education-finance.html> [https://perma.cc/M2NG-5FLP].

Index to account for cost-of-living variations across school district locations.²¹⁸

B. Dependent Variables

The primary analytical focus of this study is to examine the relationship between the presence, as well as the magnitude, of regular contact with law enforcement and a school's rate of reporting student disciplinary incidents to law enforcement agencies from a longitudinal perspective. Relative to each SSOCS data set, schools recorded (1) the total number of disciplinary incidents that occurred during the school year for a range of incidents and (2) the total number of these incidents they reported to police or other law enforcement.²¹⁹ These incidents include rape, sexual assault, robbery (with and without a weapon), physical attack (with and without a weapon), threat of physical attack (with and without a weapon), theft, firearm possession, knife possession, possession of illegal drugs, possession of inappropriate prescription drugs, possession of alcohol, and vandalism.²²⁰ From these data, we create a continuous variable for each of the three time junctures that captures a school's report rate to law enforcement (per 100 students) for all of the student disciplinary incidents listed above. We transform raw report rates to report rates per 100 students to account for variation in school enrollment sizes across the sampled schools.

C. Independent Variables

As we explain above, our primary analytical objective is to examine the relationship between the presence, as well as the magnitude, of regular

218. For a detailed explanation and description of the Comparable Wage Index, see LORI L. TAYLOR & WILLIAM J. FOWLER, JR., U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STAT., A COMPARABLE WAGE APPROACH TO GEOGRAPHIC COST ADJUSTMENT (2006), <https://nces.ed.gov/pubs2006/2006321.pdf> [<https://perma.cc/C8H7-TUUT>]. For a discussion of some of the limitations of the Comparable Wage Index, see, for example, Heise, *supra* note 216, at 154–57; Thomas A. DeLuca, *Instructional Spending Metrics: A Multilevel Analysis Using NCES Data*, 44 J. EDUC. FIN. 23, 42 (2018).

219. See 2017–2018 SSOCS MANUAL, *supra* note 208, at A-16; 2015–2016 SSOCS MANUAL, *supra* note 208, at A-17; 2009–2010 SSOCS MANUAL, *supra* note 208, at A-11.

220. See 2017–2018 SSOCS MANUAL, *supra* note 208, at A-16; 2015–2016 SSOCS MANUAL, *supra* note 208, at A-17; 2009–2010 SSOCS MANUAL, *supra* note 208, at A-11. The SSOCS data derive school administrators' survey responses to, for example, "recorded student incidents." The survey respondents were provided with instructions regarding how the variables would be operationalized to promote consistency in responses across schools. However, to an unknown degree, these data inevitably reflect respondents' interpretations of what constitutes a "student incident" warranting recording. See 2017–2018 SSOCS MANUAL, *supra* note 208, at 41.

contact with law enforcement and a school's reporting rate. Accordingly, our key independent variables include: (1) a dummy variable that signals those schools that reported the presence of any law enforcement officer at their school at least once a week, and (2) a continuous variable assessing the total number of law enforcement officers that had regular contact with a school.²²¹

In addition to its law enforcement presence, the probability that a school would report a student disciplinary incident to law enforcement may have been influenced by a complex interaction of other factors. As such, our models for this focus area include an array of control variables that we loosely organize into two general categories: school- and student-level variables.

1. School-Level Variables

Several school-level variables may have influenced the probability that schools would report disciplinary incidents to law enforcement. These include a school's level of overall "disorder," instability in student enrollment, urbanicity score, and an assessment of the level of crime in the area where the school is located. To measure a school's level of "disorder," we create a variable by indexing a school's total number of recorded disciplinary incidents (per 100 students). We account for student enrollment instability by measuring the total percentage of students who either transferred in or out of the school during each of the respective school years. A school's urbanicity score, which is based on a school's geographic location, is measured on a four-point scale ranging from "rural" to "urban." To account for the level of crime in the area where the school is located, we include a score provided by school officials that measures on a three-point scale their perceptions of the general crime levels in the area in which their school is located.

Although other variables already account for variation in student enrollment across schools, we also include a school's raw student enrollment as a separate independent variable to assess if a school's scale influences whether it reported disciplinary incidents to law enforcement. Indeed, it seems plausible that smaller schools might be better positioned to foster a more positive school climate, which may result in fewer disciplinary reports to law enforcement.²²² Conversely, larger and more impersonal schools may

221. See 2017–2018 SSOCS MANUAL, *supra* note 208, at A-10; 2015–2016 SSOCS MANUAL, *supra* note 208, at A-11; 2009–2010 SSOCS MANUAL, *supra* note 208, at A-9.

222. See Seth Gershenson & Laura Langbein, *The Effect of Primary School Size on Academic Achievement*, 37 EDUC. EVALUATION & POL'Y ANALYSIS, 135, 137 (2015); John R. Slate & Craig

struggle to create a cohesive school community and positive school climate,²²³ which often leads to more student disciplinary issues and the perceived need for tighter measures of student control.²²⁴ For similar—though sufficiently distinct—reasons, we also include a variable that measures each school’s student-to-teacher ratio, as having more adults focused on students’ educational needs also may foster a more positive school climate.²²⁵

Another factor that may contribute to a school’s positive climate is a school’s fiscal strength. Schools with greater resources are better positioned to hire more personnel, fund programs, invest in infrastructure, and foster student engagement, all of which can enhance a school’s climate and reduce student disciplinary incidents.²²⁶ Furthermore, a school’s fiscal strength may capture other unobservable aspects of a school and its culture.

To operationalize a school’s fiscal strength, we include a standard proxy: the annual current per pupil spending for each of the three school years aligned with the SSOCS datasets. We accomplish this by exploiting the leading sources of school district-level per pupil spending data: the U.S. Census Bureau’s annual survey of public elementary and secondary schools for financial information.²²⁷ Furthermore, we supplement the U.S. Census Bureau’s data with data from the U.S. Department of Education’s National Center for Education Statistics Comparable Wage Index to adjust for cost-of-living variations that exist in the thousands of school districts across the nation.²²⁸ We also convert the per pupil spending dollars for each school year

H. Jones, *Effects of School Size: A Review of the Literature with Recommendations*, 13 *ESSAYS EDUC.* 1, 9 (2005); Kathleen Cotton, *School Size, School Climate, and Student Performance*, in *SCHOOL IMPROVEMENT RESEARCH SERIES* (1996), <https://educationnorthwest.org/sites/default/files/SizeClimateandPerformance.pdf> [<https://perma.cc/JYD9-AAA7>].

223. See Slate & Jones, *supra* note 222, at 9; Cotton, *supra* note 222.

224. See Noguera, *supra* note 78, at 345.

225. See U.S. DEP’T OF EDUC., *AN OVERVIEW OF SMALLER LEARNING COMMUNITIES IN HIGH SCHOOLS* 10–14 (2001), https://www2.ed.gov/offices/OVAE/HS/SLCP/slchighschools_research_09_01.doc [<https://perma.cc/5HZK-VGKZ>] (describing the benefits of lower teacher-student ratios).

226. See Nance, *supra* note 15, at 345–62.

227. See *2010 Public Elementary-Secondary Education Finance Data*, U.S. CENSUS BUREAU (2010) [hereinafter U.S. CENSUS BUREAU 2010], <https://www.census.gov/data/tables/2010/econ/school-finances/secondary-education-finance.html> [<https://perma.cc/XK6B-UR53>]; U.S. CENSUS BUREAU 2016, *supra* note 217; *2018 Public Elementary-Secondary Education Finance Data*, U.S. CENSUS BUREAU (2018) [hereinafter U.S. CENSUS BUREAU 2018], <https://www.census.gov/data/tables/2018/econ/school-finances/secondary-education-finance.html> [<https://perma.cc/WHP4-7E22>].

228. For a detailed description of the Comparable Wage Index, see generally TAYLOR & FOWLER, *supra* note 218. For a discussion of the limitations of the Comparable Wage Index, see, for example, Heise, *supra* note 216, at 162–63 and DeLuca, *supra* note 218, at 42.

to 2020 dollars to account for inflation and to facilitate meaningful comparisons across school years. As Table 1 indicates, the mean current per pupil spending (expressed in constant 2020 dollars) for all of the schools in the sample during the 2009–2010 school year was \$13,282.²²⁹ The mean declined to \$11,181 during the 2015–2016 school year, but slightly rebounded to \$12,491 during the 2017–2018 school year.²³⁰

Our decision to include school *district*-level per pupil spending data creates two slight complications. First, not every school in our sample comes from a different school district. For example, for the 2015–2016 SSOCS, the total number of “regular” schools in our sample (1,890) derives from 1,490 different school districts, meaning that 400 schools are from a school district that includes at least one other school in the sample. Of course, the district-level current per pupil spending value does not vary for schools from the same school district. While not ideal, it should not unduly distort our results. Second, it is not uncommon for schools within the same school district to vary in per pupil spending, meaning that the average district-level per pupil spending for each school may not fully reflect the per pupil spending for each school in our study.²³¹ While perhaps also not ideal, researchers that focus on per pupil spending variations normally focus on variation across—rather than within—school districts.²³² Thus, our research facilitates greater comparison among the wide array of studies that examine outcomes associated with variations in district-level per pupil spending.²³³

Because mandatory reporting obligations may also influence the likelihood of schools reporting students to law enforcement, we account for whether school officials were obligated to report various disciplinary

229. See *infra* Table 1.

230. See *infra* Table 1.

231. See, e.g., Ary Amerikaner, *States Are Burying Damning Data About School Funding*, N.Y. TIMES (Jan. 29, 2020), <https://www.nytimes.com/2020/01/29/opinion/school-district-funding-data.html> [<https://perma.cc/82DH-L8A3>] (explaining the variation in consequential per pupil spending that sometimes exists across schools in the same school district); see also Simon Ejdemry & Kenneth A. Shores, *Pulling Back the Curtain: Intra-District School Spending Inequality and Its Correlates* (July 31, 2017) (unpublished manuscript) (on file with author).

232. See generally BRUCE D. BAKER ET AL., EDUC. L. CTR., *IS SCHOOL FUNDING FAIR? A NATIONAL REPORT CARD 11* (7th ed. 2018); BRUCE D. BAKER, CTR. FOR AM. PROGRESS, *AMERICA’S MOST FINANCIALLY DISADVANTAGED SCHOOL DISTRICTS AND HOW THEY GOT THAT WAY* 11, 14, 19, 21, 23–25 (2014); LINDA DARLING-HAMMOND, *THE FLAT WORLD AND EDUCATION* 22 (2010).

233. See Heise, *supra* note 216, at 154–57 for a discussion of the various leading per pupil spending measures.

incidents to law enforcement under prevailing state law.²³⁴ To accomplish this, we identify the relevant statutes and regulations in all fifty states and the District of Columbia that were in place during the 2009–2010, 2015–2016, and 2017–2018 academic years. We code a dummy variable as “1” if there was a clear and relatively unambiguous mandatory reporting obligation in place during the relevant time period in which a student disciplinary incident occurred. We create two separate mandatory reporting variables—one for violent incidents and another for non-violent incidents. We separate the mandatory reporting variables in this manner for two reasons. First, referring students to law enforcement for non-violent offenses (e.g., vandalism; theft; possession of drugs, unauthorized prescription drugs, and alcohol) relates to a different rationale than referring students for violent offenses (e.g., sexual assault, attack with a weapon). Second, this separation facilitates comparison of the results from this study to other studies that separate these variables in a similar manner.²³⁵

The last school-level variable we include in our models is whether the school is an elementary school. The majority of schools in the United States are elementary schools, which is reflected in our samples.²³⁶ And while most school crime and violence occur in secondary schools,²³⁷ we are mindful that one of the most highly-publicized and tragic events of school violence in the United States occurred at Sandy Hook Elementary School in December 2012.²³⁸ Consequently, we approached this study with particular curiosity about how elementary schools may differ from secondary schools with respect to their inclination to create safe schools by reporting student disciplinary incidents to law enforcement agencies. To explore these questions, we include a dummy variable coded as “1” for elementary schools.

234. Our focus on state-specific mandatory reporting statutes implicitly acknowledges that application of federal reporting requirements theoretically should not have varied across the schools in our sample. See *supra* note 50 and accompanying text. However, state-level mandatory reporting requirements varied considerably. See *supra* notes 51–57 and accompanying text.

235. See Nance, *supra* note 14, at 969; Heise & Nance, *supra* note 14.

236. See *infra* Table 1 (indicating that 59% of the sampled schools in both 2009–2010 and 2015–2016 were elementary schools and 60% were elementary schools in 2017–2018).

237. See KE WANG ET AL., U.S. DEP’T OF EDUC., NAT’L CTR. FOR EDUC. STAT., INDICATORS OF SCHOOL CRIME AND SAFETY: 2019, at 130 tbl.1.2 (2020) (showing that the vast majority of school shootings in the last twenty years occurred at a secondary school).

238. James Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. TIMES (Dec. 14, 2012), <https://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html> [<https://perma.cc/5CUD-JCFL>].

2. Student-Focused Variables

We also insert several key student-focused variables in our models, especially factors reflecting student marginalization. Several prior empirical studies document that student marginalization factors may influence a school's approach to school discipline and crime prevention.²³⁹ These student marginalization variables include each school's percentage of Black students, nonwhite students (including Black students), and students in poverty.²⁴⁰ In addition, because multiple prior empirical studies indicate that boys are generally more likely than girls to be disciplined in school,²⁴¹ we also account for a school's percentage of male students.

Table 1 presents basic summary statistics on all of the variables considered in our models. Table 2 contains the summary descriptive statistics of our variables in a disaggregated form. We disaggregate the means pursuant to whether schools had regular contact with law enforcement officers for each of the relevant time periods.

239. See, e.g., U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 173, at 12–14; Nance, *supra* note 46, at 65–73.

240. The variable for students in poverty is measured by students eligible to participate in a free or reduced-lunch program. See Heise, *supra* note 216, at 158, for a general discussion of various student-poverty measures.

241. See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 173, at 16 (reporting that boys are overrepresented among students who receive school discipline); John M. Wallace, Jr. et al., *Racial, Ethnic, and Gender Differences in School Discipline Among U.S. High School Students: 1991–2005*, 59 NEGRO EDUC. REV. 47, 54 (2008) (“Within racial and ethnic subgroups, boys are consistently more likely than girls of the same racial or ethnic group to have experienced school discipline.”).

Table 1: Summary Descriptive Statistics²⁴²

	School Years		
	2009- 2010	2015- 2016	2017- 2018
<i>Dependent Variable:</i>			
Rate of sch. police reports (per 100 students)	1.12	0.77	0.69
<i>Independent Variables:</i>			
Was a full- or part-time SRO/police at sch. (1=yes)	0.36	0.50	0.54
Number of full- and part-time SRO/police at sch.	0.64	0.84	0.89
Sch. student:teacher ratio	16.32	17.79	17.12
Sch. student mobility % (in/out)	15.96	15.05	13.28
Sch. urbanicity scale (rural-to-urban; 1-4)	2.42	2.51	2.53
Sch. disorder report rate (per 100 students)	2.29	1.57	1.61
Sch. area crime scale (low-to-high; 1-3)	1.30	1.31	1.29
Sch. student enrollment	578.04	595.4	604.15
Elementary sch. (1=yes)	0.59	0.59	0.60
Mand. sch. violent incident report req. (1=yes)	0.88	0.90	0.87
Mand. sch. non-violent incident report req. (1=yes)	0.67	0.69	0.67
Sch. student poverty %	51.00	56.15	57.33
Sch. student nonwhite %	37.84	43.1	44.21
Sch. student black %	14.11	12.46	13.24
Sch. student male %	49.05	49.7	50.40
Sch. dist. mean per pupil spending	11,227	11,196	12,223
Sch. dist. mean per pupil spending (2020 \$)	13,282	11,181	12,491
<i>N (unweighted)</i>	2,420	1,890	2,500

242. Reported means derive from the SSOCS weighted sample. 2009–2010 SSOCS MANUAL, *supra* note 208; 2015–2016 SSOCS MANUAL, *supra* note 208; 2017–2018 SSOCS MANUAL, *supra* note 208; U.S. CENSUS BUREAU 2010, *supra* note 227; U.S. CENSUS BUREAU 2016, *supra* note 217; U.S. CENSUS BUREAU 2018, *supra* note 227.

Table 2: Comparing Schools With and Without a Regular Law Enforcement Presence²⁴³

	2009-2010		School Years 2015-2016		2017-2018	
	With	Without	With	Without	With	Without
<i>Dependent Variable:</i>						
Rate of sch. police reports (per 100)	1.96	0.65	1.10	0.44	1.03	0.31
<i>Independent Variables:</i>						
Sch. student:teacher ratio	17.12	15.88	17.14	18.44	17.81	16.32
Sch. student mobility % (in/out)	17.96	14.84	15.62	14.48	13.87	12.60
Sch. urbanicity (rural-to-urban; 1-4)	2.56	2.34	2.53	2.49	2.50	2.55
Sch. disorder report rate (per 100 students)	3.20	1.78	1.91	1.23	1.83	1.36
Sch. area crime scale (low-to-high; 1-3)	1.32	1.28	1.31	1.31	1.29	1.30
Sch. student enrollment	785.29	461.43	714.52	476.29	715.31	475.56
Elementary sch. (1=yes)	0.35	0.73	0.45	0.74	0.47	0.75
Mand. sch. violent incid. rep. req. (1=yes)	0.88	0.88	0.88	0.92	0.86	0.88
Mand. sch. non-vio. incid. rep. req. (1=yes)	0.69	0.66	0.66	0.71	0.66	0.68
Sch. student poverty %	51.75	50.58	55.65	56.65	56.42	58.38
Sch. student nonwhite %	40.95	36.09	42.81	43.38	42.74	45.92
Sch. student black %	17.37	12.28	13.35	11.56	14.83	11.39
Sch. student male %	48.14	49.56	49.54	49.86	50.27	50.55
Sch. dist. mean per pupil spend. (orig. \$s)	10,900	11,406	10,885	11,509	11,521	13,033
<i>N (unweighted)</i>	<i>1,360</i>	<i>1,070</i>	<i>1,270</i>	<i>620</i>	<i>1,740</i>	<i>760</i>

243. Reported means derive from the SSOCS weighted sample. 2009–2010 SSOCS MANUAL, *supra* note 208; 2015–2016 SSOCS MANUAL, *supra* note 208; 2017–2018 SSOCS MANUAL, *supra* note 208; U.S. CENSUS BUREAU 2010, *supra* note 227; U.S. CENSUS BUREAU 2016, *supra* note 217; U.S. CENSUS BUREAU 2018, *supra* note 227.

D. Empirical Strategy

We test our research hypotheses with two distinct, though related, empirical specifications. First, for each of the three time periods, we examine the relationship between the presence of any regular contact with law enforcement and a school's rate of reporting student disciplinary incidents to law enforcement. To accomplish this, we estimate fractional response regression models of a continuous variable—the rate of the school incident reports to law enforcement agencies—bounded between zero and one.²⁴⁴

Second, we examine whether the magnitude of a school's SRO/law enforcement presence influenced a school's propensity to report student disciplinary incidents to law enforcement agencies for each of the three time periods. In similar fashion, we estimate fractional response regression models of the rate of the school incident reports to law enforcement agencies bounded between zero and one.

E. Data and Empirical Strategy Limitations

The SSOCS data manifest many obvious strengths but include limitations as well. First, while the data contains a variety of school- and student-level measures, including information about a school's gender and race/ethnicity profiles, the data do not contain any demographic information on the individual students involved in the disciplinary incidents or who were reported to law enforcement. The absence of this information precludes researchers from assessing whether marginalized students or particular gender groups were reported to law enforcement at disproportionate rates at the individual level.

Second, the data only provide information on how many students were involved in disciplinary incidents and reported to law enforcement. The data do not contain information on what happened to students after they were reported to law enforcement (e.g., whether a report resulted in an arrest, trial, conviction, or none of these). The absence of particularized information on the outcomes of the reports, however, should not detract from our larger point

244. Because our dependent variable is a rate (or fraction) bounded between zero and one (inclusive), we preferred fractional response regression models over other possible models. Because of the possibility of overdispersion, and out of an abundance of caution, we also considered two alternative specifications to test that our core results were robust to model specification. Unreported results from a binominal regression model and a negative binominal regression model using actual raw school-level count data did not materially differ from the results. See *infra* Tables 3, 4. For an example of a similar empirical strategy, see 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).

that any student involvement in the criminal justice system is significant and, at least to some extent, likely alters students' lives in a negative fashion.²⁴⁵ Despite any formal legal consequences, involvement in the justice system is associated with exclusionary discipline, lower academic achievement, failure to graduate, and increased future involvement in the justice system, either as a youth or as an adult.²⁴⁶

Third, our research design limitations prevent us from drawing any causal inferences from our findings or determining causal direction with precision. For example, we understand that decisions to report disciplinary incidents to law enforcement may operate completely independent of having a regular law enforcement presence, which could result from pre-existing crime levels, disruption, or extraordinary past student disciplinary problems. But it is also plausible that a regular law enforcement presence does indeed influence schools' decisions to report disciplinary incidents to law enforcement. To be better positioned to make such causal inferences, we would want to randomly assign SRO/police officers to otherwise identical schools.

Despite these limitations, the SSOCS data allow us to exploit a rich array of control variables to help us disentangle the complex relations between and among our dependent and key independent variables of interest. For example, regarding our hypotheses on the association between the regular presence of law enforcement officers at a school and a school's decision to report a disciplinary event to law enforcement agencies, our models seek to control, as best as the existing data allow, for other factors that may influence a school's decision to report disciplinary incidents to law enforcement. And while research design factors prevent us from making strong causal claims, we nonetheless believe that our results contribute uniquely to the existing knowledge base on school crime and safety and the school-to-prison pipeline literature, particularly because no other researchers, to our knowledge, have examined these trends in a longitudinal manner.

III. RESULTS, DISCUSSION, AND PROPOSALS FOR REFORM

Our empirical analyses reveal critical longitudinal trends that will inform the national discussion on the role of law enforcement officers in schools. In this section, we present our results and consider their legal and policy implications. We also set forth recommendations for reform based on our findings.

245. *See supra* Section I.D.

246. *See supra* Section I.D.

A. A Law Enforcement Presence Is Growing in Schools

We begin by highlighting a more obvious, but important, trend. As Table 1 above displays, our data analysis indicates that both the percentage of schools having regular contact with law enforcement officers and the magnitude of that presence has increased from 2009 to 2018. For example, during the 2009–2010 school year, 36% of the sampled schools had regular contact with law enforcement officers.²⁴⁷ During the 2017–2018 school year, the percentage of sampled schools having regular contact increased to 54%.²⁴⁸ Similarly, during the 2009–2010 school year, the average number of regular law enforcement officers having a regular presence at a school (which also includes schools that reported no regular law enforcement presence) was 0.64.²⁴⁹ During the 2017–2018 school year, the average number increased to 0.89.²⁵⁰ As explained in Part I, the forces driving these increases are multifaceted and complex,²⁵¹ and schools' decisions to partner with law enforcement agencies have salient legal and policy implications for students.²⁵²

B. The Relationship Between Law Enforcement Presence and Schools' Rate of Reporting Students to Law Enforcement Agencies for Disciplinary Events

One of our primary objectives is to examine the association between having any regular police presence at a school and a school's reporting rate to law enforcement for disciplinary offenses. We employ fractional response regression models to examine the relationship between various independent variables and the report rate over the three time junctures. We present the results of our analyses in Table 3 below.

247. *See supra* Table 1.

248. *See supra* Table 1.

249. *See supra* Table 1.

250. *See supra* Table 1.

251. *See supra* Section I.B.

252. *See supra* Section I.D.

Table 3: Fractional Response Regression Models of School Report Rates for All Discipline Incidents to Law Enforcement Agencies over Time Relative to Any Regular Contact with SRO/Police²⁵³

	<i>School Years</i>					
	<i>2009-2010</i>		<i>2015-2016</i>		<i>2017-2018</i>	
Any full- pt.-time SRO/police (1=yes)	1.53**	(0.14)	1.55**	(0.27)	1.87**	(0.20)
Sch. student:teacher ratio	1.00	(0.00)	0.99	(0.01)	1.00	(0.00)
Sch. student mobility % (in/out)	1.01**	(0.00)	1.02*	(0.01)	1.01	(0.00)
Sch. urban. scale (rural-to-urban)	0.92	(0.05)	0.92	(0.07)	1.02	(0.05)
Sch. disorder report rate	1.02**	(0.01)	1.06**	(0.02)	1.07**	(0.01)
Sch. area crime scale (lo-to-hi)	1.25**	(0.10)	1.09	(0.12)	1.22**	(0.09)
Sch. student enrollment	1.00*	(0.00)	1.00	(0.00)	1.00	(0.00)
Elementary sch. (1=yes)	0.18**	(0.02)	0.31**	(0.08)	0.16**	(0.02)
Vio. incident report req. (1=yes)	1.22	(0.16)	0.63	(0.18)	0.66**	(0.09)
Non-vio incident report req. (1=yes)	0.77*	(0.09)	0.86	(0.11)	0.95	(0.09)
Sch. poverty %	1.01*	(0.00)	1.00	(0.00)	1.01**	(0.00)
Sch. nonwhite %	1.01	(0.00)	1.00	(0.00)	1.00	(0.00)
Sch. black %	1.00	(0.00)	1.00	(0.00)	1.00*	(0.00)
Sch. male %	1.01**	(0.00)	0.98	(0.01)	1.01	(0.01)
Sch. dist. mean per pupil spending	1.00	(0.00)	1.00	(0.00)	1.00**	(0.00)
Constant	0.00**	(0.00)	0.03	(0.02)	0.00	(0.00)
Pseudo R ²	0.09		0.08		0.11	
<i>N (unweighted)</i>	2,370		1,890		2,480	

Our analyses reveal that, even after controlling for various school and student characteristics, having regular contact with any magnitude of law enforcement is strongly associated with a school's increased reporting rate of students to law enforcement agencies for committing disciplinary offenses. This relationship holds true for each of the time junctures from 2009 to 2018. Perhaps what is most striking about our findings is that they underscore a

253. The dependent variable is the rate of school reports for all student disciplinary incidents to law enforcement agencies. Robust standard errors, clustered on school district, are noted in parentheses. The models were estimated using the "fracreg logit" command in Stata (v.16.1) and used the odds ratio option and SSOCS weighted data. * $p < 0.05$; ** $p < 0.01$. 2009–2010 SSOCS MANUAL, *supra* note 208; 2015–2016 SSOCS MANUAL, *supra* note 208; 2017–2018 SSOCS MANUAL, *supra* note 208; U.S. CENSUS BUREAU 2010, *supra* note 227; U.S. CENSUS BUREAU 2016, *supra* note 217; U.S. CENSUS BUREAU 2018, *supra* note 227.

consistent feature of having a sustained law enforcement presence in schools—a feature that seems to be under-considered when policymakers discuss the need to bolster school security to protect children. Yet this outcome should not be ignored. As explained above, involving students in the criminal justice system often carries severe consequences.²⁵⁴ Our findings are also consistent with other empirical and observational studies that conclude that having a sustained law enforcement officer presence influences educators to view disciplinary events in a more criminal justice-oriented fashion to address student misconduct.²⁵⁵

We also examined the relationship between the magnitude of sustained law enforcement contact and the report rates of student discipline incidents to law enforcement, again using fractional response regression models. As displayed in Table 4 below, during the 2015–2016 and 2017–2018 school years (but not in 2009–2010), the magnitude of regular law enforcement contact exerted an upward influence on the report rate, providing further support for our hypotheses.

254. See *supra* Section I.D.

255. See KUPCHIK, *supra* note 1, at 115; Heise & Nance, *supra* note 14; Nance, *supra* note 14.

Table 4: Fractional Response Regression Models of School Report Rates for All Student Discipline Incidents to Law Enforcement Agencies over Time Relative to the Magnitude of SRO/Police²⁵⁶

	School Years					
	2009-2010		2015-2016		2017-2018	
Ttl. SRO/police at sch.	1.00	(0.00)	1.03**	(0.01)	1.02**	(0.01)
Sch. student:teacher ratio	1.00	(0.00)	0.99	(0.01)	1.00	(0.00)
Sch. student mobility % (in/out)	1.01**	(0.00)	1.02*	(0.01)	1.01	(0.00)
Sch. urban. scale (rural-to-urban)	0.94	(0.05)	0.93	(0.07)	1.04	(0.05)
Sch. disorder report rate	1.02**	(0.01)	1.06**	(0.02)	1.07**	(0.01)
Sch. area crime scale (lo-to-hi)	1.24**	(0.10)	1.07	(0.12)	1.22**	(0.09)
Sch. student enrollment	1.00**	(0.00)	1.00**	(0.00)	1.00**	(0.00)
Elementary school (1=yes)	0.16**	(0.02)	0.29**	(0.08)	0.13**	(0.02)
Vio. incident report req. (1=yes)	1.22	(0.16)	0.59	(0.19)	0.65**	(0.09)
Non-vio incident report req. (1=yes)	0.77*	(0.09)	0.85	(0.11)	0.95	(0.09)
Sch. poverty %	1.01*	(0.00)	1.00	(0.00)	1.01**	(0.00)
Sch. nonwhite %	1.00	(0.00)	1.00	(0.00)	1.00	(0.00)
Sch. black %	1.00	(0.00)	1.00	(0.00)	1.00	(0.00)
Sch. male %	1.01**	(0.00)	0.98	(0.01)	1.01	(0.01)
Sch. dist. mean per pupil spending	1.00	(0.00)	1.00	(0.00)	1.00**	(0.00)
Constant	0.00	(0.00)	0.04	(0.03)	0.01	(0.00)
Pseudo R ²	0.09		0.08		0.10	
<i>N</i> (unweighted)	2,370		1,890		2,480	

Because (1) the percentage of schools experiencing regular contact with law enforcement increased from 2009 to 2018 and (2) there is a strong connection between regular contact with law enforcement and schools' reporting students to law enforcement agencies, we expected that the overall reporting rate of students to law enforcement also increased over this time period. However, as displayed in Table 5 below, we discovered that the *opposite* was true. Both the rate of school police reports (per hundred

256. The dependent variable is the rate of school reports for all student disciplinary incidents to law enforcement agencies. Robust standard errors, clustered on school district, are noted in parentheses. The models were estimated using the "fracreg logit" command in Stata (v.16.1) and used the odds ratio option and SSOCS weighted data. * $p < 0.05$; ** $p < 0.01$. 2009–2010 SSOCS MANUAL, *supra* note 208; 2015–2016 SSOCS MANUAL, *supra* note 208; 2017–2018 SSOCS MANUAL, *supra* note 208; U.S. CENSUS BUREAU 2010, *supra* note 227; U.S. CENSUS BUREAU 2016, *supra* note 217; U.S. CENSUS BUREAU 2018, *supra* note 227.

students) and the reports as a percentage of total recorded student incidents declined significantly from the 2009–2010 school year to the 2017–2018 school year.²⁵⁷ Specifically, during the 2009–2010 school year, schools on average reported 1.12 disciplinary incidents to law enforcement per hundred students (32.6% of the total incidents recorded).²⁵⁸ But during the 2017–2018 school year, this rate dropped to 0.69 per hundred students (28.15% of the total incidents recorded).²⁵⁹

257. *See infra* Table 5.

258. *See infra* Table 5.

259. *See infra* Table 5.

Table 5: Summary of School Reports to Law Enforcement over Time²⁶⁰

	<i>School Years</i>		
	<i>2009-2010</i>	<i>2015-2016</i>	<i>2017-2018</i>
Rate of sch. police reports (per 100 students)	1.12	0.77	0.69
Sch. police reports as a percentage of total recorded student incidents	32.60	28.0	28.17
<i>N (unweighted)</i>	<i>2,420</i>	<i>1,900</i>	<i>2,500</i>

Disaggregating the data even further, Table 6 reveals that not only did the referral rate decline at schools that had no regular contact with law enforcement, but it also declined significantly, albeit at a slightly lower rate, at schools that had regular contact with law enforcement. For example, during 2009–2010, schools with regular contact on average reported 1.96 disciplinary incidents to law enforcement per hundred students (44.92% of the total incidents recorded).²⁶¹ During the 2017–2018 school year, this rate declined to 1.03 per hundred students (35.72% of the total incidents recorded).²⁶²

260. Reported means and mean rates and percentages derive from SSOCS weighted samples. 2009–2010 SSOCS MANUAL, *supra* note 208; 2015–2016 SSOCS MANUAL, *supra* note 208; 2017–2018 SSOCS MANUAL, *supra* note 208.

261. 2009–2010 SSOCS MANUAL, *supra* note 208.

262. 2017–2018 SSOCS MANUAL, *supra* note 208.

Table 6: Summary of Key “School-to-Prison” Hypothesis Indicators over Time Disaggregated by Having or Not Having Regular Contact with SRO/Police²⁶³

	<i>School Years</i>					
	<i>2009-2010</i>		<i>2015-2016</i>		<i>2017-2018</i>	
	<i>With</i>	<i>Without</i>	<i>With</i>	<i>Without</i>	<i>With</i>	<i>Without</i>
Rate of sch. police reports (per 100)	1.96	0.65	1.10	0.44	1.03	0.31
Sch. police reports as a percentage of total recorded student incidents	44.92	24.54	35.00	19.92	35.72	18.25
<i>N (unweighted)</i>	<i>1,360</i>	<i>1,070</i>	<i>1,270</i>	<i>630</i>	<i>1,740</i>	<i>760</i>

Although the reasons for the decline are unclear, the declining rates imply that schools are responding to an environment that continues to evolve in real time. In addition, schools are most likely reporting fewer events to law enforcement agencies for different reasons. For example, some schools may understand the negative consequences that flow into students’ lives when students become involved in the criminal justice system²⁶⁴ and, accordingly, choose to employ alternative discipline strategies. It is also possible that schools with SRO programs have entered into MOUs with law enforcement agencies. As explained above, MOUs clarify which types of disciplinary actions SROs should address and what should be reserved for educators.²⁶⁵ Following an MOU may result in fewer referrals for lower-level offenses.

Other schools may want to avoid the negative attention that can result from reporting students to law enforcement agencies. The Every Student Succeeds Act mandates that school districts publicly report school-related arrests and referrals to law enforcement as part of their report cards in exchange for federal funds.²⁶⁶ In addition, the U.S. Department of Education’s Office for Civil Rights (OCR) has the authority to “collect or coordinate collection of data necessary to ensure compliance with civil rights laws.”²⁶⁷ Using this authority, the OCR collects data biennially “from nearly all public local educational agencies . . . and schools” in the nation and makes these data

263. Reported means and mean rates derive from the SSOCS weighted samples. 2009–2010 SSOCS MANUAL, *supra* note 208; 2015–2016 SSOCS MANUAL, *supra* note 208; 2017–2018 SSOCS MANUAL, *supra* note 208.

264. *See supra* Section I.D.

265. *See supra* Section I.C.

266. 20 U.S.C. § 6311(h)(1)(C)(viii)(I).

267. 20 U.S.C. § 3413(c)(1).

publicly available in its Civil Rights Data Collection (CRDC).²⁶⁸ Some school officials may avoid reporting students to law enforcement agencies because they do not want parents and the larger community to perceive that their schools are disorderly, dangerous, or punitive, which may cause parents to enroll their children elsewhere.²⁶⁹ Negative school reputations can also depress real estate prices and property valuations, which may anger community members and result in lower tax revenues to support local schools.²⁷⁰ These undesirable outcomes can lead to school officials losing their jobs.²⁷¹

Another distinct possibility that warrants attention is that schools continue to refer students to law enforcement agencies but fail to report these referrals in their public report cards or on U.S. Department of Education surveys, including SSOCS surveys. In October 2020, Daniel Losen and Paul Martinez authored a report examining how racially disparate school discipline affects students' learning opportunities.²⁷² Relying on the 2015–2016 CRDC, Losen

268. See U.S. DEP'T OF EDUC., CIVIL RIGHTS DATA COLLECTION (CRDC) FREQUENTLY ASKED QUESTIONS, <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/crdc.html> [https://perma.cc/75E8-ZYVV].

269. 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 et al., *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/DVP6-LSX9]. 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/2HRD-36TC]. 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/9BCE-HF4H]. 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.*

270. See JONATHAN ROTHWELL, BROOKINGS, HOUSING COSTS, ZONING, AND ACCESS TO HIGH-SCORING SCHOOLS 14–16 (2012) (finding that housing prices are significantly higher for houses located near high-performing schools than houses located near low-performing schools).

271. See Travis et al., *supra* note 269 (reporting that if school crime reports are too high, supervisors of school principals become displeased, and principals “fear for their jobs”).

272. See DANIEL J. LOSEN & PAUL MARTINEZ, LOST OPPORTUNITIES: HOW DISPARATE SCHOOL DISCIPLINE CONTINUES TO DRIVE DIFFERENCES IN THE OPPORTUNITIES TO LEARN, at iv (2020).

and Martinez intended to include a detailed section on student law enforcement referrals and school-based arrests from a national, state, and district perspective.²⁷³ However, they discovered that the 2015–2016 CRDC contained too much missing data to conduct a meaningful study.²⁷⁴ Specifically, they examined data relating to law enforcement referrals and school-related arrests for secondary schools located in the 1,630 school districts that enrolled at least 3,000 secondary students.²⁷⁵ They observed that about 60% of these school districts (including many of the nation’s largest school districts in Boston, Los Angeles, and New York City) reported zero school-related arrests and just over 32% reported zero referrals to law enforcement and zero school-related arrests.²⁷⁶ Losen and Martinez concluded that “referral to law enforcement and school-related arrest data [was] seriously underreported in 2015–2016.”²⁷⁷

In another study, the Southern Poverty Law Center (SPLC) sent public records requests to eight school districts in Louisiana, asking for data related to referrals for law enforcement and school-related arrests from 2015 to 2018.²⁷⁸ From SPLC’s work and news stories, the SPLC learned that these eight school districts had an active law enforcement presence.²⁷⁹ The SPLC also sent public records requests to thirty-three law enforcement agencies inside the boundaries of these eight school districts in an attempt to measure the accuracy of the information reported.²⁸⁰ The SPLC concluded from their study that the eight school districts were “not accurately and consistently collecting data on their school policy programs.”²⁸¹ The majority of these school districts did not provide complete data on referrals to law enforcement and school-based arrests.²⁸² In fact, three school districts admitted that they kept no records at all in these areas.²⁸³

We conducted our own analyses of the three SSOCS data sets to identify the percentage of schools that (1) reported no incidents to law enforcement agencies and (2) did not experience any recorded disciplinary incidents. We report the results below in Table 7.

273. *Id.* at 33.

274. *Id.* at 36.

275. *Id.*

276. *Id.*

277. *Id.* at 4.

278. S. POVERTY L. CTR., *THE DATA GAP: SCHOOL POLICING IN LOUISIANA* 6 (2019).

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.* at 7.

283. *Id.*

Table 7: Percentage of Schools that Reported No Incidents to Law Enforcement and Did Not Experience Any Recorded Disciplinary Incidents²⁸⁴

	<i>School Years</i>		
	<i>2009-2010</i>	<i>2015-2016</i>	<i>2017-2018</i>
Reported no incidents to law enforcement	39.4%	51.5%	52.8%
Did not experience any recorded student disciplinary incidents	14.6%	20.2%	19.8%
<i>N (unweighted)</i>	<i>2,420</i>	<i>1,900</i>	<i>2,500</i>

As Table 7 illustrates, the percentage of schools that reported zero incidents to law enforcement for the school year increased significantly from 2009–2010 to 2017–2018. During the 2009–2010 school year, 39.4% of schools reported no incidents to law enforcement. In 2017–2018, more than half of the schools (52.8%) reported zero incidents to law enforcement. We also observe a steady increase of schools that claimed that they did not experience a single recorded student disciplinary event during the entire school year for any of the fifteen categories of disciplinary events included in the SSOCS survey (14.6% in 2009–2010; 19.8% in 2017–2018).²⁸⁵ Again, while we do not know for certain the reasons for the declining reporting rates, we join Losen and Martinez and the SPLC in expressing concern that many school districts may underreport or fail to keep track of the number of student referrals to law enforcement in violation of federal law.

C. The Relationship Between Race and Reporting Students to Law Enforcement Agencies

Our study also highlights the complex association between race, student discipline, and referrals to law enforcement. As Tables 3 and 4 indicate, a school's percentage of nonwhite students was not predictive of a school's reporting rate to law enforcement at each juncture of the data gathering stage

284. Percentages derive from SSOCS weighted samples. 2009-2010 SSOCS MANUAL, *supra* note 208; 2015-2016 SSOCS MANUAL, *supra* note 208; 2017-2018 SSOCS MANUAL, *supra* note 208.

285. *See supra* note 220 and accompanying text.

from 2009 to 2018.²⁸⁶ Likewise, a school's concentration of African-American students also was not predictive, except during the 2017–2018 school year in Table 3, where it was a statistically significant *negative* predictor, meaning that schools with *lower* concentrations of African-American students were more likely to refer students to law enforcement.²⁸⁷

We emphasize that the SSOCS data sets do not contain racial/ethnic data on the individual students who were referred to law enforcement. Rather, they contain only the percentage of students at a school who were nonwhite and Black. Thus, it is certainly possible that marginalized students in a particular school were disproportionately referred to law enforcement agencies. Our narrower point, however, is that the data do not indicate racial disparities relating to law enforcement referrals at the school level.

Our finding that the concentration of marginalized students at a school was not predictive of referrals to law enforcement may surprise some, especially because racial disparities relating to school discipline, public education, the criminal justice system, and other areas of our society are pervasive.²⁸⁸ Nevertheless, as we explain in Part I, our findings are consistent with our general understanding of the nuanced ways that implicit racial bias may influence decision-making.²⁸⁹ Racial disparities tend to be more pronounced for offenses that require decisionmakers to subjectively characterize behavior, such as whether a student is disruptive, defiant, or disrespectful.²⁹⁰ Conversely, racial disparities are less observable for objectively-defined offenses that require less characterization, such as physical altercations, possession of illegal drugs and alcohol, vandalism, and truancy.²⁹¹ Because objectively-defined offenses are the bases for most referrals to law enforcement, it follows that we should (and do) observe fewer racial disparities related to law enforcement referrals.

Yet, several empirical studies report that African-American students are significantly over-represented at national and state levels with respect to referrals to law enforcement.²⁹² For example, data from the 2011–2012

286. See *supra* Tables 3, 4.

287. See *supra* Table 3.

288. See Nance, *supra* note 36, at 811–16.

289. See *supra* Part I.

290. See *supra* Part I.

291. See *supra* Part I.

292. See OFF. FOR C.R., U.S. DEP'T OF EDUC., CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: SCHOOL DISCIPLINE 1, 6 (2014); 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, 198–99 (2020) (analyzing data from the 2013–2014 Civil Rights Data Collection and concluding that “Black students’ arrest rates were

CRDC shows that although Black students represented only 16% of the total enrollment of students nationally, they represented 27% of students referred to law enforcement.²⁹³ Another recent study we conducted may reconcile these seemingly contradictory outcomes. In that study, we examined the characteristics of schools more likely to have regular contact with law enforcement officers.²⁹⁴ We discovered that “in secondary schools the concentration of African-American students in schools [was] predictive of a sustained law enforcement presence in both [2009–2010] and [2015–2016], but not in [2017–2018] when SROs became even more commonplace.”²⁹⁵ Juxtaposing the findings of this study with that study leads to the following possible reconciliatory explanation: If during the 2009–2010 and 2015–2016 school years (1) secondary schools with higher concentrations of African-Americans were more likely to have regular contact with law enforcement and (2) regular contact with law enforcement led to higher law enforcement referral rates, the logical outcome of these two phenomena is that African-Americans would be over-represented at the state and national levels with respect to law enforcement referrals even though the objective-judgment offenses on which the referrals were based did not lead to racial imbalances at the school level.²⁹⁶

D. Other School-Level and Student-Focused Variables that Predicted Increased Law Enforcement Referral Rates

Other school-level and student-focused variables also emerged as predictive of increased law enforcement referral rates. Notably, two variables emerged as predictive for all three time periods across both analyses displayed in Tables 3 and 4. First, elementary schools were less likely to refer students to law enforcement agencies than secondary schools.²⁹⁷ Although arrests of young children do occur and, when they do, sometimes draw

higher . . . by 1.23 students per 1,000”); Evie Blad & Alex Harwin, *Black Students More Likely To Be Arrested at School*, EDUC. WK. (Jan. 25, 2017), <https://www.edweek.org/ew/articles/2017/01/25/black-students-more-likely-to-be-arrested.html?r=1131109146> [<https://perma.cc/3Q22-JRS3>] (“In 43 states and the District of Columbia, black students are arrested at school at disproportionately high levels.”).

293. See OFF. FOR C.R., *supra* note 292, at 6.

294. See Nance & Heise, *supra* note 170, at 47–56.

295. *Id.* at 52–53.

296. See *supra* Section I.E.2.

297. See *supra* Tables 3, 4.

national attention,²⁹⁸ this finding is unsurprising and refreshing. Involving any student in the criminal justice system is troubling,²⁹⁹ but especially so for very young children.³⁰⁰

Second, a school's disorder rate consistently emerged as predictive for all time periods across both analyses, exerting an upward influence on reporting rates.³⁰¹ Nevertheless, while the existence of a relationship between a school's disorder rate and a school's reporting rate is clear, its causal direction remains unclear. In other words, it is possible that increased disorder led to more law enforcement referrals because school officials working in disorderly schools attempted to stabilize the school environment by introducing a criminal justice-oriented approach to discipline.³⁰² Alternatively, it is possible that more student referrals to law enforcement contributed to a net deterioration of a school's climate which, in turn, fueled a more disorderly environment.³⁰³ Or, even more likely, law enforcement referral rates and school disorder levels interacted and flowed in both directions concurrently, meaning that increased disorder led to increased referrals, which led to even more school disorder.

Other school-level variables emerged as statistically significant, albeit on a less consistent basis. School enrollment was a positive predictor for all three time periods in Table 4, but only emerged as predictive in 2009–2010 in Table 3.³⁰⁴ This implies that, at least to some extent, schools with larger enrollments may have relied more on criminal justice-oriented measures in an attempt to control the school environment. Another empirical study we

298. See, e.g., *Handcuffed 5-Year-Old Sparks Suit*, CBS NEWS (Apr. 25, 2005, 9:40 AM), <https://www.cbsnews.com/news/handcuffed-5-year-old-sparks-suit/> [https://perma.cc/J556-BE27]; Bob Herbert, *6-Year-Olds Under Arrest*, N.Y. TIMES (Apr. 9, 2007), http://www.nytimes.com/2007/04/09/opinion/09herbert.html?_r=0 [https://perma.cc/2N82-7JPQ]; see also Jesselyn McCurdy, *Targets for Arrest*, in FROM EDUCATION TO INCARCERATION: DISMANTLING THE SCHOOL-TO-PRISON PIPELINE 86, 90–93 (Anthony J. Nocella et al. eds., 2014).

299. See *supra* Section I.D.

300. See Bill Hutchinson, *More Than 30,000 Children Under Age 10 Have Been Arrested in the US Since 2013: FBI*, ABC NEWS (Oct. 1, 2019, 6:31 AM), <https://abcnews.go.com/US/30000-children-age-10-arrested-us-2013-fbi/story?id=65798787> [https://perma.cc/2BM6-UMJ7] (describing the detrimental impact of arrest on children).

301. See *supra* Tables 3, 4.

302. See, e.g., KUPCHIK, *supra* note 1, at 115.

303. See Mayer & Leone, *supra* note 47, at 350, 352 (finding that student victimization and school disorder were higher in schools using intense surveillance measures); Matthew P. Steinberg et al., *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) (maintaining that teachers and students reported lower levels of perceived safety in schools relying on more punitive measures to maintain order and control).

304. See *supra* Tables 3, 4.

conducted indicates that larger school districts are more likely to establish relationships with law enforcement agencies generally.³⁰⁵ In addition, the total percentage of students who transferred either in or out of school exerted an upward influence on school reporting rates for both analyses during the 2009–2010 and 2015–2016 school years. Likewise, school officials' perceptions of the crime level in the area where their school is located were also a positive predictor for both analyses during 2009–2010 and 2017–2018. In contrast, school district spending exerted a negative influence on reporting rates during 2017–2018. Curiously, and somewhat inexplicably, state statutory requirements to report students to law enforcement for violent offenses exerted a negative influence on reporting rates during 2017–2018, and state statutory reporting requirements for non-violent offenses exerted a negative influence during 2009–2010.³⁰⁶

Finally, two student-focused variables emerged as statistically significant on a sporadic basis. The first was the concentration of students in poverty, which exerted an upward influence on reporting rates for both analyses in 2009–2010 and 2017–2018.³⁰⁷ This finding is consistent with results from other studies suggesting that schools serving higher concentrations of students in poverty are more likely to rely on punitive measures to maintain order and control.³⁰⁸ The second student-focused variable that emerged as significant was the percentage of male students, which exerted an upward influence in both analyses during the 2009–2010 school year.³⁰⁹ This finding is also consistent with prior studies that found that male students were over-represented in the number of reported disciplinary actions.³¹⁰

E. Implications of Findings and Approaches To Mitigate Against the School-to-Prison Pipeline

Our central finding—that regular contact with law enforcement is strongly connected to schools' increased rate of reporting students to law enforcement agencies from 2009 to 2018—should be carefully considered. This finding is

305. See Nance & Heise, *supra* note 170, at 48.

306. See *supra* Tables 3,4.

307. See *supra* Tables 3,4.

308. See 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, 344–45 (2014) (finding that schools serving higher levels of poor students were more likely to rely on exclusionary security practices); Nance, *supra* note 166, at 40 (finding that student poverty was a strong predictor for using various combinations of security measures).

309. See *supra* Tables 3,4.

310. See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 173, at 16; Wallace, Jr. et al., *supra* note 241, at 54.

important because involving students in the criminal justice system can lead to severe outcomes, even if a referral ultimately does not lead to a conviction.³¹¹ We encourage federal and state governments to support more effective mechanisms to create safe school environments—mechanisms that will lead to more positive student outcomes and avoid involving students in the criminal justice system. Furthermore, it is critical that the U.S. Department of Education enforce schools' legal obligation to accurately report data related to referrals to law enforcement agencies. Accordingly, we set forth two specific recommendations below.

1. Enforce Accurate Reporting of Referrals to Law Enforcement

Few would have predicted that although (1) regular contact with law enforcement officers increased from 2009 to 2018, and (2) regular contact with law enforcement officers is strongly associated with schools' rates of referring students to law enforcement agencies, the overall rate of referrals significantly declined from 2009 to 2018. While we applaud any effort to curb the school-to-prison pipeline, like other researchers, we remain skeptical that the rate of law enforcement referrals has truly declined at such a rapid pace.³¹² Our skepticism is reinforced by the fact that almost 20% of the SSOCS school respondents claimed that they did not experience a single recorded student disciplinary event for any of the fifteen categories of disciplinary events included in the SSOCS survey during the 2017–2018 school year.³¹³

As explained above, to be eligible for federal education funds, the Every Student Succeeds Act requires states and school districts to keep track of and publicly report their total number of referrals to law enforcement in an accurate fashion.³¹⁴ The evidence to date strongly suggests that many school districts are not meeting this requirement.³¹⁵ By not enforcing this legal obligation, the U.S. Department of Education is failing to hold schools accountable for contributing to the school-to-prison pipeline. Furthermore, inaccurate information precludes researchers and the public from fully understanding the effects of establishing partnerships with law enforcement agencies.

We recommend that the U.S. Department of Education establish a random auditing mechanism to ensure that schools report these (and other) data

311. *See supra* Section I.D.

312. *See supra* notes 272–283 and accompanying text.

313. *See supra* Section III.B.

314. 20 U.S.C. § 6311(h)(1)(C)(viii)(I); 20 U.S.C. § 6311(h)(2)(C).

315. *See supra* notes 272–283 and accompanying text.

accurately. For example, hiring private contractors to randomly audit school district data against local law enforcement agencies' data would be an effective safeguard against falsifying data or ignoring the reporting requirement altogether. Very few school districts can afford to lose their federal funding, and this possibility would motivate school districts to fulfill their reporting obligations under federal law.

2. Support for Enhancing School Climates

During the aftermath of the shooting at Columbine High School, the U.S. Department of Education and the U.S. Secret Service conducted a joint study on effective practices to prevent school violence.³¹⁶ They concluded that central components for creating a safe learning climate included cultivating respect among members of the school community, providing emotional support, fostering positive relationships between educators and students, and being cognizant of students' emotional, social, and academic needs.³¹⁷ Similarly, Matthew Steinberg, Elaine Allensworth, and David Johnson conducted a comprehensive study on school safety in the Chicago Public School System.³¹⁸ They discovered that the central characteristic of a safe school was "the quality of relationships between staff and students and between staff and parents."³¹⁹

The U.S. Department of Education emphasized the connection between safe school environments and healthy school climates in 2014 (and should do so again),³²⁰ but the federal and state governments should go further. We recommend that these legislative bodies reduce funding designated for SRO programs and other strict security measures and redirect these funds to help schools establish healthy school climates.³²¹ A positive school climate leads to reduced student aggression and violence, lower rates of student misbehavior, reduced student bullying, and fewer incidents of sexual

316. See ROBERT A. FEIN ET AL., U.S. DEP'T OF EDUC., THREAT ASSESSMENT IN SCHOOLS: A GUIDE TO MANAGING THREATENING SITUATIONS AND TO CREATING SAFE SCHOOL CLIMATES 3-4 (2004).

317. *Id.* at 5-6, 11-12; see also BARBARA FEDDERS ET AL., SCHOOL SAFETY IN NORTH CAROLINA: REALITIES, RECOMMENDATIONS & RESOURCES 6 (2013).

318. MATTHEW P. STEINBERG ET AL., UNIV. CHI. URBAN EDUC. INST., STUDENT AND TEACHER SAFETY IN CHICAGO PUBLIC SCHOOLS: THE ROLES OF COMMUNITY CONTEXT AND SCHOOL SOCIAL ORGANIZATION (2011).

319. *Id.* at 1.

320. See GUIDING PRINCIPLES, *supra* note 119, at 5-11.

321. See FEIN ET AL., *supra* note 316, at 67-74. See Nance, *supra* note 15, at 345-60, for an extended discussion on evidence-based practices to improve school climate and enhance school safety.

harassment.³²² It also leads to higher graduation rates, improved academic achievement, lower rates of student absenteeism, lower suspension rates, fewer substance abuse issues, improved physical and mental health outcomes, and higher motivation levels for learning—all of which promote safer school environments.³²³

CONCLUSION

It is vital that we better understand how students' educational experiences are changing now that law enforcement officers have a sustained presence in more than half of our nation's traditional public schools.³²⁴ We are the first researchers to provide a longitudinal perspective of important trends that have emerged from this phenomenon by examining data spanning a decade. Our analyses reveal that at each time juncture, regular contact with law enforcement is strongly associated with an increased rate at which school officials report students to law enforcement agencies for various disciplinary events, including non-violent offenses.³²⁵ These findings are troubling because involving students in the criminal justice system can lead to severe outcomes.³²⁶

Our study also highlights the complex relationship between race and student discipline. The overall concentration of students of color at a school largely did not influence the rate at which school officials reported students to law enforcement at each data gathering stage.³²⁷ However, these findings are consistent with our understanding of how implicit racial biases operate. Specifically, implicit bias wields greater influence when disciplinary situations require school officials to subjectively characterize behavior.³²⁸ Because the vast majority of law enforcement referrals are for objectively-defined offenses that require less characterization, we should expect to (and do) observe fewer racial disparities related to law enforcement referrals.³²⁹

322. Amrit Thapa et al., *A Review of School Climate Research*, 83 REV. EDUC. RSCH. 357, 361–62 (2013); see also Jonathan Cohen et al., *School Climate: Research, Policy, Practice, and Teacher Education*, 111 TCHRS. COLL. REC. 180, 185 (2009); Stephen Brand et al., *A Large Scale Study of the Assessment of the Social Environment of Middle and Secondary Schools: The Validity and Utility of Teachers' Ratings of School Climate, Cultural Pluralism, and Safety Problems for Understanding School Effects and School Improvement*, J. SCH. PSYCH. 507, 509 (2008).

323. See Astor et al., *supra* note 160, at 2, 9, 11; Thapa et al., *supra* note 322, at 359–60.

324. See *supra* Section III.A.

325. See *supra* Section III.B.

326. See *supra* Section I.D.

327. See *supra* Section III.C.

328. See *supra* Sections I.D., I.E.

329. See *supra* Sections I.D., III.C.

In addition, our study reveals another perplexing trend. Because (1) more schools experienced sustained contact with law enforcement over time, and (2) regular contact with law enforcement is positively associated with the rate at which schools report students to law enforcement, we expected to observe that the overall reporting rate also increased over time. However, the opposite trend emerged: schools' reporting rates during the 2017–2018 school year were far lower than in 2009–2010.³³⁰ We do not know for certain the reasons for this unexpected decline, but the declining rates imply that schools are responding to an environment that continues to evolve in real time. We further suspect, as do other researchers, that many school districts may underreport or fail to keep track of the number of student referrals, in violation of federal law.³³¹ We encourage additional research to identify the precise reasons for this decline. We also recommend that the U.S. Department of Education establish a random auditing mechanism to ensure that schools report these data accurately.

Finally, we call on federal and state legislative bodies to reduce funding for SRO programs and augment support for evidence-based initiatives that promote healthy school climates. Such initiatives will create learning environments that are more inclusive, equitable, and safe—environments where all children have an increased opportunity to reach their potential.³³²

330. *See supra* Section III.B.

331. *See supra* notes 272–283 and accompanying text.

332. *See Nance, supra* note 15, at 345–71.