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## Trauma-Informed Policing: The Impact of Adult and Childhood Trauma on Law Enforcement Officers

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TRAUMA-INFORMED POLICING:  
THE IMPACT OF ADULT AND  
CHILDHOOD TRAUMA ON  
LAW ENFORCEMENT OFFICERS

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& Honorable Amy Dunn Johnson<sup>††††</sup>*

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<sup>†</sup> Dean, Widener University Delaware Law School, University of Pittsburgh School of Law J.D. First, I would like to thank God for putting me in a position to write about and shed light on issues that I find compelling. Second, it has been an honor, as well as a pleasure, to work with Professor cummings, Caleb Conrad, and Judge Amy Johnson. Their passion and intellectual acumen are unparalleled. This is our third article on this topic and I look forward to our continued collaboration. I would also like to thank my mother, Dora L. Clark, my father, Sherwood Hill, and my aunt, Selena Comer, for all of their love and support. Additionally, I would like to thank my son, Jordan K. Clark, as well as my nephews and nieces, for serving as part of my motivation for writing. Hopefully, my writings and work as a professor will one day inspire them to achieve their greatest potential. In addition, I would like to thank my mentors Professor andré douglas pond cummings, Professor Grace Wigal, and Professor Mary Wright for all of the time they dedicated to helping me improve as both a scholar and a law professor. Anything that I have managed to do well as a member of the academy is largely a function of their dedication and vested interest in my success.

<sup>††</sup> Deputy Prosecuting Attorney for the 22nd Judicial District of Arkansas; B.A., University of Arkansas; J.D., University of Arkansas at Little Rock William H. Bowen School of Law. The views expressed in this Article are those shared by me and my co-authors and do not reflect the views or opinions of the office of the Prosecuting Attorney for the 22nd Judicial District of Arkansas. As I do every time this team is published, I want to express my gratitude and admiration for my phenomenal co-authors, who each wear the additional hats of “mentor” and “friend” to me. I also want to extend my thanks to the editorial team at the *Case Western Reserve Law Review* for their hard work in getting this Article to print. Finally, I want to recognize the men and women who endure trauma on the job as law enforcement officers and those who have endured trauma at the hands of the criminal justice system. My sincere hope is that this work, and all the work to come after, can be a small part in mitigating unnecessary traumas and promoting holistic approaches aimed at creating a more equitable and just society.

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††† Associate Dean for Faculty Development and Charles C. Baum Distinguished Professor of Law; Co-director, Center for Racial Justice and Criminal Justice Reform, University of Arkansas at Little Rock William H. Bowen School of Law. J.D., Howard University School of Law. I am grateful to my co-authors and their commitment to improving the legal condition of those who suffer debilitating trauma as children. Further thanks to my research assistants who provided stellar research work, including Katherine James Clark, Madalyn Goolsby, and Sean Rowland. Thanks to the excellent staff at the *Case Western Reserve Law Review* and particularly to EIC Meritt Salathe, who provided excellent editing assistance and content suggestions. I express deep gratitude to the police leaders who sat with us for interviews providing substantive insight and color into childhood trauma and the way that trauma impacts policing decisions made as adults. As usual, any errors within are the sole responsibility of the authors.

†††† B.A., Hendrix College; J.D., University of Arkansas at Little Rock William H. Bowen School of Law. Amy Dunn Johnson is a family court judge for the Sixth Judicial District, which serves Pulaski and Perry Counties in Arkansas. The views stated in this Article are not intended as statements regarding any pending or impending litigation, nor should the content of the Article be construed as any promise or pledge that Judge Johnson would rule in any way that would be inconsistent with the impartial exercise of her duties as a judge.

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## INTRODUCTION

For every six months that a police officer serves in the line of duty, he or she is likely to experience an average of three traumatic events. Such events may include fatal accidents, murders, suicides, and active threats to the life of the officer or someone else.<sup>1</sup> Given the wealth of available data on how trauma reorganizes the nervous system to respond to everyday stimuli as threatening, this is an area that cries for critical exploration, especially in light of the frequency with which unarmed Black civilians are killed at the hands of officers who often make split-second decisions to respond to situations they perceive as dangerous with deadly force.<sup>2</sup>

For police officers of color, on-the-job trauma is often compounded by the lived experience of being a Black or brown person in America. Our previous research has delved into the traumatic fallout of the over-policing of Black youth and its long-term negative health impacts on

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1. Jordan DeVlyder, Monique Lalane & Lisa Fedina, *The Association Between Abusive Policing and PTSD Symptoms Among U.S. Police Officers*, 10 J. SOC'Y SOC. WORK & RSCH. 261, 262 (2019), <https://www.journals.uchicago.edu/doi/full/10.1086/703356#> [<https://perma.cc/5BNT-F92G>].
  2. *Say Their Names*, <https://sayevery.name/say-their-names-list> [<https://perma.cc/6Z2G-46NA>] (last visited Feb. 24, 2023). This list is a work in progress of the names of Black people killed in the United States by law enforcement and civilians. *Id.*

Black people at a population level.<sup>3</sup> As adults, officers of color then face both the persistent stress of living in a society that treats Black lives as disposable and the forceful, public rebukes of abusive police practices that target the very people who look like them. Such critiques, police officers report, add to the stress of an already demanding, hazard-filled profession.<sup>4</sup>

When the undeniable racial dimensions of aggressive policing of communities of color are publicly discussed in the wake of the murder of yet another unarmed Black mother, father, or child, commenters point to the red herring that racism in policing must not exist when such an incident involves a Black police officer who pulls the trigger. It is our assertion that this is not the case. All police officers are subject to implicit racial bias as products of a culture where white supremacy is alive and well, and this is known and documented.

What is not documented is our argument that the trauma that *all* police officers experience in the line of duty, as well as any preexisting childhood trauma that they bring with them, predisposes them at a biological level to overreact to perceived threats in ways that create increased risk for the unnecessary use of deadly force. Black police officers in particular are susceptible given the duality of their roles, although little is known about how this plays out in the context of threatening encounters.

This Article seeks to explore that duality and lay a groundwork for development of further research. We hope to accomplish this, first, by discussing the science of trauma; second, by providing an overview of the history and evolution of policing, including recent innovations (for example, body cameras, community policing, and implicit bias training) intended to reduce the use of force and improve police-community relationships; third, by examining gaps in data and research that could assist in formulating evidence-based approaches for reducing the potential for violent encounters; and finally, by sharing narrative accounts of how traumatic experiences have shaped police officers in their interactions with individuals and communities of color.

## I. THE SCIENCE OF TRAUMA

Trauma is a universal human experience. War, famine, natural disasters, and interpersonal violence have occurred throughout human

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3. See Todd J. Clark, Caleb Gregory Conrad, andré douglas pond cummings & Amy Dunn Johnson, *Trauma: Community of Color Exposure to the Criminal Justice System as an Adverse Childhood Experience*, 90 U. CIN. L. REV. 857, 908–10 (2022) [hereinafter Clark et al., *Trauma*].
  4. See Jeff Mordock, *Traumatized Police Prone to Bad Decisions; Stress Symptoms, Suicides Up*, WASH. TIMES (Feb. 15, 2022), <https://www.washingtontimes.com/news/2022/feb/15/anti-police-climate-contributing-to-ptsd-among-off/> [https://perma.cc/Y8GA-JRY9].

history, across continents and cultures.<sup>5</sup> Our bodies and brains have evolved to efficiently respond to threatening situations through activation of the stress-response system.<sup>6</sup> For those who experience acute traumatic events, this is sometimes considered “tolerable” stress, especially if that person has supportive relationships and circumstances that help buffer the stress caused by the event.<sup>7</sup>

Trauma is an unbearable experience that can ultimately cause the body’s stress-response system to go haywire.<sup>8</sup> We often see this when a person experiences a horrific, acute event that is relived over and over again long after the danger has passed, as with a survivor of a deadly car accident.<sup>9</sup> Likewise, this happens to people who are trapped in highly stressful circumstances for extended periods of time, as domestic violence victims are.<sup>10</sup> These events rewire the nervous system, causing the body to continue responding as though the threat is still lurking, even if it is not.<sup>11</sup>

#### *A. Trauma on the Brain*

The human brain is composed of three substructures. Those include the reptilian brain, consisting of the medulla oblongata and basal ganglia; the mammalian brain, which is composed of the hypothalamus, hippocampus, amygdala, and cingulate cortex; and the neocortex, which primarily consists of the brain’s frontal lobes.<sup>12</sup>

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5. BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* 1 (2014).
  6. *See* NADINE BURKE HARRIS, *THE DEEPEST WELL: HEALING THE LONG-TERM EFFECTS OF CHILDHOOD ADVERSITY* 47 (2018).
  7. *Id.* at 54.
  8. VAN DER KOLK, *supra* note 5, at 1–2.
  9. *Id.* at 65–66.
  10. *See* HARRIS, *supra* note 6, at 47. Prolonged exposure to adversity without the benefit of supportive relationships or circumstances causes health-harming “toxic stress.” *Id.* at 54.
  11. VAN DER KOLK, *supra* note 5, at 53.
  12. VAN DER KOLK *supra* note 5, at 59. The “triune brain” described here is and has been the prevailing theory of how brain structure and function are organized. However, recent neuroscience research suggests that the brain is less hierarchical and more interdependent, drawing on connections between networks in the brain to adapt to internal and external stimuli and make predictions. *See* Patrick Steffen, Dawson Hedges & Rebekka Matheson, *The Brain Is Adaptive, Not Triune: How the Brain Responds to Threat, Challenge, and Change*, *FRONTIERS IN PSYCHIATRY* (Apr. 2022), <https://doi.org/10.3389%2Ffpsyt.2022.802606> [<https://perma.cc/YCY9-X7NS>]. Regardless of which organizational theory one employs, the various brain structures described here and their roles in processing and storing traumatic events are accurate.

Bodily functions that are necessary for life—our heartbeat, sleeping, breathing, urinating, defecating, feeling temperature—are controlled by the reptilian brain. Even infants are born able to regulate these basic functions. As the most ancient part of our brains, it is located in the brain stem, which is right above where the spinal cord enters the skull.<sup>13</sup> It is also a part of the brain that can be thrown into disequilibrium if any of our most basic needs are not met.<sup>14</sup>

Just above the reptilian brain is our mammalian brain, also known as the limbic system. It is a structure shared by other animals that live in groups and care for their young. The limbic system is responsible for our survival-oriented emotions, such as fear, pleasure, and anger, as well as memory formation.<sup>15</sup> This part of the brain develops during the first six years of life, and is shaped both by an individual's genetic makeup and early experiences.<sup>16</sup> Notably, it develops in a “use-dependent manner,” meaning that groups of neurons that fire together repeatedly become a default of sorts; a young child living in an abusive, neglectful home will develop a limbic system that is wired to manage their everyday experiences, including feelings of terror and abandonment.<sup>17</sup>

Finally, the neocortex—which is the top, outermost structure of the brain—is responsible for language, reasoning, imagination, empathy, and impulse control.<sup>18</sup> It is the part of the brain that primarily matures during adolescence, reaching maturity around the age of twenty-five.<sup>19</sup> It can also be affected by trauma, most often by shutting down and leaving more primitive areas of the brain to respond.<sup>20</sup>

When the brain perceives danger, sensory information about the threat is processed in the thalamus, which serves as a relay station for information. That information then takes two paths: first, to the amygdala, which sends signals to the body's autonomic, or unconscious, nervous system so that the body can immediately respond to the threat; and second, to the frontal cortex, which makes a conscious assessment

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13. VAN DER KOLK, *supra* note 5, at 56.

14. *Id.*

15. *Id.* at 56–57.

16. *Id.* at 56, 59.

17. *Id.* at 56 (internal citations omitted).

18. *Id.* at 57–60.

19. Mariam Arain, Maliha Haque, Lina Johal, Puja Mathur, Wynand Nel, Afsha Rais, Ranbir Sandhu & Sushil Sharma, *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 459 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/> [<https://perma.cc/6S34-9UWS>].

20. VAN DER KOLK, *supra* note 5, at 59.

of the information, milliseconds after the amygdala has already caused the body to respond.<sup>21</sup>

When a person experiences trauma, the thalamus's usual process of integrating sensations into our experience shuts down. Instead, time feels frozen, and sights, smells, and sounds are encoded as fragments.<sup>22</sup> This explains why trauma victims are often unable to recall what happened to them in a sequential, narrative fashion.<sup>23</sup> The body's sympathetic nervous system goes into a state of fight, flight, or freeze, ready to respond to protect the survivor from further harm.<sup>24</sup> Memories of trauma can be triggered by stimuli that are similar to those experienced during the traumatic event. Such stimuli are processed by the thalamus and amygdala as danger signals, and the prefrontal cortex's ability to consciously differentiate between the traumatic event and subsequent trigger is impaired.<sup>25</sup> This impairment often results in a traumatized person's inability to differentiate between stimuli that are benign and those that pose actual danger, causing a loss of control over the body's automatic responses to perceived danger.<sup>26</sup>

*B. Childhood Trauma and the ACE Study*

Childhood trauma has a uniquely damaging impact on developing brains and bodies. A child's early experiences, whether good or bad, shape which neural pathways develop and grow.<sup>27</sup> This means that traumatic experiences can permanently affect brain development.<sup>28</sup>

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21. *Id.* at 60. This is the central biological process that explains how implicit bias operates at an unconscious level, such that stereotypes generated and reinforced by society are encoded in our brains as a kind of shortcut for identifying what we are acculturated to recognize as potentially threatening stimuli. *Id.* at 60–61.
  22. *Id.* at 60.
  23. James Hopper & David Lisak, *Why Rape and Trauma Survivors Have Fragmented and Incomplete Memories*, TIME (Dec. 9, 2014, 1:33 PM EST) <https://time.com/3625414/rape-trauma-brain-memory/> [<https://perma.cc/8MSV-Z625>].
  24. The classic “fight or flight” response also includes a reaction where one freezes, or completely shuts down, in response to a traumatic event. VAN DER KOLK, *supra* note 5, at 80–81, 84.
  25. *Id.* at 60.
  26. *Id.* at 60–61.
  27. HARRIS, *supra* note 6, at 145–46.
  28. VAN DER KOLK, *supra* note 5, at 318–20 (providing a narrative to demonstrate the impact childhood trauma has on dissociative behaviors and the relationship with neurofeedback). Dr. Martin Teicher, a leading researcher on the neurological effects of abuse, has published extensively about the impact of childhood trauma on the brain. Of particular note are studies that show changes to areas of the brain involved in decision making and in processing potential threats. *See, e.g.*, Martin H. Teicher,



Moreover, overactivation of the stress-response system in children may occur during critical or sensitive periods during childhood development, at times when the brain is at the height of neuroplasticity.<sup>29</sup>

Adverse Childhood Experiences (ACEs) are traumatic events experienced before the age of eighteen that consist of one or more of the following categories of abuse, neglect, or household dysfunction: (1) recurrent verbal or emotional abuse; (2) recurrent physical abuse; (3) sexual abuse; (4) neglect; (5) living with a person who abused drugs or alcohol; (6) parental separation or divorce; (7) having a mother or stepmother who was treated violently; (8) living with a person suffering from mental illness; (9) incarceration or death of a household member; and (10) social disadvantage, such as financial hardship, housing instability, community violence, and discrimination.<sup>30</sup> We have previously written about ACEs and how the Black experience with law enforcement should be recognized as an ACE.<sup>31</sup>

Perhaps the most devastating impact of childhood trauma is the damage it does to the physical health of adults who experienced traumatic events prior to the age of eighteen. The more childhood adversity a person experiences, the more likely they are to suffer from one of the ten leading causes of death and the more likely they are to

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Susan L. Andersen, Ann Polcari, Carl M. Anderson, Carryl P. Navalta & Dennis M. Kim, *The Neurobiological Consequences of Early Stress and Childhood Maltreatment*, 27 NEUROSCIENCE & BEHAV. REVS. 33, 33–37 (2003).

29. HARRIS, *supra* note 6, at 145–46. “Critical periods” are developmental time frames during which an experience or absence of an experience results in permanent, irreversible change. *Id.* at 144. For example, an infant born with a visual impairment will lose the ability to develop normal binocular vision if it is not detected and addressed before the child reaches the age of seven. *See id.* A “sensitive period” is a developmental stage at which the brain is at its peak neuroplasticity for developing a particular capability, but passage of that stage does not altogether foreclose development of that capability. *Id.* at 145. One example of a sensitive period is language development, which happens most effortlessly and fluently in childhood but can still occur later in life. *Id.*
30. *Id.* at 37, app. 1; Clark et al., *Trauma*, *supra* note 3, at 861. The Center for Community Resilience of the Milken Institute School of Public Health at George Washington University has developed a visual representation of trauma that contextualizes individual ACEs within a larger framework of community, environmental, and societal inequities that feed those ACEs. Trauma is represented as a tree with leaves that represent the outcomes of stress and trauma. It is planted in soil that is steeped in systemic inequities, scarcity of resources, discrimination, violence, and other harmful community influences that compound adversities that families face. CTR. FOR CMTY. RESILIENCE, VISUALIZING THE ISSUE: TRAUMA AND INEQUITY 1 (2022) [https://ccr.publichealth.gwu.edu/sites/g/files/zaxdzs4361/files/2022-06/final\\_poa\\_resiltrees\\_tutorial.pdf](https://ccr.publichealth.gwu.edu/sites/g/files/zaxdzs4361/files/2022-06/final_poa_resiltrees_tutorial.pdf) [<https://perma.cc/DP7H-6AEL>].
31. *See* Clark et al., *Trauma*, *supra* note 3, at 872.

die at a younger age; those who report six or more ACEs die an average of twenty years earlier than individuals who report no ACEs.<sup>32</sup>

The fallout of ACEs reaches beyond their stunning impact on health outcomes. Trauma's destruction extends to families and communities when survivors of childhood trauma commit violence against household members or fellow community members when they reach adulthood. In other words, trauma begets trauma. Men who witnessed domestic violence as children are seven times more likely to abuse their partners than men who were not exposed to household violence.<sup>33</sup> Studies have also shown a correlation between childhood trauma and adult criminality—a frustrating indication that trauma can ignite “a cruel, self-perpetuating intergenerational cycle of trauma and incarceration.”<sup>34</sup>

Our present-day understanding of childhood trauma and its far-reaching impacts traces back to a seminal research study—the now-famous Kaiser Permanente study conducted in the mid-nineties—which uncovered the hidden link between childhood adversity and poor health outcomes.<sup>35</sup> The impetus for the study was a rather accidental connection that Dr. Vincent Felitti of Kaiser Permanente made when, in 1985, he was interviewing a patient at the obesity clinic he led.<sup>36</sup> In a few months, the patient had regained the weight she had worked for a year to lose. Intending to ask the patient how old she was when she

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32. *Id.* at 866; David W. Brown, Robert F. Anda, Henning Tiemeier, Vincent J. Felitti, Valerie J. Edwards, Janet B. Croft & Wayne H. Giles, *Adverse Childhood Experiences and the Risk of Premature Mortality*, 37 AM. J. PREVENTIVE MED., 389, 389 (2009).
  33. VAN DER KOLK, *supra* note 5, at 149. Women who witnessed domestic violence as children are also more likely to end up on the receiving end of domestic violence in their adult partnerships. *Id.* at 148–49.
  34. Clark et al., *Trauma*, *supra* note 3, at 906; *see also* James A. Reavis, Jan Looman, Kristina A. Franco & Briana Rojas, *Adverse Childhood Experiences and Adult Criminality: How Long Must We Live Before We Possess Our Own Lives?*, 17 PERMANENTE J. 44, 46–47 (2013).
  35. Vincent J. Felitti, Robert F. Anda, Dale Nordenberg, David F. Williamson, Alison Spitz, Valerie Edwards, Mary P. Koss & James S. Marks, *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults*, 14 AM. J. PREVENTIVE MED. 245, 245–46 (1998).
  36. Jane Ellen Stevens, *The Adverse Childhood Experiences Study—The Largest Public Health Study You Never Heard of*, HUFFPOST, [https://www.huffpost.com/entry/the-adverse-childhood-exp\\_b\\_1943647](https://www.huffpost.com/entry/the-adverse-childhood-exp_b_1943647) [<https://perma.cc/5JWQ-R9JE>] (Dec. 6, 2017). Dr. Felitti had become frustrated that many of his patients would drop out of his obesity study after successfully losing weight. To figure out why his patients were dropping out, he began interview them. He assumed that his patients “who were 400, 500, 600 pounds would be getting heavier and heavier year after year.” However, after analyzing data for more than 2,000 of his patients, he never observed that phenomenon. *Id.*

first became sexually active, he instead asked her how much she weighed. “Forty pounds,” she replied.<sup>37</sup> The errant question led the patient to reveal a history of sexual abuse that began when she was just four years old.

Dr. Felitti and his team soon made the astonishing realization that most of their morbidly obese patients had suffered sexual abuse as children. Dr. Felitti began incorporating questions about past abuse into his routine checkups. He knew he had uncovered something major.<sup>38</sup> More specifically, Dr. Felitti learned that his patients’ obesity resulted from overeating as a result of the trauma they experienced from childhood sexual abuse. Overeating was a coping mechanism to help to moderate the pain of the sexual abuse. That’s why the weight gain happened abruptly. Moreover, it also explained why the patients were dropping out—the trauma they experienced from the sexual abuse had not been resolved. As such, the response of overeating continued to be a viable mechanism for coping.<sup>39</sup>

Dr. Felitti joined forces with Dr. Robert Anda of the Centers for Disease Control and Prevention in 1995 to conduct an ambitious survey of more than 17,000 patients in the San Diego area. The survey utilized a set of ten questions that probed patient histories of traumatic childhood events, including various forms of abuse and neglect, as well as parental mental illness, substance abuse, incarceration, and domestic violence. One point was assigned for each of the ten categories of childhood adversity that a patient had experienced, with a minimum possible score of zero and a maximum possible score of ten.<sup>40</sup>

The results were striking in at least two respects. First, ACEs are incredibly common. Two-thirds of the responding patients reported at least one ACE. Of that number, 87 percent reported two or more. One out of every six of all patients reported an ACE score of four or more. These findings were especially stark in that they did not even address the prevalence of trauma in struggling or otherwise disadvantaged communities. Most study participants were white, middle-class, educated San Diego residents with ready access to health care.<sup>41</sup>

Second, in comparing patients’ ACE scores with their medical records, Felitti and Anda found a strong dose-response relationship between ACEs and poor health outcomes—an important potential

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37. VAN DER KOLK, *supra* note 5, at 146; Stevens, *supra* note 36 and accompanying text.

38. VAN DER KOLK, *supra* note 5, at 146. Despite the groundbreaking nature of the early research on ACEs, the work was initially met with criticism and then largely forgotten. HARRIS, *supra* note 6, at 40.

39. Stevens, *supra* note 36.

40. VAN DER KOLK, *supra* note 5, at 146–47; Harris, *supra* note 6, at 36–37.

41. VAN DER KOLK, *supra* note 5, at 147.

indicator of causation.<sup>42</sup> In other words, the more ACEs a person had experienced, the higher their risk for such deadly illnesses as cancer and ischemic heart disease.<sup>43</sup> Even though the long-term impacts of trauma differ depending on whether it is experienced during childhood or adulthood, in either case, the nervous system experiences the world with an altered perception of danger.<sup>44</sup>

*C. Trauma and Psychopathology*

From a psychological standpoint, trauma is defined with respect to the three “E’s”: an event, an experience, and an effect. The Substance Abuse and Mental Health Services Administration defines “individual trauma as an event or circumstance resulting in . . . physical harm . . . emotional harm . . . and/or life-threatening harm,” with “lasting adverse effects.”<sup>45</sup>

Within the mental health community, trauma is viewed as a subset of trauma- and stressor-related disorders. Those disorders include post-traumatic stress disorder (PTSD), acute stress disorder, adjustment disorder, reactive attachment disorder, disinhibited social engagement disorder, and both specified and unspecified trauma- and stressor-related disorders.<sup>46</sup> The current edition of the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders* (DSM-V) defines trauma as “[e]xposure to actual or threatened death, serious injury, or sexual violence” that is experienced in one of the following ways: (1) “directly experiencing the traumatic event[]”; (2) directly witnessing the event “as it occurred to others”; (3) “learning that the traumatic event[] occurred to a close family member or close friend”<sup>47</sup>; or (4) “experiencing repeated or extreme exposure to aversive details of [the] traumatic event[],” usually through on-the-job exposure, which is the case for many first responders.<sup>48</sup> In other words, trauma can be experienced directly, as the victim of a crime, or indirectly, as a

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42. HARRIS, *supra* note 6, at 40; Felitti et al., *supra* note 35, at 246.

43. HARRIS, *supra* note 6, at 40.

44. See VAN DER KOLK, *supra* note 5, at 82.

45. *Trauma and Violence*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., <https://www.samhsa.gov/trauma-violence> [<https://perma.cc/R3BS-KYAA>] (Sept. 27, 2022).

46. VA. COMM’N ON YOUTH, TRAUMA- AND STRESSOR-RELATED DISORDERS 2 (2017), <https://vcoy.virginia.gov/documents/collection/018%20Trauma2.pdf> [<https://perma.cc/D9MD-V8TT>]. Of these disorders, reactive attachment disorder and disinhibited social engagement disorder are diagnosed only in children. *Id.*

47. AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 271 (5th ed. 2013) [hereinafter DSM-V]. “In cases of actual or threatened death of a family member or friend, the event[] must have been violent or accidental.” *Id.*

48. *Id.*

witness or third party learning of a traumatic event. The DSM-V's definition recognizes that exposure to traumatic events can result in psychopathology, often taking the form of severe anxiety, dissociation, substance abuse, self-harming behaviors, and hypervigilance.<sup>49</sup>

The DSM-V, which was published in 2013, greatly expanded many of the criteria for a variety of diagnoses—including those associated with trauma. Experts in the field have roundly criticized this expansion, citing the lack of validity and reliability.<sup>50</sup> Of particular concern is the focus on individual pathology and the “surface phenomena” associated with diagnoses, as opposed to any meaningful emphasis on such underlying causes as social conditions and family dynamics.<sup>51</sup>

This critique—which we fully echo—bears an undeniable resemblance to our society's approach to addressing profound flaws in the U.S. system of policing. Until we confront and reckon with the rotten foundations of anti-Blackness and trauma in policing, all the de-escalation training, community policing, and criminal prosecutions of police shootings of civilians will serve as a mere Band-Aid for the violence that police inflict on communities of color.

#### *D. Childhood Trauma and Epigenetics*

Adverse experiences not only negatively influence health and mental health outcomes, but they can cause epigenetic changes as well. Epigenetic changes are “a set of heritable changes that are not coded for in the underlying DNA sequence.”<sup>52</sup> Such changes do not disturb the

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49. VA. COMM'N ON YOUTH, *supra* note 46, at 1, 3 (first citing Tuppett M. Yates, *The Developmental Psychopathology of Self-Injurious Behavior: Compensatory Regulation in Posttraumatic Adaptation*, 24 CLINICAL PSYCH. REV. 35 (2004); then citing Peter M. Thomas, *Protection, Dissociation, and Internal Roles: Modeling and Treating the Effects of Child Abuse*, 7 REV. GEN. PSYCH. 364 (2003); and then citing Judith A. Cohen & Anthony P. Mannarino, *Trauma-Focused Cognitive Behavioral Therapy for Traumatized Children and Families*, 24 CHILD ADOLESCENT PSYCHIATRIC CLINICS N. AM. 557 (2015)).
50. See, e.g., VAN DER KOLK, *supra* note 5, at 166; Leonard Sax, “*Unspecified Mental Disorder*”? *That's Crazy*, WALL ST. J. (June 26, 2013, 7:01 PM), <https://www.wsj.com/articles/SB10001424127887323844804578529030063800200> [<https://perma.cc/8DUD-S25J>]. The DSM-V's diagnostic criteria do not generate consistent, predictable, or replicable results, which is highly problematic from the standpoint of providing appropriate treatment. VAN DER KOLK, *supra* note 5, at 166–67.
51. VAN DER KOLK, *supra* note 5, at 166–67.
52. Jason Lang, Judith McKie, Helen Smith, Angela McLaughlin, Christopher Gillberg, Paul G. Shiels & Helen Minnis, *Adverse Childhood Experiences, Epigenetics and Telomere Length Variation in Childhood and Beyond: A Systematic Review of the Literature*, 29 EUR. CHILD & ADOLESCENT PSYCHIATRY 1329, 1330 (2020). Epigenetic gene expression is believed to allow organisms to rapidly adapt to environmental changes. *Id.*

DNA itself, but they do impact how genes get expressed.<sup>53</sup> In essence, the epigenome is where nature and nurture intersect.

Nobel Prize-winning scientist Dr. Elizabeth Blackburn and health psychologist Dr. Elissa Epel have collaborated on research that specifically examined how telomeres, which are sequences on the end of chromosomes, are affected by certain environmental influences, including adversity.<sup>54</sup> Telomeres are noncoding sequences on the ends of DNA strands that are like “caps” or “bumpers” that protect DNA strands from harm.<sup>55</sup> They bear the brunt of any biochemical damage, allowing the DNA coding sequence itself to remain intact. Once the telomeres suffer a certain level of damage, they send signals to the cell that either cause the cell to die prematurely, as happens with premature aging or when pancreatic cell death causes diabetes; or they send signals that cause the DNA to replicate incorrectly and uncontrollably, as happens in cancer.<sup>56</sup> The longer telomeres are, the more damage they are able to withstand before problems start to happen. Research suggests that adversity experienced in childhood is associated with shorter telomeres in adults.<sup>57</sup>

Dr. Rachel Yehuda of the Icahn School of Medicine at Mount Sinai in Manhattan was on a team of researchers that looked specifically at whether epigenetic changes caused by trauma can be passed down to subsequent generations.<sup>58</sup> After two airplanes struck the twin towers of the World Trade Center on September 11, 2001, Dr. Yehuda and her team treated individuals who had been affected by the disaster. Among the patients who came in were 187 pregnant people who were showing symptoms of PTSD. The clinicians monitored their pregnant patients for a period of months after their babies were born. Many of the mothers had confirmed diagnoses of PTSD and had abnormally low levels of the stress hormone cortisol—a common marker of PTSD.<sup>59</sup>

Researchers tested the saliva of the 9/11 survivors’ babies at nine months and found that the babies also showed unusually low cortisol levels. These findings squared with similar data showing low cortisol levels in the children of Holocaust survivors. Dr. Yehuda and her team now had evidence that the low cortisol levels they were seeing may have

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53. *Id.*

54. *See generally* ELIZABETH BLACKBURN & ELISSA EPEL, *THE TELOMERE EFFECT* (2017).

55. HARRIS, *supra* note 6, at 87; Lang et al., *supra* note 52, at 1329.

56. HARRIS, *supra* note 6, at 87–88.

57. *Id.* at 88–89.

58. *See* Rachel Yehuda, *Trauma in the Family Tree: Parents’ Adverse Experiences Leave Biological Traces in Children*, *SCI. AM.*, July 1, 2022, at 52.

59. *Id.*

been due to epigenetic changes, rather than the impact of being raised by parents suffering from the consequences of severe trauma.<sup>60</sup>

If, in fact, the imprint of trauma is passed down through generations, the ripple effects of the horrors visited upon Black Americans through slavery, Black Codes, Jim Crow laws, lynchings, mass incarceration, and police killings of Black mothers, fathers, and children defy quantification. These traumas represent a historical and biological through line that may very well account for modern-day racial disparities in health.

*E. The Criminal Justice System as a Cause of Trauma*

The American criminal justice system, as it is currently constituted, actively inflicts trauma on Black Americans through over-policing Black communities; imposing racially disparate criminal charges and sentences on Black defendants; perpetuating mass incarceration; and exposing Black families, directly and indirectly, to police brutality.<sup>61</sup> We have previously written at length about the nature and extent of the harm, concluding that the exposure of children of color to the criminal justice system should be classified as an ACE,<sup>62</sup> and in Part II of this Article we trace the extensive, violent history of our country's system of anti-Black policing and its more recent manifestations.

There can be no doubt that the four-year-old daughter of Diamond Reynolds, then the girlfriend of Philando Castile, had to have been utterly traumatized when she witnessed police officer Jeronimo Yanez shoot and kill Castile as she sat in the backseat of the car that Castile was driving. Video from the police car where a handcuffed Reynolds and her daughter were sitting in the immediate aftermath of the killing shows the girl begging her mother to stop crying, saying, "I don't want you to get shot."<sup>63</sup> Although her experience would not qualify as an ACE under the original ACE evaluation rubric,<sup>64</sup> little Diamond was a direct witness to the deadly shooting and, in fact, directly experienced peril from at least one shot that narrowly missed her.<sup>65</sup>

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60. *Id.*

61. See Clark et al., *Trauma*, *supra* note 3, at 859–60, 872, 874–75, 882–84, 886, 905.

62. *Id.* at 899–907.

63. Samantha Schmidt, "I Don't Want You to Get Shot," *Girl, 4, Begged Mother After Philando Castile Shooting*, WASH. POST (June 22, 2017, 2:37 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2017/06/22/i-dont-want-you-to-get-shot-girl-4-begged-mother-after-philando-castile-shooting/> [https://perma.cc/H79U-2GCV].

64. See *supra* note 30 and accompanying text.

65. *Philando Castile Shooting: Bullets Came Close to 4-Year-Old Girl*, CBS NEWS (June 7, 2017, 3:15 PM), <https://www.cbsnews.com/news/philando-castile-shooting-bullets-came-close-to-4-year-old-girl/> [https://perma.cc/SR8W-R7XK].

*F. Protective Factors and the Science of PACEs*

Traumatic experiences do not always result in dysregulation of the body's stress-response system; a growing body of research is showing that protective factors can hedge against the damage that trauma often does to the body's nervous system. Research regarding Positive and Adverse Childhood Experiences, or "PACEs," as they are known, recognizes the extraordinary capacity of our brains and bodies to heal from trauma with appropriate trauma-informed and resilience-building practices.<sup>66</sup> One aspect of this approach, resiliency theory, recognizes that positive situational, social, and individual factors can interrupt negative outcomes associated with trauma.<sup>67</sup> Three broad categories of protective factors include "positive relationships; safe, protective, equitable environments; and healthy development of social and emotional competencies."<sup>68</sup> While these protective factors make the most dramatic difference for children who experience trauma, they can still significantly reduce the negative effects of toxic stress in adults.<sup>69</sup>

Among the protective factors that are gaining the attention of public health experts is the concept of community resilience. The Center for Community Resilience at the Milken Institute School of Public Health at George Washington University has mapped out a visual framework that illustrates the relationship between communities that have access to equitable, trauma-informed support systems and the positive health and social outcomes that these systems generate for individual families and entire communities.<sup>70</sup> One of the key components of a trauma-informed community support system is the existence of "fair policing practices and restorative justice" that are "developed with community input and oversight."<sup>71</sup>

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66. See *PACEs Science 101 (FAQs)—Positive and Adverse Childhood Experiences*, PACEs CONNECTION (Oct. 1, 2019), <https://www.pacesconnection.com/blog/aces-101-faqs> [<https://perma.cc/UL94-UF5Q>].
67. Elizabeth Crouch, Elizabeth Radcliff, Melissa Stropolis & Aditi Srivastav, *Safe, Stable, and Nurtured: Protective Factors Against Poor Physical and Mental Health Outcomes Following Exposure to Adverse Childhood Experiences (ACEs)*, 12 J. CHILD & ADOLESCENT TRAUMA 165, 165 (2019). Dr. Nadine Burke Harris discusses this concept in her description of what constitutes "tolerable stress." HARRIS, *supra* note 6, at 54.
68. Crouch et al., *supra* note 67, at 166. Research has shown that the effects of ACEs may be partially or completely negated by the presence of an adult who creates a sense of safety for a child; having a loving, stable adult in a child's life; or living in a safe, supportive neighborhood. *Id.*
69. See HARRIS, *supra* note 6, at 167.
70. See CTR. FOR CMTY. RESILIENCE, *supra* note 30, at 6. For a brief discussion of the version of the tree that visualizes ACEs and their community contexts, see Clark et al., *Trauma*, *supra* note 3, at 868–69, 907–22.
71. CTR. FOR CMTY. RESILIENCE, *supra* note 30, at 6.



*G. Double Trauma: Black Police Officers*

We hypothesized when we began this project that it was possible that police officers of color will likely have experienced a double trauma in their lives, including being brutalized by law enforcement officers as children and suffering additional trauma as law enforcement professionals of color at the hands of fellow police officers and the communities where they work. Our interviews bore this belief out. In every interview that we conducted with current and former police officers of color, we heard harrowing tales of police misconduct and brutal policing of these officers of color when they were children. We additionally heard experiences of discrimination and harassment that these officers of color faced once they joined police departments across the nation as adults.

These childhood experiences ranged from shotguns being held to the heads of these officers when they were children to being harassed, targeted, and beaten as young men and women by police officers charged with protecting them and their communities. The adult experiences included isolationist tactics and bullying, even outright discrimination as police officers of color. After learning of the harrowing childhood traumas with the police, we wondered why, after suffering such brutalities, these children would grow up to become law enforcement agents themselves. Our interview section that follows sheds light on this double trauma and the ways that police officers of color experience law enforcement in this country.

II. ANTI-BLACK POLICING IN THE UNITED STATES

*A. U.S. Policing's History and  
Time-Honored Tradition of Anti-Black Racism*

Unfortunately, the well-known, alarming statistics surrounding anti-Black racism in America's policing and criminal justice systems must be continuously repeated to remind us of the consequences. Although Black Americans make up only approximately 12 percent of the U.S. population, they make up 38 percent of the over two million people behind bars in the home of the brave and the land of the free.<sup>72</sup> Other studies have shown that not only are Black Americans incarcerated at nearly five times the rate of white Americans in state prisons,<sup>73</sup> but they are also more than three times as likely to be killed

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72. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2022*, PRISON POL'Y INST. (Mar. 14, 2022), <https://www.prisonpolicy.org/reports/pie2022.html> [<https://perma.cc/9WW6-L3GR>].

73. ASHLEY NELLIS, SENT'G PROJECT, *THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 5* (2021), <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> [<https://perma.cc/4UJB-QAJQ>].

during an encounter with law enforcement than similarly situated white Americans.<sup>74</sup> Additionally, Black Americans killed by police were far more likely to be unarmed.<sup>75</sup> Even as these statistics remain startling, they are nothing new, as “police forces from incipency were created to manage, control and intimidate Black bodies.”<sup>76</sup>

As we have argued in our previous works regarding anti-Black policing, “state-sponsored killing of unarmed Black men, women, and children is a deeply rooted [and time-honored] tradition in the United States.”<sup>77</sup> Today, the tense relationship between law enforcement and the Black community seems tattered beyond repair, as the widespread present harms, coupled with the historical trauma of brutality and oppression that American police forces have consistently levied against Black Americans of all ages, have taken their inevitable toll.

In grappling with the current state of relations between law enforcement and Black communities, one must recognize the critical evidence that most police agencies, particularly in the American South, began as slave patrols.<sup>78</sup> For example, the Commonwealth of Virginia “enacted more than 130 slave statutes, and the federal government enacted the Fugitive Slave Laws in 1793 and 1850, all in an effort to

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(stating that in twelve states—Alabama, Delaware, Georgia, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, North Carolina, South Carolina, and Virginia—more than half the state prison population is Black, and seven states—California, Connecticut, Iowa, Maine, Minnesota, New Jersey, and Wisconsin—maintain a Black-white disparity larger than nine to one).

74. Gabriel L. Schwartz & Jaquelyn L. Jahn, *Mapping Fatal Police Violence Across U.S. Metropolitan Areas: Overall Rates and Racial/Ethnic Inequities, 2013–2017*, PLoS ONE, June 24, 2020, at 1, 5, <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0229686&type=printable> [<https://perma.cc/U2UW-N5D7>].
75. Jon Swaine, Oliver Laughland & Jamiles Lartey, *Black Americans Killed by Police Twice as Likely to be Unarmed as White People*, GUARDIAN (June 2, 2015), <https://www.theguardian.com/us-news/2015/jun/01/black-americans-killed-by-police-analysis> [<https://perma.cc/EJ5Z-W3RA>].
76. See Todd J. Clark, Caleb Gregory Conrad, andré douglas pond cummings & Amy Dunn Johnson, *Meek Mill’s Trauma: Brutal Policing as an Adverse Childhood Experience*, 33 ST. THOMAS L. REV. 158, 171 (2021) [hereinafter Clark et al., *Meek Mill*].
77. See Clark et al., *Trauma*, *supra* note 3 at 857, 872–73; see also andré douglas pond cummings, “*Lord Forgive Me, But He Tried to Kill Me*”\*: Proposing Solutions to the United States’ Most Vexing Racial Challenges, 23 WASH. & LEE J. C.R. & SOC. JUST. 3, 8–22 (2016) (designating the three most pressing racial tragedies facing the United States as police killing of unarmed Black men, mass incarceration, and the rate of violent homicide deaths in the Black community).
78. VICTOR E. KAPPELER & LARRY K. GAINES, COMMUNITY POLICING: A CONTEMPORARY PERSPECTIVE 47 (2009).

control black slaves.”<sup>79</sup> Further, “the literature clearly establishes that a legally sanctioned law enforcement system existed in America . . . for the express purpose of controlling the slave population . . . . The similarities between the slave patrols and modern American policing are . . . salient . . . . Hence, the slave patrol should be considered a forerunner of modern American law enforcement.”<sup>80</sup>

This is not to say that modern-day police officers are members of a “slave patrol.” However, the true history of the evolution of American policing must be acknowledged and understood to explain how the system is infected with a sickness of anti-Blackness that continues its history of discrimination and oppression today. With a photograph of a slave patrol badge on the screen behind him, civil rights attorney Jeffery Robinson recently explained in a lecture,

People in my community, from my great-great-great-grandfathers on down, have had a reason to fear that badge. Because the people wearing it and the weapons and guns that they carried were used to oppress us. So the next time you’re wondering, “Why is there such animosity in the Black community when it comes to policing? Why is it such a concern?” *It’s in our DNA.*<sup>81</sup>

As we explained recently in the *University of Cincinnati Law Review*, “A second critical historical truth [to recognize] is that controlling and exploiting Black bodies was literally written into the United States Constitution.”<sup>82</sup> The Fugitive Slave Clause found in Article IV, Section 2, states:

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.<sup>83</sup>

Further, in a compromise between Northern delegates and Southern slaveholding delegates at the 1787 Constitutional Convention, Article I, Section 2 provided that enslaved Black individuals were to be counted as *three-fifths* of a person for purposes of populace representation:

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79. andré douglas pond cummings, *Reforming Policing*, 10 DREXEL L. REV. 573, 579 (2018) (citing KAPPELER & GAINES, *supra* note 78).
80. *Id.* (quoting K.B. Turner, David Giacomassi & Margaret Vandiver, *Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts*, 17 J. CRIM. JUST. EDUC. 181, 186 (2006)).
81. WHO WE ARE: A CHRONICLE OF RACISM IN AMERICA (Netflix 2022) at 33:23 (emphasis added).
82. Clark et al., *Trauma*, *supra* note 3 at 876; *see also* TA-NEHISI COATES, WE WERE EIGHT YEARS IN POWER: AN AMERICAN TRAGEDY 242 (2017).
83. U.S. CONST. art. IV, § 2, *superseded by* U.S. CONST. amend. XIII.

“Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons . . . excluding Indians not taxed, three fifths of all other Persons.”<sup>84</sup> Thus, slavery, anti-Black racism, and discrimination were intentionally and firmly included in the founding documents of the nation. The U.S. Constitution then, as written, dehumanized Black Americans by including these racist ideas and themes in the nation’s governing document.

These themes are not just abstract historical anomalies or part of a biased narrative; instead, they are entrenched in the independence and current governing documents of the United States and many of its fifty states, even today. Most Americans might be surprised that even their beloved national anthem is permeated with echoes of anti-Black racist themes and threats. Francis Scott Key originally penned the lyrics to “The Defense of Fort M’Henry,” what has come to be known as “The Star-Spangled Banner,” in 1814 after witnessing the British bombardment of Fort McHenry while aboard a British ship.<sup>85</sup> However, although the United States famously gained its independence on July 4, 1776, Key’s patriotic war tune did not officially become America’s national anthem until 1931.<sup>86</sup> Some observers postulate that the song’s lyrics—not just those in the first verse sung at sporting events—made it too controversial for the distinction prior to the twentieth century.<sup>87</sup> The following are lines from the third verse of Francis Scott Key’s “The Star-Spangled Banner”:

No refuge could save the hireling and slave  
From the terror of flight or the gloom of the grave  
And the star-spangled banner in triumph doth wave  
O’er the land of the free and the home of the brave<sup>88</sup>

Scholars believe that Key’s words served as a direct threat and warning to enslaved Black people in the colonies against attempting to escape. Author Jefferson Morley explains that the song’s third verse is referring to the British practice of impressment during the War of 1812, where the British forced conscription of American sailors to fight for

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84. See U.S. CONST. art. I, § 2, amended by U.S. CONST. amend. XIV, § 2.

85. Gillian Brockell, *The Ugly Reason “The Star-Spangled Banner” Didn’t Become Our National Anthem for a Century*, WASH. POST (Oct. 18, 2020, 7:30 AM), <https://www.washingtonpost.com/history/2020/10/18/star-spangled-banner-racist-national-anthem/> [<https://perma.cc/BPM5-T2TX>].

86. *Id.*

87. See *id.*

88. FRANCIS SCOTT KEY, *THE STAR-SPANGLED BANNER* (Philadelphia, Pa.: A. Bacon & Co., 1815).

the Royal Navy.<sup>89</sup> As part of this practice, “the British [also] promised refuge to any enslaved Black people who escaped their enslavers” and welcomed men who escaped their enslavement “to join the British Corps of Colonial Marines in exchange for land after their service.”<sup>90</sup> It has been reported that “[a]s many as 4,000 [enslaved Black] people, mostly from Virginia and Maryland, escaped.”<sup>91</sup> Still others disagree about the meaning of the third verse, instead opting to engage in mental gymnastics to make it more patriotic and less racist, but the songwriter’s personal feelings toward Black people and slavery are well documented. Key, a son of a wealthy plantation family, referred to Black people as “a distinct and inferior race of people, which all experience prove to be the greatest evil that afflicts a community” and expressed his support of “[the emancipation of] the enslaved only if they were [all] immediately shipped to Africa.”<sup>92</sup> Key later served as the chief law enforcement officer for the young nation’s capital, a position in which he not only “presided over the daily enforcement of enslavement laws,” but also “bolster[ed] enslavers’ power.”<sup>93</sup> As district attorney, Key prosecuted white anti-slavery activists, pushed for the death penalty of wrongfully convicted slaves, and pushed for President Andrew Jackson to appoint his friend and brother-in-law, Roger B. Taney, Chief Justice of the U.S. Supreme Court.<sup>94</sup> Chief Justice Taney famously authored the decision in *Dred Scott v. Sandford*,<sup>95</sup> which decreed that Black people “had no rights which the White man was bound to respect.”<sup>96</sup>

The United States cannot escape the deep roots of anti-Black racism in its history, tradition, and present institutions. In 2016, the United Nations Working Group of Experts of African Descent acknowledged this inextricable connection when it released the following statement describing the African American experience in the United States:

The colonial history, the legacy of enslavement, racial subordination and segregation, racial terrorism, and racial

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89. See Brockell, *supra* note 85.

90. *Id.*

91. *Id.*

92. *Id.*; Jefferson Morely, *Even Republicans Should Care About the Racist History of “The Star-Spangled Banner,”* WASH. POST (Aug. 28, 2020, 6:00 AM), <https://www.washingtonpost.com/outlook/2020/08/28/even-republicans-should-care-about-racist-history-star-spangled-banner/> [<https://perma.cc/DQ4M-QFPQ>].

93. Morely, *supra* note 92.

94. *Id.*; Brockell, *supra* note 85.

95. 60 U.S. 393 (1856).

96. Brockell, *supra* note 85.

inequality in the US remains a serious challenge as there has been no real commitment to reparations and to truth and reconciliation for people of African descent. Despite substantial changes since the end of the enforcement of Jim Crow and the fight for civil rights, ideology ensuring the domination of one group over another, continues to negatively impact the civil, political, economic, social and cultural rights of African Americans today. The dangerous ideology of white supremacy inhibits social cohesion amongst the US population. Lynching was a form of racial terrorism that has contributed to a legacy of racial inequality that the US must address. Thousands of people of African descent were killed in violent public acts of racial control and domination and the perpetrators were never held accountable.<sup>97</sup>

Thus, as recently as 2016, this group recognized the consistent historical traumas perpetuated on Black men, women, and children in the United States have never been adequately addressed or remedied, and that this oppressive legacy is continued through the actions of police departments across the nation.<sup>98</sup> In fact, the Working Group found that “[c]ontemporary police killings and the trauma it creates are reminiscent of the racial terror lynching of the past. Impunity for state violence has resulted in the current human rights crisis and must be addressed as a matter of urgency.”<sup>99</sup>

Policing in the United States is riddled with toxic anti-Black racism, an infection present since the slave patrols and lynchings in which law enforcement was an active participant. Reforming policing requires an explicit recognition and acknowledgment that American policing is historically and culturally infected with anti-Black racism that permeates present-day policing.<sup>100</sup>

As we stated in our recent article,

The same anti-Black ethos and history that inspired constitutional dehumanization and the eras of slavery, Jim Crow, and lynching run directly through to the twenty-first century police reactions to George Floyd allegedly using a counterfeit \$20 dollar bill, Rayshard Brooks falling asleep in a Wendy’s drive

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97. *Statement to the Media by the United Nations’ Working Group of Experts on People of African Descent, on the Conclusion of Its Official Visit to USA, 19–29 January 2016*, UNITED NATIONS (Jan. 29, 2016), <https://www.ohchr.org/en/statements/2016/01/statement-media-United-Nations-working-group-experts-people-african-descent> [https://perma.cc/J5DT-XXRY].

98. *See id.*; cummings, *Reforming Policing*, *supra* note 79, at 582.

99. *Statement to the Media by the United Nations’ Working Group*, *supra* note 97.

100. cummings, *Reforming Policing*, *supra* note 79, at 582 (describing the anti-Black culture of police departments throughout the United States).

thru, or Sincere Pierce and Angelo Crooms allegedly driving a stolen car. That an alleged small counterfeit bill, falling asleep in a fast-food drive thru, or driving a stolen car would lead to violent death at the hands of U.S. law enforcement forcefully instructs as to the continuing enthrallment, distress, fascination, and anti-Blackness that pervades current law enforcement officers and agencies throughout America.<sup>101</sup>

This ethos likewise rears its ugly historical head in the form of white vigilantism, as Trayvon Martin was killed for wearing a hoodie by wannabe-police officer George Zimmerman and Ahmaud Arbery was hunted down and murdered by white men for jogging through a neighborhood. The line between the history of slave patrols and lynchings and the killing of unarmed Black men, women, and children for minor infractions—or no infraction at all—could not be more direct.

As we previously argued, “Because U.S. law enforcement is truly rooted in anti-blackness and brutal control of African American and other minority men, then reform efforts cannot simply be cosmetic or by buzzword (e.g., ‘all police must receive implicit bias training,’ and ‘all police must wear body cameras’).”<sup>102</sup> Although requiring all police to undertake implicit bias training could be useful and all police should wear body cameras, the very nature of policing in the United States must be radically called out and reconstructed. Only a radical reimagining of policing at every level can find true reform success in this nation. As discussed below, some forward-looking police departments and law enforcement agencies have undertaken efforts that could lead to radical reform and lasting change. A survey of some of the most successful reform efforts follows.

*B. Transformation Through Tragedy:  
Attempts to Improve Policing After George Floyd’s Public Killing*

The senseless murder of George Floyd in May 2020 “ignited a mass movement” across the United States and world “centered on [the] persistent [and pervasive] police violence against Black Americans and intensified [the] calls for systemic change in American policing.”<sup>103</sup> “Amid the earlier losses of Philando Castile, Breonna Taylor, and countless others,” along with the viral videos displaying for the public the lynching of Ahmaud Arbery in broad daylight, “Floyd’s death served as a catalyst for one of the largest social movements in U.S.

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101. Clark et al., *Trauma*, *supra* note 3, at 878.

102. cummings, *Reforming Policing*, *supra* note 79, at 590, 616.

103. Ram Subramanian & Leily Arzy, *State Policing Reforms Since George Floyd’s Murder*, BRENNAN CTR. FOR JUST. (May 21, 2021), <https://www.brennancenter.org/our-work/research-reports/state-policing-reforms-george-floyds-murder> [<https://perma.cc/9XZ5-ZR9V>].

history.”<sup>104</sup> As millions took to the streets in protest across the United States and globe, the majority of the American public could no longer ignore that the nation’s policing and criminal legal systems’ present abuses were “deeply rooted in a history of racial oppression and [the] dehumanization of people of color.”<sup>105</sup> The uprising after Floyd’s murder appeared to be a flashpoint, the culmination of years of “grassroots organizing” and “nearly a decade of the Black Lives Matter Movement . . . , signaling that the [United States was possibly] on the precipice of [needed, overdue] positive change.”<sup>106</sup>

Across the country, local governments sought to respond to the public’s calls for change. In response to several community-led “defund the police” movements, American “cities and counties [began] restructuring how local budgets and law enforcement [work together] in service of public safety. For example, Austin, Los Angeles, and at least [a dozen] other cities pledged to cut police budgets with” the goal of increasing investment in community programs related to “supportive housing and violence prevention.”<sup>107</sup> Other cities looked beyond budgetary changes. “San Francisco launched crisis response teams to respond to behavioral health calls in lieu of police,”<sup>108</sup> “Berkeley voted to limit law enforcement involvement in low-level traffic stops,”<sup>109</sup> and New York City “became the first municipality to end qualified immunity for [police] officers.”<sup>110</sup> Citizens took a direct role in enacting change, as “at least eighteen ballot initiatives strengthening law enforcement oversight” appeared on ballots across the nation, “including in localities like Kyle, Texas, and Columbus, Ohio.”<sup>111</sup>

States have joined localities in responding to calls for change. In the year after Floyd’s murder, twenty-five states and Washington,

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104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*; see also Eric Westervelt, *Removing Cops from Behavioral Crisis Calls: “We Need to Change the Model,”* NPR (Oct. 19, 2020, 5:00 AM), <https://www.npr.org/2020/10/19/924146486/removing-cops-from-behavioral-crisis-calls-we-need-to-change-the-model> [<https://perma.cc/F246-MFVJ>].

109. Subramanian & Arzy, *supra* note 103; see also Eric Westervelt, *Cities Looking to Reform Police Traffic Stops to Combat “Fishing Expeditions,”* NPR (Apr. 16, 2021, 4:16 PM), <https://www.npr.org/2021/04/16/988200868/cities-looking-to-reform-police-traffic-stops-to-combat-fishing-expeditions> [<https://perma.cc/2GS7-MSX7>].

110. Subramanian & Arzy, *supra* note 103; see also Tyler Kendall, *New York City Limits Qualified Immunity, Making It Easier to Sue Police for Misconduct,* CBS NEWS (Mar. 27, 2021, 8:00 AM), <https://www.cbsnews.com/news/nyc-qualified-immunity-police-misconduct/> [<https://perma.cc/CV97-T3T5>].

111. Subramanian & Arzy, *supra* note 103.



D.C., enacted statewide measures addressing “at least one of the three areas directly related to the circumstances of Floyd’s killing: use of force; duty for officers to intervene, report, or render medical aid in instances of police misconduct; and policies relating to law enforcement misconduct reporting and decertification.”<sup>112</sup> Of course, this type of quick government action in the face of public outcry has happened previously, perhaps most recently in 2016 in the fallout over the police killing of Michael Brown in Ferguson, Missouri. Even after the reforms and changes made after Brown’s death, senseless Black deaths at the hands of police continued unabated and will persist even after this round of reactionary enactments if policing in the United States does not dramatically change.

#### 1. Use of Force

Officer Derek Chauvin knelt on George Floyd’s neck for nine minutes and twenty-nine seconds, a use of force that ultimately killed him. In direct response to this nonsensical use of force, several states worked to restrict, or sought to clarify, the types of force officers are permitted to use and under what circumstances they are permitted to use them.<sup>113</sup> The laws most directly related to Floyd’s murder are those passed by nine states and Washington, D.C., that ban use of chokeholds and other neck restraints. Similarly inspired to act by the tragic killing of Adam Toledo, a thirteen-year-old shot and killed by police during a foot chase, five states enacted laws restricting or prohibiting shooting at fleeing vehicles or suspects, eliminating the use of deadly force to prevent escape.<sup>114</sup> State legislatures not only responded to police violence against Black men, women, and children but also addressed law enforcement’s punitive use of nonlethal weapons, such as rubber bullets and tear gas, used during the widespread protests and demonstrations after George Floyd’s murder. At least seven states, however, moved in the opposite direction, passing laws in 2020 and 2021 that restrict the rights of protestors.<sup>115</sup> In fact, in states like Florida and Oklahoma, lawmakers went so far as to protect drivers who intentionally struck protestors with their vehicles from liability in response to the seventy-two such incidents that occurred from May to July 2020.<sup>116</sup>

#### 2. Duty to Intervene

Americans all watched the cell phone video footage of George Floyd’s murder and listened to the onlookers as they pleaded with

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112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

Derek Chauvin to let Floyd breathe.<sup>117</sup> Sadly, in the moments when George Floyd was taking his last breaths, three other Minneapolis police officers, J. Alexander Kueng, Thomas Lane, and Tou Thao, looked on.<sup>118</sup> In February 2022, these officers were found guilty of violating Floyd’s “civil rights while acting under government authority when they failed to give him medical aid.”<sup>119</sup> Officers Kueng and Thao were also found guilty of failing to intervene to stop Chauvin from using excessive force.<sup>120</sup> On October 24, 2022, Kueng pled guilty to aiding and abetting second-degree manslaughter in exchange for the murder count being dismissed.<sup>121</sup> Kueng was sentenced to three-and-a-half years in prison for his role in Floyd’s killing.<sup>122</sup> Thao, showing no remorse or admitting any wrongdoing, agreed to a stipulated evidence trial on the aiding and abetting manslaughter count and was sentenced to four years and nine months in prison.<sup>123</sup> Holding officers accountable for their actions—or deadly inaction—is crucial.

In addition to acting on officer use of force, some states also sought to address officers’ duty to intervene and render medical aid. After Floyd’s death, “twelve states and DC have created a duty for law enforcement officers to intervene in cases of excessive or illegal force or misconduct” and implemented “penalties for officers who fail to do so ranging from discretionary decertification to criminal liability.”<sup>124</sup> “[E]ight states created a duty to render medical aid for anyone,”

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117. *George Floyd (I Can’t Breathe) Original Full Video by Darnella Frazier*, YOUTUBE, <https://www.youtube.com/watch?v=prZ-bYOUuZo> [<https://perma.cc/DDK2-XL37>] (last visited Oct. 3, 2023).

118. *See Daniella Silva, 3 Officers Found Guilty on Federal Charges in George Floyd’s Killing*, NBC NEWS (Feb. 25, 2022, 7:30 AM), <https://www.nbcnews.com/news/us-news/jury-reaches-verdict-federal-trial-3-officers-george-floyds-killing-rcna17237> [<https://perma.cc/PED2-322E>].

119. *Id.*

120. *Id.*

121. Amy Forliti, *1 Plea, 1 Alternate Approach Avert Trial over Floyd’s Death*, AP NEWS (Oct. 24, 2022, 5:53 PM), <https://apnews.com/article/death-of-george-floyd-j-alexander-kueng-thomas-lane-tou-thao-e9d40eae8ac193e61f07004323a3193d> [<https://perma.cc/L5B8-KQHL>].

122. Ray Sanchez and Brad Parks, *Former Minneapolis Police Officer Who Helped Restrain George Floyd Sentenced to 3 ½ Years in Prison*, CNN (Dec. 9, 2022, 3:14 PM), <https://www.cnn.com/2022/12/09/us/George-floyd-alexander-kueng-sentencing/index.html> [<https://perma.cc/8AW6-LY4P>].

123. Steve Karnowski, *Ex-Minneapolis Officer Unrepentant as He Gets Nearly 5 Years in George Floyd Killing*, AP NEWS (Aug. 7, 2023, 2:20 PM), <https://apnews.com/article/george-floyd-minneapolis-officer-tou-thou-sentencing-586deae8b4d14807ef3f2bdd0196d0b86> [<https://perma.cc/W2B8-ZWNH>].

124. Subramanian & Arzy, *supra* note 103.

including a suspect, “under an officer’s custody or care.”<sup>125</sup> Presently, almost 75 percent “of the nation’s 100 largest police agencies” have a duty to intervene, as twenty-one such agencies “adopted duty to intervene policies since June 5, 2020.”<sup>126</sup>

### 3. Decertification and Misconduct Reporting

Prior to murdering George Floyd in May of 2020, “[Derek] Chauvin had been the subject of 22 misconduct . . . or internal investigations.”<sup>127</sup> This is not an outlier. Former New York police officer Daniel Pantaleo, who choked Eric Garner to death for selling loose cigarettes in 2014, was investigated seven times for misconduct in the five years leading up to Garner’s murder.<sup>128</sup> Timothy Loehmann, “[t]he rookie Cleveland police officer who fatally shot 12-year-old Tamir Rice [in 2014,] had been deemed unfit for duty at a previous police department and was in the process of being fired when he resigned from his post.”<sup>129</sup> Prior to joining the Cleveland Division of Police in March of 2014, Loehmann spent five months “with the police department in the Ohio suburb of Independence,” where his “[s]upervisors described him as an emotionally unstable recruit with a ‘lack of maturity’ and ‘inability to perform basic functions as instructed’ during a weapons training exercise.”<sup>130</sup>

Officers like Loehmann are referred to as “wandering officers” since they frequently move from department to department.<sup>131</sup> Wandering officers escape notice after engaging in misconduct because states lack statewide decertification processes and easy methods of reviewing prior misconduct.<sup>132</sup> It was only after Floyd’s death in 2020, and not after the murders of Garner and Rice in 2014, that at least fourteen states enacted laws that established or strengthened law enforcement decertification processes.<sup>133</sup> For example, “Massachusetts . . . will now automatically revoke officer certifications for making false arrests,

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125. *Id.*

126. *Id.*

127. *Id.*

128. Sonia Moghe, *Disciplinary Record of Ex-Officer Who Held Eric Garner in Chokehold Is Finally Released*, CNN (June 23, 2020, 11:01 PM), <https://www.cnn.com/2020/06/23/us/eric-garner-officer-misconduct-complaints/index.html> [https://perma.cc/WV72-MQA4].

129. Christine Mai-Duc, *Cleveland Officer Who Killed Tamir Rice Had Been Deemed Unfit for Duty*, L.A. TIMES (Dec. 3, 2014, 5:48 PM PT), <https://www.latimes.com/nation/nationnow/la-na-nn-cleveland-tamir-rice-timothy-loehmann-20141203-story.html> [https://perma.cc/YSJ5-XZ35].

130. *Id.*

131. Subramanian & Arzy, *supra* note 103.

132. *Id.*

133. *See id.*

creating or using fals[e] evidence, destroying evidence, perpetrating a hate crime, [or] using excessive force that results in death or serious bodily injury.”<sup>134</sup> Another thirteen states passed legislation that “require[es] law enforcement agencies to report [officer] misconduct data to the state.”<sup>135</sup>

*C. Broader Solutions:  
Community-Oriented and Trauma-Informed Policing*

The true impact of the myriad of laws and ordinances described above will only be determined with the passage of time. Broader solutions such as community-oriented and trauma-informed policing have also garnered increased popularity with law enforcement agencies, as these approaches attempt to address “the twin goals of ending over-policing and mass-incarceration . . . [by] reducing unnecessary and negative contact with the police and overreliance on punitive systems of control.”<sup>136</sup>

1. Community Policing

Community policing is not a new term or concept in the American lexicon, but the recent focus on the over-policing of Black and brown communities has given it a new wave of enthusiasm. In the aftermath of the killing of Michael Brown in Ferguson, Missouri, President Barack Obama established the Task Force on 21st Century Policing. In a 2015 report, the task force identified the goal of effective and just policing as building trust and legitimacy within the communities officers serve.<sup>137</sup> Simply, community policing programs seek to enhance the legitimacy of law enforcement agencies, because “[w]hen police lack legitimacy, residents are far less likely to contact police or cooperate with their investigations.”<sup>138</sup> A recent study “found that a single, positive, nonenforcement-related encounter enhanced the legitimacy of police officers and increased people’s willingness to cooperate with the police.”<sup>139</sup>

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134. *Id.*

135. *Id.*

136. *Id.*

137. Mike Cummings, *Study Finds Community-Oriented Policing Improves Attitudes Toward Police*, YALE NEWS (Sept. 16, 2019), <https://news.yale.edu/2019/09/16/study-finds-community-oriented-policing-improves-attitudes-toward-police> [<https://perma.cc/V372-FTWM>] (“[C]ommunity-oriented policing [is] a law-enforcement strategy that focuses on positive, non-punitive, and non-enforcement contact with the public as a means to build trust and promote safety.”).

138. *Id.* (discussing Kyle Peyton, Michael Sierra-Arévalo & David G. Rand, *A Field Experiment on Community Policing and Police Legitimacy*, 116 PROC. NAT’L ACAD. SCIS. 19894 (2019)).

139. Peyton et al., *supra* note 138, at 19894.

## 2. Trauma-Informed Policing

The COVID-19 pandemic highlighted the severe need for trauma-informed policing during and beyond the worldwide health crisis. Extreme stressors, such as rising unemployment rates and nationwide stay-at-home orders, hit American families hard and increased the potential for traumatic events in the household like intimate partner violence and forms of child abuse.<sup>140</sup> Trauma-informed policing uses “a strengths-based approach and understanding [of] the physiological and psychological impacts of trauma from a police operational lens.”<sup>141</sup> In an article published in the *Journal of Community Safety and Well-Being*, the flagship publication for the Canada-based nonprofit Community Safety Knowledge Alliance, Daniel J. Jones explained that in the Canadian context, police needed to be sensitive to the impact that the COVID-19 isolation policies had on Canada’s Indigenous population, as isolating from others may have triggered past trauma from state-sanctioned assimilation.<sup>142</sup> Between 1831 and 1998, “[t]here were 140 federally-run Indian Residential Schools in Canada.”<sup>143</sup> The Canadian government attempted to “assimilate” Indigenous children “into Canadian society” by “separat[ing] some 150,000 Indigenous children from their families and forc[ing] them to attend Christian boarding schools.”<sup>144</sup> “Thousands of [Indigenous] children died of disease and other causes, and the Canadian government has [since] acknowledged that physical and sexual abuse” were commonplace at these schools.<sup>145</sup> In 2021, Canada celebrated the inaugural National Day for Truth and Reconciliation, specifically commemorating the schools’ victims and survivors.<sup>146</sup>

Unlike the Parliament of Canada, Canadian law enforcement agencies, or Canadian society, Americans have yet to truly recognize and grapple with the horrors of slavery and the deep history and impact of anti-Black racism in the United States.

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140. Daniel J. Jones, *Pandemic Policing: Highlighting the Need for Trauma-Informed Services During and Beyond the COVID-19 Crisis*, 5 J. CMTY. SAFETY & WELL-BEING 69, 69 (2020).

141. *Id.*

142. *Id.*

143. Rachel Treisman, *This New Canadian Holiday Reflects on the Legacy of Indigenous Residential Schools*, NPR (Sept. 30, 2021, 9:36 AM), <https://www.npr.org/2021/09/30/1041836090/canada-indigenous-residential-schools-national-day-for-truth-and-reconciliation> [https://perma.cc/VHD2-GQ2R].

144. *Id.*

145. *Id.*

146. *Id.*

*D. Incremental Progress Not Meeting  
National Appetite for Systemic Reform*

Now, several years after George Floyd's death, Americans are still seeking the overhaul of the American system of policing that felt so imminent in the summer of 2020. Even after the wave of state and local initiatives and reforms implemented across the nation in the aftermath of Floyd's murder, a 2022 Gallup poll found that almost 90 percent of Americans continue to support changes to policing in the United States.<sup>147</sup> Fifty percent of Americans support "major changes" to policing and 39 percent support "minor changes."<sup>148</sup> Although 72 percent of Black adults support major changes, compared to 44 percent of white adults and 54 percent of Hispanic adults, approximately 90 percent of each group advocates for at least minor changes.<sup>149</sup>

Two-thirds of the public "strongly" or "somewhat" endorses reforms that are seen as not weakening police, like mandating officers to have good relations with the community, terminating officers with multiple incidents of abuse of power, altering management practices to punish misconduct, discontinuing stop-and-frisk policies, and holding officers legally accountable for abuse of power or unnecessary harm.<sup>150</sup> Even though support for more systemic changes has slightly waned since the summer of 2020, still roughly four in ten Americans support measures like "eliminating police unions, eliminating officer involvement in nonviolent crimes (i.e., traffic violations, sleeping in public, loitering, substance possession), [and] removing military weapons and equipment from police forces."<sup>151</sup> Support for more sweeping proposals, such as abolishing police departments, remains low.<sup>152</sup>

Even with these clear signals from the American public and a 2020 national election that put Joe Biden in the White House and the Democratic Party in majorities in both houses of Congress, the progress of police reform has been slow. Most notably, the legislation bearing Floyd's name, the George Floyd Justice in Policing Act (the Act), failed to materialize into law, a large blow to the Biden administration's criminal justice reform agenda.<sup>153</sup> The Act would have federally banned

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147. Justin McCarthy, *Americans Remain Steadfast on Policing Reform Needs in 2022*, GALLUP (May 27, 2022), <https://news.gallup.com/poll/393119/americans-remain-steadfast-policing-reform-needs-2022.aspx> [<https://perma.cc/RP44-E7VM>].

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. Matt Viser, *Biden Orders Police Reforms Two Years After Floyd Killing*, WASH. POST (May 25, 2022, 7:37 PM), <https://www.washingtonpost.com/politics/2022/05/25/biden-police-reforms-floyd/> [<https://perma.cc/33E5-2T3Y>].

chokeholds, which killed Eric Garner in 2014,<sup>154</sup> and no-knock warrants, which led to the death of Breonna Taylor in 2020.<sup>155</sup> Additionally, the Act would have (1) established “a framework to prevent and remedy racial profiling by law enforcement at the federal, state, and local levels,” (2) mandated data collection for police agencies, and (3) redirected funding to community-based policing programs.<sup>156</sup>

The Act passed the House mostly along party lines, but negotiations of the bipartisan bill broke down in the Senate when lawmakers could not reach an agreement on how to address the issues of qualified immunity, the “legal doctrine that shields police officers from civil lawsuits,” and lowering the bar to prosecute officers who engaged in misconduct.<sup>157</sup> After the Act’s failure, and on the second anniversary of Floyd’s murder, President Biden signed an executive order “aimed at preventing and punishing police misconduct” with Floyd’s family by his side.<sup>158</sup> Instead of the transformational federal legislation that not only advocates but also a majority of the American public hoped for, Biden’s executive order worked to supply guidelines and incentives for police.<sup>159</sup>

The truth is, the kind of systemic reform desperately needed—the kind that is generations past due—should be based on, and implemented through, well-researched and data-driven policies and initiatives at all levels of government. Unfortunately, all existing data relating to use of force or fatal incidents involving police is incomplete at best, and perhaps blatantly nonexistent.

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154. Joseph Goldstein & Nate Schweber, *Man’s Death After Chokehold Raises Old Issue for the Police*, N.Y. TIMES (July 18, 2014), <https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html> [https://perma.cc/77M5-XH8H].

155. Theresa Waldrop, *Breonna Taylor Killing: A Timeline of the Police Raid and Its Aftermath*, CNN (Mar. 3, 2022, 5:46 PM), <https://www.cnn.com/2022/02/22/us/no-knock-raid-breonna-taylor-timeline/index.html> [https://perma.cc/AFY3-W75U]; Viser, *supra* note 153.

156. Congressional Research Service, *Summary: H.R.1280—117th Congress (2021–2022)*, CONGRESS.GOV (Mar. 3, 2021), <https://www.congress.gov/bill/117th-congress/house-bill/1280> [https://perma.cc/PM8C-HEA8]; Viser, *supra* note 153.

157. Jordain Carney, *Democrats Block GOP Police Reform Bill Amid Senate Stalemate*, THE HILL (June 24, 2020, 12:54 PM), <https://thehill.com/homenews/senate/504303-democrats-block-gop-police-reform-bill-amid-senate-stalemate/> [https://perma.cc/RY8S-YUU4]; *see also* Juana Summers, *Congressional Negotiators Have Failed to Reach a Deal on Police Reform*, NPR (Sept. 22, 2021, 5:55 PM), <https://www.npr.org/2021/09/22/1039718450/congressional-negotiators-have-failed-to-reach-a-deal-on-police-reform> [https://perma.cc/UEM5-WZA8].

158. Viser, *supra* note 153.

159. *Id.*

Only 5,030 of the nation's 18,514 law enforcement agencies submitted data to the FBI's national database in 2020.<sup>160</sup> Similarly, in 2021, "only 27 percent of local and federal agencies" contributed to the data.<sup>161</sup> In September 2021, a peer-reviewed study published in *The Lancet*, "one of the world's oldest and most renowned medical journals," found that "55% of deaths from police violence from 1980 to 2018 were misclassified or unreported in official vital statistics reports."<sup>162</sup> In total, "researchers estimated [that] official government data did not report 17,100 deaths from police violence" and that 60 percent of non-Hispanic Black deaths were misclassified—"meaning they [were] not attributed to police violence."<sup>163</sup>

Similarly, solid data is lacking on the efficacy of recent innovations such as community-oriented policing, the use of body cameras, implicit bias training, collaborations with mental health providers in responding to crises, and de-escalation training.<sup>164</sup> Most often, the research simply hasn't been conducted, although some research on community-oriented policing suggests that its efficacy in preventing crime or making community members feel safer is limited.<sup>165</sup>

### III. LACK OF COMPREHENSIVE RELIABLE DATA

Throughout the history of the criminal legal system, there has been a general reluctance to collect data, especially when the data has the potential of highlighting issues of racial inequality.

#### *A. Driving While Black*

During the 1980s and 1990s there was an overwhelming sentiment in the Black community that Black drivers were disproportionately stopped for minor traffic violations in comparison to other drivers.<sup>166</sup> At the time of these complaints, very few police departments were

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160. Subramanian & Arzy, *supra* note 103.

161. Tom Jackman, *For a Second Year, Most U.S. Police Departments Decline to Share Information on Their Use of Force*, WASH. POST (June 9, 2021, 8:00 AM), <https://www.washingtonpost.com/nation/2021/06/09/police-use-of-force-data/> [<https://perma.cc/R3Q6-ZBVA>].

162. Grace Hauck, *More Than Half of Police Killings in the US Are Unreported in Government Data, Study Finds*, USA TODAY (Sept. 30, 2021, 6:30 PM), <https://www.usatoday.com/story/news/nation/2021/09/30/police-killings-unreported-government-data-lancet-study-finds/5915807001/> [<https://perma.cc/NMQ4-KLCB>].

163. *Id.*

164. See AM. PUB. HEALTH ASS'N, POLICY STATEMENT NO. 201811: ADDRESSING LAW ENFORCEMENT VIOLENCE AS A PUBLIC HEALTH ISSUE (2018).

165. *Id.*

166. David A. Harris, *The Stories, the Statistics, and the Law: Why "Driving While Black" Matters*, 84 MINN. L. REV. 265, 266–67, 275–77 (1999).



maintaining traffic stop data necessary to confirm the existence of these claims. Two important cases changed this: *State v. Soto*<sup>167</sup> and *Wilkins v. Maryland State Police*.<sup>168</sup> In *State v. Soto*, seventeen Black motorists argued that their arrests on the New Jersey Turnpike occurred as a direct result of racially discriminatory enforcement of the state's traffic laws by the New Jersey police.<sup>169</sup> These defendants filed motions to suppress all contraband and evidence obtained from their arrests.<sup>170</sup> In support of their position, the defendants introduced expert testimony from Dr. John Lamberth, chairman of the Psychology Department at Temple University, who provided statistical evidence affirming that Black drivers were stopped more frequently than white drivers.<sup>171</sup> His research was sufficient to establish a prima facie case that the New Jersey State Police were specifically targeting and profiling Black drivers.<sup>172</sup> The court concluded that “the utter failure of the State Police hierarchy to monitor and control a crackdown program” operated by the State Police “or investigate the many claims of institutional discrimination manifests its indifference if not acceptance.”<sup>173</sup>

In the second case, *Wilkins v. Maryland State Police*, Robert Wilkins,<sup>174</sup> a Harvard Law student, was stopped because he was “Driving While Black.”<sup>175</sup> Shortly before Wilkins was stopped, Maryland State troopers “received a bulletin outlining a drug-interdiction campaign that urged them to target young black males driving rental cars with Virginia plates.”<sup>176</sup> Wilkins forced the Maryland State Police to settle his race-discrimination lawsuit and to enter a consent decree to keep records on the race of motorists who

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167. 734 A.2d 350 (N.J. Super. Ct. Law Div. 1996).

168. Consent Decree, *Wilkins v. Md. State Police*, No. CCB-93-468 (D. Md. Apr. 22, 2003), <https://clearinghouse.net/case/1044/> [<https://perma.cc/66FT-7QP7>] (last visited Jan. 28, 2023).

169. *Soto*, 734 A.2d at 352.

170. *Id.*

171. *Id.* at 352–53.

172. *Id.*

173. *Id.* at 361.

174. In 2014, President Obama appointed Wilkins as a federal judge on the U.S. Court of Appeals for the D.C. Circuit. Ben Nuckols, *Racial-Profiling Plaintiff Becomes Federal Judge*, WASH. EXAM’R (Sept. 12, 2014, 8:27 PM), <https://www.washingtonexaminer.com/racial-profiling-plaintiff-becomes-federal-judge-2164397> [<https://perma.cc/5NLT-RR7Y>].

175. See Patrick Lee Plaisance, *Panel Shines Light On “Driving While Black,”* DAILY PRESS (Nov. 11, 1998, 12:00 AM), <https://www.dailypress.com/news/dp-xpm-19981111-1998-11-11-9811110118-story.html> [<https://perma.cc/HV8W-6BZU>].

176. *Id.*

were pulled over.<sup>177</sup> Wilkins's suit forced the Maryland State Police to become one of the first major police departments to collect traffic stop data.<sup>178</sup> In addition, his case served as a model for defendants to bring similar suits in other states.<sup>179</sup> Moreover, the case led many states to enact legislation to create monitoring systems to require recordkeeping systems to track police stops.<sup>180</sup>

At the same time that *Soto* and *Wilkins* were percolating through the litigation process, former U.S. Representative John Conyers was also fighting against racial profiling. In 1997, 1999, and 2001,<sup>181</sup> he introduced legislation that addressed racial profiling by requiring law enforcement agencies to collect data for monitoring and deterring racial profiling.<sup>182</sup> Though these three federal bills failed, Representative Conyers continued introducing bills to eliminate racial profiling in every Congress from 2001 until 2017, and many states have enacted legislation based on his proposals.<sup>183</sup>

After Representative Conyers's first proposal, the National Association of Police Organizations and the National Troopers Coalition expressed strong opposition to his proposed legislation. In detailing the basis for the opposition, the organizations remarked that police would express resentment toward it and that there is "no pressing need or justification" for it.<sup>184</sup> In sum, the organizations argued there

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177. See Nuckols, *supra* note 174 (referring to the consent decree as part of the "sweeping changes" in the Maryland State Police after Wilkins filed his lawsuit); see also Consent Decree at 4–11, *Wilkins v. Md. State Police*, No. CCB-93-468 (D. Md. Apr. 22, 2003), <https://clearinghouse.net/case/1044/> [<https://perma.cc/66FT-7QP7>] (last visited Jan. 28, 2023).

178. Laura Barnhardt, *State Settles Bias Case*, BALTIMORE SUN (Apr. 3, 2003, 12:00 AM), <https://www.baltimoresun.com/news/bs-xpm-2003-04-03-0304030167-story.html> [<https://perma.cc/5YS4-CM6K>].

179. *A Tribute to Judge Robert L. Wilkins*, ACLU MD. (Sept. 16, 2014, 12:00 AM), <https://www.aclu-md.org/en/news/tribute-judge-robert-l-wilkins> [<https://perma.cc/8BNX-98G3>].

180. *Id.*

181. Melissa Whitney, *The Statistical Evidence of Racial Profiling in Traffic Stops and Searches: Rethinking the Use of Statistics to Prove Discriminatory Intent*, 49 B.C. L. REV. 263, 275 (2008).

182. See *id.*; see also Traffic Stops Statistics Study Act of 2000, H.R. 1443, 106th Cong. (2000).

183. Melissa Nann Burke, *Rep. Conyers Renews Call for End to Racial Profiling*, DET. NEWS, <https://www.detroitnews.com/story/news/politics/2017/07/27/rep-john-conyers-renews-call-end-racial-profiling/104062548> [<https://perma.cc/4AY6-4HLW>] (July 28, 2017); Whitney, *supra* note 181, at 275–76.

184. Robert L. Jackson, *Push Against Bias in Traffic Stops Arrested*, L.A. TIMES (June 1, 1998), <https://www.latimes.com/archives/la-xpm-1998-jun-01-mn-55452-story.html> [<https://perma.cc/BA9X-57TC>].

was no need to collect the data because there was not a real problem with racially profiling Black drivers.

The criminal legal system's overall reluctance to collect important data, especially in contexts that impact marginalized communities, gives a criminal justice system that is overwhelmingly white, especially with regard to leadership positions,<sup>185</sup> substantial power to make unbridled and unchecked decisions that negatively impact oppressed groups.

*B. Violent Encounters Between Police and Civilians*

This reluctance to systematically collect data on encounters between police and civilians is not limited to racial profiling and traffic stops. Comprehensive data on interactions that result in psychological harm, physical injury, and death of civilians is likewise lacking.<sup>186</sup> Age, race, ethnicity, nativity, sexual identity, gender identity, socioeconomic status, mental health diagnoses, type of law enforcement officer, location of death, causal mechanism of death, and similar data that could help in the development of evidence-based interventions that could prevent violence in police-civilian encounters is not systematically collected, reported, or shared across agencies.<sup>187</sup>

A 2017 article in the *American Journal of Public Health* highlights the need for additional research to explore the relationship between police brutality and health.<sup>188</sup> In their article, the authors argue that public health scholars should advocate for funding sources to support research

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185. Lauren Leatherby & Richard A. Oppel Jr., *Which Police Departments Are as Diverse as Their Communities?*, N.Y. TIMES (Sept. 23, 2020), <https://www.nytimes.com/interactive/2020/09/23/us/bureau-justice-statistics-race.html> [<https://perma.cc/2JMN-VRQZ>].

186. See Sirry Alang, Donna McApline, Ellen McCreedy & Rachel Hardeman, *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AJPH PERSPS. 662, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5388955/pdf/AJPH.2017.303691.pdf>. There are some available resources that do an excellent job of curating what data is currently available, including the *Washington Post's* database of fatal police shootings in the United States since 2015 and the Law Enforcement Epidemiology Project at the University of Illinois Chicago School of Public Health, which contains available data and research on injuries to civilians caused by law enforcement, as well as on-the-job injuries and deaths suffered by law enforcement officers. See *Fatal Force*, WASH. POST, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [<https://perma.cc/V39R-EHVG>] (Aug. 28, 2023); *Law Enforcement Epidemiology Project*, U. ILL. CHI. SCH. PUB. HEALTH, <https://policeepi.uic.edu/> [<https://perma.cc/44ZL-WG2Y>] (last visited Sept. 1, 2023).

187. See AM. PUB. HEALTH ASS'N, *supra* note 164.

188. See Alang et al., *supra* note 186, at 664; AM. PUB. HEALTH ASS'N, *supra* note 164.

that includes heightened surveillance of police brutality.<sup>189</sup> Specifically, public health researchers must require national surveys that collect data about health and stress to include stressors that are pertinent to all individuals. Simple questions about how often respondents have been pulled over by police (Philando Castile was reportedly pulled over forty-nine times in thirteen years), how often respondents are followed in stores, and so on can be powerful indicators of the types of everyday stressors that are the products of racism. We must also press funders to support qualitative research that seeks to understand the lived experiences of people who encounter police brutality.<sup>190</sup>

Given the near-daily barrage of news accounts of police violence against Black and brown citizens, we know—and existing data bears out—that civilians of color are disproportionately impacted. If you are Black, you are 3.23 times more likely to die at the hands of police than a white person is.<sup>191</sup>

The lack of a comprehensive system for collecting, sharing, reporting, and researching data associated with police-civilian encounters is a gross failure in a system whose express reason for existence is to serve and protect. Research in this area is essential for an accurate understanding of the degree to which aggressive or violent encounters between police and civilians are associated with trauma and the concomitant negative health outcomes of these encounters for both members of the public and police officers.

### *C. Mental Health of the Police*

In researching the issues highlighted in this Article, we encountered the same issues that were present in both the “Driving While Black” and police brutality contexts, namely, that little to no data exists on ACEs and their impact on law enforcement officers. When we were developing our first two articles analyzing ACEs in the context of the criminal legal system,<sup>192</sup> we were enthusiastic about the nature of our work and realized that it would be valuable to extend our efforts to looking at ACEs in the context of law enforcement. As we began this current project, we quickly realized that the foundational research we needed to analyze the impact of ACEs on law enforcement officers and agencies did not exist.

In one of the first and few articles to address the impact of childhood trauma on law enforcement, several researchers conducted an experiment that exposed ninety psychiatrically healthy police

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189. See Alang et al., *supra* note 186, at 664.

190. *Id.*

191. Clark et al., *Meek Mill*, *supra* note 76, at 171.

192. See Clark et al., *Trauma*, *supra* note 3; Clark et al., *Meek Mill*, *supra* note 76.

cadets<sup>193</sup> to various sounds and minor electrical shocks to measure their psychophysiological responses<sup>194</sup> to trauma.<sup>195</sup> The cadets were connected to various sensors and their psychophysiological responses were measured by assessing their eyeblink electromyogram (EMG), skin conductance (SC),<sup>196</sup> and heart rate responses.<sup>197</sup> The ninety cadets consisted of two groups; group one contained sixty-five cadets who reported childhood trauma while group two contained twenty-five cadets who reported no childhood trauma.<sup>198</sup> The experiment was conducted in three phases and at each phase their psychophysiological responses were measured. In phase one, applying a low-threat

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193. Nmandi Pole, Thomas C. Neylan, Christian Otte, Thomas J. Metzler, Suzanne R. Best, Clare Henn-Haase & Charles R. Marmar, *Associations Between Childhood Trauma and Emotion-Modulated Psychophysiological Responses to Startling Sounds: A Study of Police Cadets*, 116 J. ABNORMAL PSYCH. 352, 353 (2007) (explaining the breakdown as 84.4 percent male, 42.2 percent Caucasian, 24.4 percent Asian American, 14.4 percent Latino, 4.4 percent African American, 1.1 percent Native American, and 13.3 percent other or mixed ethnicity).
194. *Id.* at 355. See generally Zachary Infantolino & Gregory A. Miller, *Psychophysiological Methods in Neuroscience*, NOBA, <https://nobaproject.com/modules/psychophysiological-methods-in-neuroscience> [<https://perma.cc/J6CG-JDB3>] (last visited Jan. 29, 2023) (“Psychophysiology is defined as any research in which the dependent variable (what the researcher measures) is a physiological measure, and the independent variable (what the researcher manipulates) is behavioral or mental. In most cases the work is done noninvasively with awake human participants. Physiological measures take many forms and range from blood flow or neural activity in the brain to heart rate variability and eye movements. These measures can provide information about processes including emotion, cognition, and the interactions between them. In these ways, physiological measures offer a very flexible set of tools for researchers to answer questions about behavior, cognition, and health.”).
195. Pole et al., *supra* note 193, at 353.
196. See Elizabeth A. Bauer, Kayla A. Wilson & Annmarie MacNamara, *Cognitive and Affective Psychophysiology*, in COMPREHENSIVE CLINICAL PSYCHOLOGY 49, 49 (Gordon J.G. Asmundson ed., 2d ed. 2022) (“Skin conductance response (SCR) is stimulus-locked electrodermal activity, typically measured using electrodes placed on the fingertips or hands, that reflects increased sympathetic activity.”).
197. Pole et al., *supra* note 193, at 355.
198. The researchers measured the cadets’ trauma by using the Life Stressor Checklist-Revised (LSC-R). *Id.* at 354; see *PTSD: National Center for PTSD*, U.S. DEP’T OF VETERANS AFFS., <https://www.ptsd.va.gov/professional/assessment/te-measures/lsc-r.asp> [<https://perma.cc/W9KW-YCCZ>] (last visited Feb. 14, 2023) (demonstrating that the LSC-R “is a self-report measure that assesses traumatic or stressful life events. The measure has a focus on events relevant to women such as abortion, and can also be used with men. The questionnaire includes 30 life events, including experiences with natural disasters, physical or sexual assault, death of a relative, and other events, following a yes/no response format”).

condition, the cadets were placed in a chair facing a computer monitor with an X on the screen. The cadets were then connected to sensors and subjected to startling sounds. They were told that they would be shocked at some point but that the shock would not occur until they were fitted with a finger simulator. In phase two, applying the medium-threat condition, the X on the computer was replaced with the words “no shock” and then each cadet was fitted with the finger stimulator that they were previously told could shock them. The researchers determined that this created a medium-level threat because of their previous research, which suggested that “the mere placement of the finger stimulator leads to more intense negative emotions than the low threat condition.”<sup>199</sup> Again, they were subjected to startling sounds and their psychophysiological responses were measured. Finally, in phase three, applying a high-level threat, the sign reading “no shock” was replaced with a sign reading “shock coming.” The cadets were then subjected to startling sounds and minor shocks. After analyzing the results, the researchers found that the cadets that experienced childhood trauma showed more EMG, SC, and heart rate responses than their counterparts who reported no childhood trauma. In addition, the officers who experienced previous childhood trauma rated themselves as “experiencing more negative emotions as the level of threat increased in the experiment.”<sup>200</sup> Similarly, “they also reported experiencing less positive emotion and showed larger SC responses throughout the experiment.”<sup>201</sup> In summary, these results suggest that childhood trauma may lead to long-lasting modifications to both emotional and psychophysiological responses in law enforcement officers.<sup>202</sup> While this article provided key foundational information about trauma and policing, it did not attempt to evaluate or measure how ACEs impact the way in which law enforcement officers police.

We did, however, locate a few compelling and similarly focused articles, one of which attempted to conduct a research project very similar to the one laid out in this Article—evaluating the impact of ACEs on law enforcement.<sup>203</sup> The author of the article, Stephen Levesque, affirms the same conclusion that we reached—that there is little to no research evaluating the impact of ACEs on law

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199. Pole et al., *supra* note 193, at 355.

200. *Id.* at 358.

201. *Id.*

202. *See id.*

203. Stephen Levesque, *Carrying Trauma from Birth to Work: Adverse Childhood Experiences in Law Enforcement Officers and Their Implications* (May 2021) (MA thesis, Merrimack College) (on file with Merrimack ScholarWorks, a service of the McQuade Library, Merrimack College).

enforcement.<sup>204</sup> Levesque does highlight an important point: the existing research dealing with law enforcement and trauma has “exclusively focused on issues which come about from the job, and not those which officers come into the job with. Prior trauma before entering into the police force may account for more than work stressors or critical incidents, however, this has not been studied.”<sup>205</sup>

To facilitate the research project, Levesque planned to administer an anonymous online survey that would have required each participant to complete the ACE test.<sup>206</sup> The survey also would have sought demographic information about the law enforcement participant’s gender, age, years of service, and rank.<sup>207</sup> Few officers agreed to participate in the survey, and as a result Levesque concluded that it would be insufficient to extract “enough viable data to demonstrate any correlation of statistical significance.”<sup>208</sup> Although Levesque was unable to complete the study, he did provide several useful reasons as to why he was unable to complete it.<sup>209</sup> These reasons include a realistic stigma associated with law enforcement and mental health; the difficulty that individuals have in reporting ACEs and personal trauma; general resistance from law enforcement departments to collect and report data, as such collection might harm the department; and the fear that department leaders have of lowering morale by having officers examine the trauma they experienced not only in childhood but also working on the force. We consider each of these in turn.

1. There Is a Realistic Stigma Associated with  
Law Enforcement and Mental Health.

Law enforcement officers are expected to maintain a high level of control and to remain calm, cool, and collected while on the job. For example, in a job posting for a Miami-Dade police officer, one of the items listed under the “Knowledge, Abilities and Skills” section of the posting specifically mentioned that officers should possess “[e]motional stability and the necessary capacity to cope with a wide range of interpersonal situations.”<sup>210</sup> The essence of the position requires mental stability. Thus, any acknowledgment of mental instability

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204. *Id.* at 2–3.

205. *Id.* at 8–9 (emphasis omitted).

206. *Id.* at 16.

207. *Id.*

208. *Id.* at 19.

209. *Id.* at 19–21.

210. *Careers: Police Officer*, MIAMI-DADE CNTY., <https://www.miamidade.gov/global/police/careers-police-officer.page> [<https://perma.cc/CTT4-4BZ4>] (last visited Jan. 16, 2023).

automatically undermines an officer's status.<sup>211</sup> As a result, police officers are less likely to reveal mental health issues or to seek counseling for mental health concerns.<sup>212</sup> This articulation is not mere conjecture. Professor Heather Stuart wrote an article that evaluated this exact issue.<sup>213</sup> She surveyed 133 police officers who were enrolled in a mandatory one-day workshop focusing on mental health in the workplace.<sup>214</sup> Professor Stuart found that 62 percent of the officers believed that they would experience discrimination in the workplace from fellow officers that knew that they suffered from mental illness.<sup>215</sup> In addition, 62 percent of the officers also stated that they would “not want a supervisor or manager who had a mental illness.”<sup>216</sup> Professor Stuart also found that the majority of the officers agreed as follows:

- 59.4 percent of the officers “agreed that police officers think that being treated for a mental illness is a sign of personal failure”;
- 54.9 percent “agreed that a manager would not consider an application for promotion from an officer with a mental illness”;
- 54.2 percent agreed “that most police officers would not accept professional help if they were experiencing a mental illness”;
- 52.6 percent “would not willingly accept a colleague with a mental illness as a partner.”<sup>217</sup>

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211. See Rhea Mahbubani & Kelly McLaughlin, *Police Officers Stigmatize Seeking Help for Mental-Health Issues. It Could Be Damaging for the Communities They're Supposed to Serve and Protect*, INSIDER, <https://www.insider.com/police-officers-stress-mental-health-stigma-impacting-public-2020-6> [<https://perma.cc/SY5P-WEBS>] (last visited Feb. 14, 2023). According to Risdon Slate, a professor of criminology at Florida Southern College, “[P]olice departments are modeled after paramilitary organizations and are pervaded by a ‘John Wayne syndrome,’” where officers are overserious, emotionally withdrawn, and quick to resolve situations on their own. *Id.* (quoting Slate). He expressed that officers who ask for help end up placed on the “bow-and-arrow squadron,” resulting in loss of their service revolver and an assignment to a desk job. *Id.*

212. See Heather Stuart, *Mental Illness Stigma Expressed by Police to Police*, 54 *ISR. J. PSYCHIATRY RELATED SCIS.* 18, 18 (2017).

213. *Id.*

214. *Id.* at 18–19.

215. *Id.* at 20.

216. *Id.*

217. See *id.*



Professor Stuart's work highlights the reality that officers believe that there are legitimate consequences to reporting mental health concerns from fellow officers at and above their rank.

2. In General, It Is Difficult for People to Disclose ACEs.<sup>218</sup>

There is also a general, individualized fear associated with reporting ACEs that is independent of the external perception that may be held by an officer's peers.<sup>219</sup>

Stigma is a major barrier to seeking psychological treatment. Consequently, roughly only 11–30% of people who experience mental health issues seek psychological help. Moreover, the police culture of valuing toughness, self-reliance, and suppressing weakness in combination with the distrust and suspicion of seeking outside help can further promote and enforce the negative beliefs around help-seeking among police officers.<sup>220</sup>

3. There Is a General Resistance to Collecting Data at the Department Level Because of a Fear of How the Collected Data Might Negatively Impact the Department.

Individual departments do not want to be associated with research into the mental health of their officers for fear that evidence of mental health issues among their officers might be suggestive that the departments themselves have failed in some capacity.<sup>221</sup> To combat this concern, Levesque informed each of the relevant department chiefs that all data would be collected anonymously; however, the response rate was still very low.<sup>222</sup> Again, stigma played a role in the process. In fact, Levesque noted that one chief "believed that due to the low number of participating agencies it would be possible to connect the data back to their department."<sup>223</sup> In essence, there are two concerns at the department level: the stigma that the department somehow failed to act to deal with mental health issues and the fact that individual officers within the department might experience stigmatization.<sup>224</sup> Levesque's study was focused on a limited and local geographic scope; however, he opined that a nationally focused survey might assuage the department-

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218. See Levesque, *supra* note 203, at 19.

219. *Id.*

220. Sara Soomro, Examining Mental Health Stigma Among Police Officers and Intended Behavior Towards People with Mental Illness (Dec. 10, 2019) (MA thesis, City University of New York) (on file with CUNY Academic Works, City University of New York) (citation omitted).

221. See Levesque, *supra* note 203, at 19.

222. See *id.* at 19–20.

223. *Id.* at 19.

224. See *id.*

level concern because it would be harder to connect the survey results back to individual officers from a specific department.<sup>225</sup>

4. Department Leaders May Be Reluctant to Allow Their Respective Departments to Participate out of a Fear of Creating an Environment Where Their Own Officers Feel Targeted, Together with a Generalized Fear by the Chief of a Reduction in Morale.

Levesque averred that chiefs might “fear negative perceptions of themselves by their subordinates.”<sup>226</sup> Since officers are seriously concerned about the stigma of reporting mental health issues, as noted above, any initiative to compel them to participate in a process that will require them to report mental health issues will be met with resistance. As such, any effort to encourage participation in a survey about mental health increases “the possibility that the officers will feel as if they are being targeted by their commanding officer. And the Chief’s willingness to participate may make officers who do not wish to discuss such things feel as though they are being forced into speaking about their childhood trauma.”<sup>227</sup>

This process could cause a downward spiral in morale which could ultimately impact the chief’s credibility in the department. As a result, it is more likely that chiefs will resist any effort to participate in studies evaluating mental health. In light of these challenges, it is imperative that researchers and scholars engage in a serious effort to increase research on ACEs and policing for the following reasons.

First, collecting this data benefits the officers. Again, while the research is sparse, the research and narratives that do exist focus on the impact that ACEs have on the way that officers police the communities they serve. Instead, there is an additional value that is often overlooked—that of the police officer. If there is more research on how ACEs directly impact law enforcement officers, departments could provide additional resources and support for officers that have faced such trauma. This notion focuses on the well-being of the officer. In 2019, several researchers explored this idea. While their study was focused on the relationship between police practices and PTSD, not ACEs, it was nonetheless informative. They found that approximately 11 percent of the active-duty police officers they surveyed “self-reported involvement with police abuse which was associated with greater severity of PTSD symptoms.”<sup>228</sup> Based on this information, they determined that their

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225. *See id.* at 19–20.

226. *Id.* at 20.

227. *Id.* at 21.

228. DeVlyder et al., *supra* note 1, at 267.

[f]indings from the present study provide the first empirical evidence, to [their] knowledge, that police violence may be detrimental not only to the health of targeted communities and individuals but also to the mental health of police officers themselves. This would suggest that police departments may directly benefit from addressing police violence perpetration among their officers.<sup>229</sup>

Assuming this is true, police departments and their decision makers may be more inclined to participate because the benefit of participation runs to the officers.

Second, conducting research on ACEs and policing forces the discussion about mental health. While there may be some sentiment that this exercise exacerbates some of the problems that prevented Levesque from completing his research, there is another perspective. For example, several researchers found that psychiatric patients were more likely to report abuse when they were directly asked about it, rather than when they were given the option to spontaneously self-report it.<sup>230</sup> Based on these findings, many researchers recommend “a policy of regular, direct inquiry about abuse be introduced in all psychiatric settings, including inpatient units.”<sup>231</sup>

While this example falls outside of the law enforcement context, the essence of the argument is still persuasive in that we also know that law enforcement officers are unwilling to volunteer this information for all of the reasons highlighted above. However, asking the questions about mental health creates a pathway for more dialogue and to make officers begin to feel more comfortable addressing these issues for their own benefit as well as that of the community at large.

For this Article, we began the process of asking law enforcement officers specific questions about ACEs, trauma, and the impact that experiencing ACEs as children, particularly childhood trauma inflicted by law enforcement directly, had on them as they decided to become

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229. *Id.* at 270.

230. See John Read & Allen Fraser, *Abuse Histories of Psychiatric Inpatients: To Ask or Not to Ask?*, 49 *PSYCHIATRIC SERV.* 355, 355 (1998) (“Jacobson and colleagues found that only 12 percent of childhood abuse reported in response to direct questioning had been recorded in routine clinical assessments. Goodwin and associates found an abuse prevalence rate of 50 percent among female inpatients who were asked directly about abuse; however, they found that in a control group of patients who were not asked about abuse, only 10 percent spontaneously reported abuse. Briere and Zaidi reported that abuse was mentioned in the records of only 6 percent of a group of patients seen in a psychiatric emergency room but that abuse was reported by 70 percent of patients who were asked. Wurr and Partridge found that while case notes suggested a 14 percent rate of childhood sexual abuse among adult inpatients, direct investigation produced a rate of 46 percent.” (citations omitted)).

231. *Id.*

police and how they currently police. Our findings were incredibly instructive. Next, we discuss some of these outcomes.

#### IV. THE IMPACT OF TRAUMA ON POLICE OFFICERS

As we have described above, childhood trauma, particularly childhood trauma inflicted by law enforcement officials or the criminal legal system, can lead to debilitating health outcomes in adults, both physical and mental.<sup>232</sup> Further, as described above, studying the impact that childhood trauma has on police officers writ large is seriously understudied, underreported and misunderstood—particularly when trauma is inflicted by law enforcement officers upon children and families of color.<sup>233</sup> We have set out in our study to begin the process of studying, reporting, and understanding the impact that ACEs have on police officers, particularly police officers of color, who we have shown in our previous work stand at much more significant risk of being traumatized as children by law enforcement officers and the criminal legal system.<sup>234</sup> We query here: How do police officers who have suffered significant trauma as children, inflicted by law enforcement officials, deal with that trauma as adults, particularly when they become police themselves?

In order to begin to understand, we developed a list of interview questions, petitioned for Institutional Review Board (IRB) approval, and set about interviewing current and former police officers, many of color, asking them whether they suffered abuse at the hands of law enforcement officials as children and, if yes, how that both impacted their decision to become police and how it impacted their own policing activities as officers.<sup>235</sup> Additionally, we set out to understand whether adult police officers suffer trauma on the job and, if yes, how adult traumas impact the officers' ability to perform their policing duties. What follows is a review of some of the frighteningly honest responses of several current and former law enforcement leaders, mostly of color, who have served throughout the United States, but most particularly in the Midwest and southern portions of the nation.

##### *A. Childhood Trauma and Its Impact*

In our interviews, we were keenly focused on uncovering whether our subjects, who are current or former police officers, had experienced any childhood trauma inflicted by law enforcement officers. Research shows that children of color often experience debilitating traumas at

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232. *See supra* Part I.

233. *See supra* Part I.G.

234. *See generally* Clark et al., *Trauma*, *supra* note 3; Clark et al., *Meek Mill*, *supra* note 76.

235. For our list of IRB-approved interview questions, see Appendix A.

the hands of law enforcement officers while they are young.<sup>236</sup> We wanted to explore whether current or former police officers, particularly officers of color, had experienced trauma as children at the hands of the police. Fairly recent studies indicate that police encounters for children of color often severely traumatize those children, leading to anxiety, depression, panic, post-traumatic stress, and mental health disorders.<sup>237</sup> We wondered whether this would be true of children of color that grew up to become police officers. Stated another way, did police officers of color have a different experience with law enforcement as youth, perhaps facing no traumatic experiences, leading them to want to become police?

Next, if our interviews revealed that current and former police officers did in fact experience childhood trauma at the hands of law enforcement, we wondered why, after those experiences, they would want to enter law enforcement? And, after entering law enforcement burdened by extremely negative experiences with law enforcement as youth, we wondered whether those experiences impacted the way that the traumatized officers policed the communities in which they served.

As it turns out, our interviews show that law enforcement officers of color suffered massive childhood trauma at the hands of the police at rates similar to or perhaps even more pervasive than other youth of color. One African American former police leader from the South reported an interaction with a white police officer as a twelve-year-old boy as follows:<sup>238</sup>

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236. See KRISTIN HENNING, *THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH 204–19* (2021). Within her book, Professor Henning achingly reports of the childhood trauma that Black and Latinx youth face by simply interfacing with law enforcement in their neighborhoods as children.

Black youth . . . automatically pull their hands out of their pockets, put their hands on the dashboard, or put their hands up and yell “Don’t shoot,” when confronted by police. Black youth routinely run at the sight of police—not because they are hiding something or doing anything wrong, but because they are terrified of getting shot, choked or maimed. Black youth learn these safety measures from their parents, construct them with friends, or develop them instinctively to survive. But the need for survival strategies is itself a source of trauma.

Just having to worry about becoming a victim is as frightening and stressful as being a victim.

*Id.* at 211.

237. *See id.*

238. For each interview quotation that appears in this Part below, the identical wording in the oral interview has been lightly edited and paraphrased for readability and accuracy.

I was walking with white friends in a department store in my hometown. It was one of those department stores that had a candy counter with self-filling compartments that allowed customers to take a scoop of a particular kind of candy, place it in a bag, and then weigh the bag to see the cost of the candy. As I was walking by the candy counter, after I had passed it a couple of steps, I felt a hand grab my Afro and when I turned it was a white police officer. This officer screamed that he had seen me shoplift candy from the open candy counter and as I began to protest, the officer hurled me to the ground by his hand in my Afro. The officer grabbed the metal candy weight basket and began hitting me over the head with it. I was so startled and frightened that I voided on myself. While on the ground, the police officer threatened to kill me for stealing the store's candy. I was literally afraid for my life. Of course, I had not stolen any candy, and when the officer searched me while still on the ground, [he] did not find any candy in my pockets. The officer did not touch my white friends I was walking with. I had not had many experiences with police in my very large home city, and this was one of my first ever interactions with law enforcement. I learned as a young boy that the police would abuse you and threaten your life for something as inconsequential as pieces of candy, which I had not even stolen.<sup>239</sup>

When asked how this experience impacted his decision to become a police officer, this Black former police leader stated:

I am obstinate and stubborn. While the white police officer violated me and my rights as a child, I knew that I could do better if given the chance. I believed then, and do now, that law enforcement should protect and serve the communities in which they work, particularly vulnerable communities. I knew that if I were able to pursue a career as a police officer, that I would do so much better than was done to me. I needed that obstinance to become a police officer in the 1970s and 1980s, as I was not welcomed by many white officers on the police department where I got my first job. I did not tolerate disrespect, but there were many moments where I was confronted with racism, lack of support, and outright attempts at harassment. I was stubborn though, and believed that nobody could tell me what I could or could not do.<sup>240</sup>

When asked whether the trauma he experienced as a child at the hands of the police impacted or informed the way that he policed the

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239. Interview with African American former police leader from the South (notes on file with authors).

240. Interview with Black former police leader (notes on file with authors).

communities where he worked, the African American former police leader responded:

Yes, it absolutely impacted the way I did my job every day. I was determined to treat everyone that I encountered fairly. Even when dealing with a drunken, raging citizen who was spitting and throwing punches, I would try to calm and contain that individual with as little force as possible. Everyone deserves to be respected and treated humanely. I knew that the fear that I had of police officers because of what happened to me as a young man, that I wanted no one to have that fear of me, but rather to know that I could be trusted to treat everyone equally.<sup>241</sup>

Another former Black American police leader from the Midwest described separate traumatic events that he had with police officers when he was a child. The first occurred when he was thirteen years old:

My friends and I were walking home from the corner store. To look cool, we always purchased soda cans, mine was grape soda, and then we dropped those into brown paper bags and drank our sodas from brown bags, fronting like we were drinking beer. As we were walking through our neighborhood to our homes, a car pulled up and three white men jumped out of the car and began chasing us. We had no idea who they were, so, as we were taught by our parents, we ran from these white men. After a couple of blocks, one of the white men caught up to me, screamed at me for making him run, and then hurled me to the ground. I had thrown my grape soda away as I was running. It was not until I had been thrown to the ground and roughed up that the white man showed me his badge and gun—he was an undercover police officer. I immediately told him that I had been drinking grape soda in a brown paper bag, but the officer told me that he was going to arrest me for drinking alcohol as an underaged youth.

Thereafter, the police officer handcuffed me and marched me up and down the street of my neighborhood yelling out whether anyone knew me and who I belonged to. Once my neighbor identified me and pointed out where I lived, the officer marched me home and yelled for my parents to come out of the house. The irony is that my father and brother were both involved in policing, my dad as private security and my brother as a member of the police force in my city. My mother came out of our house and then immediately called my brother to come off of his police shift and help us out of this mess with the white undercover officer. Even though the other white undercover officers recovered my grape soda in a brown bag because I told them where I had

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241. Interview with African American former police leader (notes on file with authors).

thrown it, they did not take the handcuffs off and let me go inside until my brother came screeching up in his patrol car and ordered the undercover officers to let me go. I was thirteen years old and had been tackled and thrown to the ground by the police. If my brother had not come off of his police shift, I have no doubt that things would have been much worse for me. It was traumatic.<sup>242</sup>

This former police leader then described his second traumatic encounter with the police, this time as a fifteen-year-old:

Apparently, I share the name of someone who had committed a serious crime in my home city. One night, while my mother and sister were asleep and I was preparing to go to bed, the front and back doors of our home were simultaneously kicked in and seven or eight police officers came careening into our house with shotguns pointed at us. I was immediately tackled to the ground and had a shotgun held to my head for the rest of the time the police were in the house. My five-year-old sister was dragged out of her bed at gunpoint and made to walk into the living room in tears. My mother was ordered out of bed and she too had a shotgun pointed at her head as the officers spread out through the house, holding me, my sister, and my mother at the end of shotgun barrels.

After the police found nothing they were searching for in the house, they finally began asking questions and that is when I learned that they were searching for a much older man that had the same name as me, and after describing who they were looking for, my mother told them that the person they were looking for with the same name as me lived five or six miles away in a different neighborhood. Thereafter, my mother was finally able to tell them that her son was a police officer in the same police department and the officers finally trained their shotguns to the ground and began to depart. When I asked what we were supposed to do with the broken and splintered front and back doors that they had kicked in, the lead officer stated, "I don't give a fuck what you do."

Neighbors came over that night, astonished that the police had broken into the home of a teenager that had the same name as the man who had committed a serious crime, and who was also the brother and family of a currently serving police officer. I was fifteen and distinctly remember that our neighbors brought over plywood and nailed it up over our front and back doors to protect us from the weather that night. My mother, sister, and I were

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242. Interview with Black former police leader from the Midwest (notes on file with authors).



badly frightened and traumatized by the illegal search and being held at gunpoint.<sup>243</sup>

When queried as to how these traumatic experiences influenced his decision to become a police officer, the former police leader from the Midwest stated:

For years, I wanted nothing to do with working in law enforcement. Even though I came from a family of law enforcement professionals, my experience with white police officers that traumatized me as a child kept me from considering law enforcement as a career for years. I joined the Marine Corps and spent many years in the service before I left the military and decided that with a wife and young child, that I needed insurance and a steady income, so ended up getting hired onto the police department in my hometown.<sup>244</sup>

When asked whether suffering childhood trauma at the hands of police officers impacted the way that this former police leader policed the communities that he served later when he became a police officer, he stated:

Those traumas that I suffered as a child impacted my police work every single day of my thirty-year law enforcement career. Not only was I determined to never traumatize the citizens that I served, I found myself literally protecting the citizens in my city from abuse at the hands of fellow police officers, mostly white officers. Every time I made an arrest, even of those who had committed serious crimes, my Black partner and I always locked our suspects inside our patrol car to ensure that no other officer would try to harm, beat, abuse, or even kill our suspect. My partner and I became the protectors of suspects in our care because we could not trust that other members of our police department would not try to harm them, particularly African American suspects.

I learned this lesson the hard way.<sup>245</sup>

Our early research and interviews indicate that current and former law enforcement officers of color experienced significant childhood trauma at the hands of the police. These traumatic experiences harmed the psychological and emotional health of these children. The impact of these traumas was dramatic, influencing individual choices to become law enforcement officers and impacting the ways in which these officers policed the communities in which they worked. ACEs can lead to

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243. *Id.*

244. *Id.*

245. *Id.*

debilitating health outcomes in adults. When law enforcement officers treat children with disdain and burden them with trauma, they are not only harming the mental and psychological growth of children, but are also contributing to poor adult health outcomes, for no good law enforcement reason. We expect that our continued research will uncover that policing in communities of color is filled with placing traumatic experiences on those communities.

*B. Adult Trauma and Its Impact*

While our work has focused on the impact of trauma on children, particularly as inflicted by American policing and the criminal legal system, we also endeavored in our interviews, and will further explore in our upcoming national study, the impact of adult trauma on law enforcement officers. We postulate that while childhood trauma severely impacts law enforcement officers in their capacity as police, these same police officers likely experience additional trauma as adults, including on-the-job trauma that may exacerbate the childhood trauma that these officers experienced as children. We anticipate that Black and brown police officers continue to experience trauma today through racism and discrimination and witnessing abuse, harassment, and even killing of Black and brown citizens by their fellow police department colleagues.

One former police leader of color from the South described the first adult trauma he experienced as a new police officer:

I recall coming upon the first dead body I had ever encountered as a police officer. The dead body had been gutted and intestines and internal organs were laying on the street outside of the body. I had never seen anything like that before and was not sure how to process what I was seeing. After we had secured the scene and detectives arrived, we left the scene and were expected to return to our evening patrol. I was a very young new police officer and I had not fully processed what I had just seen and was shaken for the rest of the evening on my patrol. I had a very difficult time returning to my patrol and know now that I had experienced a trauma, and was unable to fully handle it at that time. Back then, there was no counseling for police officers and we were expected to kind of “man up” and handle whatever we encountered on the street. To this day, that vision of the dead body with entrails cut out of it still haunts me.<sup>246</sup>

This officer, who as a young adult witnessed a horrific murder scene, had neither been trained nor equipped to deal with or handle this kind of experience. And, at that time in his career, there were no resources available for this young man to turn to following that

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246. Interview with former police leader of color from the South (notes on file with authors).

traumatic exposure in order to process, describe, unpack, and settle this extremely unsettling impact. We imagine that as we conduct our national survey in the future, we will hear many more experiences of officers who encountered deeply troubling traumas while on the job and were left to fend for themselves entirely in processing and dealing with these traumatic experiences.

Interestingly, and in contrast, when a police leader of color from the Midwest was queried as to whether he had suffered trauma as an adult police officer, he responded:

I really was not traumatized by the police work that I did in any real way. My experience in the military as a younger man introduced me to a world filled with danger, war, and destruction when serving in a war-torn nation. Thus, when I encountered death and destruction as a police officer, I was sort of immune to it as I had seen much worse in the military.<sup>247</sup>

As we learned from our interviews and anticipate we will learn when our national survey is conducted, law enforcement professionals are expected to encounter trauma and toxic stress while on the job without internalizing or being impacted by it. As our interview subjects made clear, the traumatic experiences that law enforcement officers face hit each officer differently. Some shrug off traumatic encounters while others are deeply impacted by them and are often left unsupported and on their own to process such trauma.

## CONCLUSION

What we present here is just the beginning of the national and longitudinal study that we will undertake to truly assess a sample of thousands of police officers across the country. What the interview subjects in this study have shown is that police officers of color, particularly Black American police officers, have in fact suffered traumatizing ACEs as children at the hands of law enforcement officials in alarming numbers. Indeed, of the officers that report abuse at the hands of law enforcement as children, to a person they detailed that this abuse motivated them to try to ensure that no person under their care or authority would ever be treated in the same inhumane manner that they themselves were.

We anticipate that as we engage in a national, longitudinal study on police trauma suffered by law enforcement officers as children and then later as adults, particularly at the hands of police officers, we will uncover a story of deeply held traumas that impact law enforcement officers in real and difficult ways as adults. Gathering data of this kind, as detailed above, has been extremely difficult as law enforcement

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247. Interview with police leader of color from the Midwest (notes on file with authors).

officers are notoriously closed, cautious, and unwilling to share any perceived “weakness” that could harm their reputations or their jobs. We stand ready to develop the survey instrument and interview questions that will break into this crucial area of research, as this Article demonstrates that there are indeed law enforcement officers willing to discuss and describe the kind of outcomes that childhood and adult traumas have on their lives as police.

APPENDIX

**IRB-Approved Research Questions**

1. What position or positions did you serve in/are you serving in as a law enforcement officer?
2. How long did you serve/have you served in your/each position?
3. Before the age of 18, did you have any encounters with the police where the officer used force of any kind against you?
  - a. If so, is this something that has influenced you in any way as a police officer? How?
4. Before the age of 18, did you interface with the criminal legal system (i.e., appeared before a judge; arrested/booked/jailed; etc.)?
  - a. If so, is this something that has influenced you in any way as a police officer? How?
5. Trauma is defined as exposure to actual or threatened death, serious injury, or sexual violence in one or more of the following ways: (1) directly experiencing the traumatic event(s); (2) witnessing, in person, the event(s) as it occurred to others; (3) learning that the traumatic event occurred to a close family member or friend (in cases of actual or threatened death, the event(s) must have been violent or accidental); (4) experiencing repeated or extreme exposure to aversive details of traumatic events (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse)
  - a. Before the age of 18, did you experience any trauma (as defined above)?
  - b. As an adult, age 18 and older, have you experienced any trauma (as defined above)?
  - c. Of the traumatic events that have happened to you as an adult, how many have happened in connection with your work as a police officer?
6. [If a or b are Yes] Do you feel that your traumatic experience(s) have influenced you in any way as a police officer? How?
7. Are you of Hispanic, Latino, or Spanish origin?
8. What is your race? ((1) White, (2) Black or African American, (3) Asian, (4) American Indian or Alaska Native, or (5) Native Hawaiian or other Pacific Islander).