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A MORE GROWN-UP RESPONSE TO ORDINARY ADOLESCENT BEHAVIORS: REPEALING PINS LAWS TO PROTECT AND EMPOWER D.C. YOUTH

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Introduction

In February 2020, the District of Columbia (“District” or “D.C.”) Juvenile Justice Advisory Group (“JJAG”), issued an important report calling for decriminalization of “status offenses.” Status offenses are alleged youthful wrongdoings that are prosecuted in the District as “Persons in Need of Supervision” cases.¹ This Position Paper provides additional support for JJAG’s recommendations. It offers guidance and suggestions to help the District successfully transition away from PINS prosecutions—while also ensuring community youth feel safe, supported, and empowered in their own lives as they transition to adulthood.

The D.C. Metropolitan Police Department has historically been the enforcement arm to address youth status offenses. However, status offense laws are vague and subject to a great deal of discretion. Allowing police to remain the primary point of engagement for youth in need is, therefore, problematic. The District has historically also disproportionately targeted youth of color, particularly Black male youth, for stops. These encounters can lead to negative perceptions of police among youth and influence how youth see themselves and their place in the community.²

In addition, adults are not criminalized for exhibiting similar behaviors, resulting in the discriminatory treatment of children. Status offenses, such as violation of the youth curfew, raise

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¹ See DC-JJAG, *Create New Opportunities for “Persons in Need of Supervision (PINS)” to Succeed Without Legal Intervention* (2020), <https://ovsjg.dc.gov/service/juvenile-justice-advisory-group> (then choose “Create New Opportunities for ‘Persons in Need of Supervision’ (PINS) to Succeed Without Legal Intervention” under “Special Reports”) [hereinafter NEW OPPORTUNITIES].

² See Jeremy I. Levitt, *“Fuck Your Breath”: Black Men and Youth, State Violence, and Human Rights in the 21st Century*, 49 WASH. U. J. L. AND POL’Y 87, 96 (2015) (“[L]ike many Black men and youth my daily regimen—demeanor, appearance, socialization, and driving routes—were largely shaped, informed, and even controlled by probable confrontation with police. This made life extremely stressful; sadly, my experience reveals that many Black men are more concerned with unprovoked and hostile police encounters than with violent criminal elements.”).

constitutional concerns too, as youth may be required to explain their reason for being outside after hours, in violation of their Fifth Amendment rights. Moreover, youth status policing does not account for married or emancipated youth who are not subject to curfew compliance, those exercising their First Amendment rights, or Fourth Amendment questions.

In the last few years, the District has launched a number of youth- and family-centered programs which can help support the needs of youth in the community, without relying on police engagement. This report proposes recommendations to support the decriminalization of status offenses, including repealing District status offense laws, ending the criminalization of ordinary adolescent behaviors, rejecting police intervention as the default response, continuing community-based support of youth, and streamlining youth services. With these recommendations, the District can demonstrate its commitment to serving the interests of youth and families in D.C., allow police to focus on gun violence issues and real public safety issues in the District, and establish itself as a national leader in youth justice reform.

I. Background and Context

Status offenses are youth-based behaviors considered unlawful under the District of Columbia Code (“D.C. Code”). They include staying out past curfew, missing school, running away from home, or disobeying guardians.³ Historically, the Metropolitan Police Department (“MPD”) has been the enforcement arm to address such childhood behaviors. The Office of the Attorney General (“OAG”) has prosecuted them as “Persons in Need of Supervision” or PINS matters. Formal charges have been adjudicated by the D.C. Superior Court Family Division, where child status offense respondents face court-ordered disposition and consequences.⁴

In recent years, the District’s justice system stakeholders have revisited some PINS policies and practices. For example, under the Comprehensive Youth Justice Amendment Act (“CYJAA”), the Family Division is no longer permitted to use secure detention for youth who come before the

³ See, e.g., D.C. Code § 16-2301(8)(A)(iii) (providing a child is “in need of supervision”—thus, a status offender—if they are “habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable”); § 2-1542 (providing a complex array of youth “curfew hours” that differ based upon the time of year and weekdays versus weekends).

⁴ See NEW OPPORTUNITIES at 6; see also SUPERIOR CT. OF THE DIST. OF COLUMBIA, FAM. CT., ATT’Y PRAC. STANDARDS FOR REPRESENTING JUVS. CHARGED WITH DELINQ. OR AS PERSONS IN NEED OF SUPERVISION (2004).

court on PINS charges alone.⁵ The OAG is diverting more such cases from the court system.⁶ In 2020, MPD issued a General Order directing officers to avoid using handcuffs on children alleged to be truant or out of home past curfew, unless the child is believed to be a danger to self or others.⁷ Status offense arrests and prosecutions have, therefore, been greatly reduced.

At present, however, there is no uniform, coordinated, non-punitive approach across communities or agencies for so-called PINS matters. Status offenses remain “on the books” as part of the D.C. Code. JJAG’s call to have these youthful behaviors entirely decriminalized has yet to be realized. This Position Paper, therefore, urges the District to take the next step. It supports JJAG’s recommendations for a more modern, nuanced, and mature approach to ordinary childhood behaviors than the historic response of arrest and prosecution in our already overburdened courts.

II. Decriminalization of Adolescent Behaviors as Emerging Best Practice

Status offenses as a category trace their roots to the controversial “child saving” era of the turn of the last century.⁸ They are also a legal anomaly, involving a unique set of prohibitions with possible legal sanctions for youth alone.⁹ That is, adults are not subject to such laws and generally cannot be arrested, processed, or prosecuted for things like failing to comply with the wishes of their family members.¹⁰

As a doctrine, status offense law is also internally conflicted. On one hand, status statutes reflect the concern that children are too young to engage in certain conduct. On the other hand, such laws subject children to policing and prosecution despite their supposed tender age. Thus, at once, status offense provisions tend to discount youthful autonomy and agency while

⁵ Kaitlyn Sill, *Runaway Youth as Status Offenders*, 3 CRIM. JUST. COORDINATING COUNCIL 1, 6 (2018) (recounting that considering the CYJAA’s adoption, “DC can no longer securely detain PINS youth”).

⁶ *Alternatives to the Court Experience (ACE) Diversion Program*, D.C. DEP’T OF HUM. SERVS., <https://dhs.dc.gov/page/alternatives-court-experience-ace-diversion-program> (explaining OAG’s efforts “to not prosecute youth who allegedly commit status offenses”) (last visited May 8, 2022).

⁷ See GO-OPS-305.01, *Interacting with Juveniles*, D.C. METRO. POLICE DEP’T (Jan. 28, 2020) at 6.

⁸ See Geoff K. Ward, *The Black Child Savers: Racial Democracy and Juvenile Justice* (2012) (describing the emergence of the “parental state” as a means to “regulate the socialization of wayward and delinquent youth”); see also Mae C. Quinn, *From Turkey Trot to Twitter: Policing Puberty, Purity, and Sex Positivity*, 38 N.Y.U. REV. OF L. AND SOC. CHANGE 51 (2014) (describing punitive policing practices at the end of the 1800s undertaken in the name of protecting vulnerable youth, but often criminalizing normal youthful exploration and identity building).

⁹ See Derek M. Cohen, *Kids Doing Time for What’s Not a Crime: The Over-Incarceration of Status Offenders*, TX PUB. POL’Y FOUND. (Mar. 18, 2014), <https://rightoncrime.com/2014/03/kids-doing-time-for-whats-not-a-crime-the-over-incarceration-of-status-offenders> (describing the “uniqueness of status offenses”).

¹⁰ *Id.*

simultaneously holding youth to adult culpability standards under the law. Viewed in these ways, PINS laws are unfortunately childist in their orientation while also adultifying.

Childism, like racism and sexism, is a form of discrimination.¹¹ A term used for some time in psychology and childhood studies, it is now making its way to legal discussions.¹² It describes the phenomenon of denying rights to, prejudicing, or otherwise marginalizing children.¹³ PINS provisions create bans that limit the actions and freedom of youth but not adults. Further, these laws fail to account for what we now know about the teenage brain and expected boundary-testing and risk-taking on the part of youth.¹⁴ In other words, they tend to criminalize ordinary adolescent behaviors and development.¹⁵

Criminalizing children's activities under PINS laws also "adultifies" them.¹⁶ It expects youth to understand and comply with laws in the same way as adults. Status laws and practices also expose children to public shaming, court involvement, liberty restrictions, and other sanctions. This is inconsistent with the PINS doctrine's alleged protective and uplifting goals. On balance, such consequences undermine healthy youth development rather than support it.¹⁷ Moreover, these

¹¹ The terms "childism" or "childist" has been used in two different ways. Some commentators have employed it the way it is applied here, to talk about discrimination against youth. *See generally* Elizabeth Young-Buehl, *CHILDISM: CONFRONTING PREJUDICE AGAINST CHILD*. (2013); *see also* Quinn, *Twitter and Policing*, *supra* note 8 at 93 (urging rejection of "childism for competency-based participation"). Others use the term in a more "positive" sense as a means of advancing human rights for children, similar to the way the word "feminism" is used. *See, e.g.*, John Wall, *CHILD.'S RTS: TODAY'S GLOB. CHALLENGE 3* (2017) ("Childism seeks to transform ideas and societies in response to the particular lived experiences of children.").

¹² *See* Quinn, *Twitter and Policing*, *supra* note 8.

¹³ *Id.*; *see also* Young-Buehl, *CHILDISM*, *supra* note 11, at 37 (childism involves "prejudice against children" who are too often treated like property, subject to control, or simply removed from certain areas "to serve adult needs").

¹⁴ *See, e.g.*, Kristin Henning, *Criminalizing Ordinary Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 *CORNELL L. REV.* 383 (2013) (describing developmental, empirical, and other research relating to teen behaviors, which most youth generally outgrow).

¹⁵ *See* Jay Blitzman, *Are We Criminalizing Adolescence?*, 30 *ABA J.* 22 (Spring 2015) (condemning the use of criminal justice approaches on children in the context of alleged status offenses); Quinn, *Twitter and Policing*, *supra* note 8, at 139 ("enactment of normal adolescent development processes" should not be met with "criminalization and prosecution when they veer too far afield from what . . . adults might do themselves").

¹⁶ *See* Rebecca Epstein, et al., *Girlhood Interrupted: The Erasure of Black Girls' Childhood* (2017) (using the word 'adultification' to describe when youth are assumed to be "more-adultlike" than they are – as is often the case for Black girls); Mae C. Quinn, *In Loco Juvenile Justice: Minors in Munis, Cash from Kids, and Adolescent Pro Se Advocacy – Ferguson and Beyond*, 2015 *BYU L. REV.* 1247, 1298 (2015) (describing how local laws and practices may work to adultify youth); Am. Psych. Ass'n, *Black Boys Viewed as Older, Less Innocent Than Whites, Research Finds*, *APA* (Mar. 2014), <https://www.apa.org/news/press/releases/2014/03/black-boys-older> (describing research demonstrating that beginning at age ten, Black children are perceived as "less innocent than other children in every age group" and that dehumanization of Black people among police officers was linked to violent encounters with Black children in custody).

¹⁷ *See, e.g.*, Beth Cauffman et al., *Crossroads in Juvenile Justice: The Impact of Initial Processing Decision on Youth 5 Years After First Arrest*, *DEV. AND PSYCHOPATHOLOGY* 1 (2020) (finding that youth formally processed for offenses

tensions and shortcomings are, in part, what have led many around the country to call for the decriminalization of status offenses.

For instance, Connecticut began reforming its status offense system over a decade ago when it started diverting certain family-related PINS cases from the juvenile justice system.¹⁸ Instead, youth were referred to Family Support Centers (“FSC”) for immediate community-based services, such as non-secure respite support and housing.¹⁹ According to the Coalition for Juvenile Justice, in just “six months, the number of status offense court referrals fell by 41%” as a result of these reforms, “and more than one year later no youth charged with a status offense had been securely detained.”²⁰ Building on these successes, in 2015, Connecticut essentially decriminalized truancy.²¹ As of today, court involvement in family-related disputes formerly treated as status cases is a very rare exception.²²

Social scientists, prominent juvenile justice research groups, and even decidedly conservative think-tanks have all advanced status offense decriminalization as an emerging best practice. For instance, sociologists at the University of Hawaii recently released a study that calls for an “end [to] the criminalization of students” through status offenses and instead recommends a range of non-punitive approaches such as enhanced school-based programming and community-based mental health services for youth who are repeatedly absent.²³

Organizations like the Vera Institute of Justice, Council of State Governments Justice Center, and Georgetown’s Center for Juvenile Justice Reform have also advocated ending status

of moderate severity are more likely to be re-arrested and engage in more serious acts of violence, and less likely to complete high school or believe they have the opportunity to succeed); Laurie Spivey, *Locking Up Youth for Status Offenses is Counterproductive*, MULTISYSTEMIC THERAPY SERVS. WEBSITE (Apr. 10, 2018) (recounting harms therapist has seen as a result of status offense prosecutions and recommending community-based MST programs as alternative), <https://info.mstservices.com/blog/locking-up-kids-is-counterproductive>.

¹⁸ ACCESS TO INFO. IN JUV. CT. PROC., STATE OF CONN. JUD. BRANCH (July 10, 2021), https://www.jud.ct.gov/juv_infoguide/IJCP_StatusOffense.html.

¹⁹ COAL. FOR JUV. JUST., *Deinstitutionalization of Status Offenders (DSO): Facts and Resources* 4 (Jan. 2014) (citing Sara Mogulescu and Gaspar Caro, MAKING CT. THE LAST RESORT: A NEW FOCUS FOR SUPPORTING FAMS. IN CRISIS (Vera Institute, Dec. 2008)).

²⁰ *Id.*

²¹ TOW YOUTH JUST. INST., ISSUE BRIEF: WHY STATUS OFFENSE L. IN CONN. HAVE CHANGED (2019), https://www.newhaven.edu/_resources/documents/lee-college/institutes/tow-youth-justice-institute/issue-briefs/status-offenses.pdf.

²² *Id.*; see also CONN. JUV. BRANCH STAT, JUV. CASES – FWSN 2007-21, <https://jud.ct.gov/statistics/juvenile> (last visited June 26, 2022) (tracking data and reflecting a drop from hundreds—and sometimes thousands—of matters across the state to approximately twenty such cases in 2020-21).

²³ Omar Bird et al., DISCRIMINATORY POLICING IN HAWAII’S SCHS.: RELIANCE ON POLICE IN HAWAII’S SCHS. IS EXCESSIVE, DISCRIMINATORY AND VIOLATES NAT’L JUV. JUST. POL’YS, Mar. 24, 2021, <https://www.documentcloud.org/documents/20521930-police-in-schools-policy-brief>.

case prosecutions, noting that community-based resources and services better support youth, families, and public safety than status offense prosecutions.²⁴ Even the Right on Crime group has called for juvenile courts to step aside in status matters to allow families and communities to take the lead in assisting and supporting youth as both the appropriate developmental response—and the more fiscally responsible approach to dealing with adolescent behaviors.²⁵

III. Abandoning PINS Aligns with Administration’s Recent Innovations

Considering these developments, it is hard to see how the continued use of D.C.’s PINS laws actually serve the interests of the District, its communities, families, and youth. Instead, abandoning our outdated status offense model is the natural next policy step for legal system stakeholders. Moreover, as described by DC-JJAG in its August 2020 presentation to the Deputy Mayor of Public Safety and Justice, this shift aligns with other innovative youth and family-focused initiatives already underway under this administration’s leadership.²⁶ Additional funding and support from the D.C. government for these initiatives would best support the needs of youth in the District and obviate the need for PINS laws.

In 2019-20, District of Columbia Public Schools kicked off the Connected Schools Model.²⁷ This cutting-edge innovation employs a “whole child, whole school, whole community” model by turning schools into “resource hubs” to serve children and families in need.²⁸ With assistance ranging from home visits, to support for parents, to trauma-informed healing interventions, to twice-monthly food banks, to employment information sessions, these self-help centers are set up to offer individualized and community-based support without the stigma of arrest or disruption and bureaucratization of a court case.²⁹

²⁴ See generally Josh Weber, *et al.*, *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes* (CJJR & JC-CSG, May 2018); Mahsa Jafarian & Vidhya Ananthakrishnan, *JUST KIDS: WHEN MISBEHAVING IS A CRIME* (Vera Institute, Aug. 2017).

²⁵ See Cohen, *supra* note 9.

²⁶ See JJAG REPORT BRIEFING FOR THE DEPUTY MAYOR FOR PUB. SAFETY AND JUST., Aug. 13, 2020. To be clear, this discussion and analysis does not specifically support any particular program offered by or funded by the District. At this point, none are perfect. However, as argued throughout this paper, non-punitive alternatives are more effective at preventing crime, building public trust, and improving children’s life chances than a “police first” approach.

²⁷ *Id.*

²⁸ DCPS CONNECTED SCHS. WEBPAGE, DIST. OF COLUMBIA SCHS. WEBSITE, <https://dcps.dc.gov/page/dcps-connected-schools>.

²⁹ *Id.*

The District’s Youth Services Division (“YSD”) within the Department of Human Services has also launched several new programs in the last few years. For instance, the Parent and Adolescent Support Services (“PASS”) project works with youth who might otherwise be charged as status offenders.³⁰ This voluntary early intervention program works with families impacted by alleged childhood behaviors such as missing school, staying out late, or being disobedient.³¹ Children and families involved have access to Functional Family Therapy (“FFT”), mentoring, tutoring, and after-school programs.³²

As for specific safety concerns around youth who run away from home, the YSD recently launched the Strengthening Teens Enriching Parents (“STEP”) program.³³ Operating with a motto of “[o]ne missing youth is one too many,” this project is focused on protecting youth from sex trafficking or other exploitation.³⁴ It, thus, engages in “outreach to assess why the youth has left home.”³⁵ Then, in partnership with the child and family, the program develops strategies to help keep the youth safe.³⁶

Just a few months after JJAG’s August 2020 presentation, under this administration’s leadership, D.C.’s Child and Family Services Agency (“CFSA”) rolled out a new “Family Success Center” initiative. In announcing funding for these spaces, Mayor Bowser noted “[t]his investment in our Family Success Centers is about meeting the needs of our parents and children and creating support networks in the neighborhoods [where] they live.”³⁷ As public-private partnerships, these locations are run by grantees like Sasha Bruce Youthwork, a well-respected youth services organization, and supported by representatives from the D.C. Department of Employment Services, D.C. Public Libraries, and other organizations.

In addition, the District’s Department of Behavioral Health instituted a hotline to support persons in crisis, twenty-four hours a day, seven days a week.³⁸ Providing services to both adults

³⁰ PASS INTENSIVE CASE MGMT, DHS WEBSITE, <https://dhs.dc.gov/service/parent-and-adolescent-support-pass-intensive-case-management>.

³¹ *Id.*; see also PASS PROGRAM REFERRAL FORM, <https://dcgov.seamlessdocs.com/f/PASSREFERRAL>.

³² See FUNCTIONAL FAM. THERAPY (FFT), DHS WEBSITE, <https://dhs.dc.gov/page/functional-family-therapy-fft>.

³³ STEP PROGRAM, DHS WEBSITE, <https://dhs.dc.gov/page/strengthening-teens-enriching-parents-pass-program>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* (“[c]ase managers . . . , together with the family, implement services with community partners and other District agencies to reduce the likelihood of future [Missing Person’s Reports] and increase family stability”).

³⁷ *Mayor Bowser Launches Families First Success Centers in Wards 7 and 8*, EXEC. OFFICE OF THE MAYOR WEBPAGE (Oct. 7, 2020).

³⁸ ACCESS HELPLINE WEBPAGE, DBH WEBSITE, <https://dbh.dc.gov/service/access-helpline>.

and youth, the helpline serves as an alternative to 911. Crisis teams, rather than armed law enforcement, respond to deal with family mental health emergencies that might otherwise be dealt with as status offense unruliness matters.³⁹

Removing status offenses from the books also aligns with the administration’s desire for law enforcement to wholeheartedly focus on gun violence in the nation’s capital. For instance, many believe that minor matters—like status cases—historically have received more attention in the District than ending violence in our streets.⁴⁰ In July 2021, to address heightened concerns about gun violence after some high-profile shootings, the Mayor’s Office notified the Council that “any overtime necessary” for MPD would be approved. This came after the MPD billed the District \$43 million in 2020 for all the overtime clocked during the numerous summer protests.⁴¹

Taking status offense policing out of the MPD workflow would allow the agency to further focus on protecting the community from gun violence.⁴² In addition, this move is consistent with the Mayor’s call for courts to address the backlog that has mounted during the pandemic and to focus on resolving serious cases relating to public safety.⁴³ Adding unnecessary low-level status cases on top of all those awaiting resolution would be counterproductive.

IV. Problems with Staying the Course of PINS Policing and Prosecutions

A. History of Police Practices and Traumatization of Youth of Color

Historically, policing in this country has targeted youth of color for stops and searches for extremely minor matters and normal teen behaviors.⁴⁴ This resulted not only in a disproportionate

³⁹ *Id.*

⁴⁰ See, e.g., Yolanda Askew, *Opinion: DC Must Do Something About the Crime*, WASH. POST, July 23, 2021 (“[n]othing will change until the city’s elected officials take all murders and crimes as seriously as they do enforcing parking and speeding infractions.”).

⁴¹ Letter of Mayor Muriel Bowser, July 23, 2021.

⁴² Cf. Rob Barton & Pam Bailey, *It’s Another Crime Wave, But More Policing is Not the Answer*, AN INJUSTICE - MEDIUM, July 26, 2021, <https://aninjusticemag.com/its-another-crime-wave-but-more-policing-is-not-the-answer-7c30e1a0342a>.

⁴³ Rachel Kurzius, *Why Mayor Bowser Accused DC Courts of Creating a “Public Safety” Crisis Amid Increase in Homicides*, WAMU ONLINE, Aug. 2, 2021, <https://wamu.org/story/21/08/02/dc-bowser-superior-court-homicides>.

⁴⁴ See generally Kristin Henning, *THE RAGE OF INNOCENCE* (2021).

number of arrests and prosecutions of Black and Brown youth—but also visited shame and abuses upon them in ways that white youth generally do not experience.⁴⁵

Before the Emancipation Proclamation, enslaved Black people were considered the property of their owners and courts would not intervene on behalf of Black children to deprive the owners of laborers.⁴⁶ As a result, slaveowners usually punished children without reprimand from the judicial system. Following the Civil War and Emancipation Proclamation, many Southern states relied on informal Black codes, enforced under vagrancy laws designed to criminalize certain behaviors for Black people and to limit their freedom.⁴⁷

Under these codes, many Black youth were forced into apprenticeships or unpaid labor until adulthood.⁴⁸ Moreover, Black codes were enforced by police across the South.⁴⁹ For disobeying the codes, Black citizens, including youth could be subject to incarceration and involuntary labor under the convict leasing system.⁵⁰ In 1912, when youth courts were established, Black youth were generally overrepresented on court dockets in many states.⁵¹ In addition, they were denied the same access to community services and agencies as white youthful offenders.⁵² In the South, Black and white youth justice facilities were segregated, and, in some cases, Black youth were confined to adult prisons.⁵³ In addition, in Memphis, Tennessee, and some areas of the South, police officers presided over Black juvenile courts, while a judge presided over white juvenile courts.⁵⁴

Latinos in the justice system have also faced discrimination historically. In 1942, when the number of Latinos in the western United States increased significantly, children of Latinos were not treated equitably in youth courts. This stemmed from an emerging belief that Latinos were “feeble-minded” and predisposed to criminal behavior.⁵⁵ Today, youth of color still suffer from

⁴⁵ Mae C. Quinn, *Robbed of Childhood and Chances – Ferguson and Beyond*, ST. LOUIS POST DISPATCH, Mar. 25, 2015.

⁴⁶ James Bell, *Repairing the Breach*, NAT’L JUV. JUST. NETWORK (Sept. 2015), https://www.njjn.org/uploads/digital-library/Burns-Institute_Repairing-the-Breach-Hist-of-Youth-of-Color-in-JJ_Sept-2015.pdf.

⁴⁷ Gary Stewart, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 YALE L.J. 2249, 2259 (1998). *See also* Bell, *supra* note 46, at 8.

⁴⁸ *Id.*

⁴⁹ Stewart, *supra* note 47, at 2263.

⁵⁰ Bell, *supra* note 46, at 8.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

the effects of discriminatory and unequal treatment by police and courts in the youth justice system.⁵⁶ A 2014 study showed that some police officers overestimate the age of Black and Latino youth and treat them as adults prematurely.⁵⁷ In the study, Black boys were seen as “older, less innocent, and more culpable than peers of a similar age,” leaving them excluded from the protections of childhood.⁵⁸

Police stop data in the District of Columbia very closely illustrates how the adultification and criminalization of Black children continues today. In the District, the vast majority of individuals under the age of eighteen stopped by police are Black.⁵⁹ In 2020, approximately 89% of youth stopped were Black, representing eight out of every nine individuals stopped.⁶⁰ “Black youth were stopped at approximately 11.9 times the rate of their white peers, based on their respective percentages in the D.C. population”; the disparity was even more disturbing regarding Black boys who were stopped at 13.4 times the rate of white boys.⁶¹ Hispanic youth are also more frequently stopped than their white peers, representing 7.8% of stops versus 2.4% of stops for white youth over five months in 2019; however, both Hispanic and white youth were stopped at rates significantly below their respective percentages of the D.C. population whereas Black youth were significantly overrepresented.⁶² Black youth were also far more likely to be searched by police compared to their white peers.⁶³ In 2020, 1,021 Black youth were searched, while only seven white youth were searched.⁶⁴ Moreover, of the searches of Black youth, only 8.5% of the searches of Black youth revealed weapons, indicating that these stops and searches are not an effective means of removing weapons from the street.⁶⁵

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*; see also HENNING, *supra* note 44 (focusing on the adultification of Black youth generally, and in the District of Columbia in particular).

⁵⁹ ACLU ANALYTICS & ACLU OF D.C., *Racial Disparities in Stops by the Metropolitan Police Department: 2020 Data Update*, ACLU (Mar. 10, 2021) (updating data from original report to account for 2020 data) https://www.acludc.org/sites/default/files/field_documents/2021_03_10_near_act_update_vf.pdf. (2021).

⁶⁰ *Id.*

⁶¹ *Id.* at 5.

⁶² ACLU ANALYTICS & ACLU OF D.C., *Racial Disparities In Stops By The D.C. Metro. Police Dep't: Review Of Five Months Of Data* (June 16, 2020), 8, ACLU, https://www.acludc.org/sites/default/files/2020_06_15_aclu_stops_report_final.pdf (Hispanic youth made up 15.8% and white youth made up 18% of the youth population per the ACUL's analysis).

⁶³ *Id.*

⁶⁴ See *supra* note 59 at 5.

⁶⁵ *Id.*

These early interactions with police influence how youth see themselves, law enforcement, and their place within their communities.⁶⁶ From adolescence, “Black youth have significantly lower perceptions of police legitimacy compared to White youth” as a result of their “negative interactions with police.”⁶⁷ As young people are still shaping their perceptions of law and justice, it is important that their interactions with the police are viewed as “fair, consistent, and just.”⁶⁸ When youth of color experience negative interactions with police, as either a suspect or bystander, they see police interactions as influenced by racism and experience degradation.⁶⁹ “Policing happens to youth of Color regardless of delinquency, and that policing then creates delinquency among youth, which is then policed.”⁷⁰ Conversely, when youth experiences with police are fair, consistent, and just, youth are more likely to comply with the law.⁷¹ Removing status laws from the books would help reduce unnecessary police encounters with youth of color, likely improving police-community relations.

B. Gendered Injustice Around Youthful Boundary Testing and Risk Taking

Status offense policing and prosecution involves a gendered element too, where Black girls in particular face public shaming and other indignities at the hands of police. Now accounting for one in four youth arrests in D.C., more girls are entering the criminal legal system than ever before, despite arrest rates decreasing for boys. And, consistent with national trends, Black girls are the fastest-growing population in the District’s juvenile legal system.⁷²

Despite the increasing share of girls becoming involved in D.C.’s juvenile legal system, the behaviors for which girls are criminalized remain the same.⁷³ Police most often detain or arrest girls in the District for non-violent, non-weapons related offenses.⁷⁴ In general, girls are more likely to be detained for minor matters, such as technical violations and misdemeanors.⁷⁵ The over-

⁶⁶ACLU ANALYTICS & ACLU OF D.C., *Racial Disparities in Stops by the D.C. Metro. Police: Review of Five Months of Data*, ACLU (June 16, 2020), https://www.acludc.org/sites/default/files/2020_06_15_aclu_stops_report_final.pdf.

⁶⁷ Emily Haney-Caron & Erika Fountain, *Young, Black, and Wrongfully Charged: A Cumulative Disadvantage Framework*, 125 DICK. L. REV. 653, 677-80 (2021).

⁶⁸ *Id.* at 679.

⁶⁹ *Id.*

⁷⁰ *Id.* at 679 (citing Juan Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black & Latino Boys*, 116 PROC. NAT’L ACAD. SCIS. 8261, 8267 (2018)).

⁷¹ *Id.*

⁷² Eduardo Ferrer et al., *Beyond the Walls: A Look at Girls in D.C.’s Juvenile Justice System*, RIGHTS4GIRLS & THE GEO. L. JUV. JUST. INITIATIVE, 1, 17, 37 (2018).

⁷³ *Id.* at 2.

⁷⁴ *Id.*

⁷⁵ *Id.*

enforcement of status offenses has been detrimental to girls, who often bear the harshest consequences of increased enforcement of these offenses when compared to boys.⁷⁶

Police have historically and disproportionately arrested and detained girls for status offenses.⁷⁷ Overall, Black girls, who stand at the crossroads of being Black and female, are “arrested at a rate over [thirty] times that of white youth.”⁷⁸ The combination of sexism and racism uniquely affect Black girls and their involvement with the juvenile legal system. A study by the Georgetown Center on Poverty and Inequality showed that adults typically view Black girls as “less innocent” and “more adult-like” than white girls of the same age.⁷⁹

This view of Black girls has led adults to perceive them as needing less nurturing and protection than white girls.⁸⁰ These attitudes towards Black girls—which can be held by law enforcement officers, probation officers, judges, prosecutors, and other stakeholders—may explain the disproportionate rates of arrest, detainment, and punishment of Black girls in the juvenile legal system compared to white girls. Decriminalizing status offenses would help reduce these impacts.

Indeed, a growing body of research shows that status offenses such as truancy and running away may indicate abusive homes or foster care placements, a response to traumatic environments, sexual violence, and difficulty identifying safe adults.⁸¹ Moreover, in the District, Black girls are more likely to live in poverty, be pushed out of school, be disconnected from employment opportunities, and experience adverse childhood experiences. Thus, policing and prosecuting such minor behaviors exacerbates the unique vulnerabilities girls experience inside the juvenile legal system. Furthermore, the experience in the juvenile legal system exposes Black girls to additional traumas and leaves them disconnected from needed health, educational, and social services.

C. Continuing Constitutional Concerns and Evolving Standards for Youth

⁷⁶ *Id.* at 7.

⁷⁷ *Id.* at 31.

⁷⁸ *Id.* at 29.

⁷⁹ Rebecca Epstein et al., *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, GEO. L. CTR. ON POVERTY & INEQ. 1, 2 (2017), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>.

⁸⁰ *Id.* at 8; see also Quinn, *Policing Puberty and Sex Positivity*, *supra* note 8 at 71, 87 (describing how Black girls historically have been framed as dangerous while white girls are dealt with as persons in need of protection).

⁸¹ See Epstein et al. *supra* note 82, at 7-8.

The District’s status offense provisions also raise a range of constitutional concerns. These concerns persist despite the unsuccessful legal challenge to D.C.’s youth curfew in the 1990s. Much has changed since the D.C. Circuit Court (“D.C. Circuit” or “Circuit Court”) upheld the statute, including United States Supreme Court doctrine relating to youth. Juvenile curfew laws in many states have since been found unconstitutional.⁸² And the District’s curfew provision presents legal concerns beyond those raised in that lawsuit, as do D.C.’s other PINS provisions.

In *Hutchins v. D.C.*, decided in 1999, the D.C. Circuit allowed the 1995 Juvenile Curfew Act to stand following a constitutional challenge.⁸³ As part of its analysis, the Circuit Court found that the curfew was sufficiently related to the District’s strong interest in reducing violence in the city.⁸⁴ Therefore, the juvenile curfew did not violate the constitutional rights of persons under the age of eighteen, even if intermediate rather than rational basis scrutiny applied.⁸⁵

Notably, the *Hutchins* court relied largely on MPD data about reduced juvenile arrest numbers, suggesting the curfew “was effective in the District of Columbia.”⁸⁶ But deadly violence is on the rise despite the curfew.⁸⁷ With their 2015 study, KEEP THE KIDS INSIDE: JUVENILE CURFEWS AND URBAN GUN VIOLENCE, statisticians at the University of Virginia and Purdue University determined that gunfire incidents actually increased during curfew hours.⁸⁸ They also suggested public safety might be negatively impacted by curfews since there are fewer witnesses on the street to deter criminality.⁸⁹

The D.C. Circuit has also since questioned the wisdom of arresting youth for low-level offenses. In the 2004 decision of *Hedgepeth v. Washington Metro Area Transit Authority*, the D.C. Circuit clarified its view that youth is not a suspect class to which heightened constitutional scrutiny should apply.⁹⁰ But, in doing so, it expressly noted the likely trauma experienced by young

⁸² Elyse R. Grossman & Kathleen S. Hoke, *Guidelines for Avoiding Pitfalls When Drafting Juvenile Curfew Laws: A Legal Analysis*, 8 ST. LOUIS U. J. HEALTH L. & POL’Y 301, 310-12 (2015).

⁸³ *Hutchins v. District of Columbia*, 188 F.3d 531 (D.C. Cir. 1999).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 544.

⁸⁷ Cydney Grannan, *As Part of Gun Violence Prevention, D.C. Will Offer \$750K in Community Grants*, WAMU ONLINE (June 8, 2021) (noting that “homicides are up 21% in 2021 as compared to 2020”).

⁸⁸ See Jillian B. Barr and Jennifer L. Doleac, *Keep the Kids Inside: Juvenile Curfews and Urban Gun Violence*, 1, 4-5, 15 (Sept. 2015) https://batten.virginia.edu/sites/default/files/2019-09/Carr_Doleac_Curfew_Gunfire_Sep2015.pdf (analyzing impacts of the District’s youth curfew law).

⁸⁹ *Id.* at 3.

⁹⁰ See *Hedgepeth v. Wash. Metro Area Transit Auth.*, 386 F.3d 1148, 1151 (D.C. Cir. 2004) (noting that federal district court was correct in applying rational basis test to age-based claims under the equal protection clause).

people seized by police for minor misdeeds—as in that case, eating fast food at a Metro station—and all but urged the D.C. Council to revisit arrest as the default punishment for minor misdeeds.⁹¹ More than this, several other courts have struck down juvenile curfew laws, some expressly disagreeing with the analysis applied in *Hutchins*.⁹²

The *Hutchins* lawsuit also failed to advance other legal claims that could be brought in the days ahead.⁹³ For instance, the *Hutchins* court noted that the law was better than earlier youth curfew laws because it allowed youth to raise defenses, such as needing to be out past curfew for employment or to run family errands. But placing the onus on youth to explain their reason for being outside after hours arguably compels statements in violation of the Fifth Amendment. Requiring a young person to explain why they are out past curfew also involves burden-shifting, where a young person is presumed guilty and must prove their innocence on the street to avoid arrest. This may be true even if they are present on the street to exercise their First Amendment rights. It is hard to fathom an analogous situation for adults—that is, where they must explain their innocence to go about their business on a public street, raising other possible constitutional concerns.

Similarly, since the law also provides carve outs for youth who have been lawfully emancipated or married, it presents serious Fourth Amendment questions.⁹⁴ That is, since that category of young person is automatically exempt from curfew compliance, it would seem police should not be permitted to stop or arrest any youth who are out after hours—unless the officer also has specific grounds for suspecting, or probable cause to believe, the youth is unmarried and unemancipated.

D.C.’s juvenile curfew laws may also be void for vagueness or suffer from overbreadth, further issues that were not fully addressed by the court in *Hutchins*. For instance, the main text of the D.C. juvenile curfew law states “a minor commits an offense if he or she remains in any public place or on the premises of any establishment within the District of Columbia during curfew hours.”⁹⁵ Section 2-1543 does provide some definitions for the terms included in the law.

⁹¹ *Id.*

⁹² *See, e.g.,* State v. J.P., 907 So.2d 1101 (Fla. 2004); Ramos v. Town of Vernon, 353 F.3d 171 (2d Cir. 2003); Betancourt v. Town of West N.Y., 769 A.2d 1065 (N.J. Super. Ct. App. Div. 2001).

⁹³ The *Hutchins* lawsuit obviously does not preclude future litigation raising different legal claims brought by youth or families represented by law school clinics or other groups.

⁹⁴ *See* D.C. Code § 2-1542 (5) (referencing judicially emancipated youth and youth who are married).

⁹⁵ D.C. Code § 2-1543(a)(1).

However, ambiguities persist—particularly for children who are asked to figure out what the law means.

Defining the term “remain” with the word “linger” does not provide clear guidance to a young person seeking to comply.⁹⁶ For instance, it seems difficult for a young person—or even an adult—to glean the legal boundaries of the term “lingering.” Further declaring that “common areas” of “apartment houses” are off limits after hours if a “substantial group of the public” can access such locations, is sure to leave many children and parents confounded about how to comply with the law.⁹⁷

Perhaps most importantly, absent any *mens rea* element—enforcement of D.C.’s curfew law is likely to unfairly include innocent conduct without adequate notice to children criminalized under its terms. The District’s other PINS provisions also lack *mens rea* elements and are otherwise vague. Youth, therefore, may be held strictly liable under other District status offense laws without adequate notice of what conduct is prohibited.

By way of example, D.C. Code §16-2301(8)(A)(iii) declares that a child will be considered “in need of supervision”—thus, a status offender—if he is “habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable.”⁹⁸ Unfortunately, the law provides no meaningful definitions for terms like “habitually disobedient” or “ungovernable,” leaving children without any sense of what conduct would violate such provisions.⁹⁹ The law potentially sweeps up all manner of childhood conduct as it does not limit its reach to knowing or intentional wrongdoing.

For example, in *City of Sumner v. Walsh*, the Washington Supreme Court found that a juvenile curfew ordinance making it “unlawful for juveniles to be in a public place after certain hours” and unlawful “for the parent...of any juvenile to permit or knowingly allow such juvenile to remain in any public place” during curfew was unconstitutionally vague as it failed to properly define exemptions under the law.¹⁰⁰ In *Betancourt v. Town of West New York*, the New Jersey Superior Court struck down a juvenile curfew ordinance as unconstitutionally vague in its use of

⁹⁶ See D.C. Code § 2-1542(10).

⁹⁷ See D.C. Code § 2-1542 (9).

⁹⁸ D.C. Code §16-2301(8)(A)(iii).

⁹⁹ See generally *id.*

¹⁰⁰ *City of Sumner v. Walsh*, 148 N.W.2d 490, 492 (Wash. 2003).

terminology, such as “social events” and “direct transit,” as well as its exemptions for youth.¹⁰¹ In *Johnson v. City of Opelousas*, the Fifth Circuit court found that a city curfew ordinance was unconstitutional because it was overly broad as lack of exceptions in the ordinance precluded a “narrowing construction.”¹⁰²

Hutchins was also decided before the United States Supreme Court decision in *Roper v. Simmons* in 2005. *Roper* relied on modern social and biological science findings and struck down the death penalty for children. Holding that youth are categorically less culpable than adults, the Court explained children’s brains are still evolving during adolescence.¹⁰³ Thus, they tend to follow their peers, engage in risk-taking, and test boundaries in ways that adults do not.¹⁰⁴ Nor does *Hutchins* apply the Court’s expanded thinking from subsequent sentencing cases. Those matters further declared that evolving standards of decency require stakeholders to account for what we now know about the adolescent brain and youth development.¹⁰⁵

The Supreme Court extended the “youth are different” doctrine beyond sentencing proceedings to policing practices.¹⁰⁶ But, again, the D.C. Circuit did not have the benefit of this important constitutional doctrinal shift when it decided *Hutchins*. Thus it upheld the arrest and prosecution of teens for risk-taking and boundary-testing behaviors identified by the United States Supreme Court as normal and expected in youth and emerging adults.

D. International Norms and Positive Youth Development Considerations

In creating special constitutional considerations for children accused of wrongdoing, the United States Supreme Court relied in part upon international norms and the Convention on the Rights of the Child (“CRC”).¹⁰⁷ The CRC does more than outlaw the death penalty for children. Instead, the CRC recognizes children as whole persons with many strengths and abilities who should be entitled to a wide range of rights and protections, including the right to form their own

¹⁰¹ *Betancourt v. Town of West N.Y.*, 769 A.2d 1065, 1065 (N.J. Super. Ct. App. Div. 2001).

¹⁰² *Johnson v. City of Opelousas*, 658 F.2d 1065, 1074 (5th. Cir. 1981).

¹⁰³ *Roper v. Simmons*, 543 U.S. 551 (2005).

¹⁰⁴ *Id.*

¹⁰⁵ See *Graham v. Fla.*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. La.*, 577 U.S. 190; *Jones v. Miss.*, 593 U.S. ___, 141 S. Ct. 1307 (2021).

¹⁰⁶ See *J.D.B. v. N.C.*, 564 U.S. 261 (2011).

¹⁰⁷ *Roper*, 543 U.S. at 575-78; see Stephen Arvin, *Roper v. Simmons and International Law*, 83 DENV. L. REV. 209 (2020).

identities, be heard in matters relating to their own affairs, participate in governmental and political proceedings, and be free from discrimination.¹⁰⁸

These same concerns regarding respect for youth voices, views, and identities, are central to Positive Youth Development (“PYD”) theory. PYD is an evidence-based school of thought and action that serves as an alternative to outdated frameworks focused on youth discipline and management. As explained by the United States Agency for International Development (“USAID”), which promotes PYD domestically and internationally:

*PYD transitions away from traditional approaches of responding to young people in a risk or problem frame and toward proactively building skills, fostering healthy relationships, and supporting youth to be active partners in development efforts. It suggests that if young people have the knowledge, skills, and support they need, they will thrive as adults, enjoy good health, succeed economically, and make meaningful contributions to their communities.*¹⁰⁹

Research shows that PYD efforts improve public health, safety, and life chances for youth.¹¹⁰ In 2007, the District became one of the first jurisdictions in the country to adopt a Positive Youth Development Plan, to “advance the [PYD] “philosophy and policy approach” and support such efforts through “sustained investment.”¹¹¹

Adopting JJAG’s recommendations to decriminalize status offenses to allow community-based programs to support and engage youth and families, is very much in line with PYD as a best practice, international norms, and the District’s commitment to having PYD inform local policies.

V. Next Steps to Empower DC Youth and Enhance DC Youth Justice Leadership

Formal decriminalization of PINS matters is the natural next step for the District. At this point, it already diverts most such cases, has adopted a PYD policy plan, and is calling for courts

¹⁰⁸ See CONVENTION ON THE RTS. OF THE CHILD, ARTICLES 2, 8, 12-17.

¹⁰⁹ USAID, A SYSTEMIC REV. OF POSITIVE YOUTH DEV. IN PROGRAMS IN LOW- AND MIDDLE-INCOME COUNTRIES 1 (Apr. 2017); *see also id.* at 10-12 (youth should “have necessary skills and resources to succeed, be empowered to make changes for themselves, be productive members of society and contribute to positive well-being beyond themselves, and be surrounded by structures and people that positively reinforce them”).

¹¹⁰ COLO. DEP’T OF PUB. HEALTH AND ENV’T, *Positive Youth Dev. Fact Sheet*, https://cdpsdocs.state.co.us/safeschools/Resources/caad/PYD_FactSheet.pdf.

¹¹¹ See D.C. Code § 2-1581.

and other stakeholders to more meaningfully focus on gun violence. What follows are further thoughts to assist the District in making this cost-free move in a manner that maximizes current resources, best serves D.C.’s youth in need, and demonstrates our leadership in the field of youth justice.

A. *Repeal DC Status Offense Laws and End PINS’ “Misbehavior” Mindset*

Teen boundary-testing and risk-taking—often manifested in skipping school, staying out late, or talking back to parents and guardians—is a natural and normal part of growing up. Status offense laws fail to account for this modern understanding of adolescent development and instead criminalizes ordinary adolescent behaviors. Historically such laws are used most often to stigmatize and marginalize boys and girls of color.

Removing status offenses from the books makes it clear that Black youth should not be seen as criminals when simply enacting the natural maturation process of moving from childhood to adulthood. Instead, during this time of vulnerability and insecurity, D.C. youth should be met with care and support.

B. *Reject Police Intervention as Default Response to Adolescent Actions*

The District has already rolled out a 24/7 mental health crisis intervention program that can be reached at 311—rather than 911. Non-police intervention is the appropriate response in many situations, even beyond mental health emergencies. In many states a group called “Don’t Call the Police,” helps communities consider alternatives to calling 911 to address problems that might be solved without the presence of armed officers and the looming threat of state violence. The group strives to provide communities with information and services without law enforcement involvement—mindful of the specific history and needs of each area where it operates.¹¹²

Similarly, the Newark Community Street Team (“NCST”) is a “community-based violence reduction strategy” that utilizes several approaches to reduce violence and improve quality of life for New Jersey residents, including youths.¹¹³ NCST outreach workers mentor and assist

¹¹² This program operates in cities across the country, including Albuquerque, Oklahoma City, and Columbus, offering connections to such as a LGBTQ+ Youth Center, mental health hotline, and a drop-in center for youth that provides housing, food, transportation, health care, employment, and education. *See Don’t Call Police: Resources by City*, <https://dontcallthepolice.com>.

¹¹³ *See* NEWARK CMTY. ST. TEAM, *About Us Webpage*, <https://www.newarkcommunitystreetteam.org/about-us>.

community youths in reaching goals; also, they intervene in active community disputes.¹¹⁴ Its neighborhood-based intervention strategies include wellness and counseling programs, employment referrals, and legal support through the Rutgers University Law Fellows Program.¹¹⁵ NCST has been so effective in delivering on its mission that it was recently recognized as a model by researchers at UCLA.¹¹⁶

Similarly, the District could use its existing violence interrupter and credible messenger network to reach youths who might otherwise be handled as status offenders. Violence interrupters and credible messenger outreach workers have been deployed in response to incidents of gun violence.¹¹⁷ However, their risk reduction and conflict resolution skills could be equally helpful in PINS situations. As well-trained peace agents, these individuals could act as an alternative to 911 to deescalate situations—like intrafamily disputes between youth and guardians, similar to what the District is doing for some mental health calls.¹¹⁸ Also, as trusted allies, violence interrupters and credible messengers would have the special ability to introduce youths to social services programs and providers.

In addition, the District could use part of the funding sought for violence prevention programs to create a D.C. Children’s Civil Rights Corps, similar to Rutgers University’s Law Fellows Program. A Children’s Civil Rights Corps would involve trained youth advocates who engage in holistic methods such as confidential communication, that is mindful of the youth’s wishes, well-being, life goals, and racial justice.¹¹⁹ Holistic youth advocates, serving in an “on call” capacity, would be trusted by their youthful clients. As such, these dedicated youth advocates could also educate and encourage their young clients to consider next best steps to improve their

¹¹⁴ See NEWARK CMTY. ST. TEAM, *What We Do Webpage*, <https://www.newarkcommunitystreetteam.org/what-we-do>.

¹¹⁵ *Id.*

¹¹⁶ Lorja Leap et al., NEWARK CMTY. ST. TEAM NARRATIVE EVALUATION, UCLA (Dec. 2020), https://www.newarkcommunitystreetteam.org/wp-content/uploads/2021/02/NCST-Evaluation_FINAL.pdf.

¹¹⁷ Pam Bailey, *Homicides Are Up? Here’s an Alternative to More Police and Incarceration*, MORE THAN OUR CRIMES – MEDIUM (Aug. 1, 2021), <https://morethanourcrimes.medium.com/homicides-are-up-heres-an-alternative-to-more-police-and-incarceration-6e81fecfbc0> (describing the effectiveness of D.C.’s violence interrupter outreach workers, some of whom are formerly incarcerated returning citizens).

¹¹⁸ See *Cure the Streets*, OAG’S VIOLENCE INTERRUPTION PROGRAM, <https://oag.dc.gov/public-safety/cure-streets-oags-violence-interruption-program>; see also Rachel Weiner, *D.C. to Divert Some Mental Health Calls Away from Police*, WASH. POST (May 17, 2021, 6:47 PM), https://www.washingtonpost.com/local/public-safety/dc-mental-health-crisis-response/2021/05/17/2c761706-b746-11eb-96b9-e949d5397de9_story.html.

¹¹⁹ See Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child’s Counsel in Delinquency Cases*, 81 NOTRE DAME L. REV. 245 (2005).

safety and chances of success.¹²⁰ The Children’s Civil Rights Corps could be comprised of recent graduates from the District’s own law school, such as the UDC David A. Clarke School of Law, its sister HBCU, Howard Law, and other law schools in the District. Such an on-call unit is also in line with a recent recommendation for an “on-call juvenile defender” to meet with youths in police custody to help them understand their rights and responsibilities.¹²¹

C. Continue to Commit to Community-Based Support over Court to Help Youth

The shift away from police, prosecution, and court-ordered probation is not only rooted in distrust of law enforcement, or a desire to reduce government surveillance and control in the lives of youth and families of color.¹²² Instead, as noted when the District launched its Family Success Centers in October 2020, a “whole family, whole community” approach is needed to “make sure all residents have a chance to thrive.”¹²³ It is essential “to go further upstream with support services”—rather than waiting for police or court involvement—“to ensure that no family is left behind.”¹²⁴

Community-based prevention programs are proven to reduce the risk of offending while increasing family protective features, including more supportive parent-child relationships.¹²⁵ A study in Ohio found when youths participated in family-focused therapy only 8.7% reoffended while approximately 40% of youths sentenced to probation committed another offense.¹²⁶ Similarly, the state of Florida determined when status offenders are provided with non-residential

¹²⁰ See Emily Galvin-Almanza, *Public Defenders Can Do More for Public Safety – If We Let Them*, WASH. POST (July 23, 2021, 8 AM), <https://www.washingtonpost.com/dc-md-va/2021/07/23/funding-defense-stop-crime>.

¹²¹ See Katrina Jackson & Alexis Mayer, *Demanding a More Mature Miranda for Kids 1* (DC Justice Lab & Georgetown Juv. Just. Initiative, 2020) (calling for youth in D.C. to “be provided a reasonable opportunity to consult with counsel” prior to custodial interrogation); see also D.C. Council Bill 24-306 (proposing the Youth Rights Amendment Act to provide enhanced *Miranda* protections to youth in the District).

¹²² See generally Sara Mogulescu & Gaspar Caro, *Making Court the Last Resort: A New Focus for Supporting Families in Crisis* (Vera Institute of Justice 2008).

¹²³ *Mayor Bowser Launches Families First Success Centers in Wards 7 and 8*, EXEC. OFFICE OF THE MAYOR (Oct. 7, 2020), <https://mayor.dc.gov/release/mayor-bowser-launches-families-first-success-centers-wards-7-and-8>.

¹²⁴ *Id.*

¹²⁵ See Janet Gilbert et al., *Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model*, 52 ALA. L. REV. 1153, 1174 (2001). The five types of family protective factors are (1) supportive parent-child relationships, (2) positive discipline methods, (3) monitoring and supervision, (4) families who advocate for their children, and (5) parents who seek information and support.

¹²⁶ Donald A. Gordon, Karen Graves & Jack Arbuthnot, *The Effect of Functional Family Therapy for Delinquents on Adult Criminal Behavior*, 22 CRIM. JUST. & BEHAV. 60, 67 (1995); see also Aaron J. Curtis, *Tracing the School-To-Prison Pipeline from Zero Tolerance Policies to Juvenile Justice Dispositions*, 102 GEO. L.J. 1251, 1275 (2014).

supportive programming rather than formal prosecution only 7% went on to commit a delinquent or criminal act.¹²⁷

The Coalition for Juvenile Justice reports that, in Jefferson County, Alabama, using an outside of court approach—family counseling—for “ungovernable/incorrigible” status cases reduced case filings by approximately 40%.¹²⁸ Similar approaches have been highly successful in Connecticut, too. Instead of relying on the courts, Connecticut relies on family- and community-based therapeutic offerings in the community.¹²⁹ Native American community efforts might also offer lessons to the District on youth inclusion, cultural relevance, and humility when creating non-court-based programs to serve youth and family and community.¹³⁰

Similarly, the District of Columbia has various community-based programs that support youth and their families and could be strengthened with additional funding and staff support to serve as alternatives to policing and prosecution of status offenders. The Parent and Adolescent Support Services Intensive Case Management (“PASS ICM”) program specifically helps youth who are at risk of becoming court involved.¹³¹ Drug Free Youth, a campaign by D.C. Department of Behavioral Health, helps youth who are struggling with underage drinking and tobacco use, two behaviors often charged as status offenses.¹³²

D. Strengthen and Streamline Services Through Safety and Success Centers

The District is fortunate to have many existing government agencies and non-profit groups addressing teenage defiance, staying out late at night, and other ordinary adolescent behaviors.¹³³ Also, there is tremendous will among local stakeholders to work together to centralize, fine-tune,

¹²⁷ Victor Streib, THE STATE OF CRIM. JUST. 2007-08 at 194 (ABA 2008).

¹²⁸ *Deinstitutionalization of Status Offenders (DSO) Facts and Resources*, COAL. FOR JUV. JUST., 1, 4 (2014), <http://www.juvjustice.org/sites/default/files/resource-files/DSO%20Fact%20Sheet%202014.pdf>.

¹²⁹ *Id.*; see also *National Standards for the Care of Youth Charged with Status Offenses*, COAL. FOR JUV. JUST. SOS PROJECT, (2013), https://www.bscc.ca.gov/wp-content/uploads/National_Standards_for_the_Care_of_Youth_Charged_with_Status_Offenses_FINAL_0.pdf.

¹³⁰ See *Tribal Youth Programs*, PONCA TRIBE OF NEB., <https://www.poncatribene.org/services/social-services/tribal-youth-program> (last visited Mar. 11, 2022); see also *Youth Council*, PONCA TRIBE OF NEB., <https://www.poncatribene.org/council/boards-committees/youth-council> (last visited Mar. 11, 2022) (describing how youth themselves “serve the tribe and fund projects that are considered ‘gaps’ in services...[for] fellow youth, our elders, and tribal members in need”).

¹³¹ *Parent and Adolescent Support Services Intensive Case Management*, D.C. DEP’T OF HUM. SERVS., <https://dhs.dc.gov/service/parent-and-adolescent-support-pass-intensive-case-management> (last visited Mar. 11, 2022).

¹³² D.C. DRUG FREE YOUTH PROGRAM, <https://drugfreeyouthdc.com> (last visited Mar. 11, 2022).

¹³³ This article is not intended to serve as an exhaustive list of existing D.C. programs that support youth. Indeed, these are just some of the many services already available that could be better consolidated and streamlined.

and deploy existing resources for the good of D.C. youth and families—and to help the District continue to rise as a modern model for youth justice nationwide. However, while D.C. is resource rich compared to many other regions, it has unfortunately created a confusing alphabet soup of options perhaps only understood by system insiders.

The District’s diffuse and often outdated websites are a case in point. Children and families should not need to know different agency names and program acronyms to get help. Currently there is not a central location on the District’s website with a complete list of services available to youth. Instead, youth and caregivers must search webpages of various agencies to determine what support might be available. The same holds true for District offices, programs, and spaces throughout the city. Thus, D.C. can use the moment of PINS decriminalization as an opportunity to streamline and centralize, to support youth in a meaningful and cost-effective manner—more so than the current use of police, prosecutors, and courts.

Youth-centered programs such as PASS and STEP should be coordinated as default offerings for youth and families who may be in need—rather than forced intervention, court orders, and involuntary probation case management. These social service programs maintain internal accountability goals to ensure continued funding and demonstrate effectiveness. For instance, for fiscal year 2021, D.C.’s Youth Services Division projected that 85% of youth participants who complete their programs would demonstrate improved functioning and avoid juvenile justice system involvement while in the program—and surpassed its goal, with 95% of participating youth avoiding juvenile justice system involvement while in the program.¹³⁴

Beyond the programs offered by the government, the District is fortunate to have several private non-profits that provide quality services to youth in need. Their approaches are far more youth-centered and beneficial than public police pat-downs, processing, and prosecution. For instance, Sasha Bruce provides services to end homelessness, Supporting and Mentoring Youth Advocates and Leaders (also known as SMYAL) supports LGBTQIA+ youth, the Latin American Youth Center is a multi-cultural youth center, and both Courtney’s House and Fair Girls work to protect and assist underage survivors of sex trafficking and youth at risk of being trafficked. These programs provide specialized, individualized attention mindful of the specific needs and concerns

¹³⁴ COUNCIL OF THE D.C., COMM. ON HUM. SERVS., 2021 PERFORMANCE OVERSIGHT - DHS at 29 (Feb. 2021), https://dccouncil.us/wp-content/uploads/2021/02/DHS_2021-Performance-Oversight-Pre-Hearing-Responses.pdf; *Department of Human Services FY2022 Performance Plan 1* (Jan. 1. 2022), <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DHS22.pdf>.

of youth they serve—beyond seeing them as case numbers in need of case management. Additionally, Horton’s Kids provides educational support and family engagement services to children living in Wellington Park, an under-resourced neighborhood in Ward 8. The non-profit organization’s support includes academic and social assistance as well as basic needs support. Children who participate in the Horton’s Kids program are twice as likely to graduate from high school.¹³⁵ Thus, the District would be well served to continue to support these organizations while deepening partnerships with them.

The District also has programs to target some common status offenses, including underage drinking or tobacco use, truancy, and curfew violations. The Drug Free Youth program helps youth across the city manage substance abuse without introducing them into the legal system. Status offenses such as truancy and curfew violations can be addressed with educational and family support programs such as Horton’s Kids.

To support status decriminalization efforts and alternative methods of youth engagement, the District should also call on D.C.’s strong business sector.¹³⁶ Private universities, many of which have recently received multi-million-dollar donations, could also do more to share their wealth with community youth.¹³⁷ Challenging business and academia leaders to provide for free the same kinds of opportunities and experiences many of them had themselves as teens, or that they might provide to their own children, could result in some unique and unexpected offerings.¹³⁸

¹³⁵ HORTON’S KIDS, <https://www.hortonkids.org> (last visited Mar. 11, 2022).

¹³⁶ See, e.g., *D.C. Businesses Doing Social Good*, WASH., D.C., <https://washington.org/dc-information/community-highlights> (last visited Apr. 29, 2022); see also Carten Cordell, *GovExec Expands Government Contract Market Intel Business with Another Acquisition*, WASH. BUS. J. (Aug. 11, 2021) (announcing expansion of market for D.C. digital media company under leadership of CEO Tim Hartman); but see Tristan Navera, *Developer Duo Tackles Mixed-Use Project from the Ground Up in Deanwood*, WASH. BUS. J. (Aug. 9, 2021) (describing challenges faced by developers of color who are seeking to create new housing and grocery store venue in D.C.).

¹³⁷ Nick Anderson, *Georgetown alum pledges second \$100 million gift to public policy school*, WASH. POST (Mar. 25, 2021), <https://www.washingtonpost.com/education/2021/03/25/georgetown-frank-mccourt-100-million/>; Jenny Gathright, *Howard University’s Largest Donation Ever Raises Questions About Who Gets Donor Coins*, NPR (Feb. 11, 2020, 5:00 AM), <https://www.npr.org/2020/02/11/803572593/howard-universitys-largest-donation-ever-raises-questions-about-who-gets-donor-c>; see also Mae C. Quinn, *Wealth Accumulation at Elite Colleges, Endowment Taxation, and the Unlikely Story of How Donald Trump Got One Thing Right*, 54 WAKE FOREST L. REV. 451 (2019) (urging wealthy universities to spend down endowment funds for the benefit of local youth and families, and suggesting the use and enforcement of Payment in Lieu of Taxation programs to assist localities).

¹³⁸ As one JJAG member recently noted, when affluent youth in white communities have difficulties, they generally are not arrested. Instead, they are provided with things like horseback riding camp, fishing trips, or golf lessons as outlets that might help them find their passions. In line with this thinking, Washington County, Arkansas, has rolled out the Washington County Outdoor Adventure Club in collaboration with the state Game and Fish Commission. See DIVERSION PROGRAMS, WASH. CTY. JUV. CT., WASH. CTY., ARK.,

While some existing D.C. programs provide drop-in centers, extended hours, and housing options, the District would benefit from establishing accessible supportive spaces to receive youth twenty-four hours a day, seven days a week for safety and respite. Such age-appropriate spaces should be connected to one or more existing entities to serve as one-stop “hubs” where youth can access services from all these groups.

D.C.’s Connected Schools campuses are natural locations for such hubs, as are the Family Success Centers launched by the District in October 2020.¹³⁹ The University of the District of Columbia is another alternative space to host and support emerging adults. Thus, JJAG’s decriminalization plan will require no new expenditures—and actually saves the District money. The efficiency suggestions made here are cost-free too, other than streamlining, cutting duplication, and redistributing current resources within the District.

E. Grow as National Leader and Partner in Sharing Best Youth Justice Practices

The District will further establish itself as a national leader in youth justice if it decriminalizes PINS offenses. Indeed, D.C. could serve as an innovation hub to convene conversations with other leaders in the field to share lessons learned and continually improve D.C.’s approaches. Beyond engaging with the national youth advocacy groups listed above, including the VERA Institute and Newark, New Jersey’s NCST, the District should further develop its relationships with youth-serving groups across the country. These organizations could serve as thought and action partners—as well as ambassadors in their own jurisdictions, sharing word of D.C.’s decriminalization model.

For instance, District stakeholders have already started to build a relationship with the Youth Connection Center in Hennepin County, Minnesota. The center is open twenty-four hours a day, seven days a week and serves children aged ten to seventeen who allegedly engage in status offending behaviors or who are victims of sex trafficking.¹⁴⁰ Thus, both categories of youth are understood as individuals in need of assistance and voluntary support, rather than formal arrest

<https://www.washingtoncountyar.gov/government/departments-a-e/circuit-courts/circuit-court-division-3-juvenile/diversion-programs> (last visited Apr. 26, 2022).

¹³⁹ See DCPS CONNECTED SCHS. (listing eleven DCPS campuses that subscribe to the Connected School model), <https://dcps.dc.gov/page/dcps-connected-schools> (last visited Apr. 26, 2022); *Mayor Bowser Launches Families First Success Centers in Wards 7 and 8*, D.C. CHILD AND FAM. SERVS. AGENCY (Oct. 7, 2020), <https://cfsa.dc.gov/release/mayor-bowser-launches-families-first-success-centers-wards-7-and-8>.

¹⁴⁰ YOUTH CONNECTION CTR., HENNEPIN CTY., MINN., <https://www.hennepin.us/residents/public-safety/youth-connection-center> (last visited Apr. 26, 2022).

and prosecution. In addition, center staff serve as the front line for these youth and can return the children to their school or home—or help them develop other safe plans. This allows for police to be present in the community, while diverting children away from the criminal legal system. The Youth Connection Center also provides mental health screening, educational activities, and support for youth and families. The program is a collaboration between Hennepin County, Minneapolis Public Schools, the City of Minneapolis, and The Link.¹⁴¹

Similarly, D.C. might further engage with the Children’s Home Society of Florida (“CHS”), which offers free services for the whole family all day, every day through its Community Partnership Schools and otherwise.¹⁴² It runs a twenty-four-hour hotline and works solely with youth ages six to seventeen who struggle with truancy, running away, aggressive behavior, defiance, or who are otherwise at-risk of entering the legal system.¹⁴³ The Children’s Home offers one-on-one sessions with youth to set goals, manage anger, and resolve conflict. They also work with the family for tutoring, counseling, mentoring, educational resources, and support.¹⁴⁴

Youth Era in Eugene, Oregon, offers services to positively impact youth with a goal of achieving lasting change in communities, systems, and lives. Youth Era offers drop-in centers, virtual support, crisis response, wraparound services, technical training and support, and career training.¹⁴⁵ Youth Services of Tulsa (“YST”) also offers a wide array of services to youth from ages twelve to twenty-four. These services focus on “counseling, runaway and homeless youth, delinquency prevention, and youth development.”¹⁴⁶ Some of the services that YST provides include health services, family counseling, substance abuse counseling, LGBTQ+ services, a safe place, emergency shelter, and so much more.¹⁴⁷

In Missouri, Supporting Positive Opportunities with Teens (“The Spot”) and the Epworth Center of St. Louis, Missouri are two more promising models and thought partners, offering a range of services to community youth on a drop-in basis. Working with government agencies and

¹⁴¹ *Id.* The Link is an organization created to help at-risk youth struggling with poverty and injustice. THE LINK: YOUTH CONNECTION CTR. WEBSITE, <https://thelinkmn.org/programs/juvenile-justice-division/youth-connection-center>.

¹⁴² CHILD.’S HOME SOC’Y OF FLA., CMTY. P’SHIP SCHS. WEBPAGE, <https://chsfl.org/services/community-partnership-schools> (describing community partnership schools in Florida as seeking to “address students’ holistic needs, recognizing their unique challenges—and opportunity” with such services as “on-site access to health and wellness services,” “on-site food pantries,” mental health counseling and other services).

¹⁴³ *See id.*

¹⁴⁴ *Id.*

¹⁴⁵ YOUTH ERA PROGRAMS, <https://www.youthera.org/programs> (last visited Apr. 9, 2022).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

academic institutions, these centers offer a multitude of services, including mental health counseling, housing support, medical care, and legal representation provided by law school clinics and other groups.¹⁴⁸

Convening and leading conversations with these national partners, D.C. can help ensure that it remains relevant and forward-looking in its approaches.¹⁴⁹ For instance, both Youth Era and Epworth Center offer remote and online counseling services that youth and families can access *via* internet and a cellular telephone.¹⁵⁰ Web-based programs and resource options that are mindful of youthful online capacities may be key to reaching youth.¹⁵¹ It also avoids the pitfall of many unnecessary appointments at different groups and agencies all around town, which require additional time and transportation, often setting up youth for failure.¹⁵²

D.C. can help share the message that programs must be sensitive to youth sexuality, individuality, and racial identity. The Mayor’s budget proposal for this year, seeking \$1 million in order to support a community center for LGBTQIA+ residents to “advance[e] D.C. values” was one step in this direction.¹⁵³

CONCLUSION

Youth in the District deserve modern, trauma-informed, and nuanced approaches to addressing ordinary adolescent behaviors. Status offense laws in the District are outdated, vague, and run the risk of violating the constitutional rights of youth. Moreover, international conventions

¹⁴⁸ See EPWORTH DROP-IN CTR. WEBSITE, <https://www.epworth.org/services/epworth-drop-in-center>; THE SPOT AT WASH. UNIV. WEBSITE, <http://thespot.wustl.edu>. Report author Mae Quinn has worked closely with both organizations, providing legal services to youth in both settings as a law school clinic director.

¹⁴⁹ Here, we note that MPD’s current webpage, warning youth about the alleged dangers of failing to abide by the District’s curfew—including arrest—feels especially outdated and unappealing to local youth. See MPD, *DC’s Curfew Law – Know the Facts*, <https://mpdc.dc.gov/page/dcs-curfew-law-know-facts>.

¹⁵⁰ Similarly, in Arkansas, youth accused of underage drinking can participate in online interventions and programming. See DIV. PROGRAMS WASH. CTY. JUV. CT., WASH. CTY, ARK. (July 10, 2021), <https://www.washingtoncountyar.gov/government/departments-a-e/circuit-courts/circuit-court-division-3-juvenile/diversion-programs>. The Arkansas program is not a model in all respects, in part because it charges fees to participate.

¹⁵¹ See Quinn, *Youth and Twitter*, *supra* note 8, at 90 (suggesting that “rather than singularly viewing adolescence as a period of ignorance and dangerous impetuosity” adults should be “tapping young peoples’ superior digital era insights” to “work collaboratively with youth to shape societal norms through the Internet”).

¹⁵² See, e.g., Noella Sudbury, *Juvenile Task Force Can Help Youth, Save Money*, TIMES OBSERVER (July 10, 2021) (noting the historic problem of probation supervision resulting in unnecessary appointments for youth, which they often miss).

¹⁵³ DC MAYOR’S BUDGET PROPOSAL (May 27, 2021), <https://mayor.dc.gov/release/mayor-bowser-presents-fair-shot-budget-proposal>.

and youth organizations support alternative approaches to engaging youth, such as fostering healthy relationships and facilitating positive youth engagement in their communities and government. The District has many resources at its disposal, including government agencies and non-profit groups, that offer youth-focused programs and other alternatives to policing and prosecution. By decriminalizing status offenses and implementing the other recommendations set forth in this paper, the District can demonstrate that it is forward-leaning in its approaches to comprehensively addressing the needs of D.C. youth and the community.