

## Youth Contacts with Law Enforcement Outside of Schools

### A. Introduction

Many children and teens experience police contact. In one study of youth in large cities across the United States, more than 25 percent of youth reported that they had been personally stopped by police.<sup>1</sup> Nearly 80 percent experienced vicarious police contact, in which they witnessed a police stop of someone else or personally knew someone who had been stopped, and 25 percent experienced both personal and vicarious police contact.<sup>2</sup> Of those who reported personal police contact:

- One-third reported they were frisked or searched;
- More than 20 percent reported the officer used harsh language;
- 8 percent reported the officer used racial slurs; and
- More than 10 percent reported the officer threatened or used physical force.<sup>3</sup>

Racial disparities exist among youth contacts with police, including differences in the frequency of contact, the type of contact (i.e. personal or vicarious), and actions taken as a result of the contact.<sup>4</sup> For example, Black and Latin(x) youth are more likely than White youth to experience personal, as opposed to vicarious, contact with police.<sup>5</sup> Personal contacts between non-White youth and police may also be qualitatively different and more aggressive than contacts with White youth.<sup>6</sup> For example, Black youth are more likely than their White peers to be stopped and

<sup>1</sup> Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) pp. 33-34 <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX]. See also *Fragile Families and Child Wellbeing Study* (2020) Princeton University <<https://fragilefamilies.princeton.edu/documentation>> [as of XXX].

<sup>2</sup> Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) pp. 31, 33-34. <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX]; See also *Fragile Families and Child Wellbeing Study* (2020) Princeton University <<https://fragilefamilies.princeton.edu/documentation>> [as of XXX].

<sup>3</sup> Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) p. 34. <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX].

<sup>4</sup> See Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) pp. 33-34. <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX]. See also Geller. *Youth-Police Contact: Burdens and inequities in an adverse childhood experience, 2014-2017* (2021) Am J Public Health, 111(7), p. 1306 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of XXX]; See also Rovner, *Racial Disparities in Youth Incarceration Persist* (Feb. 2021) The Sentencing Project, p. 6 <<https://www.sentencingproject.org/publications/racial-disparities-in-youth-incarceration-persist/>> [as of XXX].

<sup>5</sup> Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) p. 33-34. <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX].

<sup>6</sup> Geller. *Youth-Police Contact: Burdens and inequities in an adverse childhood experience, 2014-2017.* (2021) Am J Public Health, 111(7), p. 1306. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of XXX]. See also Rovner, *Racial Disparities in Youth Incarceration Persist* (Feb. 2021) The Sentencing Project, p. 6 <<https://www.sentencingproject.org/publications/racial-disparities-in-youth-incarceration-persist/>> [as of XXX].

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detained for identical behavior and are also more likely to have force used against them.<sup>7</sup> Similarly, youth of color are less likely to be diverted from the criminal justice system and are more likely to be incarcerated than non-White youth.<sup>8</sup> This reflects the notion that “[w]hat happens to youthful offenders during their initial contacts with the juvenile justice system influences their outcomes at the later stages,” which, in turn, can lead to amplification of minority overrepresentation in the later stages of the criminal justice system.<sup>9</sup>

The disparities in youth encounters with law enforcement may be attributed to several factors, including the different social contexts in which non-White youth exist.<sup>10</sup> For example, non-White youth are more likely to live in densely populated, urban areas with a heavier police presence,<sup>11</sup> meaning they are more likely to experience police contact than White youth. Additionally, misbehavior by non-White youth is less likely to be ignored and more likely to be treated as a disciplinary or policing issue, unlike misbehavior by their White peers, which is more frequently perceived as a “behavioral health concern” to be addressed by school officials instead of police.<sup>12</sup>

The disparities in youth encounters with law enforcement may also be explained by differences in the perceived maturity of non-White youth. For example, multiple studies have found that Black children are perceived as less innocent than children in other demographics.<sup>13</sup> This disparity begins as early as age ten.<sup>14</sup> Thus, Black children are more likely to be perceived as adults prematurely,<sup>15</sup> and, in turn, as more culpable and with less need for the protections typically afforded to children.<sup>16</sup>

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<sup>7</sup> Bratton and Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests* (2018) 45 N. Ky. L. Rev. 137, pp.158-59.

<sup>8</sup> Rovner, *Racial Disparities in Youth Incarceration Persist* (Feb. 2021) The Sentencing Project, p. 4, 6 <<https://www.sentencingproject.org/publications/racial-disparities-in-youth-incarceration-persist/>> [as of XXX].

<sup>9</sup> Bratton and Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests* (2018) 45 N. Ky. L. Rev. 137, p. 148.

<sup>10</sup> Geller, *Youth-Police Contact: Burdens and inequities in an adverse childhood experience, 2014-2017.* (2021) Am J Public Health, 111(7) p. 1306 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of XXX].

<sup>11</sup> Geller, *Youth-Police Contact: Burdens and inequities in an adverse childhood experience, 2014-2017.* (2021) Am J Public Health, 111(7) p. 1306 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of XXX].

<sup>12</sup> Rovner, *Racial Disparities in Youth Incarceration Persist* (Feb. 2021) The Sentencing Project, p. 4 <<https://www.sentencingproject.org/publications/racial-disparities-in-youth-incarceration-persist/>> [as of XXX].

<sup>13</sup> See Goff et al, *The Essence of Innocence: Consequences of dehumanizing Black children* (2014) J. of Personality and Social Psychology <<https://search.issuelab.org/resource/the-essence-of-innocence-consequences-of-dehumanizing-black-children.html>> [as of XXX].

<sup>14</sup> See Goff et al, *The Essence of Innocence: Consequences of dehumanizing Black children* (2014) J. of Personality and Social Psychology. 106, 4 p. 529 <<https://search.issuelab.org/resource/the-essence-of-innocence-consequences-of-dehumanizing-black-children.html>> [as of XXX].

<sup>15</sup> See Goff et al, *The Essence of Innocence: Consequences of dehumanizing Black children* (2014) J. of Personality and Social Psychology. 106)4 P. 529. <<https://search.issuelab.org/resource/the-essence-of-innocence-consequences-of-dehumanizing-black-children.html>> [as of XXX].

<sup>16</sup> Bratton and Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests* (2018) 45 N. Ky. L. Rev. 137, p. 154.

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The implications of youth-police encounters, and the disparities among those encounters, are serious and affect both the youth involved and the community as a whole. At the individual level, police encounters can undermine children and teens' sense of safety and stability and contribute to the development of stress, anxiety, post-traumatic stress disorder, and depression.<sup>17</sup> These symptoms can manifest physically, affecting both the mental and physical health of youth who experience police contact.<sup>18</sup> Negative or intrusive encounters with police can also lead to individual feelings of anger or fear, which may result in distrust of or cynicism toward law enforcement and the legal system.<sup>19</sup> This is especially true for youth, since individual encounters with law enforcement provide information for children and teens, who are developing values and attitudes toward law, to evaluate the legal system and the actors that enforce it.<sup>20</sup> In other words, while positive encounters with law enforcement can reinforce the legitimacy of the legal system, negative or intrusive encounters can undermine it.<sup>21</sup> When expanded to the community level, those feelings of distrust or cynicism can undermine the legitimacy of police and result in lower levels of cooperation between communities and law enforcement in solving crimes, potentially impacting crime rates.<sup>22</sup>

The Board is concerned by the disparities in youth-police contacts and their effect on youths of color. Accordingly, the Board offers the following data analysis and recommendations to mitigate disparate treatment of youth by law enforcement in California.

## B. Data Analysis

Racial disparities in stop rates and actions taken by officers during stops of individuals in younger age groups are larger than the disparities for older age groups. For this reason, the RIPA Board has decided to examine the racial distribution of stops, actions during stops, and stop outcomes across age groups. Among reporting agencies in 2021, the majority of stops of youth

<sup>17</sup> Geller, *Youth-Police Contact: Burdens and inequities in an adverse childhood experience, 2014-2017*. (2021) Am J Public Health, 111(7). pp. 1300-02. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of XXX]; Bratton and Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests* (2018) 45 N. Ky. L. Rev. 137, p. 159.

<sup>18</sup> Geller, *Youth-Police Contact: Burdens and inequities in an adverse childhood experience, 2014-2017*. (2021) Am J Public Health, 111(7). pp. 1300-02 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of XXX].

<sup>19</sup> Geller, *Youth-Police Contact: Burdens and inequities in an adverse childhood experience, 2014-2017* (2021) Am J Public Health, 111(7). pp. 1300-02 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>>; See also Bratton and Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests* (2018) 45 N. Ky. L. Rev. 137, p. 159.

<sup>20</sup> See Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) pp. 27, 29 <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX].

<sup>21</sup> See See Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) p. 29 <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX].

<sup>22</sup> See Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) pp. 27, 29-30 <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX].

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occurred outside of schools (83.17%).<sup>23</sup> For this reason, the Board has begun to analyze both police interactions with youth both on school campuses and in non-school contexts.

### 1. Age Distribution of Individuals Stopped

Officers perceived most individuals stopped in 2021 to be adults 25 years old or more (81.35%). Transition age youth, individuals perceived to be 18 to 24 years old, made up the next largest age bracket, which contained 17.4% of all stops. Together, individuals perceived to be adults and transition age youth made up 98.7% of all stops. Individuals who were perceived to be 15 to 17 years old made up 1.1% stops. The remaining stops consisted of individuals perceived to be 10 to 14 years old (0.14% of all stops) and individuals perceived to be 1 to 9 years old (0.05%).

### 2. Primary Reason for Stop

Traffic offenses represented the largest percentage of reasons for stop within most age groups (1 to 9 (70.8%), 15 to 17 (71.6%), 18 to 24 (90.5%), and 25+ years old (86.3%)). In contrast, among individuals perceived to be 10 to 14 years old, reasonable suspicion accounted for the largest percentage of reasons for stop (55.5%) with traffic offenses being the second most common reason for stop of perceived 10 to 14 years old (28.2%). Truancy, consensual encounters, warrant/wanted person, supervision, school policy, and education code (all remaining categories) made up a larger portion of stops of youth under 18 (1 to 9, 10 to 14, 15 to 17) compared to individuals perceived to be transition age youth or adults (18 to 24 or 25+). Truancy and consensual encounters were a larger percentage of stops of youth perceived to be 10 to 14 years old compared any other age group.

### **Figure XX**

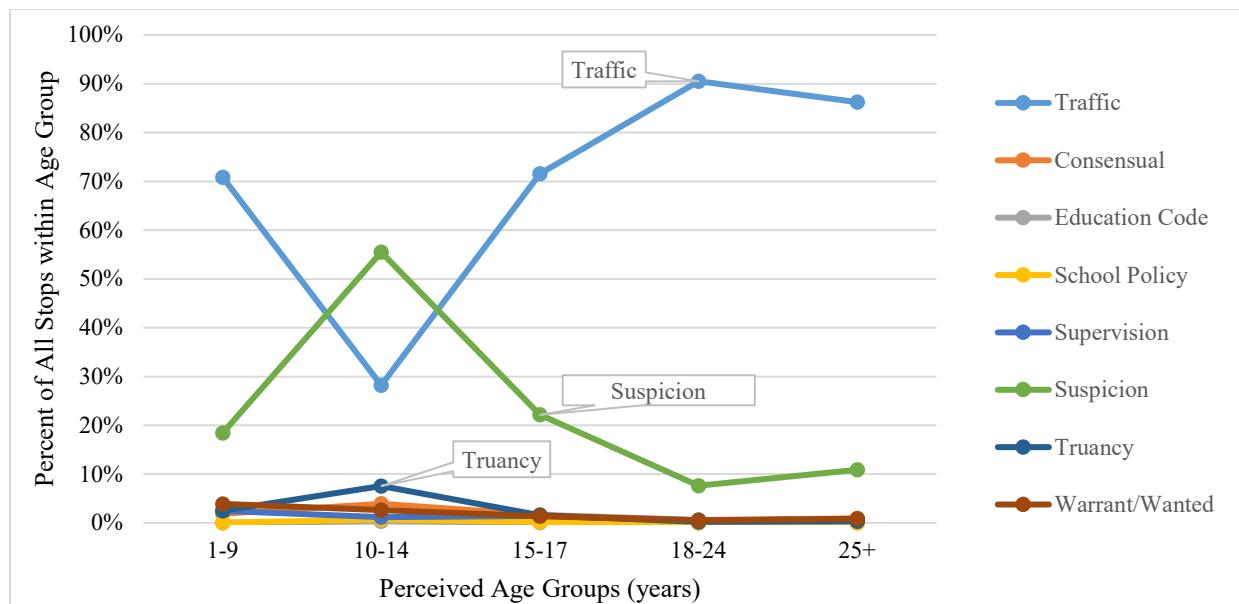
*Reason for Stops within Each Age Group*

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<sup>23</sup> Openjustice.doj.ca.gov

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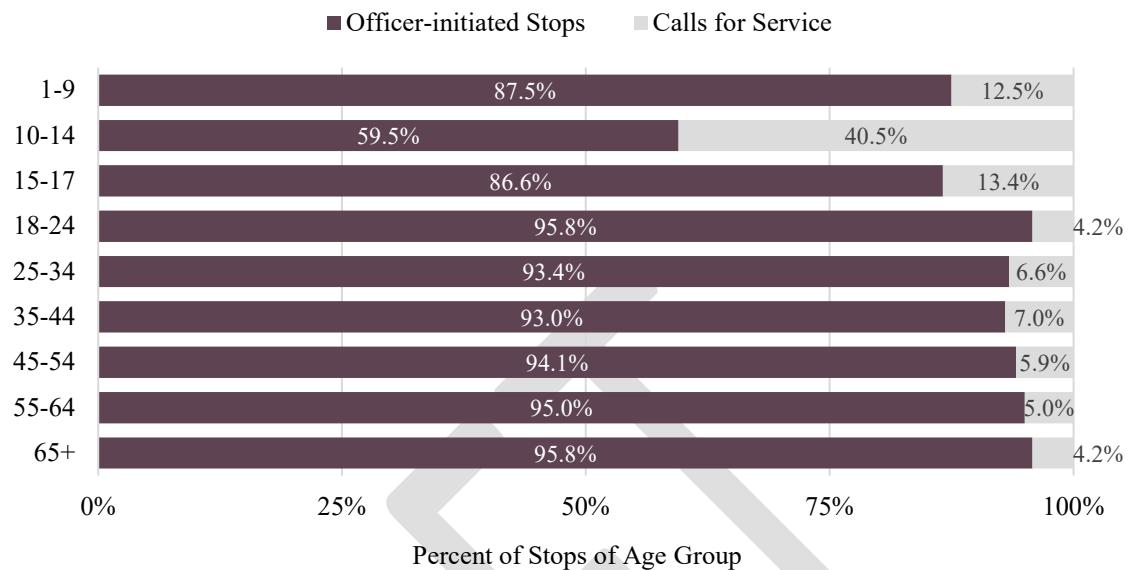


Nearly one of every three stops of youth under 15 years of age (30.76 % of stops) was primarily initiated for community caretaking reasons.

Individuals stopped whom officers perceived to be between the ages of 10 and 14 had the highest proportion of their stops initiated in response to a call for service (40.5%), followed by youth between the ages of 15 and 17 (13.4%).

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### 3. Result of Stop

Overall, 7.6 percent of all stops result in no action taken (i.e. no citation, no warning, no custodial arrest, and no other reportable stop results.) The percentage of stops that result in no action taken is higher among younger age groups (1-9, 10-14, 14-17) and lower among transitional age youth and adults (perceived 18-25 and 25+) both overall and within all racial and ethnic groups. The percent of stops resulting in no action taken was highest among individuals perceived as Black across all age groups and second highest among individuals perceived as Hispanic across all age groups. The largest disparity between racial groups in the percent of stops that result in no action taken within an age group (largest range of observed percentages of stops that result in no action taken) occurs in 15 to 17-year-olds.

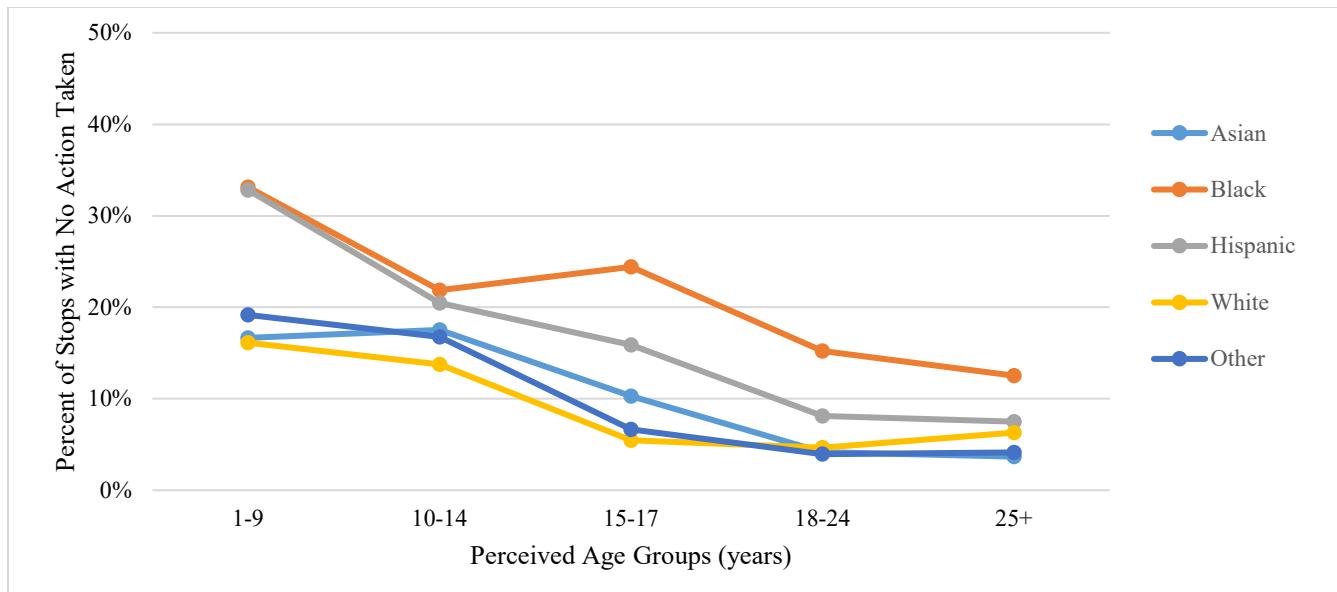
Of all stops of individuals perceived as 15 to 17 year old's, Black adolescents had no action taken 24.4 percent of the time, Hispanic adolescents had no action taken 15.8 percent of the time, Asian adolescents had no action taken 10.3 percent of the time, adolescents in other racial/ethnic groups had no action taken 6.6 percent of the time, and White adolescents had no action taken 5.5 percent of the time. Disparities in stops that result in officers taking no action should be carefully evaluated to identify the reasons for these stops to determine whether the stop was sufficiently supported by reasonable suspicion.

### Figure XX

*Rate of No Action Taken as Result of Stop by Age and Racial and Ethnic Group*

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36.05% of stops of youth under 15 years of age were reported as resulting in “Other” law enforcement action.

### C. Profiling of Youth – Trends and Impacts

The data highlights the ongoing trauma that youth, particularly Black and Latine(x) youth, face when they are criminalized by law enforcement at a young age. RIPA data shows children under the age of 9 are being handcuffed by law enforcement, detained in patrol cars or on the curbside, and searched. It is not hard to imagine that this type of law enforcement behavior, especially when directed at such young children, would have a traumatic impact on them. Given the potential long-term impacts and importance of unpacking law enforcement interactions with youth, the Board will evaluate these stops more in depth for this year’s report.

#### 1. What Happens During Stops of Youth?

Many children and adolescents face the same treatment adults do during police encounters -- detained, searched, cuffed, pepper sprayed, tased, and even shot. This treatment does great harm to communities and can have lifelong impacts for youth. Even the actions of other officers in these instances impacts what and how youth as well as the community as a whole will interact or trust law enforcement in the future. Here, the Board examines a few instances where youth are stopped by the police and unpacks how those stops can go wrong when youth are treated as adults.

*How can a parent feel safe calling the police for help when their daughter was assaulted by an officer on a now-viral video? A teen and her family sue a city for 5 million dollars after the youth was thrown to the ground and dragged by her hair by a now former officer.*

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Dajerria Becton, a Black youth, was attending a pool party when police were called to a disturbance.<sup>24</sup> Once the officer arrived, cellphone footage shows him getting out of the car and drawing his gun and pointing it at the youth.<sup>25</sup> The officers then ordered several of the youth to sit on the ground. Shocked by this, Daierra Becton yelled at officers to stop. The officer violently threw her to the ground, dragged her by her hair, and placed a knee on her back while he shoved her face into the ground.<sup>26</sup> When asked about the lawsuit, her attorney said “no amount of money is ‘great enough’ to compensate her young client for how the incident has affected her life. After the video went viral, Becton, who turned 17 this month, was bullied by racists on social media.”<sup>27</sup> In this instance, the officers resorted to force immediately when responding to a call about a pool party, and there was no consideration of the age or behaviors of youth. Their actions scared a young girl and other bystanders. The video went viral, and it affected the community’s view of not only this officer but the entire profession. This horrendous act changed the youth’s life – affecting her mental health – and she faces ongoing trauma from being bullied on top of the brutalities she experienced from the police.

*What would you do if you saw an officer handcuffing a young child? A 2019 news article describes a child being thrown to the ground, cuffed, and a hood placed over their head while attending a carnival.*

A 12-year old boy in Sacramento was cuffed and officers covered the child’s head with a ‘spit mask.’<sup>28</sup> The child was visiting the carnival and was stopped by a security guard who accused them of stealing.<sup>29</sup> When officers arrived there was a brief verbal disagreement, but shortly after that the boy is thrown to the ground and cuffed. There was no de-escalation by the officer. The officer pins the young boy to the ground the officer pulled the hood over the child’s head covering his face as bystanders yell for them to take off the mask.<sup>30</sup> These traumatizing events

<sup>24</sup> Phillips, *Black teen who was slammed to the ground by White cop at Texas pool party sues for 5\$ million* (Jan. 2017) The Washington Post <<https://www.washingtonpost.com/news/post-nation/wp/2017/01/05/black-teenager-who-was-slammed-to-the-ground-at-texas-pool-party-sues-ex-cop-city-for-5m/>> [as of XXX].

<sup>25</sup> Phillips, *Black teen who was slammed to the ground by White cop at Texas pool party sues for 5\$ million* (Jan. 2017) The Washington Post <<https://www.washingtonpost.com/news/post-nation/wp/2017/01/05/black-teenager-who-was-slammed-to-the-ground-at-texas-pool-party-sues-ex-cop-city-for-5m/>> [as of XXX].

<sup>26</sup> Phillips, *Black teen who was slammed to the ground by White cop at Texas pool party sues for 5\$ million* (Jan. 2017) The Washington Post <<https://www.washingtonpost.com/news/post-nation/wp/2017/01/05/black-teenager-who-was-slammed-to-the-ground-at-texas-pool-party-sues-ex-cop-city-for-5m/>> [as of XXX].

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<sup>28</sup> Burke, *Video of 12-year-old Sacramento boy getting handcuffed by officers sparks outrage* (May 2019) NCB News <<https://www.nbcnews.com/news/us-news/video-12-year-old-sacramento-boy-getting-handcuffed-officers-sparks-n1008816>> [as of XXX].

<sup>29</sup> Burke, *Video of 12-year-old Sacramento boy getting handcuffed by officers sparks outrage* (May 2019) NCB News <<https://www.nbcnews.com/news/us-news/video-12-year-old-sacramento-boy-getting-handcuffed-officers-sparks-n1008816>> [as of XXX].

<sup>30</sup> Burke, *Video of 12-year-old Sacramento boy getting handcuffed by officers sparks outrage* (May 2019) NCB News <<https://www.nbcnews.com/news/us-news/video-12-year-old-sacramento-boy-getting-handcuffed-officers-sparks-n1008816>> [as of XXX].

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may have been avoided if the officer was able to take a step back and acknowledge they are interacting with a youth taking the time to deescalate and use other verbal ways of resolving the issue. Not only did this effect the child who was tackled and covered with a hood, but it had a ripple effect in causing community harm to the bystanders and especially to the child's family, who likely felt powerless to respond and intervene on behalf of their child.

*How could a traffic stop for a seatbelt violation turn into a youth being tased and pepper sprayed? A family explains to reporters their experience with an officer who didn't take into consideration a youths age or possible disability resulting in the teen being tased.*

In Burbank a 16-year old with autism was tased during a routine traffic stop.<sup>31</sup> The teen's mother told reporters "This has been a devastating experience seeing my child on the ground, being tased by a police officer...worst moment of my life."<sup>32</sup> The youth was pulled over for not wearing a seatbelt and the situation escalated to the child "being tased, pepper-strayed and having a seizure."<sup>33</sup> The family's attorney told reporters "A person with special needs should not have a negative encounter with police simply because they don't know how to address them."<sup>34</sup> The officer's failure to recognize a youth with a disability as well as the signs of a medical emergency unnecessarily escalated a stop for a minor traffic infraction to an encounter that damaged the youth's health and will likely impact them for a lifetime.

*Implicit and explicit bias towards youth of color, particularly Black and Latine(x) youth, and viewing them as older can result in officers resorting to deadly force more quickly.*

Ma'Khia Bryant was a 16-year-old Black girl who was killed in front of her home after she was shot four times by 22-year-old police officer Nicholas Reardon in Columbus, Ohio.<sup>35</sup> Bryant, a foster youth, was having a fight with two adult women in the front yard of her foster home allegedly over household chores. Videos of the fatal shooting show that an officer arrived on scene and attempted to break up the fight, but then shot and killed Ma'Khia when she lunged with a stabbing motion toward one of the girls.<sup>36</sup> The mayor asked, "Did Ma'Khia Bryant need

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<sup>31</sup> Suter, *Family crushed after autistic teen is tasered by Burbank police* (July 2016) ABC 7 <<https://abc7.com/autistic-teen-tasered-boy-by-cops-police-taser/1429360/>> [as of XXX].

<sup>32</sup> Suter, *Family crushed after autistic teen is tasered by Burbank police* (July 2016) ABC 7 <<https://abc7.com/autistic-teen-tasered-boy-by-cops-police-taser/1429360/>> [as of XXX].

<sup>33</sup> Suter, *Family crushed after autistic teen is tasered by Burbank police* (July 2016) ABC 7 <<https://abc7.com/autistic-teen-tasered-boy-by-cops-police-taser/1429360/>> [as of XXX].

<sup>34</sup> Klemack, *Teen With Autism Accused of Charging at Burbank Police Officer* (July 2016) NBC Los Angeles <<https://www.nbclosangeles.com/news/teen-with-autism-charged-with-attack-on-burbank-police-officer/53015/>> [as of XXX].

<sup>35</sup> Fitz-Gibbon, *Ma'Khia Bryant: Cops release 911 calls, more bodycam of fatal shooting* (Apr. 2021) New York Post <<https://nypost.com/2021/04/21/makhia-bryant-cops-release-911-calls-more-bodycam-of-fatal-shooting/>> [as of XXX].

<sup>36</sup> Fitz-Gibbon, *Ma'Khia Bryant: Cops release 911 calls, more bodycam of fatal shooting* (Apr. 2021) New York Post <<https://nypost.com/2021/04/21/makhia-bryant-cops-release-911-calls-more-bodycam-of-fatal-shooting/>> [as of XXX].

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to die yesterday? How did we get here? This is a failure on the part of our community.”<sup>37</sup> If Ma’Khia was White would the officer have taken the time to engage in de-escalation or resorted to using a less-lethal force option. Research has shown that in many instances, officers will resort to force more quickly with Black and Latine(x) youth, again leaving the question open as to whether Ma’Khia and other would be alive today.<sup>38</sup> These encounters at their worst can turn fatal and needlessly end the life of a youth. Perhaps Ma’Khia Bryant would still be here if the officer addressed the situation with less fear and more understanding of the fragility of her youth.

These incidents highlight some of the experiences of many youth who have been hurt or killed by police. As discussed more in depth below, law enforcement must consider the vulnerability of youth, especially when using physical force against a child, because of the long lasting negative consequences of not doing so.

## 2. The High Costs of Youth Vulnerability in the Criminal Legal System

There has been a recent movement in policy development, informed by science and many years of strong community based advocacy, that acknowledges that age and developmental stages are relevant to youth interactions with the criminal legal system.<sup>39</sup> Failures to recognize these developmental differences have been shown to increase risks for youth to become involved in the system.<sup>40</sup> Research demonstrates that “[b]ecause adolescents are more impulsive, are easily influenced by others (especially by figures of authority), are more sensitive to rewards (especially immediate rewards), and are less able to weigh in on the long-term consequences of their actions, they become more receptive to coercion.”<sup>41</sup>

Some policy reforms have focused on the questioning of youth and require that a youth who is in custody cannot be questioned without the presence of a lawyer.<sup>42</sup> These changes in the law, in part, were made in response to a growing body of research showing that youth are less capable of understanding their constitutional rights than their adult counterparts and that they are more

<sup>37</sup> Fitz-Gibbon, *Ma’Khia Bryant: Cops release 911 calls, more bodycam of fatal shooting* (Apr. 2021) New York Post <<https://nypost.com/2021/04/21/makhia-bryant-cops-release-911-calls-more-bodycam-of-fatal-shooting/>> [as of XXX].

<sup>38</sup> Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) p. 33-34. <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX]; Bratton and Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests* (2018) 45 N. Ky. L. Rev. 137, p. 154.

<sup>39</sup> See Luna, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, And Prosecutorial Discretion* (2018) 18 Nev. L.J. 291; Sen. Rules Com., Off. of Sen Floor Analyses, Sen. Bill No. 203 (2019-2020 Reg. Sess.)

<sup>40</sup> Trejos-Castillo et al. *The Square One Project Learned Helplessness, Criminalization, and Victimization in Vulnerable Youth* (Dec. 2020) p. 13 <<https://squareonejustice.org/paper/learned-helplessness-criminalization-and-victimization-in-vulnerable-youth-by-elizabeth-trejos-castillo-evangeline-lopoo-and-anamika-dwivedi-december-2020/>> [as of XXX].

<sup>41</sup> Sen. Rules Com., Off of Sen Floor Analyses, Sen. Bill No. 203 (2019-2020 Reg. Sess.), citing Luna, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, And Prosecutorial Discretion* (2018) 18 Nev. L.J. 291 <<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1733&context=nlj>> [as of XXX].

<sup>42</sup> Sen. Rules Com., Off of Sen Floor Analyses, Sen. Bill No. 203 (2019-2020 Reg. Sess.)

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prone to falsely confessing to a crime they did not commit.<sup>43</sup> For example, brain imaging shows an adolescent undergoes significant changes in their frontal lobe which can effect a youth's decision making skills. These developmental differences affect how a youth responds to authority figures in and make them more prone to falsely confessing.<sup>44</sup> Youth are provided with similar protections in other areas of the law, such as laws prohibiting certain types of physical restraints such as shackling youth during criminal proceedings,<sup>45</sup> and policymakers should consider if these protections should also extend to other areas such as the practice of consent searches and field interview cards.<sup>46</sup> Youth may also need additional protections and safeguards prior to waiving any rights, and particularly if any statements they make could be used against them criminally.

Additionally, youth may respond differently in an encounter with officers than adults, and policymakers may also consider how use of force policies and practices can be reformed to take into account the physical and developmental differences of youth.

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*The 9-year-old Black girl sat handcuffed in the backseat of a police car, distraught and crying for her father as the white officers grew increasingly impatient while they tried to wrangle her fully into the vehicle. "This is your last chance," one officer warned. "Otherwise pepper spray is going in your eyeballs." Less than 90 seconds later, the girl had been sprayed and was screaming, "Please, wipe my eyes! Wipe my eyes, please!" ... There's a point in the video when an officer says, "You're acting like a child!" to which the girl replies, "I am a child!"<sup>47</sup>*

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### *Use of Force*

Youth can experience physical violence when interacting with the police. In a youth survey, of children who grew up in the 20 largest cities, of about five thousand people, 10 percent of them reported either police threatening to use force or using force against them.<sup>48</sup> An analysis by the AP of approximately 3,000 instances of use of force against youth in the United States in the last 11 years uncovered the most common types of police force used against youth were takedowns or forcibly taking a child to the ground, physical strikes or punching, and firearms pointed or

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<sup>43</sup> See Luna, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, And Prosecutorial Discretion* (2018) 18 Nev. L.J. 291; Sen. Rules Com., Off of Sen Floor Analyses, Sen. Bill No. 203 (2019-2020 Reg. Sess.)

<sup>44</sup> See Luna, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, And Prosecutorial Discretion* (2018) 18 Nev. L.J. 291; Sen. Rules Com., Off of Sen Floor Analyses, Sen. Bill No. 203 (2019-2020 Reg. Sess.)

<sup>45</sup> Welf. & Inst. Code §210.6.

<sup>46</sup> Welf. & Inst. Code § 625.6.

<sup>47</sup> Hajela and Whitehurst, 'I am a child' Pepper spray reflects policing of Black kids (Jan. 2022) ABC News <<https://abcnews.go.com/US/wireStory/child-police-pepper-spray-shows-kids-exempt-75846409>> [as of XXX].

<sup>48</sup> Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) p. 34. <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX].

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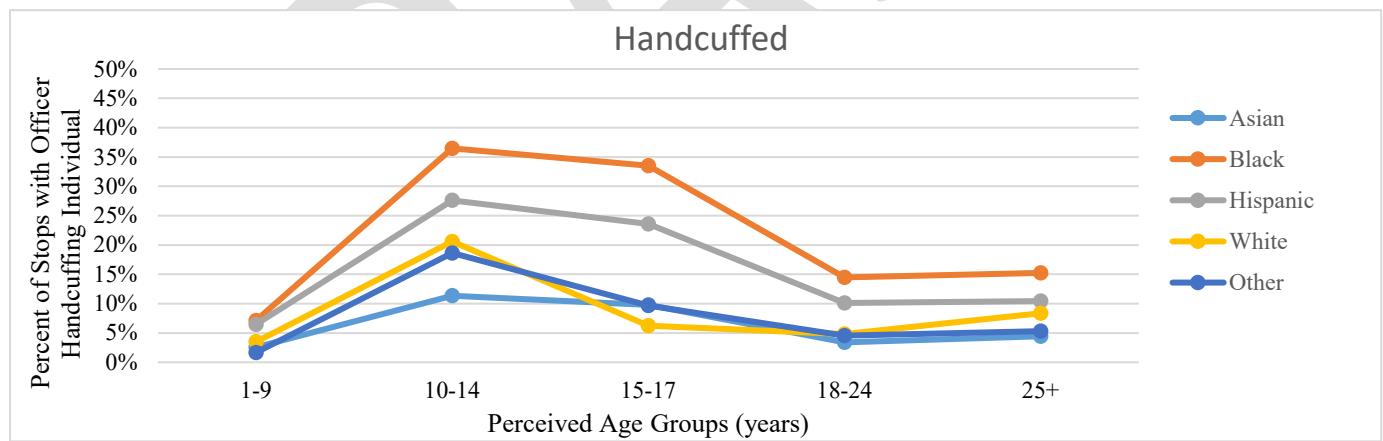
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used on children.<sup>49</sup> The data, provided by Accountable Now – a project aiming to create a comprehensive use-of-force database, includes incidents from 25 police departments in 17 states.<sup>50</sup> Disturbingly Black children made up more than 50% of children handled forcibly but only represent 15 percent of the United States child population.<sup>51</sup>

Overall, RIPA 2021 data indicates officers detained stopped individuals in a patrol car or on the curb during 11.2 percent of stops, searched stopped individual's 11.8 percent of the time, and handcuffed them during 9.8 percent of stops. Within intersections of perceived age and racial and ethnic identity, Black adolescents (10-14 and 15-17 years old) were detained (36.2-44.5% of the time), searched (39.9-42.4% of the time), or handcuffed (33.5-36.5% of the time) during a higher percentage of stops than any other combinations of race and ethnicity with age groups. Officers detained, searched, and handcuffed individuals they perceived to be Black the highest percentage of the time, relative to other racial and ethnicity groups, for all age groups. The highest observed percentage of stops in which officers detained, handcuffed, or searched individuals within all racial and ethnic groups was among adolescents (10-14 years old and 15-17 years old). Disparities between racial and ethnic groups in the percentage of stops in which officers detained, searched, or handcuffed individuals were largest among individuals perceived to be 15-17 years old.

**Figure XX**

*Search, Detainment, and Handcuff Rates by Age and Racial and Ethnic Groups*



<sup>49</sup> *Tiny wrists in cuffs: How police use force against children* (Oct. 2021) NPR

<<https://www.npr.org/2021/10/20/1047618263/tiny-wrists-in-cuffs-how-police-use-force-against-children>> [as of XXX].

<sup>50</sup> *Tiny wrists in cuffs: How police use force against children* (Oct. 2021) NPR

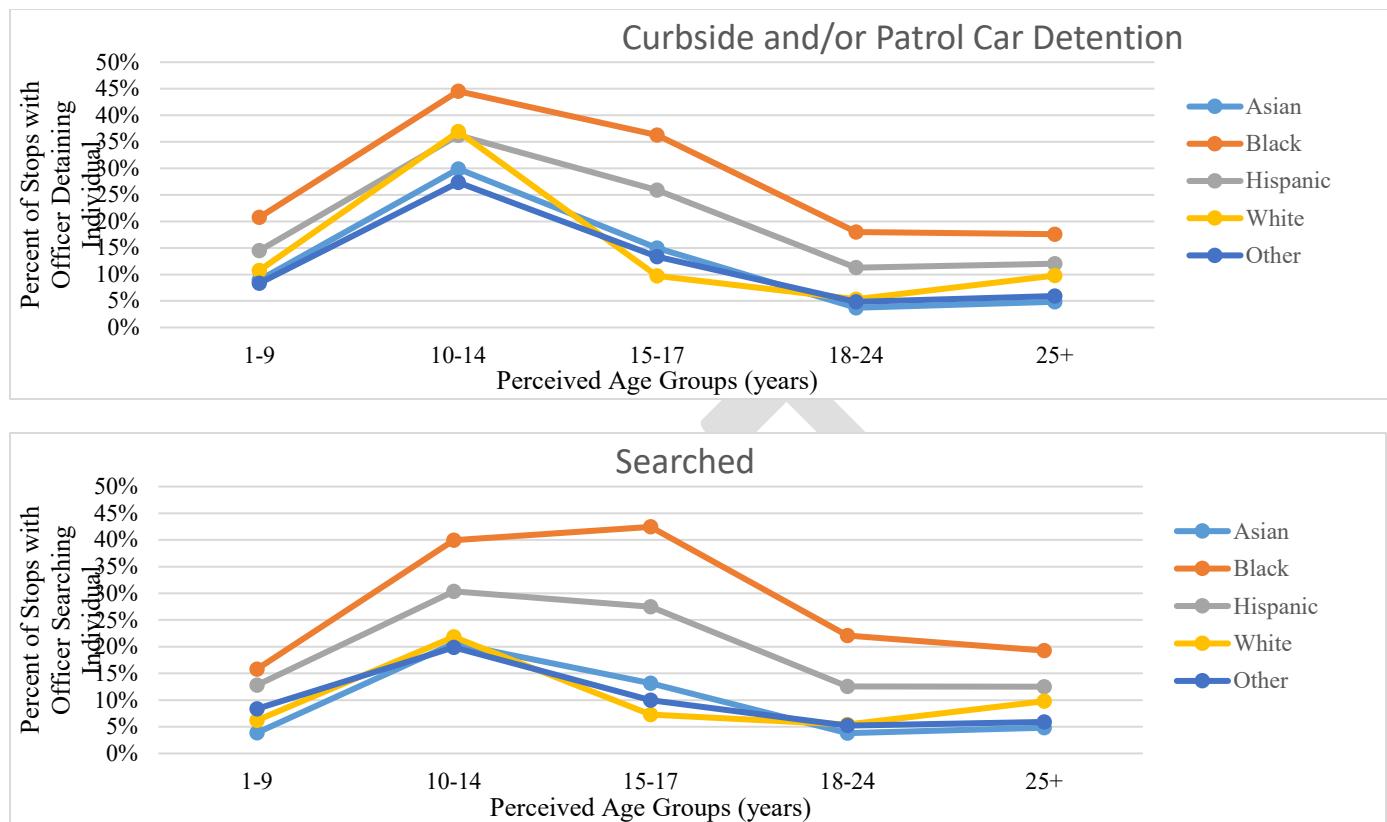
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<sup>51</sup> *Tiny wrists in cuffs: How police use force against children* (Oct. 2021) NPR

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Despite numerous protections for children under the law, there are no laws that specifically prohibit police from using force against children and few use of force policies even address a use of force continuum based upon age appropriate factors.<sup>52</sup> Some agencies have policies addressing issues such as the minimum age to be handcuffed or how to approach a youth experiencing a mental health crisis, but the vast majority do not discuss any of these issues.<sup>53</sup> The Board in future reports would like to explore different types of policies or best practices surrounding law enforcement interactions with youth –particularly with respect to use of force – and how officers are trained to deal with youth.

<sup>52</sup> See, e.g., San Francisco Police Department policy, which states “The use of force against vulnerable populations – including children, elderly persons, pregnant women, people with physical and mental disabilities and people with limited English proficiency – can undermine public trust and should be used as a last resort, when all other reasonable means have been exhausted.” The policy also prohibits the use of electronic control weapons or tasers on elderly or children unless the use of deadly force is appropriate. See General Order 5.01 Use of Force Policy and Proper Control of a Person (2022) p. 2; see also, *Tiny wrists in cuffs: How police use force against children* (Oct. 2021) NPR <<https://www.npr.org/2021/10/20/1047618263/tiny-wrists-in-cuffs-how-police-use-force-against-children>> [as of XXX].

<sup>53</sup> *Tiny wrists in cuffs: How police use force against children* (Oct. 2021) NPR <<https://www.npr.org/2021/10/20/1047618263/tiny-wrists-in-cuffs-how-police-use-force-against-children>> [as of XXX].

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*"Royal Smart remembers every detail: the feeling of the handcuffs on his wrists. The panic as he was led outside into the cold March darkness, arms raised, to face a wall of police officers pointing their guns. He was 8 years old. Neither he nor anyone else at his family's home on Chicago's South Side was arrested on that night two years ago, and police wielding a warrant to look for illegal weapons found none. But even now, in nightmares and in waking moments, he is tormented by visions of officers bursting through houses and tearing rooms apart, ordering people to lie down on the floor. "I can't go to sleep," he said. "I keep thinking about the police coming."<sup>54</sup>*

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### *Searches of Youth*

Youth commonly report being searched during their encounters with police; as noted above, a third of youth surveyed who had contact with law enforcement reported being frisked or searched.<sup>55</sup> A frisk is when an officer conducts a pat down search of a youths clothing if they have a reasonable suspicion<sup>56</sup> the person may be armed, conversely a search requires probable cause<sup>57</sup> and is more intrusive and involves searching the inside of a person's pockets, clothing, or property.<sup>58</sup> A law enforcement officer can also request consent to search a youth's person or property and does not need to have reasonable suspicion or proof the youth committed any crime.<sup>59</sup> As discussed in detail in the 2022 RIPA report on consensual encounters, agreeing to an officer's request to conduct a search is not necessarily voluntary given the inherent power inequality between law enforcement officers and members of the public.<sup>60</sup> Those inequities are exacerbated when looking at consent searches of youth because of their susceptibility to comply with an officer's request.<sup>61</sup>

Officers performed a consent only search 1.2 percent of all stops. The highest percentage of stops with consent only searches was reported among individuals who were perceived to be both

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<sup>54</sup> *Tiny wrists in cuffs: How police use force against children* (Oct. 2021) NPR

<<https://www.npr.org/2021/10/20/1047618263/tiny-wrists-in-cuffs-how-police-use-force-against-children>> [as of XXX].

<sup>55</sup> Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) The Russell Sage Foundation Journal of the Social Sciences. 5(1) p. 34. <<https://www.rsfjournal.org/content/5/1/26>> [as of XXX].

<sup>56</sup> "Reasonable suspicion" requires that there is a set of specific facts that would lead a reasonable person to believe that the stopped person is committing a crime, recently committed a crime, or is about to commit a crime.

Reasonable suspicion cannot be based solely on a hunch or instinct. "Reasonable Suspicion" requires a lesser standard of proof than "Probable cause to arrest or search." See RIPA Regs, p. 3[§ 999.226, subd. (a)(16)].

<sup>57</sup> "Probable cause to arrest or search" means a set of specific facts that would lead a reasonable person to objectively believe and strongly suspect that a crime was committed by the person to be arrested. "Probable cause to arrest" requires a higher standard of proof than "Reasonable suspicion." See RIPA Regs, p. 2 [§ 999.226, subd. (a)(14)-(15)].

<sup>58</sup> *Terry v Ohio* (1968) 392 U.S. 1; See also RIPA Regs, p. 15[§ 999.226, subd. (a)(15)(B)(9)].

<sup>59</sup> See *Florida v. Royer* (1983) 460 U.S. 491; see also *Schneckloth v. Bustamonte* (1973) 412 U.S. 218.

<sup>60</sup> See RIPA Report (2022) p. 108-109; Citing Sommers, *Are Consent Searches Truly Voluntary?* (May 2019) Scholars Strategy Network <<https://scholars.org/contribution/are-consent-searches-truly-voluntary>> [as of XXX].

<sup>61</sup> Annitto, *Consent Searches of Minors* (2014) N.Y.U. Review of Law & Social Change <[https://socialchangenyu.com/wp-content/uploads/2015/08/annitto\\_publisher.pdf](https://socialchangenyu.com/wp-content/uploads/2015/08/annitto_publisher.pdf)> [as of XXX].

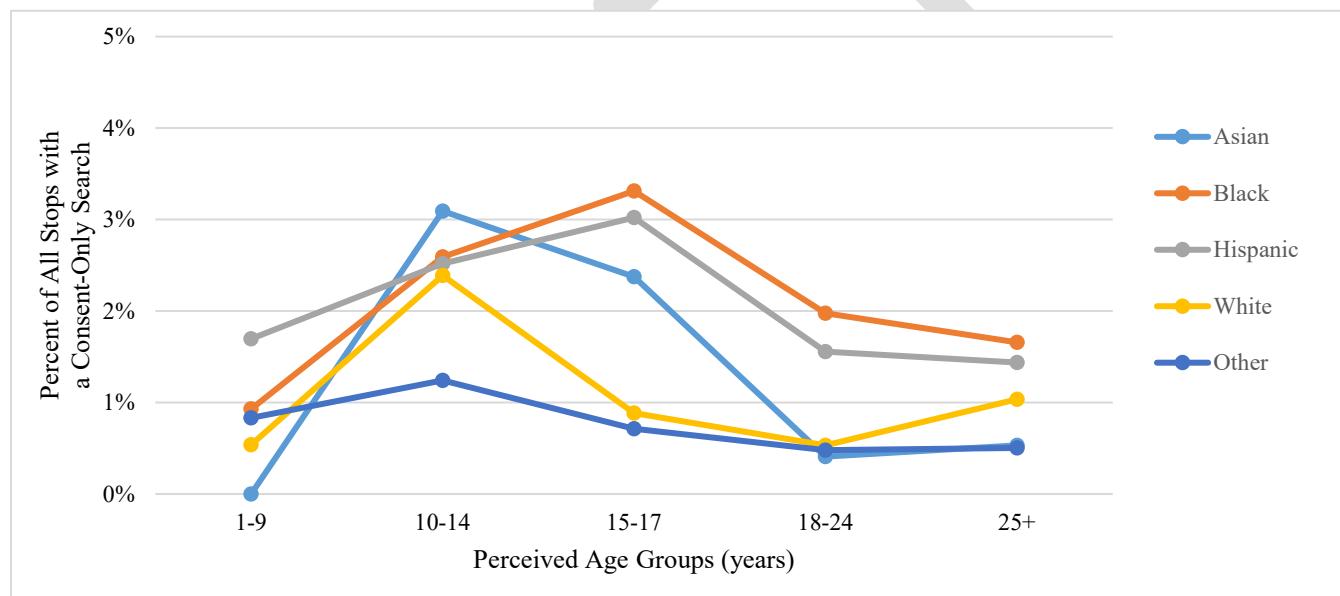
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Black and between the ages of 15 and 17 years old (3.3%). Within all five of the racial and ethnic groups, the percentage of stops that involved consent-only searches was highest during one of two perceived adolescent age groups (10 to 14 years old for White (2.3%), Asian (3.1%), and Other (1.2%) and 15 to 17 years old for Black (3.3%) and Hispanic (3.0%)). The percentage of stops involving consent only searches among individuals perceived to be 25+ years old is lower relative to these peak rates of occurrence during adolescence within all racial and ethnic groups despite persistent racial and ethnic disparities (Black 1.7%, Hispanic 1.4%, White 1.0%, Asian 0.5%, and Other 0.5%).

**Figure XX**

*Consent Only Searches by Age Group and Race and Ethnicity*



Some scholars have suggested that because of these disparities and the lack of voluntariness in agreeing to a search, officers should be required to have reasonable suspicion of a crime prior to conducting a search of anyone, but especially of youth.<sup>62</sup> States such as Washington are taking measures to address disparities in searches of youth by prohibiting an officer from asking consent to search without an attorney present.<sup>63</sup> Policymakers may wish to consider similar measures to provide more protections for youth.

<sup>62</sup> Annitto, *Consent Searches of Minors* (2014) N.Y.U. Review of Law & Social Change <[https://socialchangenyu.com/wp-content/uploads/2015/08/annitto\\_publisher.pdf](https://socialchangenyu.com/wp-content/uploads/2015/08/annitto_publisher.pdf)> [as of XXX].

<sup>63</sup> Washington State Leg. HB 1140 (2021-2022 Reg. Sess); New Law Puts Washington at forefront in Protecting Youth Rights (Apr. 2021) ACLU Press Release <<https://www.aclu.org/press-releases/new-law-puts-washington-forefront-protecting-youth-rights>> [as of XXX].

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### *Field Interview Cards and Criminalization of Youth*

During a consensual encounter, officers may also talk to a child and ask questions without suspecting they did anything wrong.<sup>64</sup> Anyone has the right to leave and does not have to respond to an officer's consensual request, but youth may not know their rights or feel comfortable leaving.<sup>65</sup> A field interview card is a document officers fill out to record and "track contacts made during stops and investigations, as well as arrests, that is generally entered into a searchable database."<sup>66</sup> The databases record information about the interaction, such as who the person is with, if they have any monitors or nicknames, and any alleged criminal affiliations.<sup>67</sup> In the 2022 Report, the Board began to explore the use of field interview cards and gender disparities in filling out these cards;<sup>68</sup> this year, the Board focuses on the use and practice of field interview cards in stops of youth, particularly given the seriousness implications of the criminalization of youth.

Overall, officers indicated they completed a field interview card as a result of stop during 3.7 percent of all stops. Compared to this overall average, officers completed field interview cards during a higher percentage of stops of individuals perceived to be 10-14 years old from all perceived racial and ethnic groups (Black 19.1%, Hispanic 16.4%, Asian 11.3%, White 10.1%, and Other 8.6%). Across all age groups, officers completed field interview cards during a higher percentage of stops of individuals perceived to be Black, and the second highest percentage during stops of individuals perceived to be Hispanic.

### **Figure XX**

#### *Field Card Interview Rates by Age and Racial and Ethnic Group*

<sup>64</sup> *United States v. Mendenhall* (1980) 446 U.S. 544, 553-554.

<sup>65</sup> *United States v. Mendenhall* (1980) 446 U.S. 544, 553-554.

<sup>66</sup> Office of the Inspector General, Los Angeles Police Commission, Review of Stops Conducted by the Los Angeles Police Department in 2019 (Oct. 2020). p. 39.

<[https://www.oig.lacity.org/\\_files/ugd/b2dd23\\_d3e88738022547acb55f3ad9dd7a1dcb.pdf](https://www.oig.lacity.org/_files/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf)> [as of XXX].

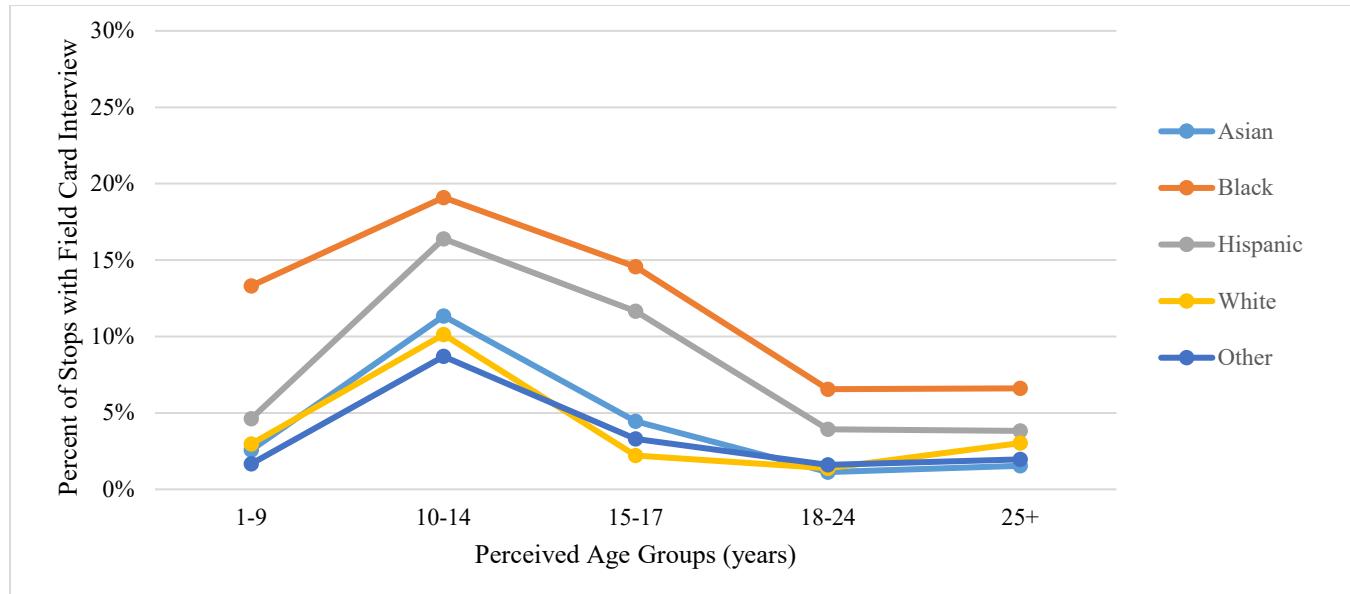
<sup>67</sup> Office of the Inspector General, Los Angeles Police Commission, Review of Stops Conducted by the Los Angeles Police Department in 2019 (Oct. 2020). p. 39.

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<sup>68</sup> Specifically, "In 2020, 26.6 percent of the stops of individuals perceived as transgender men/boys resulted in officers completing a field interview card. A similar proportion of the stops of individuals perceived as transgender women/girls (26.2%) resulted in the completion of a field interview card. Individuals perceived as gender nonconforming had the lowest proportion (5.4%) of stops resulting in the completion of a field interview card, followed by (cisgender) female and male individuals with 9.0 percent and 13.0 percent of their stops resulting in field interview cards, respectively." See, RIPA Report 2022, p. 72 <<https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf>> [as of XXX].

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The broad criteria for inclusion in police databases, including gang databases, could violate the constitutional rights of youth in particular because of their greater vulnerability and willingness to comply with authority figures but also because children may not be able to weigh the long-term consequences of their actions or speaking to the police.<sup>69, 70</sup> Further, consequences of a youth being labeled as a gang member are severe; if youth are “known to police” because their names are in a database, they may face more severe consequences for future contacts with law enforcement even when they are “known” because of a consensual encounter.<sup>71</sup>

*The use of field interview cards and their entry into criminal databases have tremendous impacts on youth in heavily policed communities since “as a practical matter, it may be difficult for a minor, or a young-adult, living in a gang-heavy community to avoid being labeled by police as a gang member when the list of behaviors includes items such as ‘is in a photograph with known gang members,’ ‘name is on a gang document, hit list or gang-related graffiti’ or ‘corresponds with known gang members or writes and/or receives correspondence.’”<sup>72</sup>*

<sup>69</sup> Flores, *Challenging Guilt by Association: Rethinking Youths’ First Amendment Right to Associate and Their Protection from Gang Databases* (2022) 107 Cornell L. Rev. 3, p. 18. <<https://live-cornell-law-review.paneonsite.io/wp-content/uploads/2022/06/Flores-note-final.pdf>> [as of XXX].

<sup>70</sup> Assemb. Comm. Pub. Safety, Assmb Bill No. 90 (2017-2018 Reg. Sess.) April 18, 2017.

<sup>71</sup> Owens, *Testing the School to Prison Pipeline* (2017) Journal of Policy Analysis and Management, 36(1). p. 11. <<https://escholarship.org/uc/item/0b8976wk>> [as of XXX].

<sup>72</sup> Assemb. Comm. Pub. Safety, Assmb Bill No. 90 (2017-2018 Reg. Sess.) April 18, 2017.

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Throughout the country, youth advocates and organizers, such as the Youth Justice Coalition in Los Angeles, have advocated against the criminalization of youth through gang databases.<sup>73</sup> CalGang, a shared database that is used by over 6,000 law enforcement officers across the state, labels and tracks thousands of people suspected of gang membership.<sup>74</sup> Children as young as 13 years old can be entered into the CalGang system and in 2021 there were 351 youth from ages 13 to 17 in the CalGang database.<sup>75</sup>

Youth are provided with more protections in many areas of the law, such as custodial interrogations, to assure statements are given voluntarily.<sup>76</sup> Policymakers should consider whether these same protections should extend to the practice of consent searches and field interview cards considering the potential negative consequences to youth. Law enforcement agencies and lawmakers should similarly consider additional protections and safeguards for youth with regard to any uses of force, searches, and field interviews, particularly if any statements made by youth could be used against them criminally.

#### D. Conclusion and Visions for Future Reports

Given the legal and ethical concerns surrounding questioning and searching children, in future reports the Board would like to explore further any policies or added protections that could be afforded to youth during these encounters. Some policy reforms the Board would like to consider in future reports include:

- (1) requiring an attorney be present search, or questioning of youth and probable cause prior to any frisk or pat search of a youth;
- (2) prohibiting the inclusion of entries into criminal databases after youth are questioned or a field interview is conducted without the presence of an attorney; and
- (3) mandating that use of force policies address interactions with youth and prohibit certain types of law enforcement actions against youths.

The Board emphasizes the importance of creating policies or laws that also consider the vulnerability of youth and hopes to review additional policies or best practices for police encounters with youth.<sup>77</sup>

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<sup>73</sup> Vitale, *The Criminalization of Youth* (2018) Jacobin <<https://jacobin.com/2018/08/the-criminalization-of-youth>> [as of XXX].

<sup>74</sup> Assemb. Comm. Pub. Safety, Assmb Bill No. 90 (2017-2018 Reg. Sess.) April 18, 2017.

<sup>75</sup> Of both children and adults there are 22,905 Hispanic/Latine(x) individuals, 7,383 Black individuals, and 2,570 White individuals in the CalGang database; See Attorney General's Annual Report on CalGang for 2021 <<https://oag.ca.gov/system/files/media/ag-annual-report-calgang-2021.pdf>> [as of XXX].

<sup>76</sup> Welf. & Inst. Code Section 625.6.

<sup>77</sup> Flores, *Challenging Guilt by Association: Rethinking Youths' First Amendment Right to Associate and Their Protection from Gang Databases* (2022) 107 Cornell L. Rev. 3, p. 18 <<https://live-cornell-law-review.pantheonsite.io/wp-content/uploads/2022/06/Flores-note-final.pdf>> [as of XXX].

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