



WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

“Protecting Students and Teachers: A Discussion on School Safety”

Submitted to the House Education and the Workforce Committee

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I. Introduction

On behalf of the American Civil Liberties Union (ACLU), its over half a million members, countless additional supporters and activists, and fifty-three affiliates nationwide, we commend the House Education and the Workforce Committee for holding this hearing entitled “*Protecting Students and Teachers: A Discussion on School Safety*,” and thank you for working to make all of our nation’s schools safer places to learn.

The ACLU is a nationwide, non-partisan organization working daily in courts, Congress, and communities to defend and preserve the civil rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. The ACLU’s Washington Legislative Office (WLO) represents the interests of the ACLU before Congress and the executive branch of the federal government, and has been a leader on Capitol Hill and with the Administration on these issues. In particular, ACLU has spearheaded efforts to pass federal legislation such as the Ending Corporal Punishment in Schools Act, the Positive Behavior for Safe and Effective Schools Act, the Student Non-Discrimination Act, and other legislations that would ban destructive punishment practices and prevent discrimination so schools can build environments that enable students to thrive.

We are pleased to submit this written statement for the record on the issue of school safety and climate, an issue of enormous national importance, and write to offer our recommendations for ensuring that a federal solution truly protects every student and does not result in unintended negative consequences that harm educational opportunities for our children.

II. Punitive School Discipline and the Over-policing of Students

The recent tragedy at Sandy Hook Elementary School has sparked a national conversation about gun safety generally and school safety in particular. However, it is important to note that gun violence occurs everywhere, and what happened at Sandy Hook was not the result of a school-specific problem. On January 16, following weeks of deliberation by the gun violence task force headed by Vice President Biden, which met with a wide variety of stakeholders, President Obama released a plan for reducing gun violence.¹ Included in the plan are a number of proposals aimed at making schools safer through a combination of executive action and legislation.

While we agree with the Administration’s statement that “one of the best things schools can do to reduce violence and bullying is to improve a school’s climate and increase trust and communication between students and staff,”² we disagree with the portions of their proposal that would lead to increasing police presence in schools. In particular, we disagree with the

¹ White House, *Now is the Time: The President’s plan to protect our children and our communities by reducing gun violence*, Jan. 16, 2013, available at http://www.whitehouse.gov/issues/preventing-gun-violence?utm_source=email193a&utm_medium=text1&utm_campaign=nowisthetime.

² *Id.* at 12.

recommendation that Congress appropriate \$150 million to school districts and law enforcement agencies to hire more police, including school resource officers.

The ACLU has long engaged in legislative advocacy and litigation aimed at reducing overly punitive school discipline practices that often push students of color and students with disabilities into the criminal justice system when law enforcement is placed in schools.

While well-meaning policymakers might assume that adding police, metal detectors and surveillance necessarily makes students safer, experience demonstrates otherwise. In a nationwide study of 450 schools between 2003 and 2008, it was determined that having School Resource Officers, or SROs, in schools, did not reduce crime or violence within the school for any specific type of crime.³ Moreover, in a 2005 survey of school principals, 25% of those who have school-based law enforcement said the reason for them was not actual violence, but media attention regarding school violence.⁴

In practice, most school police spend a significant portion of their time responding to minor, nonviolent infractions—children who have drawn on desks or talked back to teachers, for example—rather than behaviors that seriously threaten school safety. In New York City, which employs a school security force of over 5,000, schools with permanent metal detectors reported that 77% of incidents in which police personnel were involved during the 2004-2005 school year were classified as “non-criminal.”⁵ Only 4% were classified as “major crimes against persons,” and only 2% were classified as “major property crimes.”⁶ Additionally, according to a study by the National Center for Education Statistic’s national School Survey on Crime and Safety, in which 2,270 schools were surveyed, schools with police on campus report student infractions to the police at a higher rate than other schools.⁷

Criminalizing minor misbehavior that should be handled by teachers or school administrators has serious consequences for kids and contributes to the school-to-prison pipeline – policies that push kids out of classrooms and into jail cells. When students are arrested just once, their chances of graduating drop dramatically and they face lifelong repercussions as a result.⁸ We must ensure that a legislative solution does not result in children being punished more severely in the name of school safety. We strongly caution against accepting any such proposals aimed at increasing law enforcement in schools because such action can harm educational opportunities by unnecessarily pushing students out of school and into the criminal justice system.

³ THE SENTENCING PROJECT, THE FACTS ABOUT THE DANGERS OF ADDED POLICE IN SCHOOLS, (Jan. 2013), available at http://www.sentencingproject.org/doc/publications/jj_Police%20in%20Schools%20Fact%20Sheet.pdf (citing Chongmin Na & Denise C. Gottfredson, , *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, JUSTICE QUARTERLY, Oct. 2011, at 1-32.).

⁴ ANNIE SALSICH, VERA INSTITUTE OF JUSTICE, KEEPING SCHOOLS SAFE 3 (Feb. 2013), available at <http://www.vera.org/sites/default/files/resources/downloads/youth-safety-and-violence.pdf>.

⁵ New York Civil Liberties Union and American Civil Liberties Union, *Criminalizing the Classroom: the Over-Policing of New York City Schools*, 20 (2007), available at http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf

⁶ *Id.*

⁷ THE SENTENCING PROJECT, *supra* note 3 at 1.

⁸ Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 Justice Quarterly 462, 473 (2006).

This is not the first time this nation has reacted to a violent act with proposals for increasing law enforcement in schools, and we should not ignore the lessons of the past. Immediately following the 1999 Columbine High School massacre, President Clinton dramatically increased federal funding for school-based police officers, and the Department of Justice created the COPS in Schools (CIS) grant program the same year to help local communities pay for increasing police presence in schools.⁹ This was true despite the fact that there were already police at Columbine.

Three school districts in the Hartford, Connecticut area, just an hour from Newtown, were among the many that took advantage of this funding, and the ACLU of Connecticut examined the results.¹⁰ In all three districts, the study found, very young students were being arrested at school, including numerous children in grade three and below.¹¹ Among them, students of color were arrested at rates clearly disproportionate to their representation in the student population, and in some cases were even arrested for infractions when their white peers were not.¹² Though statistics do not capture the full story, the numbers in Connecticut included the arrest of two Hispanic fourth graders for “insubordination,” the arrest of an African American first grader for “leaving school grounds,” and the arrest of a Hispanic kindergartner for battery.¹³ It is difficult to imagine any circumstances under which these arrests, rather than discipline meted out by an educator, were appropriate.

The disproportionate impact of over-policing and punitive school discipline policies on students of color, as well as students with disabilities, is a nationwide problem. According to national data released by the Department of Education, students of color are likely to be punished more harshly and more frequently in schools for the same infractions as white students.¹⁴ Of all students arrested or referred to law enforcement nationally, 70% were Latino or African American.¹⁵ African American students were also 3.5 times more likely than their white peers to be suspended—and while they represented just 18% of the students in the sample, they accounted for 39% of expulsions.¹⁶ Students with disabilities, similarly, are more than twice as likely as their peers to receive one or more out-of-school suspensions.¹⁷

Recently, the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights held a landmark hearing about the school to prison pipeline and the dangers of overly punitive school discipline policies. The Subcommittee heard testimony from Edward Ward, who

⁹ American Civil Liberties Union and ACLU of Connecticut. *Hard Lessons: School Resource Officers and School Based Arrests in Three Connecticut Towns*, 14 (2008), available at http://www.aclu.org/files/pdfs/racialjustice/hardlessons_november2008.pdf.

¹⁰ *See id.*

¹¹ *Id.* at 26.

¹² *Id.* at 36.

¹³ *Id.* at 44.

¹⁴ Tamar Lewin, *Black Students Face More Harsh Discipline, Data Shows*, N.Y. TIMES, March 6, 2012, available at http://www.nytimes.com/2012/03/06/education/black-students-face-more-harsh-discipline-datashows.html?_r=1&hp.

¹⁵ DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, THE TRANSFORMED CIVIL RIGHTS DATA COLLECTION 2 (2012), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3.

attended a public high school on the west side of Chicago with a completely African American and Latino student body, where he saw these trends first hand.¹⁸ Though Ward graduated—one of just 27.7% of his classmates to do so—he described seeing many of his peers pushed out of school by the harsh policing practices. Specifically, he noted that each morning he was faced with metal detectors, x-ray machines, and uniformed security officers, making school feel like a hostile, prison-like environment.¹⁹

He testified saying:

[w]hen my classmates were suspended from Orr, they would disappear for days and when they were kicked out they would disappear sometimes for weeks. What was most shocking to me was discovering that they were being suspended for minor infractions, the kind of infractions that shouldn't merit more than a stern warning or reminder.²⁰

Other examples of negative impacts abound:

- A New York Civil Liberties Union complaint details another outrageous incident in which a school officer handcuffed and arrested a girl who tried to enter the school early to catch up on schoolwork, and then arrested the principal for attempting to intervene.²¹
- In Jordan, Minnesota, in the district of Chairman John Kline, the police officers of the town of 5,500 will be moving permanently into the district's schools, where the police chief will be taking over the high school principal's office, and all who enter must pass a police checkpoint,²² like a militarized zone, rather than the sanctuary a school should be.
- In Luzerne County, Pennsylvania, following the discovery of a situation where juveniles were being placed into for-profit detention centers for financial gain, the Interbranch Commission on Juvenile Justice concluded that “allowing schools to use the justice system as its school disciplinarian has no place in the educational process or in the juvenile court system.”²³

Most concerning, a nationwide study of SRO programs showed that SROs generally do not receive appropriate or adequate training before their placement in schools, which is dangerous

¹⁸ *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of Edward Ward), available at <http://www.judiciary.senate.gov/pdf/12-12-12WardTestimony.pdf>.

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ Amended Complaint, *B.H., et al. v. City of New York, et al.* (E.D.N.Y. June 11, 2010) (No. 10-cv-0210).

²² Heron Marquez Estrada, *Jordan answers Newtown by Sending Police Into Schools*, Star Tribune, February 16, 2013, available at: <http://www.startribune.com/local/south/191556391.html?refer=y>.

²³ *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of the Laura W. Murphy and Deborah J. Vagins, American Civil Liberties Union), at 10, available at http://www.aclu.org/files/assets/aclu_statement_for_sjc_subcomm_hearing_on_the_school_to_prison_pipeline_12_2012.pdf.

for students and calls into question their purpose in schools.²⁴ The study continued to say that conflicts are inherent because the school culture and police culture are naturally conflicting.²⁵

Unfortunately, these stories are all too common. Past experience demonstrates that increasing police presence in schools after a tragedy, while well-intentioned, is misguided. Any proposals that would bring more police, school resource officers (SROs), or even the National Guard, as some current legislative proposals suggest, must be rejected.²⁶ Militarizing our schools is not the answer to improving school climate. The cost to the health and well-being of our children is just too great.

There are alternatives to placing police officers in schools, which balance the need for security with the nurturing of students away from violence. Denver, Colorado, which is just a short distance from Columbine, knows firsthand the impact that school violence can have on a community, but has recently moved away from the heavy school policing put in place immediately following that tragedy. Two years ago, Denver instituted a plan which limits police involvement to violence necessitating their assistance and promotes restorative justice over suspensions and expulsions for typical school offenses like wandering the halls or talking back to teachers.²⁷ Since this was instituted, suspensions have been cut in half and expulsions are down by two-thirds. This effort was a collaboration between community leaders, school officials, students and police.

Similarly, in Connecticut, the communities of Manchester, Stamford and Windham, have been working closely with the Connecticut Juvenile Justice Alliance to craft strategies to support students and reduce student arrests.²⁸ The program has produced impressive results in its first year, with Manchester's high school arrest rate down 78% in 2011–2012, and expulsions down 63% district-wide.²⁹ Windham reduced district-wide arrests by 34% and also reduced in-school suspensions.³⁰

Another plan, being used in Atlanta, Georgia, and Montgomery, Alabama, only allows students to be arrested on third strikes for minor offenses like fights, disorderly conduct, disruption, and

²⁴ SALSICH, *supra* note 4, at 3.

²⁵ *Id.* at 4.

²⁶ For example, Senator Barbara Boxer (D-CA) has introduced three troubling bills this Congress, including the Save Our Student Act (S.145), which would facilitate the installation of National Guard troops in U.S. schools, the School Safety Enhancements Act of 2013 (S. 146), which would create a national tip line to report students and increase surveillance at schools, and S. 148, which would increase funding for school resource officers. All three proposals would militarize schools to the detriment of students. *See* S. 145, 113th Cong. (2013); S. 146, 113th Cong. (2013); S. 148, 113th Cong. (2013).

²⁷ Donna St. George, *A Shift in Denver: Limits on Police in Schools*, WASHINGTON POST, Feb. 18, 2013, available at http://www.washingtonpost.com/local/education/a-shift-in-denver-limits-on-police-in-schools/2013/02/18/932083b4-791b-11e2-9a75-dab0201670da_story.html.

²⁸ CONNECTICUT JUVENILE JUSTICE ALLIANCE, ADULT DECISIONS: CONNECTICUT RETHINKS STUDENT ARRESTS (Jan. 2013), available at <http://www.ctjja.org/resources/pdf/CTJJA-AdultDecisions-WhitePaper.pdf>

²⁹ *Id.* at 9.

³⁰ *Id.*

failure to follow police instruction.³¹ Due to the Atlanta plan, school referrals to juvenile courts have fallen by 70%, weapons incidents on campus are down 90%, and graduation rates are up more than 20% since 2003.

In schools that already have a law enforcement presence, lawmakers and school administrators must put appropriate safeguards in place to ensure that officers do what they are intended to do—prevent serious crimes—not usurp the role of educators by engaging in routine school discipline. Some safeguards should include, but are not limited to:

- Specific, written memorandum of understanding (MOU) between the police department and the school on the appropriate role of police involvement, limiting that involvement to serious criminal law matters to ensure that law enforcement intervention is only used as a last resort. Community, advocacy and youth organizations should be given the opportunity to comment on the MOU before it is finalized;
- High-quality specialized training for educators and all police who work in schools in such areas as youth development, non-violent conflict resolution, cultural competency, implicit bias, and interacting with students with disabilities. This should include training on how to distinguish between situations to be handled by educators and those to be handled by police, as specified in the MOU;
- Regular data collection on school-based arrests and other law enforcement interactions with students, broken down by key identity indicators (such as race, gender, disability status, English-language learner status, etc.) as well as type of offense, to ensure that police are intervening only in appropriate situations;
- Regular reporting of data to federal, state and local governments and public access to data (in a format that protects individual students' privacy and confidentiality);
- Regular monitoring of data by federal, state, and local governments for indications that police are inappropriately involved in school discipline matters and/or that racial disparities exist;
- Development of plans for reducing reliance on police, as well as any racial disparities in arrests, citations, or tickets;
- Corrective action, including the reduction or elimination of federal funds where there is overuse and/or racially disproportionate use of law enforcement to respond to student misbehavior; and
- Denial of renewal grants where the federal government identifies persistent police overreliance or racial disparities.

III. Improving Outcomes on School Discipline

Instead of focusing on proposals that would direct even more funds towards increased school policing, we encourage this Committee to pursue federal funding for efforts that proactively improve learning opportunities and school climate for all students, such as training for teachers,

³¹ Donna St. George, *Judge Steve Teske seeks to keep kids with minor problems out of court*, WASHINGTON POST, Oct. 17, 2011, available at: http://www.washingtonpost.com/lifestyle/style/judge-steve-teske-seeks-to-keep-kids-with-minor-problems-out-of-court/2011/09/21/gIQA1y8ZsL_story.html.

additional counselors and health professionals, and additional positive programs to support students.³² Some specific examples of steps to take at the federal level include:

- The Positive Behavior for Safe and Effective Schools Act, which would provide schools with the tools they need to improve learning environments by allowing them to dedicate Title I federal funds to the development of school wide positive behavior supports.³³ Positive behavior supports are evidence-based practices demonstrated to reduce disciplinary referrals, suspensions and expulsions, increase academic achievement, and improve school safety.³⁴ The bill would help to reduce reliance on suspensions, expulsions, and referrals to law enforcement, all of which push students out of schools and put graduation out of reach.³⁵ It would also enable the Department of Education to provide more training and technical assistance on effective school discipline practices and support the development of alternatives to over policing.³⁶
- The Ending Corporal Punishment in Schools Act, which would prohibit the use of physical punishment at school³⁷—a practice still legal in 19 states.³⁸ The most recent national data available indicates that over 200,000 students are the victims of this practice every year.³⁹ The use of corporal punishment is not only ineffective when it comes to improving behavior and disciplining students, but it can also cause children to withdraw academically and socially, leading to fear, depression, and anger and impacting long term well-being.⁴⁰

³² It is quite alarming that while the presence of police officers in schools has increased, the numbers of school psychologists, social workers, and guidance counselors have fallen to historic lows. For example, in the New York City public schools in the 2008-2009 school year, only 3,152 guidance counselors were employed, while 5,246 law enforcement officers were placed in schools. THE SENTENCING PROJECT, *supra* note 3 (citing New York Civil Liberties Union, Fact Sheet: *School to Prison Pipeline*, http://www.nyclu.org/files/stpp_numbers.pdf (last visited Feb. 26, 2013)). For a more detailed discussion of ACLU's federal recommendations for ending the school-to-prison pipeline and improving school climate, please see *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of the Laura W. Murphy and Deborah J. Vagins, American Civil Liberties Union), available at http://www.aclu.org/files/assets/aclu_statement_for_sjc_subcomm_hearing_on_the_school_to_prison_pipeline_12_2012.pdf).

³³ Positive Behavior for Safe and Effective Schools Act, H.R. 3165, 112th Cong. (1st Sess. 2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3165ih/pdf/BILLS-112hr3165ih.pdf>

³⁴ Deborah J. Vagins, *Teach (and Treat) Our Children Well*, Huffington Post, Dec. 3, 2009, http://www.huffingtonpost.com/deborah-jvagins/teach-and-treat-our-child_b_378794.html.

³⁵ Letter from the Dignity in Schools Campaign to Members of Congress (Dec. 18, 2009), available at http://www.aclu.org/files/assets/PBSESA_-_Dignity_in_Schools_Campaign_HR_2597_Support_Letter_FINAL.pdf

³⁶ Positive Behavior for Safe and Effective Schools Act, H.R. 3165, 112th Cong. (1st Sess. 2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3165ih/pdf/BILLS-112hr3165ih.pdf>.

³⁷ <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3027ih/pdf/BILLS-112hr3027ih.pdf>

³⁸ Yunji DeNies, *Should Your Child Be Spanked at School? In 19 States, It's Legal*, ABC News, March 16, 2012, available at <http://abcnews.go.com/US/spanking-school-19-states-corporal-punishment-legal/story?id=15932135#.UL6PkFFAUTA>.

³⁹ See DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION 2006, available at http://ocrdata.ed.gov/Projections_2006.aspx (The 2006 CRDC data is the most recent available, as national data on corporal punishment from the most recent CRDC has not yet been released).

⁴⁰ *Corporal Punishment in Schools and Its Effect on Academic Success: Hearing Before the Subcomm. on Healthy Families and Communities of the H. Comm. on Education and Labor*, 112th Cong. 1 (2010) (statement of the American Civil Liberties Union and Human Rights Watch), available at

Moreover, data shows that corporal punishment is applied at shockingly disproportionate rates against African American students and students with disabilities.⁴¹ For example, while African Americans made up 21.7% of public school students in states that allowed corporal punishment during the 2006-2007 school year, they accounted for 35.6% of those who were paddled.⁴² The discriminatory use of corporal punishment against these student subgroups seriously undermines their ability to learn and further contributes to school push-out.

Additional school officers with the power to administer school discipline in states where students can already be hit by school personnel and where such disparities exist, raises significant concerns about school climate and students' physical safety.

- The Youth PROMISE Act, which would curb youth violence and gang involvement by providing federal funding and support to local stakeholders to identify underlying causes of violence and implement evidence-based prevention programs intended to keep youth from ever entering the criminal justice system. The legislation would provide support for local youth organizations to create a PROMISE advisory panel. The panel would work with parents, teachers, law enforcement officers and other community members to evaluate needs of the community and identify and implement programs designed to address the drivers of crime in that community. This legislation is an important model for stopping more young people – overwhelmingly African American and Latino – from being funneled into the juvenile and adult criminal justice systems.

IV. Improving School Climate for LGBT Students

Any serious examination of school safety and ways to better protect students and teachers must also take all issues of school climate into account. As has been consistently demonstrated, students who are or are perceived to be lesbian, gay, bisexual or transgender (“LGBT”) or gender nonconforming are uniquely vulnerable to discrimination, harassment and even physical violence at school.

A nationwide 2011 survey of more than 8,500 students between the ages of 13-20 found that eight out of ten LGBT students reported experiencing harassment at their school within the past year based on their sexual orientation.⁴³ Six in ten LGBT students reported feeling unsafe at

http://www.hrw.org/sites/default/files/related_material/CorpPunishStatement_041510.pdf; ACLU blog: http://www.huffingtonpost.com/deborah-j-vagins/corporal-punishment-in-schools_b_983041.html; ACLU blog: http://www.huffingtonpost.com/deborah-j-vagins/an-arcane-destructive_b_631417.html

⁴¹ *Corporal Punishment in Schools and Its Effect on Academic Success: Hearing Before the Subcomm. on Healthy Families and Communities of the H. Comm. on Education and Labor, 112th Cong. 1 (2010)* (statement of the American Civil Liberties Union and Human Rights Watch), available at

http://www.hrw.org/sites/default/files/related_material/CorpPunishStatement_041510.pdf

⁴² See DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION 2006, available at http://ocrdata.ed.gov/Projections_2006.aspx (The 2006 CRDC data is the most recent available, as national data on corporal punishment from the most recent CRDC has not yet been released).

⁴³ Joseph G. Kosciw *et al.*, GLSEN, The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, and Transgender Youth in Our Nation's Schools (2012), available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/002/2105-1.pdf.

school because of their sexual orientation.⁴⁴ Transgender students experienced more hostile climates than their non-transgender peers, with eight in ten reporting feeling unsafe at school because of their gender expression.⁴⁵ The effect of a hostile school climate on LGBT and gender nonconforming students has a direct and negative impact on the students' education. Nearly a third of LGBT students reported skipping a class at least once and three in ten reported missing at least one entire day of school in the past month because of safety concerns.⁴⁶

These statistics are representative of intakes the ACLU's LGBT Project has received in the past year, including the following:

- California

A gay junior high student in Grass Valley was attacked at lunchtime by another boy because rumors were circulating that the gay student had a crush on the attacker. The other boy knocked the gay student down and shoved his face hard against the cement floor. The student reported that school administrators seemed more concerned about the rumors than about the physical assault.

- Indiana

A 16-year-old gay student in Jasper reported that one of his teachers muttered "faggot" under his breath every time the boy passed him in the hallway between classes. The student was too afraid of the teacher to report it to administrators.

A 17-year-old gay junior in Indianapolis had complained to administrators repeatedly about being harassed at school, but no action had been taken; instead, administrators told him he was bringing it upon himself. Finally, in frustration, his mother gave him a self-protection flashlight, a small device that emits a loud noise, a light, and a weak electric charge. A few days later, a group of six students surrounded him at school, threatening to attack him. He held the device in the air and activated it; the noise scared the harassers away. But instead of addressing the behavior of the students who had threatened to attack the boy, administrators suspended and later expelled the victim.

A gay, Latino 10th grader in South Bend who had been harassed repeatedly and mercilessly by classmates reported that a school custodian, who was standing next to a security officer at the time, told the student that he had no reason to complain because, "Back home you'd be killed for that." In another incident, the boy was called to the assistant principal's office because of a minor disagreement with another student, and the assistant principal instead focused on trying to get the student to tell him inappropriately intimate details about his personal life, saying, "We all have a dark side."

- Texas

A gay high school junior in Magnolia was physically attacked by a girl at lunchtime who repeatedly and loudly called him a "faggot" throughout the assault. The boy did not want

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

to hit her back, so he kept backing away, but she pursued him all the way out of the cafeteria, into the hallway, and some distance down the hallway, shoving and slapping him repeatedly the whole way. Finally, a teacher pulled the girl off him. When he complained to administrators, they told him there was “no way of proving” what he said had happened and that they could not act on one student’s word against another’s, in spite of the fact that the assault went on for several minutes in front of dozens of witnesses and multiple security cameras.

When students began spreading a rumor that a 14-year-old girl in Queen City was a lesbian, two teachers confronted the girl, asking her if the rumors were true and warned her that “the Bible forbids it.”

While federal laws currently protect students on the basis of their race, color, sex, religion, disability or national origin, no federal statute explicitly protects students on the basis of actual or perceived sexual orientation or gender identity. The Student Non-Discrimination Act – legislation that was introduced in both the 111th and 112th Congresses by Representative Jared Polis (D-CO), but has not yet been reintroduced in the 113th Congress – would do just that. The legislation would provide LGBT students with long overdue and much needed explicit federal protections by establishing a comprehensive prohibition against discrimination and harassment in all public elementary and secondary schools across the country based on a student’s actual or perceived sexual orientation or gender identity.

Nearly fifty years of civil rights history clearly demonstrate that laws similar to the Student Non-Discrimination Act are effective in preventing discrimination and harassment from occurring in the first place by prompting schools to take proactive steps to ensure a safe and supportive learning environment for all students who are in their care. The Student Non-Discrimination Act would have a profound impact in improving the lives of LGBT students in the U.S. by ensuring that discrimination and harassment of students on the basis of their sexual orientation or gender identity has no place in our country’s public elementary and secondary schools. It would do so in a way that preserves the right of all students to speak freely and the right of all students to benefit equally from the educational programs offered. The ACLU views the legislation as an essential component of an appropriate federal response to increase school safety to better protect students.

V. Preserving and Expanding Mental Health Protections for Students

Finally, as the Committee considers ways to improve school safety and the school environment, the ACLU urges that due consideration is given to providing services and support to children with mental health issues. Children and teenagers with mental health issues are no more likely than their peers to commit an act of violence, but they are more at-risk to be a victim of violence and to commit an act of self-harm.⁴⁷ According to the Centers for Disease Control and Prevention, suicide is the third leading cause of death among children and young adults (from

⁴⁷ Louis Appleby, Preben Bo Mortensen, & Urara Hiroeh. *Death by Homicide, Suicide, and Other Unnatural Causes in People with Mental Illness: A Population-Based Study*, 358 THE LANCET 2110-2112, (2001).

age 10 to 24).⁴⁸ Furthermore, children with mental health issues often have lower rates of educational attainment, and a higher incidence of contact with the juvenile justice system. Thus, the consequences of children and teenagers with mental health issues not having access to proper, evidence-based treatment can impact all aspects of their education.

The onset of mental health issues begins relatively early in life, with about half of all mental health conditions manifesting by age 14 and three-fourths by age 24.⁴⁹ Yet, there is a significant gap between the need for treatment and access to treatment. Currently, fewer than one in five children with a diagnosable mental health issue receives treatment for that condition.⁵⁰ Although most individuals with a mental health issue will eventually receive treatment, the delay between the onset of symptoms and the receipt of treatment averages a decade.⁵¹

Due to these delays in diagnosis and access to treatment, many children and teenagers with mental health issues are unable to fulfill their educational potential. According to data from the Department of Education, fewer than half of students age 14 and older with a mental health issue graduate from high school.⁵² Too often, a disproportionate number of these young people enter the juvenile justice system as a consequence of behavior resulting from unmet mental health needs and a scarcity of treatment options.⁵³ Among youth in the juvenile justice system, about two-thirds have at least one diagnosable mental health condition, and the majority of these youth also have a substance use disorder.⁵⁴

But, these statistics do not convey how often the juvenile justice system operates as a last resort for children and teenagers who do not have access to treatment services. For instance, a congressional investigation found that 47 states have at least one juvenile detention center reporting that they “warehouse” children in their facilities due to a lack of community treatment

⁴⁸ Centers for Disease Control & Prevention, 10 Leading Causes of Death by Age Group, United States 2010, http://www.cdc.gov/injury/wisqars/pdf/10LCID_All_Deaths_By_Age_Group_2010-a.pdf.

⁴⁹ Ronald C. Kessler, Patricia Berglund, Olga Demler, Robert Jin, Kathleen Merikangas & Ellen Walters, *Lifetime Prevalence and Age-of-Onset Distributions of DSM-IV Disorders in the National Comorbidity Survey Replication*, 62 ARCHIVES OF GENERAL PSYCHIATRY 593, 593–602 (2005); Kathleen Sebelius, Editorial, *Bring Mental Illness Out of the Shadows*, USA TODAY, Feb. 4, 2013, available at <http://www.usatoday.com/story/opinion/2013/02/04/kathleen-sebelius-on-mental-health-care/1890859/>.

⁵⁰ Sheryl H. Kataoka, Lily Zhang & Kenneth B. Wells, *Unmet Need for Mental Health Care Among U.S. Children: Variation by Ethnicity and Insurance Status*, 159 AM. J. PSYCHIATRY 1548, 1548-1555 (2002).

⁵¹ Philip S. Wang, Patricia Berglund, Mark Olfson, Ronald C. Kessler, *Delays in Initial Treatment Contact After First Onset of a Mental Disorder*, 39 HEALTH SERV RES. 393 (2004).

⁵² U.S. DEP’T OF EDUC., THIRTIETH ANNUAL REPORT TO CONGRESS ON THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 65 (2011), available at <https://www2.ed.gov/about/reports/annual/osep/2008/parts-b-c/30th-idea-arc.pdf>.

⁵³ NAT’L CTR. FOR YOUTH LAW, IMPROVING OUTCOMES FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM: A REVIEW OF ALAMEDA COUNTY’S COLLABORATIVE MENTAL HEALTH COURT 3 (2011), available at <http://www.youthlaw.org/fileadmin/ncyl/youthlaw/health/ACCCFinal.pdf>.

⁵⁴ JENNIE L. SHUFELT & JOSEPH J. COCOZZA, NAT’L CTR. FOR MENTAL HEALTH & JUVENILE JUSTICE, YOUTH WITH MENTAL HEALTH DISORDERS IN THE JUVENILE JUSTICE SYSTEM: RESULTS FROM A MULTI-STATE PREVALENCE STUDY 5 (2006), available at <http://www.ncmhjj.com/pdfs/publications/PrevalenceRPB.pdf>.

options.⁵⁵ Unfortunately, the economic downturn has exacerbated the longstanding lack of sufficient school-based guidance counselors, licensed clinical social workers, and psychologists to meet the needs of students.⁵⁶ According to national data from the 2010-2011 school year, the average guidance counselor serves 471 students, which is almost double the maximum recommended ratio of 250 students per counselor of the American Counseling Association.⁵⁷ Community-based mental health providers, which can help ensure a continuum of care for children and teenagers, face a similar shortfall of funding and professionals to meet the needs of juveniles. The National Association of State Mental Health Program Directors estimated an additional 700,000 people, including juveniles, sought treatment from community-based providers during a four-year period when states cut \$4.35 billion in mental health services.⁵⁸

Thus, the ACLU supports legislation that expands access to and funding for mental health and substance abuse treatment for juveniles and adults. A lack of treatment options may put an individual at greater risk of self-harm and victimization, and it may have significant consequences on their civil liberties. Since the symptoms of mental health and substance abuse issues begin to appear before adulthood in most cases, schools and school-based service providers could help reduce the multi-year time lag between the appearance of symptoms and the voluntary receipt of treatment services. Ensuring that students with mental health issues are able to access services and treatment when needed will help to improve the school environment, and it will likely increase graduation rates, and reduce the likelihood that these young people will become a victim of violence or engage in self-harm.

VI. Conclusion

Thank you for your leadership in seeking real reform on this crucial national dialogue about safety in our nation's schools. We look forward to engaging in this process and working with you to implement smart reforms that will make our schools safe, healthy places for all students to learn.

If you have any questions or comments, please contact Senior Legislative Counsel Deborah J. Vagins at 202-675-2338 or dvagins@dcacclu.org.

⁵⁵ COMMITTEE ON GOVERNMENT REFORM – MINORITY STAFF SPECIAL INVESTIGATIONS DIVISION, U.S. HOUSE OF REPRESENTATIVES, INCARCERATION OF YOUTH WHO ARE WAITING FOR COMMUNITY MENTAL HEALTH SERVICES IN THE UNITED STATES ii (2004).

⁵⁶ According to Jill Cook, the Assistant Director of the American School Counselor Association, “Schools and districts have been hit really hard by budget cuts and the recession,” resulting in “positions being cut and jobs lost.” Assoc. Press, *As Schools Cut Budgets, Strains on Counselors Grow*, FOX NEWS, June 24, 2011, available at <http://www.foxnews.com/us/2011/06/24/as-schools-cut-budgets-strains-on-counselors-grow/>.

⁵⁷ American Counseling Association, United States Student-to-Counselor Ratios for Elementary and Secondary Schools, 2010 to 2011 data year, http://www.counseling.org/PublicPolicy/PDF/2010-2011_Student_to_Counselor_Ratio.pdf (last visited Feb. 23, 2013).

⁵⁸ JOEL E. MILLER, NAT'L ASS'N OF STATE MENTAL HEALTH PROGRAM DIR., TOO SIGNIFICANT TO FAIL: THE IMPORTANCE OF STATE BEHAVIORAL HEALTH AGENCIES IN THE DAILY LIVES OF AMERICANS WITH MENTAL ILLNESS, FOR THEIR FAMILIES, AND FOR THEIR COMMUNITIES 7 (2012), available at <http://www.nasmhpd.org/docs/publications/Too%20Significant%20To%20Fail.pdf>.