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THE BIPARTISAN SAFER COMMUNITIES ACT: A DANGEROUS NEW CHAPTER IN THE WAR ON BLACK YOUTH

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INTRODUCTION

In June 2022, President Biden signed the Bipartisan Safer Communities Act (BSCA) into law as a response to a series of recent mass shooting tragedies. The act has generally been upheld as a major legislative victory that addresses gun violence and invests in mental health supports. While the investments in mental health are long overdue, the BSCA simultaneously includes a series of dangerous provisions that will disproportionately expose people who are Black, brown, disabled, and young—as well as those experiencing poverty—to increased criminalization.

Visionary young leaders who are closest to gun violence have demanded anti-carceral policy approaches to reduce violence.¹ Yet the BSCA reinforces a carceral vision for public safety that is both ineffective and rooted in anti-Black racism.² It appropriates at least \$1.5 billion to the U.S. Department of Justice (DOJ) to support policing and punitive interventions that will harm Black and brown young people. The BSCA will expand student surveillance, school militarization, and data-driven police strategies against youth who have been marginalized—undermining privacy and civil rights. Troublingly, it fits squarely within the Biden Administration’s disturbing return to 90s-era “fund the police” rhetoric, betraying their commitment to racial equity.³ It also distracts from viable, youth-centered, anti-carceral policy solutions for school safety.⁴

This brief offers context on the youth criminalization crisis in the United States. We then outline a series of harmful elements in the BSCA. Specifically, we review provisions that:

- Increase funding for threat assessments, surveillance, and greater police presence in schools;
- Expand data-sharing between law enforcement and mental health providers, risking youth privacy rights; and
- Reinforce racial bias and take other ineffective approaches to reduce gun violence.

In addition, this brief provides recommended actions that Congress, federal agency leaders, and community advocates can take to mitigate these harms.

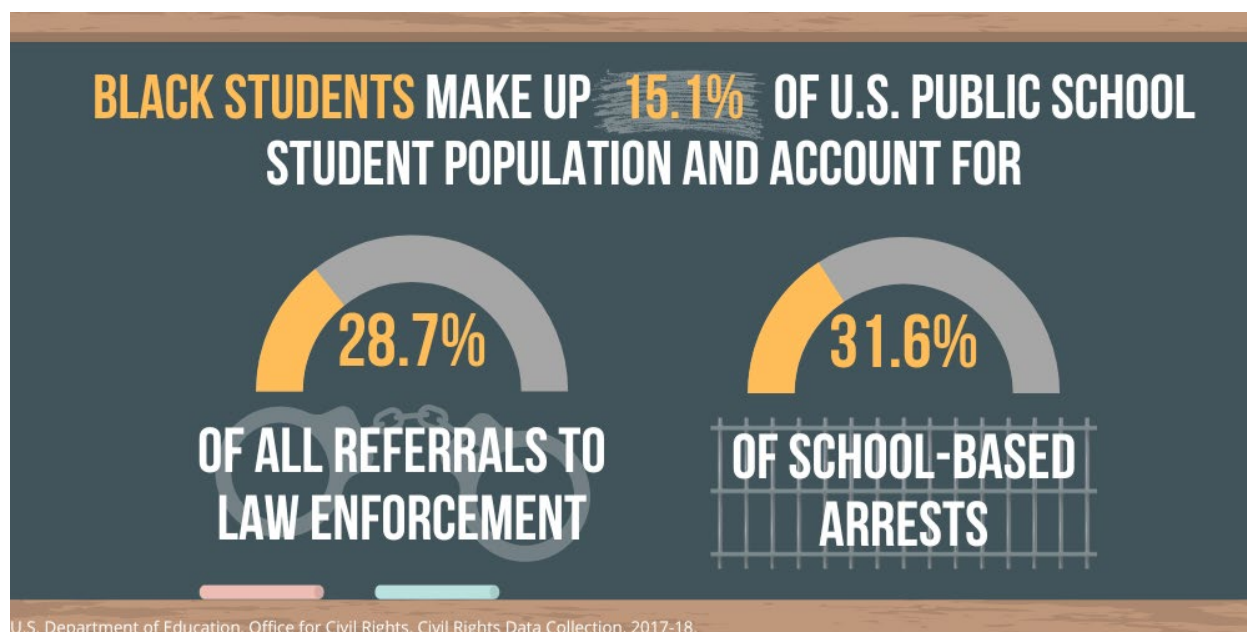
For a full analysis of the key mental health provisions in the BSCA, a timeline of expected implementation, and recommendations for mental health policies that center equity, read our sister brief: **The Bipartisan Safer Communities Act: Wins for Mental Health Undermined for Black and Brown Youth.**



BACKGROUND: THE SCHOOL PUSHOUT CRISIS, BIG DATA POLICING, AND THE CRIMINALIZATION OF YOUTH MENTAL & BEHAVIORAL HEALTH SERVICES

THE SCHOOL PUSHOUT CRISIS CONTINUES THE “WAR ON BLACK YOUTH”

The school pushout crisis remains a significant barrier to racial justice and youth safety in schools around the country. “School pushout” refers to the use of punitive school discipline practices to remove students from the classroom and push them into greater contact with the juvenile and criminal legal systems.⁵ Such practices include suspensions, expulsions, and school-based arrests. Research indicates that youth subject to exclusionary discipline face an array of other barriers to academic success and economic security that persist into adulthood.⁶



School pushout falls heaviest on Black students, students with disabilities, and students from families experiencing poverty, as well as LGBTQIA+ students.⁷ For example, according to the most recent data from the U.S. Department of Education’s Office of Civil Rights, Black students make up 15.1 percent of the U.S. public school student population and account for 28.7 percent of all referrals to law enforcement and 31.6 percent of school-based arrests. Black and American Indian and Alaska Native (AIAN) students are being referred to law enforcement at more than two times the rate of white students. Black and Native Hawaiian or other Pacific Islander (NHPI) students are subjected to school-based arrests at more than three times the rate of white students, and AIAN are subjected to school-based arrests at more than two times the rate of white students. Disabled students make up 13.2 percent of the U.S. public school student population and account for 26.1 percent of all referrals to law enforcement and 25.8 percent of school-based arrests.⁸

The school pushout crisis reflects decades of racist policy design marshaled in service of the War on Black Youth.⁹ This concept refers to a series of racist federal, state, and local policies dating back to the 1950s that leveraged surveillance and criminalization as tools to control the presence of Black youth in public life. The mass criminalization of Black and brown youth has disastrous consequences.

High levels of school pushout cannot be separated from the ubiquitous presence of law enforcement in schools—especially those with high populations of students of color and students from families experiencing poverty.¹⁰ According to data from the 2017-2018 school year, nearly 230,000 students nationwide were referred to law enforcement.¹¹ In nearly every state, Black students are referred to law enforcement at rates higher than the general student population.¹² Research shows that police presence in schools harms student wellness, academic outcomes, and socioeconomic outcomes while often infringing on students' civil and human rights.¹³

DATA-DRIVEN POLICE SURVEILLANCE TARGETS BLACK YOUTH IN SCHOOLS & COMMUNITIES

Police presence in schools is undergoing a drastic transformation due to the broad use of data-driven police surveillance technologies.¹⁴ Data-driven police surveillance technology refers to a broad set of tools that use algorithms to process large datasets.¹⁵ They enable law enforcement agencies to broadly monitor and police the activities of individuals and communities. Common police surveillance technologies include facial recognition; social media monitoring; student device monitoring; predictive policing; and gang/at-risk youth databases, among many more.

School officials are increasingly using a range of these technologies in schools which subject Black and brown youth to perpetual law enforcement surveillance and state control.¹⁶

These technologies have enabled law enforcement agencies to systemically abuse young people's rights around the country. New research demonstrates that police surveillance systems harm young people in ways that resemble traditional law enforcement presence.¹⁷ For example, a 2022 study in the *Journal of Criminal Justice* found that schools ranking highest in surveillance infrastructure suspend more students than other schools.¹⁸ This data further showed that high-surveillance learning environments reduce test scores and college enrollment for Black students. In recent years, a range of communities have actively resisted the introduction of these technologies into their school districts, emphasizing the disparate impact of police surveillance on students of color and students with disabilities.¹⁹

YOUTH MENTAL HEALTH CRIMINALIZATION

Decades of systemic, racist divestment in systems of care have significantly limited opportunities for young people to receive mental and behavioral health care. In fact, the criminal legal system has become the de facto treatment setting for many individuals who lack access to mental and behavioral health care.²⁰ 70 percent of youths detained in the juvenile justice system have diagnosable symptoms of a mental health disorder. This is 3.5 times the rate among all young people under 18.²¹

A recent study found that 45.7 percent of justice-involved youths screened positive for post-traumatic stress disorder (PTSD), 49.4 percent for depression, and 61.2 percent for substance abuse.²² The study also identified that 48.6 percent of these youths experience two or more mental health and substance abuse disorders. This study also saw a strong relationship between the number of traumas youth experience and their number of disorders. Young people with mental and behavioral health conditions are susceptible to state surveillance and police interventions. Criminalizing mental illness worsens the health of hundreds of thousands of people. It complicates their care and recovery by creating additional barriers to health, housing, and employment.

HOW THE BSCA EXPANDS YOUTH CRIMINALIZATION AND DEEPENS THE RELATIONSHIP BETWEEN LAW ENFORCEMENT AND MENTAL HEALTH

INCREASED FUNDING FOR THREAT ASSESSMENT TEAMS, LOCAL INTERAGENCY DATA-SHARING, AND SURVEILLANCE OF VULNERABLE YOUTH

The BSCA appropriates \$1.5 billion in new funding for the U.S. Department of Justice (DOJ). Of this money awarded to the DOJ:



\$750 million is allocated to support the Byrne Memorial Justice Assistance Grant program;



\$300 million is allocated to the Bureau of Justice Assistance for the STOP School Violence grant program;



\$200 million is allocated to expand the FBI's data-sharing capacity with local law enforcement agencies and mental health systems; and



\$250 million is allocated for unspecified "community violence intervention programs."

This is a reflection of the Biden Administration's commitment to expanding federal investments in law enforcement and other carceral systems. What follows is a review of how the STOP School Violence and other grant programs can harm young people.

THREAT ASSESSMENT TEAMS HARM YOUTH PRIVACY

The BSCA's increased spending level for the STOP School Violence competitive grant program is particularly concerning. This federal funding stream incentivizes jurisdictions to expand collaborations between law enforcement agencies, mental health service providers, and school districts by developing "threat assessment" teams. These teams are interagency collaborations between police departments, school officials, and other local agencies designed to share information about youth who have been marginalized. These collaborations were developed in response to the unsupported narrative that youth surveillance, interagency data sharing, and greater coordination between law enforcement and mental health providers will enable schools to better identify young people at risk of committing a mass shooting event or engaging in some other harmful behavior.²³ The BSCA represents a 40 percent increase in existing funding for these activities, fully ignoring the fact that evidence shows little to no connection between mental illness and mass shootings.²⁴

Federal investments in interagency data sharing and youth surveillance raise a number of concerns for youth and their families. These programs are used in ways that violate students' privacy rights guaranteed under federal, state, and local laws. Police surveillance disproportionately burdens Black and brown students and students with disabilities, implicating civil and privacy rights protected under Title VI of the Civil Rights Act and Section 504 of the Rehabilitation Act. Also, threat assessment programs deepen the presence of law enforcement in systems of care, which can have a negative effect on the ability of young people to access critical social services.



POLICE PRESENCE IN SCHOOL HURTS STUDENT SUCCESS

Young people have called for an end to all police presence in schools.²⁵ The Biden Administration and Congress have betrayed them by allocating funding to the STOP School Violence grant program and other DOJ activities. Federal investments into these funding streams do not reflect a youth-driven definition of safety.

Positioning police as an effective intervention to violence in schools does not leave room to contemplate the role of state actors in initiating and facilitating violence. Authorities such as school resource officers and other law enforcement personnel in schools may threaten a safe learning environment and perpetrate violence.²⁶

Police presence in schools can have a devastating impact on youth and young adults. Researchers have found that federal grants for police in schools, including the Community Oriented Policing Services (COPS) grant, increase middle school discipline rates by 6 percent.²⁷ Their studies show that

RESEARCHERS HAVE FOUND THAT FEDERAL GRANTS FOR POLICE IN SCHOOLS, INCLUDING THE COMMUNITY ORIENTED POLICING SERVICES (COPS) GRANT, INCREASE MIDDLE SCHOOL DISCIPLINE RATES BY 6 PERCENT.

students from families with low incomes, in addition to Black and Hispanic students, experience the largest increases in discipline. Further, their research found that exposure to a 3-year federal grant for school police is associated with a 2.5 percent decrease in high school graduation rates and a 4 percent decrease in college enrollment.²⁸

Evidence repeatedly demonstrates that police are not effective in preventing mass shootings.²⁹ In fact, **data show that fatalities are typically higher when police are present during school shootings.**³⁰ Research has shown that police in schools undermine youth social, economic, and academic outcomes.³¹ Police change the school environment by increasing chronic absenteeism; in-school and out-of-school suspensions; expulsions; and police referral and arrest.³² All of these consequences negatively affect young people's emotional and mental health.

INCREASED FUNDING FOR YOUTH DATA-SHARING BETWEEN FEDERAL AND LOCAL LAW ENFORCEMENT AGENCIES

The BSCA provides significant new resources for data-sharing activities between law enforcement and mental health providers. This will rapidly expand the “cradle-to-prison algorithm” and other data-driven police surveillance practices that target youth who are made vulnerable to contact with the criminal legal system.³³ It will harm youth with mental challenges who have low incomes and are Black and brown.

Under the BSCA, the National Instant Criminal Background Check System (NICS) administered by the Federal Bureau of Investigation (FBI) is required to conduct a more rigorous background check on certain individuals under age 21. NICS is now required to coordinate with state and local law

enforcement, courts, and mental health agencies to review a young person’s juvenile justice records and mental health adjudications when they are flagged by the system. Operationalizing this provision will require an expansion of data-sharing capabilities between law enforcement agencies and mental health care systems.

Policymakers have enacted few legal protections that regulate how the data generated through these systems must be governed to protect youth privacy rights. While these reforms to the background check system may have been enacted with good intent, unfortunately, they threaten to undermine youth privacy. They may also incentivize local law enforcement agencies to engage in youth surveillance and procure data-driven policing technologies.

A CARCERAL APPROACH TO GUN CONTROL WILL HARM VULNERABLE YOUTH, ESPECIALLY BLACK STUDENTS

A key feature of the BSCA is the expansion of criminal penalties for individual possession or procurement of firearms. It includes new penalties and enhanced sentences for straw purchases and gun trafficking, in addition to criminal prohibitions on gun ownership such as the “boyfriend loophole.”³⁴ These policies expand the punitive and carceral capacities of law enforcement agencies nationwide to criminalize Black and brown youth at scale with negligible impact on reducing gun violence or mass shooting events.³⁵

In that respect, the BSCA continues a troubling history of racial injustice in gun control measures in the United States that stretch back to the colonial era.³⁶ That history reveals an inherent suspicion of Black gun ownership and a use of criminal penalties as a means of social control.³⁷ Research indicates that Black and brown youth are disproportionately criminalized under *existing* criminal statutes related to gun possession and transfers.

For example, an analysis of New York state’s felony gun possession statute found that while Black people were 18 percent of the state’s population, they made up 78 percent of the state’s felony gun possession cases statewide.³⁸ In contrast, white New Yorkers made up 70 percent of the total

NEW YORK STATE’S FELONY GUN POSSESSION STATUTE FOUND THAT WHILE BLACK PEOPLE WERE 18 PERCENT OF THE STATE’S POPULATION, THEY MADE UP 78 PERCENT OF THE STATE’S FELONY GUN POSSESSION CASES STATEWIDE. IN CONTRAST, WHITE NEW YORKERS MADE UP 70 PERCENT OF THE TOTAL POPULATION AND 7 PERCENT OF SUCH CASES.

population and 7 percent of such cases. A separate 2020 report from the Center for Criminal Justice Research Policy found that Black men between the ages of 18-24 had the highest arrest rates for crimes involving guns in Illinois.³⁹ The researchers found that there were 2,404 arrests per 100,000 Black young adults ages in the state. Federal law enforcement data indicate that Black people make up approximately 52 percent of individuals arrested for weapons charges nationwide in 2021.⁴⁰

These data underscore the devastating consequences of a carceral approach to gun control for Black communities. They also highlight the need for policymakers to embrace a structural analysis and demonstrate cultural humility to understand the reasons that motivate young people to turn to gun ownership.⁴¹ Researchers have found that many young people embrace guns out of concerns for their own physical safety more than any other rationale.⁴² These researchers further found that young people largely did not convey any intent to use these weapons to proactively commit crimes. Altogether, this research underscores the need for policymakers to take on a more nuanced understanding of the role of systemic divestment and place-based disadvantage in facilitating gun violence.⁴³

Efforts to address gun injuries and fatalities in domestic violence situations also typically do not address the root causes of domestic violence. Moreover, while efforts to support survivors of intimate partner violence may have some noble intent, carceral responses to domestic violence are rooted in a form of patriarchal protection that assumes survivors' best interests over their own, self-identified needs.⁴⁴ Like abusers, the police—and those in the criminal legal system more broadly—assume to make decisions on behalf of survivors. Police-centered interventions fail to recognize that criminal penalties can create new physical, economic, and emotional insecurities for survivors.

Addressing gun supply is essential to curbing gun violence. Attempts at gun control policy that prioritize criminalizing possession over reducing the overall supply will likely follow historical patterns and burden mostly marginalized people. Gun control policy reforms must center the lived experiences of Black and brown youth and young adults who carry the heaviest burdens of gun victimization. Reform efforts must also center the policy visions of young people: to pursue effective, anti-carceral strategies to reduce violence, while simultaneously repairing legacies of racist divestment and criminalization.⁴⁵



RECOMMENDATIONS FOR HARM REDUCTION

The BSCA offers at least \$1.5 billion in new, annual federal investments to significantly expand youth criminalization; deepen connections between carceral systems and mental health services; and exacerbate the school pushout crisis. Without intervention, the act's impact on marginalized youth may be defined by a rapid acceleration of data-driven criminalization and police surveillance in schools and communities.

Below is a series of strategies that federal lawmakers, federal agency leaders, and community advocates should pursue to prevent the BSCA from expanding investments into youth criminalization.

CONGRESS SHOULD...

- **Repeal DOJ Funding in BSCA.** Repeal all BSCA provisions that appropriate new funding for the Department of Justice—especially \$200 million for the STOP School Violence Act program.
- **Amend U.S. Department of Education and Department of Health and Human Services Stipulations for Funding.** Amend the BSCA to include explicit language prohibiting the use of any BSCA funding to support law enforcement activities. This should include interagency data sharing with law enforcement, police youth surveillance technologies, or any other activity or practice that introduces police presence into the schoolhouse.

FEDERAL AGENCY LEADERS SHOULD...

- **Disqualify Law Enforcement from Grant Eligibility.** In the absence of repealing the BSCA's appropriations to the Department of Justice, federal policymakers should leverage their full statutory authority to prioritize certain grant applicants. They should prioritize grants that do not include law enforcement agencies and deprioritize any proposals seeking collaboration with law enforcement agencies. The category of "law enforcement agencies" should include immigration enforcement alongside traditional law enforcement activities.
- **Provide Agency Guidance on Anti-Carceral Approaches to School Safety.** Federal policymakers should issue guidance outlining how school districts and other youth-serving systems can use anti-carceral design to improve public safety while expanding economic, social, and educational opportunities.
- **Provide Agency Guidance on Civil & Human Rights Obligations.** Federal policymakers should issue guidance clarifying the civil and privacy rights obligations of federal grant recipients. They should particularly focus on:

- Title VI of the Civil Rights Act;
- Section 504 of the Rehabilitation Act;
- Title IX of the Educational Amendments of 1972; and
- The Family Educational Rights and Privacy Act (FERPA).

As part of this guidance, policymakers should articulate a set of “prohibited uses” for BSCA-related funding. They should include activities that present an unacceptable level of risk for systemic civil and human rights violations for marginalized youth. Among these prohibited uses should be

- Youth social media monitoring;
- Police predictive analytics and related “intelligence-led” policing activities;
- Facial recognition; and
- Interagency data-sharing agreements with law enforcement entities, among others.

COMMUNITY ADVOCATES SHOULD...

- **Use Community Resistance & Local Protections.** Be prepared to resist data-driven surveillance and policing activities focused on youth characterized as vulnerable. Previous Biden-era federal investment to local school systems helped support the rapid expansion of school-focused, data-driven surveillance systems by local law enforcement agencies.⁴⁶

Communities should be vigilant as local school districts and law enforcement agencies produce these technologies—especially in communities with a longstanding history of civil and human rights abuses. A number of cities have banned the use of certain data-driven surveillance practices, while others have significant oversight protections to govern their procurement and use.⁴⁷ Community advocates should leverage these local protections to push back against law enforcement adopting these systems. In communities without these protections, advocates should look to create them.

- **Offer Agency Complaints for Rights Violations.** File formal complaints with federal agencies for rights violations related to school surveillance, threat assessment practices, and youth criminalization efforts funded by the BSCA. Advocates should prioritize documenting harm and seeking redress for the disparate impact these systems may produce for young people—especially from communities that have been marginalized.

Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Family Educational Rights and Privacy Act of 1974 all contain formal processes for individuals and communities that have been harmed to level complaints against federally funded entities that engage in discriminatory or exclusionary practices.⁴⁸ Community advocates should take full advantage of these processes. Doing so will help vindicate the rights of youth who are profiled, discriminated against, or harmed by activities and technologies funded by these programs.

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