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CHOOSING CHILDREN: PREVENTING INTRA-FAMILY
CONFLICT FROM FEEDING THE PRISON PIPELINE

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ABSTRACT

Parents struggling to raise challenging children often lack needed community support. These parents turn to law enforcement when they feel their child cannot be controlled. Problematically, law enforcement officers are trained to respond to crime, not simple parent-child domestic disputes. Thus, when parents call police during disagreements, the argument may end in arrest and contact with the juvenile court system. Interaction with the juvenile justice system carries a myriad of risks. This comment outlines the risks inherent in calling the police and entering the juvenile court system. The author evaluates existing alternatives to calling law enforcement and recommends that communities adopt alternatives to calling the police for cases of intra-family conflict.

INTRODUCTION

A mother and son stand in the courtroom facing the judge. On the other side of the dais stands another boy, alone. The first boy is charged with assault and battery. The second boy, his brother, is the alleged victim. “What happened?” the judge asks. The mother replies. “I was at my wits end, these two wouldn’t stop fighting. I told them if they didn’t stop I would call the police.” She looks lost, perhaps she is wondering, how did I get here.¹

This story is not rare. A surprising number of instances of family conflict end up in our criminal legal system.² As law enforcement funding increased, with a corresponding decrease in funding for social services, families often do not know where to turn when a conflict arises that is beyond parental control. This comment argues that calling the police and having children enter the juvenile justice system is not the best option for many intra-family disputes. Instead, the author explores the use of alternatives to law enforcement to mitigate intra-family conflict. Many alternatives, such as restorative practices and community solutions, are preferable because they offer ongoing

¹ This story is based on a case that I worked on as an intern with Richmond Public Defender’s office during the summer of 2019. I have received permission from my supervisor to use these facts to illustrate an example of why a family member might call the police on his or her children. As I sat in court watching this case I wondered, why did this mother call the police on her children? Did she know one of her kids might go to jail or enter the criminal legal system for decades because of this action? This paper seeks to answer that question and provide alternatives to that mom and many others.

² See, e.g. Howard N. Snyder & Carl McCurley, *Domestic Assaults by Juvenile Offenders*, JUV. JUST. BULL. 1 (2008), <https://www.ncjrs.gov/pdffiles1/ojjdp/219180.pdf>. The term “criminal legal system” is used as an alternative to “criminal justice system.” This alternate use of language reflects that our legal system does not always provide justice to many under its auspices. The author first heard the term used at a lecture given by Professor James Forman, Jr. about his Pulitzer Prize winning book *Locking Up Our Own: Crime and Punishment in Black America*. Robert Wiblin & Keiran Harris, *James Forman Jr. on reducing the cruelty of the US criminal legal system*, 80,000 HOURS (July 27, 2020), <https://80000hours.org/podcast/episodes/james-forman-jr-cruelty-in-the-us-criminal-legal-system/>; see also Cory Booker, *Our Criminal-Legal System: Justice Doesn’t Have to Be Missing from Equation*, HUFFPOST (Apr. 15, 2015), https://www.huffpost.com/entry/our-criminal-legal-system_b_7071792?guc-counter=1.

support networks for the child and family, provide immediate services for families in crisis, and limit criminal justice ramifications for the child.

These alternatives join the ongoing conversation surrounding the movement to resources away from police departments and toward community services. For decades, activists have worked tirelessly to raise awareness of the issues stemming from over-policing.³ The tragic murder of George Floyd opened a policy window to shine light on the issue of aggressive policing in many communities of color. This comment highlights several existing programs and joins the call to reallocate resources away from policing and toward programs designed specifically to support children and families without criminal justice ramifications.

The background to this comment outlines the issue of intra-family conflict, the risks to children inherent in seeking assistance from the police and potentially entering the juvenile court system and presents restorative justice principles and the concept of transformative justice. The discussion offers two intervention options (including community interventions as well as deescalated law enforcement interventions) and outlines existing programs and alternatives that may be utilized to provide support and intervention without the risk of law enforcement or court involvement. Overall, the author recommends that communities adopt alternatives to calling the police for cases of intra-family conflict.

I. BACKGROUND

This section presents the issue of intra-family conflict and highlights several problems with family members calling law enforcement on their children. Part one discusses the lack of community support offered to solve family crisis, details the extent of the problem, and outlines reasons why family members might call the police. Part two details the risks inherent in calling the police: that—problematically—law enforcement officers are trained to respond to crime, not family domestic disputes; that mandatory arrest laws may require the officer to make an arrest; and police officer discretion may

³ See, e.g., Linda Poon & Marie Patino, *CityLab University: A Timeline of U.S. Police Protests*, BLOOMBERG (June 9, 2020), <https://www.bloomberg.com/news/articles/2020-06-09/a-history-of-protests-against-police-brutality>.

be colored by racial bias. Part three explores issues with entering the juvenile justice system: children experience stress simply by entering court and may face an unpredictable possibility of punishment and future court involvement. Finally, part four provides a brief overview of restorative practices utilized to alleviate family conflict.



Figure 1

A. *Why and How Often are Police Involved in Intra-family Conflict?*

i. *Extent of the Issue*

Government data collectors and researchers rarely examine family conflict in the home that is not considered child abuse.⁴ According to the Bureau of Justice Statistics there was an annual average of 1.3 million nonfatal domestic violence victimizations between 2006-2015.⁵ The majority of these victimizations—eighty percent (see Figure 1)—were between intimate partners.⁶ On the other hand, the category of victimization that is the subject of this comment (intra-family conflict involving children) was lumped together with all non-intimate partner violence under a category called “other” domestic relationship.⁷

⁴ Ji Hyon Kang & James P. Lynch, *Calling the Police in Instances of Family Violence: Effects of Victim-Offender Relationship and Life Stages*, 60 *CRIME & DELINQ.* 34, 36 (2014); Rebecca A. Schut et al., *Police Response to Violence and Conflict between Parents and their Minor Children*, 35 *J. FAM. VIOLENCE* 117, 119 (2020).

⁵ U.S. DEP’T. OF JUST., NCJ250231, *POLICE RESPONSE TO DOMESTIC VIOLENCE, 2006-2015*, at 1 (2017), <https://www.bjs.gov/content/pub/pdf/prdv0615.pdf>.

⁶ *Id.* at 3.

⁷ *See id.* at 2.

The category of “other” domestic relationships includes violence between parent-child, sibling, or any other relative.⁸ Thirty-two percent (see Figure 1) of the total victimization, that is, 425,580 victimizations in the ten year period, were attributed to “other” family members.⁹ The vast majority of the assaults surveyed between “other” family members, sixty-four percent, were categorized as simple assaults and did not entail serious violence (see Figure 2).¹⁰ Police were called to the scene in fifty-six percent of all incidents.¹¹ In twenty-three percent of reported victimizations, police arrested an offender during their initial response.¹² Law enforcement involvement with juveniles implicated in non-injury, intra-family conflict is common. One study found that one out of every twelve domestic assault offenders brought to the attention of law enforcement were younger than eighteen and one-fourth of all assaults by juvenile offenders constituted domestic violence.¹³ One-third of these domestic assault offenders were female, while two-thirds of juvenile assault offenders harmed females, often the juvenile’s mother.¹⁴ Interestingly, a parent was the target in half of all domestic assaults that juvenile offenders committed; a sibling targeted in another twenty-four percent of the population.¹⁵

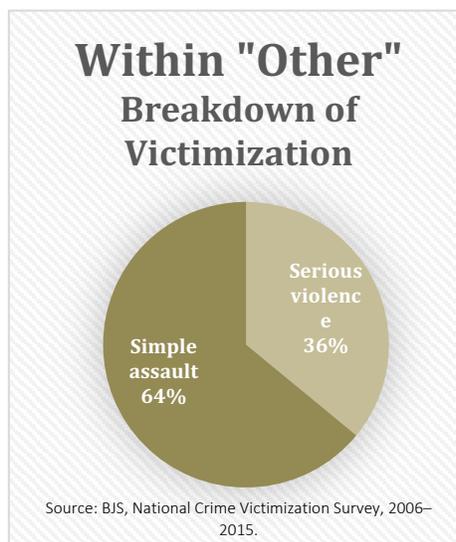


Figure 2

⁸ *Id.*; see also Peter C. Kratcoski, *Youth violence directed towards significant others*, 8 J. ADOLESCENCE 145, 146 (1985) (explaining adolescent family violence occurs when an older child, generally post-pubescent, perpetrates violent acts upon their parents, siblings or other members of their household); Schut et al., *supra* note 4, at 117 (explaining that law enforcement uses the term domestic or family violence to mean any violence characterized by “intimacy, familial ties, or a shared household”).

⁹ U.S. DEP’T. OF JUST., *supra* note 5, at 2.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 1–2 (noting that reporting rates were about the same for victimizations involving an intimate partner [spouse, former spouse, boyfriend, or girlfriend] as for other victim-offender relationships [parent, child, sibling, or any other relative except spouses]).

¹² *Id.* at 1.

¹³ See, e.g., Snyder & McCurley, *supra* note 1, at 2.

¹⁴ *Id.*; see Schut et al., *supra* note 4, at 118 (noting that when the child was the offender, boys were the most common offender and the mother was the most common victim).

¹⁵ Snyder & McCurley, *supra* note 2, at 4.

A 2013 study in Philadelphia found one in twenty domestic violence incidents to which police officers were summoned involved minor children and their parents.¹⁶ A substantial majority of the incidents evaluated involved a child offender and a parent victim.¹⁷ Notably, intra-family conflicts involving a juvenile rarely resulted in injury.¹⁸ In some cases, officers appeared to serve as mediators in mostly verbal conflicts.¹⁹ However, parents called the police on their children at nearly an equal rate as serious intimate partner violence.²⁰

ii. Reasons Why Families Contact Law Enforcement

While this comment focuses on intra-family conflict and violence, parents may have a myriad of additional reasons to call the police on their children. A parent may be perplexed or frustrated when deciding how to respond when her child acts out and look to law enforcement for services. In the juvenile court system, disobeying rules, running away from home, skipping school, ignoring curfew, or underage drinking are considered “status offenses.” When parents call the police for support on these issues, they may be unaware that they are inserting their children into the court system.²¹ Parents may also be dealing with a child with severe mental health issues and not know where else to turn.²² Many parents mistakenly believe they can only access services through a court order.²³

Parents may also call law enforcement on their children to discourage them from future criminal behavior or as a threat to get them to behave.²⁴ Countless

¹⁶ Schut et al., *supra* note 4, at 117, 127.

¹⁷ *Id.* at 121.

¹⁸ See U.S. DEP’T. OF JUST., *supra* note 5, at 4.

¹⁹ See Schut et al., *supra* note 4, at 127.

²⁰ U.S. DEP’T. OF JUST., *supra* note 5, at 2.

²¹ See KAREN TAMIS & CYMONE FULLER, VERA INST. OF JUST., *IT TAKES A VILLAGE: DIVERSION RESOURCES FOR POLICE AND FAMILIES 1* (2016), <https://www.vera.org/downloads/publications/it-takes-a-village-report.pdf>; see also Mahsa Jafarian & Vidhya Ananthakrishnan, *Just Kids: When Misbehaving is a Crime*, VERA INST. OF JUST. (Aug. 2017), <https://www.vera.org/when-misbehaving-is-a-crime> (explaining that status offenses are noncriminal acts that are only problematic due to the age of the child).

²² See generally KATHLEEN R. SKOWYRA & JOSEPH J. COCOZZA, NAT’L CTR. FOR MENTAL HEALTH & JUV. JUST., *BLUEPRINT FOR CHANGE: A COMPREHENSIVE MODEL FOR THE IDENTIFICATION AND TREATMENT OF YOUTH WITH MENTAL HEALTH NEEDS IN CONTACT WITH THE JUVENILE JUSTICE SYSTEM*, at vii (2007) (noting the impact of undiagnosed mental health issues on a youth’s disruptive behavior).

²³ See Renee VandenWallBake, *Considering Childhood Trauma in the Juvenile Justice System: Guidance for Attorneys and Judges*, AM. BAR ASS’N (Nov. 1, 2013), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol_32/november-2013/considering-childhood-trauma-in-the-juvenile-justice-system-gui/.

²⁴ See, e.g., Anthony Petrosino et al., *Scared Straight and Other Juvenile Awareness Programs for Preventing Juvenile Delinquency: A Systematic Review of the Randomized Experimental Evidence*, 589 ANNALS AM. ACAD. POL. & SOC. SCI. 41, 41 (2003); see also Aditi Mukherji, *Call Cops to Teach Kids a Lesson? It Can Backfire*, FINDLAW (June 15, 2013), <https://blogs.findlaw.com/blotter/2013/06/call-cops-to-teach-kids-a-lesson-it-can-backfire.html> (pointing out that the fear this action may create on young children may overwhelm the benefits and could even result in the arrest of a parent).

parents voice their frustration to their children for not minding, expressing the hope that a night in jail might teach the child a lesson and get him to behave.²⁵ Unfortunately, most scholarship has determined that programs designed to deter future criminal activity by showing the potential repercussions are ineffective.²⁶ An example of a program designed to discourage criminal behavior is Scared Straight, which is devised to deter juvenile participants from future criminal offenses.²⁷ Research determined that the program is more harmful than doing nothing.²⁸ In fact, these efforts to prevent juvenile delinquency actually increase the odds that the participants will commit another delinquent offense.²⁹

Lastly, parents may call the police because they do not know where else to turn. Often the police are called for assistance because offenders, victims, and other observers have no one else to call to intervene and resolve verbal and physical conflict.³⁰ Over the past fifty years, programs that support the police have grown while funding for other community services has diminished.³¹ Family members may lack awareness of alternatives to calling the police.³² The general public often views law enforcement as a resource when a situation involving a parent and child becomes unmanageable.³³ Alternatively, family members may dial 911 for an ambulance and not expect the police to respond as well.³⁴ Finally, as previously mentioned, there is a myth that children can only receive mental health services and treatment if they are involved in the court system.³⁵ The community may not know about alternative community programs or believe they can only be accessed through court order which forces parents to resort to involving law enforcement.³⁶

²⁵ See Mukherji, *supra* note 24. The author has seen similar remarks on body worn camera video on several occasions.

²⁶ Petrosino et al., *supra* note 24, at 43.

²⁷ *Id.* at 41.

²⁸ *Id.* at 53.

²⁹ *Id.*

³⁰ Schut et al., *supra* note 4, at 127.

³¹ Philip V. McHarris, *Democrats are ignoring a key piece of criminal justice reform — slicing police budgets*, WASH. POST (Jan. 16, 2020), <https://www.washingtonpost.com/outlook/2020/01/16/democrats-are-ignoring-key-piece-criminal-justice-reform-slicing-police-budgets/>.

³² See Schut et al., *supra* note 4, at 127.

³³ *Id.*

³⁴ See Rod Brouhard, *What Happens After You Call 911?*, VERY WELL HEALTH (Apr. 20, 2020), <https://www.verywellhealth.com/what-happens-after-you-call-911-4078457>. On two separate occasions colleagues reported this experience to the author anecdotally. On one of those occasions a parent reported that if he had realized the police would arrive, he would never have dialed 911. See Sarah Shourd, *They Called for Help. They'd Always Regret It*, ATLANTIC (Jan. 30, 2021), <https://www.theatlantic.com/health/archive/2021/01/when-mental-health-crisis-lands-you-jail/617599/>, for an example of this scenario.

³⁵ VandenWallBake, *supra* note 23.

³⁶ See TAMIS & FULLER, *supra* note 21, at 2.

B. Issues with the Law Enforcement Response

Often, when police respond to instances of family conflict, it involves verbal altercations and results in little criminal justice intervention.³⁷ However, bringing law enforcement into the family dispute may cause a myriad of unforeseen problems. Parents calling the police on their child may undermine the parent-child relationship by reducing trust and security.³⁸ Children need to feel confident that their parent is capable of keeping them under control.³⁹ Furthermore, the law enforcement response generally does not solve the deeper issue behind the conflict and may in fact exacerbate it.⁴⁰ Two examples that illustrate problems with utilizing law enforcement in instances of intra-family conflict are insufficient officer training and mandatory arrest laws.

i. Insufficient Law Enforcement Training

A lack of law enforcement training creates a singular problem when police respond to family conflicts.⁴¹ Many cases (up to seventy percent) involve youth with mental health issues.⁴² Most police officers are not trained to deal with mental health problems.⁴³ Police without proper training have great difficulty deescalating emotional conflicts.⁴⁴ The initial police response at the time of crisis can worsen an already tense situation.⁴⁵ Many police officers come out of the military rather than from college or police training programs.⁴⁶ They are equipped with military style gear and weapons.⁴⁷ These officers are trained in military tactics rather than mental health counseling

³⁷ See Schut et al., *supra* note 4, at 127.

³⁸ Amy Morin, *Reasons You Shouldn't Call the Police on Your Child*, VERY WELL FAM. (Oct. 1, 2020), <https://www.verywellfamily.com/reasons-calling-the-police-on-your-child-wont-work-1094764>.

³⁹ See *id.*

⁴⁰ See Alexandra Pavlidakis, Comment, *Mandatory Arrest: Past its Prime*, 49 SANTA CLARA L. REV. 1201, 1202–03 (2009).

⁴¹ See Gene Grabiner, *Who Polices the Police?*, 43 SOC. JUST. 58, 61 (2016); see also Caroline Preston, *Police education is broken. Can it be fixed?*, HECHINGER REPORT (June 28, 2020), <https://hechingerreport.org/police-education-is-broken-can-it-be-fixed/>.

⁴² See, e.g., SKOWYRA & COCOZZA, *supra* note 22.

⁴³ See, e.g., TAMIS & FULLER, *supra* note 21, at 3.

⁴⁴ Compare Amy C. Watson et al., *The Crisis Intervention Team (CIT) Model: An Evidence-Based Policing Practice?*, 35 BEHAV. SCI. & L. 431, 436 (2017) (illustrating that police officers with such training demonstrated reductions in use and effectiveness of force), with NowThis News, *Police Officer Caught Punching 13-Year-Old With Cerebral Palsy*, YOUTUBE (May 13, 2019), https://www.youtube.com/watch?v=pAr2_TUKt08&feature=youtu.be (depicting an example of a police officer using excessive force in an emotional conflict).

⁴⁵ See Amam Z. Saleh et al., *Deaths of People with Mental Illness During Interactions with Law Enforcement*, 58 INT'L J. L. & PSYCHIATRY 110, 114–15 (2018).

⁴⁶ See Grabiner, *supra* note 41, at 62; see also Kevin Loria, *Military veterans to get priority for police jobs under COPS grants*, CHRISTIAN SCI. MONITOR (June 25, 2012), <https://www.csmonitor.com/layout/set/print/USA/2012/0625/Military-veterans-to-get-priority-for-police-jobs-under-COPS-grants>.

⁴⁷ See, e.g., V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 CARDOZO L. REV. 1453, 1486–87 (2019).

and social services.⁴⁸

ii. Mandatory Arrest and Officer Discretion

In conjunction with the militarization of the police force, many states have mandatory arrest laws that mandate the aggressor in a domestic violence incident be arrested.⁴⁹ Mandatory arrest may lead to a child being taken into custody rather than an effort to deescalate the family conflict.⁵⁰ In the example of the brothers at the outset of this comment, a mandatory arrest law in Virginia led one brother to be arrested rather than the police officer ending the sibling conflict with a warning.⁵¹ Another issue with involving law enforcement is the police contact can inadvertently result in arrest for an unrelated issue.⁵² Responding officers may find drugs on the premises; Child Protective Services may remove children from the custody of their families; non-citizens face the risk of deportation; and, if the incident does not go smoothly, the juvenile may inadvertently receive a charge of felony assault and battery on law enforcement.⁵³

Mandatory arrest laws are not employed in every jurisdiction.⁵⁴ When mandatory arrest laws do not apply, there is potential for an arbitrary result due to a lack of standardization in police response to incidents between children and parents. Officers have complete discretion to determine whether or not to make an arrest.⁵⁵ Racial bias is shown to play a major role in officer discretion.⁵⁶ While white juvenile assault offenders are more likely to be reported to law enforcement for victimizing a parent or sibling,⁵⁷ black

⁴⁸Roge Karma, *We train police to be warriors — and then send them out to be social workers*, VOX (July 31, 2020), <https://www.vox.com/2020/7/31/21334190/what-police-do-defund-abolish-police-reform-training>.

⁴⁹ See AM. BAR ASS'N COMM'N ON DOMESTIC VIOLENCE, *DOMESTIC VIOLENCE ARREST POLICIES BY STATE* (2011).

⁵⁰ See *id.* (citing IOWA CODE ANN. § 236.12(2)(a)-(b) (2020)).

⁵¹ See VA. CODE ANN. § 19.2-81.3(B) (2020) (requiring that an officer arrest the person he has probable cause to believe was the predominant physical aggressor).

⁵² See, e.g., Andrea L. Dennis, *Criminal Law As Family Law*, 33 GA. STATE U. L. REV. 285, 339–40 (2017).

⁵³ See generally *id.* (“[H]ome inspections and searches may result in criminal justice consequences not only for the supervisee but also for others residing in the same home. Based on information or items an agent uncovers during an inspection or search, a supervisee may be charged with new criminal offenses or face the prospect of having supervision revoked.”).

⁵⁴ See David Hirschel et al., *Domestic Violence and Mandatory Arrest Laws: To What Extent do They Influence Police Arrest Decisions?*, 98 J. CRIM. L. & CRIMINOLOGY 255, 256 (2007).

⁵⁵ Schut et al., *supra* note 4, at 118.

⁵⁶ See, e.g., Tamara A. Steckler, *Litigating Racism: Exposing Injustice In Juvenile Prosecutions*, 60 RUTGERS L. REV. 245, 247 (2007).

⁵⁷ See Snyder & McCurley, *supra* note 2, at 6.

offenders are more commonly arrested than their white counterparts, regardless of the severity of the offense.⁵⁸

Beyond initial arrests, racial bias plays an unfortunate role in every phase of the legal process. When law enforcement intervenes the officer may choose to simply warn the juvenile, provide diversion services, or arrest the juvenile.⁵⁹ Diversion allows the officer to send an offender directly to rehabilitation services which may remedy the underlying issue without an arrest or juvenile conviction.⁶⁰ The responding officer's perception of the youth and his family informs his decision to release with a warning, divert to programs, or arrest.⁶¹ If the officer does not like the attitude of the juvenile or thinks the environment is unsupportive or unsafe he can refer the juvenile to prosecution rather than deescalate the situation. Research shows that police are five times more likely to arrest a black adolescent or other person of color.⁶² Even as youth violence decreases, the disparity in arrest for youth of color increases.⁶³ Evidence indicates that although diversion programs are available and may be effective, they are more often used with white and more affluent young people.⁶⁴

C. The Impact of Entering the Juvenile Court System

While the juvenile justice system is not designed to be punitive, even the most positive interaction with the juvenile court has lasting negative ramifications for young people.⁶⁵ Children under the auspices of the juvenile court confront a plethora of adverse childhood experiences.⁶⁶ Adverse childhood experiences build within children leading to an increased risk of disease, poor decision-making, and even early death.⁶⁷ Family disruption such as divorce, addiction, and eviction is an adverse childhood experience that causes stress and trauma.⁶⁸

⁵⁸ Schut et al., *supra* note 4.

⁵⁹ See PORTIA ALLEN-KYLE, ACLU OF N.J., MISSED OPPORTUNITIES: YOUTH DIVERSIONARY PROGRAMS IN NEW JERSEY 2 (2018).

⁶⁰ *Id.* at 3.

⁶¹ Steckler, *supra* note 56, at 248.

⁶² JOSHUA ROVNER, SENT'G PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 1, 3 (2016), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/> (noting that African American juveniles are more than ten times as likely as white juveniles to be committed and Hispanic juveniles were more than five times as likely as white juveniles to be committed).

⁶³ *Id.* at 9.

⁶⁴ *See id.* at 6.

⁶⁵ See DEBORAH SMITH ET AL., NAT'L CTR. FOR STATE CTS., TRAUMA AND STATE COURTS (2018), <https://nsc.contentdm.oclc.org/digital/collection/famct/id/1343>.

⁶⁶ *Id.* (noting the findings of the CDC-Kaiser Permanente Adverse Childhood Experiences (ACE) Study showed that stressful or traumatic events experienced during childhood have a precise correlation with physical and mental health as adults).

⁶⁷ *Id.*

⁶⁸ *See id.*

For some youth, entering court may be traumatizing, stress producing, and can trigger reactions to prior trauma.⁶⁹ One study found that the rates of post-traumatic stress disorder (“PTSD”) in children who are involved in the juvenile-justice system are about the same as that experienced by soldiers returning from deployment in Iraq.⁷⁰ The act of being grabbed, handcuffed, and detained can aggravate the original traumatizing events.⁷¹ Additionally, minors that enter the juvenile court system have an increased risk of future court involvement.⁷² Limiting a child’s contact with the juvenile court system dramatically decreases the risk of further court involvement.⁷³ Once a youth is court involved he is much more likely to be arrested in the future.⁷⁴ Finally, court involvement may cause a child and family more problems, such as missed work and school for court hearings, possible loss of child custody, and the risk of deportation.⁷⁵

As previously indicated, the juvenile court system is designed to treat children differently than adults and provide services rather than punishment.⁷⁶ Diversion services informally rehabilitate a child rather than punish the particular offense.⁷⁷ Despite a goal of diverting children away from being adjudicated delinquent,⁷⁸ young people are at risk of potentially arbitrary sentences.⁷⁹ Individual judge’s decisions are extremely discretionary.⁸⁰ Due to this discretion, a judge’s personality and biases are injected into the court proceedings which raises serious issues of fairness and equality.⁸¹ One study found that sentencing decisions can be influenced by a judge’s football team

⁶⁹ See VandenWallBake, *supra* note 23.

⁷⁰ *Id.*

⁷¹ SMITH ET AL., *supra* note 65.

⁷² ALLEN-KYLE, *supra* note 59; Anna Aizer & Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital, and Future Crime: Evidence from Randomly-Assigned Judges*, 130 Q. J. ECON. 759, 799 (2015).

⁷³ ALLEN-KYLE, *supra* note 59.

⁷⁴ *Cf. id.* (noting that later criminal justice involvement is less likely if a child has limited contact with the juvenile justice system).

⁷⁵ *Family Court: Raising Awareness About Immigration Consequences*, IMMIGRANT DEF. PROJECT, <https://www.immigrantdefenseproject.org/family-court-raising-awareness-about-immigration-consequences/> (last visited Jan. 27, 2021); VandenWallBake, *supra* note 23.

⁷⁶ S’Lee Arthur Hinshaw II, *Juvenile Diversion: An Alternative to Juvenile Court*, 1993 J. DISP. RESOL. 305, 305 (1993).

⁷⁷ *Id.*

⁷⁸ *Id.* at 305–06. Juvenile courts use slightly different language from other courts. Thus, rather than being found guilty of a crime, a juvenile is adjudicated delinquent. See, e.g., VA. CODE ANN. § 16.1-272 (2020); VA. CODE ANN. § 16.1-278.8 (2020).

⁷⁹ See Hinshaw II, *supra* note 76, at 309; see also Steckler, *supra* note 56, at 256.

⁸⁰ Thomas A. Zonay, *Judicial Discretion: Ten Guidelines for Its Use*, NAT’L JUD.

COLL., <https://www.judges.org/judicial-discretion-ten-guidelines-for-its-use/> (last visited Jan. 24, 2021).

⁸¹ Steckler, *supra* note 56, at 256–57.

losing or even by feeling hungry⁸² and are often unfavorable toward low-income youth of color.⁸³ Not only do black non-Hispanic and Hispanic children endure greater possibility of arrest⁸⁴ and prosecution,⁸⁵ they are five times more likely to be detained or committed than similarly situated white youth.⁸⁶

D. Restorative Practices and Transformative Justice

i. Restorative Justice

The issues outlined above are well documented and many reformers of the criminal legal system advocate are using restorative justice practices to address these problems.⁸⁷ Restorative justice is often the umbrella term for all programs that take the view that the criminal legal system is not the only, or most appropriate, place to respond to crime.⁸⁸ Many proponents of restorative justice are disillusioned by the punitive justice system and have lost confidence in incarceration leading to rehabilitation.⁸⁹ Advocates for a new approach are also concerned about the loss of voice for victims in the legal system.⁹⁰ Unlike the traditional system, restorative justice often involves direct communication between the harm-doer, the person harmed, and the greater community within which they both reside.⁹¹ Restorative justice seeks to achieve restitution for the harmed while imploring perpetrators to take responsibility for their behavior, develop empathy, and learn vital problem-solving skills.⁹²

Advocates often lump broad reform ideas under the heading of restorative

⁸² Kindred Motes, *Game day injustice? Judges dole out harsher sentences after home team upset*, VERA INST. (Sept. 29, 2016), <https://www.vera.org/blog/game-day-injustice-judges-dole-out-harsher-sentences-after-home-team-upset>.

⁸³ *See id.*

⁸⁴ ROVNER, *supra* note 62, at 3, 8.

⁸⁵ *See, e.g.*, Frank Kineavy, *Black, Hispanic Minors Are More Likely to be Tried as Adults Than Whites*, DIVERSITYINC (Oct. 24, 2016), <https://www.diversityinc.com/black-hispanic-minors-likely-tried-adults-whites/>.

⁸⁶ SENT'G PROJECT, RACIAL DISPARITIES IN YOUTH INCARCERATION FACT SHEETS (2017), <https://www.sentencingproject.org/wp-content/uploads/2017/10/Racial-disparities-in-youth-incarceration-fact-sheets.pdf> (noting that Black youth are five times more likely to be detained or committed than white youth and that Latino youth are 65% more likely than white youth to be detained or committed).

⁸⁷ Restorative justice is not explained in great detail. *See* A RESTORATIVE JUSTICE READER (Gerry Johnstone, ed., 2d ed., 2013); RUTH ANNE STRICKLAND, RESTORATIVE JUSTICE (David A. Shultz & Christina DeJong eds., 2004); Ross London, *A New Paradigm Arises*, in A RESTORATIVE JUSTICE READER 5 (Gerry Johnstone, ed., 2d ed., 2013), for more in-depth discussions of restorative justice.

⁸⁸ *See* Kathleen Daly, *What is Restorative Justice? Fresh Answers to a Vexed Question*, 11 VICTIMS & OFFENDERS 9, 10 (2015).

⁸⁹ *See* Carrie Menkel-Meadow, *Restorative Justice: What is it and Does it Work?*, 3 ANN. REV. L. & SOC. SCI. 161, 163 (2007).

⁹⁰ *See id.* at 164.

⁹¹ *Id.* at 162.

⁹² *See id.*

justice, leading one author to explain that restorative justice is a “contemporary justice mechanism” to address crime, disputes, and community conflict.⁹³ At its heart, restorative justice can be understood as a set of practices that can be tailored to fit the particular needs of a community.⁹⁴ These principles align themselves well with family conflict with which the parties are already deeply connected and have incentive to resolve problems and reach mutual decisions.⁹⁵ In incidents of family conflict, especially violence, the traditional judicial system may seek to cut off access between parent and child, but research shows that engaging the parent and family is vital to the child’s future success.⁹⁶

ii. Transformative Justice

In order to solve the entrenched issues impacting parents and children in intra-family conflict, efforts may need to move beyond restorative practices to transformative justice. Critics of restorative justice argue that it is too narrow and backward looking: they contend restorative justice is yet another mechanism designed to respond to crime after it has occurred and to castigate, rather than an effort to transform.⁹⁷ One feminist critique points to the term “restore” and argues that efforts should move beyond restoring the legal system and instead endeavor to remake it.⁹⁸ Restorative justice may also focus too narrowly on healing a singular conflict while ignoring the underlying structural injustices.⁹⁹

As an alternative to restorative justice, transformative justice expands to a larger framework that involves “changing wider social systems in ways that help to prevent the occurrence and re-occurrence of harmful incidents.”¹⁰⁰ Transformative justice recognizes that the current legal system facilitates and perpetuates violence in communities of color.¹⁰¹ Involving law enforcement maintains oppression and stymies efforts to address conflict and solve issues

⁹³ Daly, *supra* note 88, at 21.

⁹⁴ See Menkel-Meadow, *supra* note 89.

⁹⁵ See Pamela L. Airey, Comment, *It's a Natural Fit: Expanding Mediation to Alleviate Congestion in the Troubled Juvenile Court System*, 16 J. AM. ACAD. MATRIM. L. 275, 281 (1999).

⁹⁶ VandenWallBake, *supra* note 23.

⁹⁷ Howard Zehr, *Restorative or transformative justice?*, ZEHR INST. FOR RESTORATIVE JUST. BLOG (Mar. 10, 2011), <https://emu.edu/now/restorative-justice/2011/03/10/restorative-or-transformative-justice>.

⁹⁸ Daly, *supra* note 88, at 19.

⁹⁹ Zehr, *supra* note 97.

¹⁰⁰ *Id.*

¹⁰¹ Generation 5, *What are Community Accountability & Transformative Justice?*, TRANSFORMATIVE JUST., <https://www.transformativejustice.eu/en/what-are-ca-and-tj/> (last visited Jan. 29, 2021).

within the community.¹⁰² Instead, transformative justice confronts oppression directly and looks to community resources to create a new paradigm.¹⁰³ The alternatives listed in this comment are often transformative in nature and seek to solve criminal legal issues outside the auspices of the traditional justice system.

II. DISCUSSION

“I want to die,” Desiree says tonelessly to a police officer. She stands in the park with her mother. It is unclear why, but Desiree took her mom’s phone and summoned law enforcement. Desiree’s mother tells another officer, “she always says this. She’s just mad because her step-father said it was time to go home.” The officers ask the child questions. They learn that Desiree is twelve, she has recently been hospitalized for severe depression, and she has just returned home. The officers are perplexed; they do not know how to resolve this standoff. They seek to cajole the child into leaving: “you have to listen to your mom, she pays for your food and clothes, you’re just mad right now but you know she loves you,” but their words fall on deaf ears. Eventually the officers begin to feel frustrated. “Come-on” they say, “you must leave.” “No,” the child says softly. Desiree turns, casually, to walk away. The officers’ training kicks in: the child cannot ignore their orders. They grab Desiree by the arm, twisting it back, throwing her to the asphalt and cuffing her. She screams in pain and anguish, her legs kicking fruitlessly on the ground. “Don’t move!” an officer shouts, “you’re about to get charged with a felony assault and battery on law enforcement.”¹⁰⁴

Altercations with the police regularly result in increased stress, trauma, and in the most tragic cases, death.¹⁰⁵ If the police interaction results in arrest, which is more likely for black and brown young persons, further traumatization looms in juvenile court proceedings. Still, intervention is essential to

¹⁰² *Id.*; *Transformative Justice*, TRANSFORMHARM.ORG, <https://transformharm.org/transformative-justice/> (last visited Jan. 29, 2021) (explaining that transformative justice is a way of practicing alternative justice while acknowledging individual experiences and identities and working to actively resist the state’s criminal injustice system; transformative justice recognizes that oppression is at the root of all forms of harm, abuse, and assault).

¹⁰³ *See, e.g.*, GENERATION FIVE, TOWARD TRANSFORMATIVE JUSTICE: A LIBERATORY APPROACH TO CHILD SEXUAL ABUSE AND OTHER FORMS OF INTIMATE AND COMMUNITY VIOLENCE 5 (2007), http://www.generationfive.org/wp-content/uploads/2013/07/G5_Toward_Transformative_Justice-Documents.pdf. “Philly Stands Up” is one example of this. Their work includes direct community engagement with both survivors and perpetrators of sexual assault aimed at healing and accountability, using a transformative justice framework that also seeks to prevent future assaults. *See, e.g.*, *About*, PHILLY STANDS UP, <https://phillystandsup.wordpress.com/about/> (last visited Jan. 22, 2020).

¹⁰⁴ This story is based on a case that I worked on with the Children’s Defense Clinic during the spring of 2020. Details have been changed to protect the confidentiality of the juvenile. I have received permission from the Director of the Clinic, Julie McConnell, to use these facts to illustrate a possible outcome when the police are called for assistance during an intra family dispute. While the police initially sought to assist, their lack of training and knowledge of resources led to an escalation in violence that only caused harm to the child, the person who sought their assistance in the first place.

¹⁰⁵ *See, e.g.*, Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321, 2324 (2014).

addressing the long-term consequences of intra-family conflict.¹⁰⁶ Higher rates of parent–child conflict predict numerous problem behaviors leading to early aggression and depression in youth across all social strata.¹⁰⁷ There is consensus that exposure to violence within the family household increases the likelihood of a violent relationship in later life and maintains the cycle of violence.¹⁰⁸ Children exposed to violence may experience multiple risk factors including psychological health issues such as depression, anxiety and PTSD, overall poorer health, academic difficulties and potential for academic failure, and an increased likelihood of juvenile offending.¹⁰⁹ While emergency intervention may not solve the deeper issues, it halts the immediate crisis and allows access to the family to address systemic alternatives to violence.

This comment outlines two options to reduce police and court involvement in intra-family conflicts. It strives to make calling the police a last resort. As an alternative, his comment recommends the funding of community intervention programs. Community intervention offers friends and neighbors—those on the front line of the conflict—the tools and resources to intervene and support families in conflict. Secondly, if police do respond, increased training and programming is essential to direct the law enforcement response away from arrest and toward support and mitigation. At both stages, evaluations of community activism efforts and innovative social programs show that a form

¹⁰⁶ This comment begins to address this issue after conflict has occurred. To fully address the issue of family conflict, community support services should begin with early childhood and prevention programs. Examples of prevention programs that are successfully utilized in Australia and England include: Triple P Positive Parenting Program (www.triplep.net) and the Incredible Years (www.incredibleyears.com). Project SafeCare has also been adopted in Washington State (<https://www.childwelfare.gov/topics/prevention/prevention-programs/homevisit/homevisitprog/safe-care/>). See Geoff Lindsay et al., *A Comparison of the Effectiveness of Three Parenting Programmes in Improving Parenting Skills, Parent Mental-Well being and Children's Behaviour when Implemented on a Large Scale in Community Settings in 18 English Local Authorities: The Parenting Early Intervention Pathfinder (PEIP)*, 11 BMC PUB. HEALTH 962, 968 (2011) (finding that there was a significant improvement in outcome for parents completing these programs in England); MATTHEW R. SANDERS ET AL., UNIV. OF QUEENSL., PARENTING AND FAM. SUPPORT CTR., THEORETICAL, SCIENTIFIC AND CLINICAL FOUNDATIONS OF THE TRIPLE P-POSITIVE PARENTING PROGRAM: A POPULATION APPROACH TO THE PROMOTION OF PARENTING COMPETENCE 1, 19 (2003) (concluding that the Triple P program in Australia provides parenting skills at different levels produce predictable decreases in child behavior problems); Matthew R. Sanders, *Parenting Interventions and the Prevention of Serious Mental Health Problems in Children*, 177 MED. J. AUSTRAL. S87, S90 (2002) (explaining parenting interventions are essential to the prevention of serious mental health problems in children and evaluating the success of Triple P).

¹⁰⁷ See Chelsea M. Weaver et al., *Parent-Child Conflict and Early Childhood Adjustment in Two-Parent Low-Income Families: Parallel Developmental Processes*, 46 CHILD PSYCH. & HUM. DEV. 94, 104 (2015).

¹⁰⁸ See Gregory Routt & Lily Anderson, *Adolescent Aggression: Adolescent Violence towards Parents*, 20 J. AGGRESSION, MALTREATMENT & TRAUMA 1, 11 (2011).

¹⁰⁹ See *Children Exposed to Violence*, U.S. DEP'T OF JUST., OFF. OF JUV. JUST. & DELINQ. PREVENTION, <https://ojjdp.ojp.gov/programs/children-exposed-violence> (last visited Jan. 22, 2021).

of transformative justice is a viable option to limit police contact with families.¹¹⁰

A. Community Intervention. Provide an immediate response to conflict and limit the criminal justice ramifications for children and families.

The community is often in a position to access families and provide culturally- appropriate assistance at the earliest stages of conflict.¹¹¹ About one third of incidents of family conflict are never brought to the attention of law enforcement.¹¹² Family members suffer in silence; they may fear the perpetrator, wish to protect a loved one from arrest or deportation, feel shame that they cannot control their children,¹¹³ or they may never have been given a safe space to share their trauma.¹¹⁴ The fact law enforcement has not been contacted does not mean that friends, neighbors, and community members are not aware there may be a serious problems within some families.¹¹⁵ For example, studies of intimate partner domestic violence show abused women look to extended family, friends, and neighbors before reaching out to authorities.¹¹⁶ Few access shelters¹¹⁷ and they seek support from the police, courts, and child protection agencies last.¹¹⁸ Similar to intimate partners in a domestic relationship, families in conflict reach out to friends and neighbors for advice.¹¹⁹ This community network can, and may already, intervene to stop intra-family conflict without law enforcement intervention.

i. Community-Based Interventions

Community-based intervention recognizes that family-members, similar to many women in violent intimate partner relationships, are hesitant to reach out to law enforcement for help in some instances of intra-family conflict.¹²⁰ Law enforcement places a premium on safety which generally entails physical separation from the perpetrator through foster care, shelters, or arrest.¹²¹

¹¹⁰ See Anthony J. Nocella, *An Overview of the History and Theory of Transformative Justice*, 6 PEACE & CONFLICT REV. 1, 4, 8 (2011).

¹¹¹ See Mimi E. Kim, *Alternative Interventions to Violence: Creative Interventions*, 4 INT'L J. NARRATIVE THERAPY & CMTY. WORK 45, 49 (2006).

¹¹² U.S. DEP'T. OF JUST., *supra* note 5, at 3.

¹¹³ *Id.*

¹¹⁴ Cf. P. CATLIN FULLWOOD, PREVENTING FAMILY VIOLENCE: COMMUNITY ENGAGEMENT MAKES A DIFFERENCE 4 (Lindsey Anderson & Kelly Mitchell-Clark eds., 2002), <https://www.futureswithoutviolence.org/userfiles/file/ImmigrantWomen/PFV-Community%20Engagement.pdf> (stating that families who have a safe place to share trauma have no reluctance to discuss family violence).

¹¹⁵ See Mimi E. Kim, *Alternative Interventions to Intimate Violence: Defining Political and Pragmatic Challenges*, in FEMINISM & RESTORATIVE JUSTICE 193, 196 (J. Ptacek ed., 2010).

¹¹⁶ FULLWOOD, *supra* note 114, at 2.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See Kim, *supra* note 115, at 195–96.

¹²¹ See *id.* at 201–02.

This separation is not always a viable option. As an alternative, a program developed in Oakland, California in 2004, Creative Interventions, promotes community-based interventions led by friends and neighbors motivated to end the conflicts of which they are aware.¹²² The program developed an in-depth toolkit which encourages a community-based approach to ending interpersonal violence.¹²³ Creative Interventions defines “community-based intervention to violence” as “any intervention to intimate violence which primarily involves community or collective solutions and/or engages the perpetrator without involving the state.”¹²⁴

Creative Interventions developed a tool kit, which offers knowledge and resources to equip community networks to provide effective, ethical, and sustainable intervention options.¹²⁵ The tool kit acknowledges that many communities have used a creative approach to violence intervention for generations.¹²⁶ It offers a holistic approach that involves the person harmed, the harm doer and the larger community.¹²⁷ The 578 page tool kit contains a basic model for violence intervention, nine different tools which can be adopted to the specific intervention, and stories based upon the experiences of utilizers of Creative Interventions during its development and pilot stages.¹²⁸ One tool emphasizes staying safe during an intervention.¹²⁹ It utilizes the first person narrative of a young woman seeking to address an attempted rape.¹³⁰ The toolkit allowed her to address all of the areas of safety and put together a plan prior to confronting the person who harmed her.¹³¹

As a companion to the toolkit, the organization utilizes first person narrative to learn from the experiences of others.¹³² Many believe that family violence is private and families experiencing it are not willing to discuss their problems, but the opposite is true.¹³³ Family members, given a safe space to

¹²² Kim, *supra* note 111.

¹²³ See *generally* Toolkit, CREATIVE INTERVENTIONS, <http://www.creative-interventions.org/tools/toolkit/> (last visited Feb. 6, 2021).

¹²⁴ See CREATIVE INTERVENTIONS, CREATIVE INTERVENTIONS TOOLKIT: A PRACTICAL GUIDE TO STOP INTERPERSONAL VIOLENCE 2–7 (2020), <https://www.creative-interventions.org/wp-content/uploads/2020/08/CI-Toolkit-Final-ENTIRE-Aug-2020.pdf>.

¹²⁵ See *generally* Toolkit, *supra* note 123.

¹²⁶ See CREATIVE INTERVENTIONS, *supra* note 124, at 1–2.

¹²⁷ *Id.* at 5.

¹²⁸ Toolkit, *supra* note 123; Tools, CREATIVE INTERVENTIONS, <http://www.creative-interventions.org/tools/toolkit/> (last visited Jan. 22, 2021).

¹²⁹ See CREATIVE INTERVENTIONS, *supra* note 124, at 4B-2.

¹³⁰ *Id.* at 4B-16.

¹³¹ *Id.* at 4B-17.

¹³² See *Organizing Resources for Storytelling and Interventions*, CREATIVE INTERVENTIONS, www.stopviolenceeveryday.org/creative-interventions/ (last visited on Jan. 22, 2021).

¹³³ FULLWOOD, *supra* note 114.

share, are often open and willing to communicating their experiences.¹³⁴ These shared experiences help lay the foundation for future intervention.

In addition to utilizing the Creative Interventions tool kit, several organizations promote steps to undertake before calling police to investigate a conflict.¹³⁵ Restorative Response Baltimore seeks to address conflict through community conferencing.¹³⁶ Community conferencing is a voluntary one-time restorative practice that seeks to include every person involved in a conflict.¹³⁷ This effort, like many others, looks to neighbors and the community to stop violence. Organizers ask neighbors to think before calling the police and step through a decision tree which asks, along each branch, whether there is an alternative to calling the police.¹³⁸ The decision tree, attached as Appendix A, can be updated with resources for any community.¹³⁹

Another organization, Chicago-based Project NIA, has the long-term objective of eradicating youth incarceration completely. Created in 2009, Project NIA's mission is to "dramatically reduce the reliance on arrest, detention, and incarceration for addressing youth crime and to instead promote the use of restorative and transformative practices, a concept that relies on community-based alternatives."¹⁴⁰ Project Nia has developed a Transformative Justice Curriculum Guide, which, among other things, utilizes a community facilitator to lead a discussion of a family conflict that resulted in the neighbors calling the police.¹⁴¹ Participants discuss the other options the neighbor could have taken and how the decision may have led to further oppression.¹⁴²

Finally, Community Violence Interruption models could be redeployed to address family conflicts. In New York City, Cure Violence programs use

¹³⁴ *Id.*

¹³⁵ See e.g., Ann Deslandes, *How a simple Google doc called "What to do instead of calling the police" went viral and why it matters*, MEDIUM (Dec. 8, 2016), <https://medium.com/the-vocal/how-a-simple-google-doc-called-what-to-do-instead-of-calling-the-police-went-viral-and-why-it-2a068a1e089f> (highlighting community organizer who compiles alternatives to calling police); see also *What To Do Instead of Calling the Police: A Guide, A Syllabus, A Conversation, A Process*, CMTY. RES. HUB, <https://communityresourcehub.org/resources/what-to-do-instead-of-calling-the-police-a-guide-a-syllabus-a-conversation-a-process/> (last visited Jan. 19, 2021) (providing resources for alternatives to calling police).

¹³⁶ *Addressing conflict through community conferencing*, RESTORATIVE RESPONSE BALT., <https://www.restorativeresponse.org/conferencing/> (last visited Jan. 19, 2021).

¹³⁷ *Id.*

¹³⁸ *Alternatives to Calling the Police*, UNITARIAN UNIVERSALIST ASS'N, <https://www.uua.org/safe/handbook/alternatives-calling-police> (last visited Jan. 19, 2021).

¹³⁹ See generally *id.*

¹⁴⁰ Emily Blumenstein, *Spotlight On: Project NIA - Building Peaceful Communities*, 36 CHILD. LEGAL RTS. J. 218, 218 (2016).

¹⁴¹ PROJECT NIA, TRANSFORMATIVE JUSTICE: A CURRICULUM GUIDE 21–22 (2013).

¹⁴² *Id.* at 22.

community interruption to disrupt gun violence through mediation.¹⁴³ The programs are designed to ensure that minor disputes do not escalate into violence.¹⁴⁴ “Violence interrupters” are deployed to targeted areas throughout New York “to mediate, talk, and listen.”¹⁴⁵ Violence interrupters use their familiarity with the area, personal relationships, social networks, and knowledge to deter neighborhood residents from engaging in violence.¹⁴⁶ An evaluation of Cure Violence found a significant reduction in gun violence, nearly fifty percent, in neighborhoods where the program was implemented when compared to similar neighborhoods in New York City.¹⁴⁷

ii. Government Programs

Several states have funded programs that can be called for crisis intervention without involving the police. In Connecticut, the state has developed CIT-Y, a crisis intervention team explicitly for youth, that is accessed by dialing 2-1-1.¹⁴⁸ The program is funded by the Connecticut Department of Children and Services through a grant from United Way.¹⁴⁹ Dialing 2-1-1 is a one-stop connection to all the local services a child may need, including immediate crisis care for children who are, for instance, putting themselves in danger or behaving violently.¹⁵⁰ Teams of mental health workers respond to the crisis immediately and bring the situation under control.¹⁵¹

Illinois, through legislation, developed the Comprehensive Community-Based Youth Services Program, which is funded through the Illinois Department of Health and Human Services and provides grants to local community service organizations to provide crisis services in every county in the state.¹⁵² The crisis response system is designed to prevent young people from entering either the child welfare or juvenile justice systems unnecessarily.¹⁵³ The

¹⁴³ Sheyla A. Delgado et al., *The Effects of Cure Violence in the South Bronx and East New York, Brooklyn*, in DENORMALIZING VIOLENCE: A SERIES OF REPORTS FROM THE JOHN JAY COLLEGE EVALUATION OF CURE VIOLENCE PROGRAMS IN NEW YORK CITY 2 (2017).

¹⁴⁴ See Roge Karma, *4 Ideas to Replace Traditional Police Officers*, VOX (June 24, 2020), <https://www.vox.com/2020/6/24/21296881/unbundle-defund-the-police-george-floyd-rayshard-brooks-violence-european-policing>.

¹⁴⁵ *Anti-Violence Development*, MANUP!, <https://manupinc.org/anti-violence-program/> (last visited Jan. 23, 2020).

¹⁴⁶ Delgado et al., *supra* note 143.

¹⁴⁷ *Id.* at 9.

¹⁴⁸ TAMIS & FULLER, *supra* note 21, at 9; see also *When Your Child is in Crisis*, MOBILE CRISIS, <https://www.mobilecrisisempct.org/portfolio-view/when-a-child-in-your-care-is/> (last visited Jan. 20, 2021).

¹⁴⁹ *When Your Child is in Crisis*, *supra* note 148.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² 20 ILL. COMP. STAT. ANN. 505/17a-4 (2020).

¹⁵³ ILL. JUV. JUST. RSCH. & INFO. CONSORTIUM, RESPONDING TO YOUTH AND FAMILIES IN CRISIS: COMPREHENSIVE COMMUNITY-BASED YOUTH SERVICES (CCBYS), <http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/BRIEFING%20SERIES%20-%20CCBYS%20.pdf> (last visited Feb. 5, 2021).

program provides “immediate crisis intervention programs for runaways, youth locked out of their homes or in conflict with parents or caregivers, and young people in immediate physical danger.”¹⁵⁴

All of these interventions depend on the family, neighbors, and community to intervene and access support without involving law enforcement. Advocates of community-based interventions recognize that family, friends, and neighbors are aware of issues within the family long before they reach a boiling point.¹⁵⁵ These alternative interventions show that by utilizing community resources it is possible to provide support outside the traditional criminal legal realm.

B. Law Enforcement Intervention. Ensure the police force has training to deescalate conflicts and keep children out of the juvenile court system.

Community intervention, however preferable, may not always be possible. There will be times when the police are summoned to an intra-family conflict. On these occasions, the police must be properly trained to know how to respond. Many of the most difficult instances of conflict involve persons with mental illness. Take, for example, the plight of Desiree, introduced on page fifteen. The responding officers were aware she struggled with mental illness and suicidal ideation but did not know how to assist her.¹⁵⁶ Many police departments are beginning to train specific officers in the Crisis Intervention Team (CIT) model.¹⁵⁷ CIT is a collaborative strategy designed to improve police response to persons with mental illnesses or those experiencing a mental health crisis.¹⁵⁸ CIT fosters a community partnership of law enforcement, mental health professionals, individuals living with mental illness and/or addiction disorders, their family, and other advocates.¹⁵⁹ CIT focuses on prevention and partnership and building relationships with individuals and families in order to offer services before crisis occurs.¹⁶⁰

CIT is an example of the best practices in law enforcement, but individual officers need to utilize the program; the police department cannot provide

¹⁵⁴ *Id.*

¹⁵⁵ See Kim, *supra* note 111 (noting those closest to the family have the greatest motivation to end the conflict).

¹⁵⁶ Casework with “Desiree,” Children’s Defense Clinic (2020).

¹⁵⁷ Amy C. Watson & Anjali J. Fulambarker, *The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners*, 8 BEST PRAC. MENTAL HEALTH 71, 71 (2012).

¹⁵⁸ *Id.*

¹⁵⁹ *CIT is More Than Just Training...it’s a community program*, CRISIS INTERVENTION TEAM INT’L, <http://www.citinternational.org/Learn-About-CIT> (last visited Jan. 24, 2021).

¹⁶⁰ TAMIS & FULLER, *supra* note 21, at 8.

cursory training and then pay lip service to the initiative.¹⁶¹ The CIT model is “more than just training.” CIT requires collaboration across agencies and with community stakeholders to ensure respectful, efficient, and effective crisis response.¹⁶² For Desiree, the responding officers initially sought to assist the child, but did not have the training necessary to solve the issue.¹⁶³ If CIT training had been offered, perhaps the situation would not have escalated so traumatically.

Examples of alternative policing concepts are emerging across the country. In Eugene, Oregon, the CIT collaborative model is expanded considerably.¹⁶⁴ During a mental health crisis, the police are not usually the ones to respond. Instead, a crisis program called CAHOOTS (Crisis Assistance Helping Out On The Street) calms tension and even provides medical aid.¹⁶⁵ A Wall Street Journal article provided an example of CAHOOTS:

[CAHOOTS] arrived at the home of a teen who had been punching her mother. The air was thick with tension. They listened to the girl’s story—adults were always trying to control her—as she stood above them on the porch steps. They talked with the mother. After an hour and a half, they brokered a peace treaty devised by the warring parties.¹⁶⁶

CAHOOTS keeps callers out of the justice system, provides immediate stabilization, and, if necessary, transports individuals to additional treatment options.¹⁶⁷ In 2019, the mobile crisis center responded to seventeen percent of the Eugene Police Department calls for service, over 24,000 interactions with the community.¹⁶⁸

In Pima County, Arizona, the local government, with the assistance of a Bureau of Justice Assistance grant, funds the Alternative Community Engagement Services (ACES) Center.¹⁶⁹ When the program was developed in 2009, juvenile court data disclosed that a preponderance of juveniles entered the system for domestic violence offenses and that seventy percent were

¹⁶¹ See Watson & Fulambarker, *supra* note 157, at 72 (stressing the need for the CIT model to be more than just a training program).

¹⁶² See *id.* at 72, 77.

¹⁶³ Casework with “Desiree,” Children’s Defense Clinic (2020).

¹⁶⁴ See *Crisis Intervention Training*, EUGENE POLICE DEPT., <https://www.eugene-or.gov/926/Crisis-Intervention-Training> (last visited Feb. 5, 2021).

¹⁶⁵ Zusha Elinson, *When Mental-Health Experts, Not Police, Are the First Responders*, WALL ST. J. (Nov. 24, 2018), <https://www.wsj.com/articles/when-mental-health-experts-not-police-are-the-first-responders-1543071600>.

¹⁶⁶ *Id.*

¹⁶⁷ CAHOOTS, WHITE BIRD CLINIC, <https://whitebirdclinic.org/cahoots/> (last visited Jan. 23, 2021).

¹⁶⁸ WHITE BIRD CLINIC, CRISIS ASSISTANCE HELPING OUT ON THE STREETS: MEDIA GUIDE 2020, at 1 (2020), <https://whitebirdclinic.org/wp-content/uploads/2020/07/CAHOOTS-Media.pdf>.

¹⁶⁹ See Jessica Blackburn, *Center a safe place for kids in domestic violence-related situations to cool down*, ARIZ. DAILY STAR (Oct. 7, 2017), https://tucson.com/news/local/center-a-safe-place-for-kids-in-domestic-violence-related-situations-to-cool-down/article_09e5f98a-9066-534e-8add-d14fcc926973.html.

diagnosed with mental illness.¹⁷⁰ Under the program, when the police get a call about family conflict the child is taken to the ACES Center without a referral to the court.¹⁷¹ Decorated like a comfortable home with bedrooms to stay the night, the center operates not only as a safe space to cool down but provides restorative practices and resources to the parents and child to alleviate the larger issue.¹⁷² According to an evaluation of the program it took time for law enforcement to catch-on but today the ACES center reduces the number of children in detention significantly.¹⁷³

Modeled after the Pima County program, King County in Washington State launched the Family Intervention and Restorative Services Center (FIRS) in 2015.¹⁷⁴ King County had noted that family violence constituted one-third of its juvenile detention bookings.¹⁷⁵ Prior to the launch of FIRS, programs such as the innovative Step-Up, which uses restorative practices to build healthy relationships to address youth violence, could only be accessed through a court referral.¹⁷⁶ Today, FIRS provides an alternative to arrest and detention for youth during juvenile domestic violence altercations.¹⁷⁷ FIRS offers youth detained for family violence incidents space at an overnight respite center where staff offers de-escalation counseling to safely reunite youths with their families.¹⁷⁸ Parents and children are also referred to the Step-Up program to develop long-term solutions to reduce family conflict; Step-Up includes a skills based and restorative practice group intervention for youth and their parents/caretakers that focuses on non-violence and respect between family members.¹⁷⁹

Evaluations of FIRS and Step-Up show significant reductions in violent and abusive behavior, as well as lower recidivism rates, for youth and

¹⁷⁰ See BRENDA FLYNN, PIMA CNTY. JUV. CT., DOMESTIC VIOLENCE ALTERNATIVE CENTER 2-3 (2008), <https://docplayer.net/43163536-Domestic-violence-alternative-center-dvac-pima-county-juvenile-court-tucson-arizona.html>.

¹⁷¹ See Blackburn, *supra* note 169.

¹⁷² See *id.*

¹⁷³ *Id.*

¹⁷⁴ SARAH CUSWORTH WALKER, UW MEDICINE, PROCESS AND IMPACT EVALUATION: FAMILY INTERVENTION AND RESTORATIVE SERVICES CENTER (FIRS) 3 (2017), <https://static1.squarespace.com/static/5935ee95893fc011586f1304/t/59c084b7b7411cde53890a27/1505789122237/FIRSevaluation41717.pdf>.

¹⁷⁵ *Family Intervention and Restorative Services*, KING CNTY. (Sept. 11, 2018), <https://www.king-county.gov/depts/prosecutor/youth-programs/firs.aspx>.

¹⁷⁶ WALKER, *supra* note 174, at 5.

¹⁷⁷ *Id.* at 3.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 7; See *Preamble*, NAT'L ASS'N FOR CMTY. MEDIATION, <https://www.nafcm.org/default.aspx> (last visited Feb. 5, 2021), for information on starting a community mediation group to develop community involvement for communication and conflict resolution.

families that completed the programs.¹⁸⁰ A 2014 evaluation of Step-Up participants found a significant reduction in recidivism between program youth and the comparison group not provided programming.¹⁸¹ Reducing violence also saves communities money. CAHOOTS uses an annual budget of \$2.1 million to provide services for the cities of Springfield and Eugene, Oregon.¹⁸² The cost of running the program is just a little over two percent of the \$90 million police budget for the two cities.¹⁸³ In addition, CAHOOTS saves the Eugene and Springfield police departments nearly fifteen million dollars a year.¹⁸⁴ Finally, a 2016 report in the *American Journal of Preventative Medicine* estimated up to fifty percent of fatal encounters with law enforcement involved persons struggling with mental illness.¹⁸⁵ But, under the CAHOOTS model, the trained mental health workers only requested police backup 250 times—one percent of 24,000 calls—significantly limiting the opportunity for police escalation.¹⁸⁶

The programs presented above all indicate that it is possible to successfully address intra-family conflict with limited law enforcement intervention and without entering the auspices of the juvenile courts. These models illustrate that proper law enforcement training and the shifting of resources to programs directly designed to address mental health and intra-family conflict may lead to better outcomes and cost savings for families and the larger community.

C. Counter Argument. Does not calling the police put the family at risk?

While it is often not discussed, intra-family conflict is a serious issue.¹⁸⁷ Some will posit that not calling law enforcement will fail to protect children from child abuse and severe harm.¹⁸⁸ Research in domestic violence raises this issue as well, but also addresses the fact that many communities of color are already hesitant to call the police in instances of family conflict. Advocates recognize the adverse impact law enforcement has on young black men in particular.¹⁸⁹ Alternatives to law enforcement intervention reaches family violence hidden from sight. Evidence indicates that community-based

¹⁸⁰ *Step-Up: Evaluation Findings, Building Respectful Family Relationships*, KING CNTY. (Dec. 18, 2014), <https://www.kingcounty.gov/courts/superior-court/juvenile/step-up/about/Evaluations.aspx>.

¹⁸¹ *Id.*

¹⁸² WHITE BIRD CLINIC, *supra* note 168.

¹⁸³ *Id.*

¹⁸⁴ Karma, *supra* note 144.

¹⁸⁵ WHITE BIRD CLINIC, *supra* note 168.

¹⁸⁶ *Id.* at 2.

¹⁸⁷ *See, e.g.*, Routt & Anderson, *supra* note 108, at 15.

¹⁸⁸ *See* Meghan Condon, *Bruise of a Different Color: The Possibilities of Restorative Justice for Minority Victims of Domestic Violence*, 17 *GEO. J. POVERTY L. & POL'Y* 487, 488–89 (2010) (presenting a critique of not arresting perpetrators in domestic violence situations).

¹⁸⁹ ROVNER, *supra* note 62, at 1.

programming is the most effective way to intervene with youth and families.¹⁹⁰ This effort combines the strengths of the community and all professionals—police, mental health, and courts—to stop family violence and protect both parents and children.

Finally, to those who argue that the police are the best choice to ensure public safety, it is important to recognize that much of family violence is not studied, reported, or handled in the first place. Thus, without larger structural changes, family safety is not addressed regardless of law enforcement availability.¹⁹¹

CONCLUSION

The two brothers whose altercation landed them in court at the opening of this comment were fortunate. The court dismissed the charges and ordered services be offered to the mother to help her manage the squabbling siblings.¹⁹² Still, the siblings' conflict could have been addressed outside a law enforcement response. First, to develop alternatives to policing, more research is needed into the prevalence of intra-family conflict that results in a law enforcement response.¹⁹³ Second, the police, especially law enforcement officers without the proper training, should not be the first responders in instances of intra-family conflict.¹⁹⁴ By shifting funding away from the militarization of the police and to community programs,¹⁹⁵ the paradigm that police are the only answer for problems in the community will diminish.¹⁹⁶ Focus on the police places emphasis on the last step in the process rather than seeking to provide solutions before problems reach the boiling point.¹⁹⁷ Additionally, data shows that when police are called there is a disproportionate likelihood that the call will result in the arrest of a person of color, particularly black youth.¹⁹⁸

As a starting place to move away from law enforcement involvement, neighbors and landlords could provide information to families regarding available family support programs. Additionally, local governments can increase funding to organizations located and staffed within the communities

¹⁹⁰ Rount & Anderson, *supra* note 108, at 15–16.

¹⁹¹ See, e.g., Condon, *supra* note 188, at 499.

¹⁹² This was the conclusion of the aforementioned case that I worked on as an intern with Richmond Public Defender's office during the summer of 2019.

¹⁹³ See Kang & Lynch, *supra* note 4, at 35.

¹⁹⁴ See Grabiner, *supra* note 41, at 74 (noting that police are a "poor substitute for needed mental health providers, child protective services, and first responders").

¹⁹⁵ McHarris, *supra* note 31.

¹⁹⁶ Grabiner, *supra* note 41, at 74.

¹⁹⁷ See Sara Mogulescu & Gaspar Caro, *Making Court the Last Resort: A New Focus for Supporting Families in Crisis*, 24 FED. SENT'G REP. 30, 30 (2011).

¹⁹⁸ ROVNER, *supra* note 62, at 7.

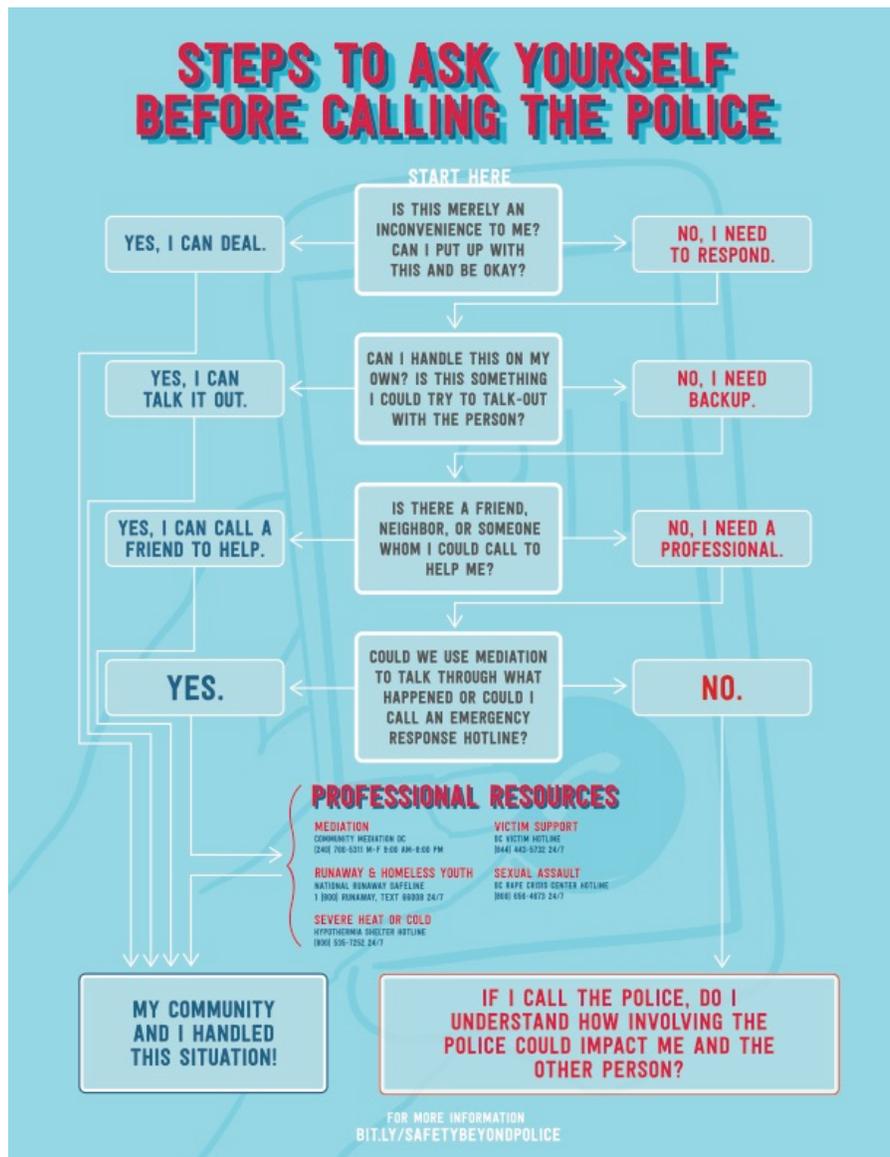
served.¹⁹⁹ Neighbors, family members, and local community leaders know families in conflict personally and can intervene to assist families long before issues reach a boiling point.²⁰⁰ Community members can evaluate whether families need outside assistance or if they can steer their neighbors to alternative programs, such as family mediation and other restorative practices, that have the ability to address the foundational issues from which family conflicts originate. Finally, if a conflict reaches a point that requires immediate intervention, law enforcement must be properly trained to deescalate disagreements and transfer young people to diversion programs that do not include court involvement.

By utilizing the options outlined above, the community and families involved greatly benefit. Community interventions coupled with law enforcement training and alternatives limits court involvement and trauma for children and families. By utilizing restorative practices and transformative justice it is possible to create ongoing community support networks, provide immediate services for families in crisis, and limit criminal legal ramifications for children and families.

¹⁹⁹ Cf. Kim, *supra* note 111, at 46 (discussing the historical funding scheme that led to and promoted increased reliance on criminal legal interventions).

²⁰⁰ See Heather Douglas & Tamara Walsh, *Adolescent Family Violence: What is the Role for Legal Response?*, 40 SYDNEY L. REV. 499, 523–24 (2018).

APPENDIX A: STEPS TO FOLLOW BEFORE CALLING THE POLICE
DECISION TREE UPDATED FOR WASHINGTON DC



ALTERNATIVES TO CALLING THE POLICE

STEPS TO ASK YOURSELF

1. **Is this merely an inconvenience to me?** Can I put up with this and be okay?
2. **No, I need to respond.** Can I handle this on my own, is this something I could try to talk-out with the person?
3. **No, I need back-up.** Is there a friend, neighbor, or someone whom I could call to help me?
4. **No, I need a professional.** Can we use mediation to talk through what's happening or is there an emergency response hotline I could call?
5. **No.** If I call the police do I understand how involving the police could impact me and the other person?

ALTERNATIVE STRUCTURES WE CAN BUILD

Audre Lordé Project's Safe Outside the System seeks to empower community members to be proactive in preventing anti-LGBTQ violence, intervene when violent situations arise, and build stronger relationships between LGBTQ people of color, our allies and the community as a whole.

Philly's Pissed & Philly Stands Up, PP provides direct support to survivors of sexual assault and PSU works with folks who have committed sexual assault or partner abuse to take accountability.

Community-based Approach to Ending Interpersonal Violence started in 2004 in Oakland as a national resource center to create and promote community-based interventions to interpersonal violence.

Incite! is a national activist organization of radical feminists of color advancing a movement to end violence against women of color and our communities through direct action, critical dialogue, and grassroots organizing. Stop Law Enforcement Toolkit and Community Accountability Best Practices

Cure Violence, based in Chicago, is an evidence-based public health approach to reducing shootings and killings. They use trained street violence interrupters and outreach staff, public education campaigns, and community mobilization to counter the violence epidemic. Note: this program is now state-sponsored, which some people feel undermines its efficacy and sustainability.

FOR MORE INFORMATION
[BIT.LY/SAFETYBEYONDPOLICE](https://bit.ly/safetybeyondpolice)

LIST OF MEDIATION & HOTLINE RESOURCES

MEDIATION:

Community Mediation DC
 (240) 766-5311 M-F 9:00 AM - 8:00 PM

Mediation offers a chance to listen and to be heard, to build relationships, and to develop your own solutions to your own conflict. Mediation works because when people develop their own solutions, these solutions last longer. Mediators are professionally trained volunteers who reflect the diversity of your community. Call or email info@communitymediationdc.org for more information.

RUNAWAY & HOMELESS YOUTH:

National Runaway Safeline
 1 (800) RUNAWAY, text 66008, & chat 24/7

Offers support, can mediate talks between family members, can provide free bus tickets home. If you want to avoid mandatory reporting, avoid giving identifying information.

SEVERE HEAT OR COLD:

Hypothermia Shelter Hotline
 (800) 535-7252 24/7

They will dispatch a van equipped with water, blankets, gloves and jackets. When it is 32 degrees or below the van can take the person from the street to an emergency shelter or to a hospital if needed. When it is 95 degrees or above the van can transport the person to cooling centers. Transportation is always voluntary.

OPPORTUNITIES TO GET INVOLVED BUILDING ALTERNATIVE STRUCTURES TO POLICE IN DC

- **Know your neighborhood:** meet your neighbors, learn their names, who they are, their contact information, say hello when you walk by.
- **Ask bars, restaurants, nightclubs, and music venues to join the Safe Bar Collective:** by training their staff to recognize and respond to harassment and keep communities safe from sexual violence and hate violence using bystander intervention strategies.
- **Learn bystander intervention, de-escalation and street harassment responses:** by getting a group of friends, neighbors, or colleagues together and scheduling a training with the Collective Action for Safe Spaces (CASS). CASS is a local organization that mobilizes the community to end public sexual harassment and assault in the DC area.
- **Volunteer with Community Mediation D.C.:** see above.
- **Join Stop Police Terror Project DC:** SPTP works to oppose police abuses and to build community-led peacekeeping efforts to empower oppressed communities to deal with their own security concerns in Washington DC. SPTP has many campaigns including one to support DC's Neighborhood Engagement Achieves Results (NEAR) Act
- **Join Showing Up for Racial Justice DC—Policing:** SURJ-DC-Policing organizes white people around racial justice and police abuse in the District. Get involved by contacting surjdc+policing@gmail.com, hosting political education house parties, facilitating education events, and fundraising for their partner community.

SEXUAL ASSAULT:

DC Rape Crisis Center Hotline
 (800) 656-4673 24/7

The Center, committed to the belief that all forms of oppression are linked, helps survivors and their families heal from the aftermath of sexual violence through crisis intervention, counseling, advocacy, community outreach, education, and legal and public policy initiatives. They will connect you to an advocate and other survivor resources.

VICTIM SUPPORT:

DC Victim Hotline | (844) 443-5732 24/7
 by call, text, or chat

The hotline provides comprehensive information, resources and referrals in D.C. to connect victims of crime to free resources and help them navigate the physical, financial, legal, and emotional repercussions of crime.

READING LISTS

- What To Do Instead of Calling the Police** A google doc resource guide
- Calling Someone Other Than the Cops** By Conor Friedersdorf
- Feeling for the Edge of your Imagination: finding ways not to call the police** By Caroline Loomis