

AMERICAN BAR ASSOCIATION
YOUNG LAWYERS DIVISION
REPORT TO THE HOUSE OF DELEGATES
RESOLUTION

- 1 RESOLVED, That the American Bar Association urges Congress and the United States
2 Department of Education to collect data and prepare a report on: (1) how racism,
3 poverty, and living in high crime communities psychologically impacts youth; and (2) the
4 quality of in-school mental health services that are provided to youth experiencing
5 mental health problems as a result of these stressors;
- 6 FURTHER RESOLVED, That the American Bar Association urges , federal, state, local,
7 territorial, and tribal governments and school districts to appropriate and allocate funds
8 to in-school mental health services to identify and address mental health conditions
9 related to racism, poverty, and living in high crime communities; and
- 10 FURTHER RESOLVED, That the American Bar Association urges local governments,
11 school districts, boards, and commissions to review mental health policies and practices
12 in schools to ensure that the mental health needs of youth living in poverty or high crime
13 communities or experiencing race-based mental health illness are appropriately
14 addressed.

REPORT

I. Introduction

The purpose of this resolution is to ensure that children who live in high poverty or high crime communities, or those who experience race-based trauma or race-based traumatic stress, receive the support to maintain and restore good health. Good mental health helps to ensure that children achieve academic success and become productive members of society. Currently, schools service about 70 percent of all children who receive mental health services, and it is imperative that these services benefit our most vulnerable population—this includes children and youth dealing with the implications of systemic racism, personal discrimination, poverty and/or neighborhood violence.

To adequately address these needs, the American Bar Association must urge Congress to collect data and prepare a specialized report that discusses how mental health is affected by racism, poverty, and/or living in high crime communities. The American Bar Association also should seek the appropriation of funds to support mental health services based upon the federal government's findings. The funding should support hiring mental health professionals who are trained in race-based trauma, as well as training school staff to identify and properly address this type of trauma. This may also require implicit bias training for school staff and mental health professionals working with this particular population. Finally, this resolution encourages local governments and school districts to review and update mental health policies and practices as it relates to identifying or treating these types of mental health problems.

II. Racism, Poverty, or Living in High Crime Communities Can Greatly Impact the Lives of Children and Youth

Racism involves one group having the power to carry out systemic discrimination through institutional policies, while also shaping cultural beliefs and values that support those practices.¹ These discriminatory policies and practices have created inequalities in several areas of life for racial minorities. Racial minorities face structural barriers when it

¹ *What is Racism? Racism Defined*, <http://www.dismantlingracism.org/racism-defined.html> (last updated December 2018); see also Ali Meghji, *Critical Race Theory*, <https://globalsocialtheory.org/topics/critical-race-theory/> ("Central to critical race theory is that racism is much more than individual prejudice and bigotry; rather, racism is a systemic feature of social structure.").

comes to employment,² education,³ health care,⁴ and securing housing.⁵ Likewise, as it relates to the criminal justice system, racial minority adults are more likely than white adults to be arrested; once arrested, they are more likely to be convicted; and once convicted, and they are more likely to experience lengthy prison sentences. Specifically, Black and Hispanic are respectively 5.9 and 3.1 times as likely to be incarcerated than whites. In 2016, Black Americans made up roughly 13 percent of the population, but comprised 27 percent of all individuals arrested in the United States.⁶ These social injustices directly impact Black children and other similarly situated racial minority youth. For example, Black children are 6 times as likely as white children to have had an imprisoned parent.⁷ Children with incarcerated parents are more likely to drop out; perform lower in school both academically and behaviorally; develop learning disabilities, and experience mental and physical health problems.⁸

Furthermore, although the rate of youth confinement has significantly declined between 2003 and 2013, the racial gap between Black and American Indian youth compared to white youth has increased.⁹ Black and Brown youth are also more likely to have negative encounters with the police that lead to arrest, charges, and confinement. Black youth are 4.1 times as likely to be committed to secure placements as whites, American Indians are 3.1 times as likely, and Hispanics are 1.5 times as likely.¹⁰ In 2016

² Employment for Black men has been 11 to 15 percentage points lower than other men's employment in every month since January 2000. "These descriptive trends are not sufficient to establish cause-and-effect relationships, but research designed to isolate the causes of black men's worse employment outcomes consistently finds significant effects of racial discrimination, arrest records, and, for older men, weaker educational credentials. Michael Hout, The Stanford Ctr. on Poverty and Inequality, *State of the Union 2017 Employment 1* (2017), https://inequality.stanford.edu/sites/default/files/Pathways_SOTU_2017_employment.pdf.

³ See Sean F. Reardon, et al., The Stanford Ctr. on Poverty and Inequality, *State of the Union 2017 Education 1* (2017), https://inequality.stanford.edu/sites/default/files/Pathways_SOTU_2017_education.pdf (explaining determinants of unequal educational opportunities for minority students are persistent racial and ethnic disparities in family resources and segregation patterns).

⁴ See Rucker C. Johnson, The Stanford Ctr. on Poverty and Inequality, *State of the Union 2017 Housing 1* (2017), https://inequality.stanford.edu/sites/default/files/Pathways_SOTU_2017_health.pdf ("These disparities emerge because of racial differences in childhood conditions, such as parental income, access to health care, neighborhood poverty rates, and other childhood family and neighborhood factors.").

⁵ Mathew Desmond, The Stanford Ctr. on Poverty and Inequality, *State of the Union 2017 Housing 1* (2017), https://inequality.stanford.edu/sites/default/files/Pathways_SOTU_2017_housing.pdf ("Racial and ethnic gaps in homeownership, housing wealth, and tax expenditures on housing are still very wide. Whereas 71 percent of white families live in owner occupied housing, only 41 percent of black families and 45 percent of Hispanic families do.").

⁶ Joshua Rovner, The Sentencing Project, *Racial Disparities in Youth Commitments and Arrests 2* (2016), <https://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>.

⁷ Leila Morsy, et al., Economic Policy Inst., *How Does Our Discriminatory Criminal Justice System Affect Children?*, Dec. 21, 2016, <https://www.epi.org/publication/how-does-our-discriminatory-criminal-justice-system-affect-children-black-children-are-six-times-as-likely-as-white-children-to-have-a-parent-whos-been-incarcerated/>.

⁸ *Id.*

⁹ Rovner, *supra* note 6, at 1; see also The Sentencing Project, *Racial Disparities in Youth Commitments and Arrests* (2016), <https://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>.

¹⁰ The Sentencing Project, *supra* note 9, at 1–3 (based on data from 2013).

Black youth accounted for 15 percent of all U.S. children, yet made up 35 percent of juvenile arrests in that year.¹¹ In the school setting, during the 2011-12 school year, Black student arrests and referrals to law enforcement were 31 percent of all such arrests and referrals, even though Black students made up only 16 percent of all enrolled children. For the 2009-2010 school year, Black and Hispanic students represented more than 70 percent of in-school arrests or police referrals.¹²

In addition to institutional forms of discrimination, many children of color also experience personal discrimination as a result of their race or ethnicity.¹³ In a study¹⁴ analyzing data from a 2004 to 2006 review of 5,147 fifth-graders and their parents, 20 percent of Black students, 15 percent of Hispanic students, 16 percent of students that were classified as “other,” and 7 percent of white students surveyed reported experiencing racial/ethnic discrimination. 80 percent of these racial encounters were reported to have occurred at school.¹⁵ In addition, children who reported experiencing discrimination were more likely to have one or more of the following mental health disorders: depression, attention-deficit hyperactivity disorder, oppositional defiant disorder, and conduct disorder.¹⁶

These hardships and social injustices can intensify for racial minority children who also live below the poverty line. In general, children growing up in poverty are more likely to experience mental health problems, have poor physical health, underachieve at school, feel unsafe, and experience hunger, homelessness and bullying.¹⁷ In the United States 33 percent of Black children, 33 percent of American Indian children, 26 percent of Hispanic or Latino children, 11 percent of white children, and 19 percent of two or more

¹¹ The Sentencing Project, *Report of the Sentencing Project to the U.N. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance Regarding Racial Disparities in the U.S. Criminal Justice System 4* (March 2018), <https://www.sentencingproject.org/wp-content/uploads/2018/04/UN-Report-on-Racial-Disparities.pdf>.

¹² Rachel Wilf, Ctr. For Am. Progress, *Disparities in School Discipline Move Students of Color Toward Prison*, Mar. 2012, <https://www.americanprogress.org/issues/race/news/2012/03/13/11350/disparities-in-school-discipline-move-students-of-color-toward-prison/>. According to the U.S. Department of Education Office for Civil Rights, disparities in school suspension rates between white students and students of color are seen as young as pre-school. Although studies fail to show that Black students misbehave at higher rates than white students, Black students are three times more likely to be suspended or expelled.

¹³ African American adults have also reported experiencing personal discrimination. Fifty-one percent reported personally experiencing racial slurs, 52 percent reported people making negative assumptions or insensitive or offensive comments about their race, 40 percent reported that people have acted afraid of them because of their race, and 42 percent have experienced racial violence. National Public Radio, Robert Wood Johnson Found., *Discrimination in Am.: Experiences And Views of African Am.* 1–2 (Oct. 2017), <https://www.npr.org/assets/img/2017/10/23/discriminationpoll-african-americans.pdf>.

¹⁴ Tumaini R. Coker, et al., *Perceived Racial/Ethnic Discrimination Among Fifth-Grade Students and Its Association with Mental Health* 99 AM. J. PUBLIC HEALTH 1 (May 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2667854/pdf/878.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ The Children’s Soc’y, *What are the Effects of Child Poverty?*, <https://www.childrenssociety.org.uk/what-we-do/our-work/ending-child-poverty/what-are-the-effects-of-child-poverty>.

racers live below the poverty line.¹⁸ With regard to crime victimization, research shows that people living below the federal poverty level have more than double the rate of violent victimization as people in high-income households.¹⁹ Specifically for Black children, they are more likely to be victims of child abuse/neglect, robbery, and homicide.²⁰ In fact, homicide is the leading cause of death among Black males between the age of 15 to 34;²¹ it is the second leading cause of death for Black females between the ages of one to four and 15-24.²² Further, studies show that Black and Brown children and youth witness crimes, including violent crimes, at a high rate. In a study involving seven-year-old children who lived in an inner-city, 75 percent reported having heard gunshots, 60 percent had seen drug deals, 18 percent had seen a dead body outside, and 10 percent had seen a shooting or stabbing at home.²³ In another study cited by the National Center for Victims of Crime involving participants living in Chicago, approximately 25 percent of Black children reported witnessing a person shot and 29 percent indicated that they had seen a stabbing.²⁴

In all, it is imperative that governments and stakeholders fully appreciate the potential psychological effects living in poverty and high crime communities can have on children, along with the added stressors related to systemic and individual racism. This resolution simply calls for Congress to take the charge in researching these issues further.

III. **Schools Must Be Equipped to Handle Mental Health Problems Induced by Racism, Poverty, and High Crime Communities**

“Traumatic events that occur as a result of witnessing or experiencing racism, discrimination, or structural prejudice (also known as institutional racism) can have a profound impact on the mental health of individuals exposed to these events.”²⁵ Racial trauma—or race-based traumatic stress—is the stressful impact or emotional pain that

¹⁸ Kids Count Data Ctr., The Annie E. Casey Foundation, *Children in poverty by race and ethnicity in the U.S.*, <https://datacenter.kidscount.org/data/tables/44-children-in-poverty-by-race-andethnicity#detailed/1/any/false/871,870,573,869,36,868,867,133,38,35/10,11,9,12,1,185,13/324,323> (footnotes updated Sept. 2018).

¹⁹ Erika Harrell, et al., U.S. Dep’t of Justice, *Household Poverty and Nonfatal Violent Victimization 2008-2012*, (last revised Aug. 1, 2018), <https://www.bjs.gov/content/pub/pdf/hpnnv0812.pdf>.

²⁰ The Nat’l Ctr. for Victims of Crime, *Action Partnership on Interventions for Black Children Exposed to Violence and Victimization*, <https://victimsofcrime.org/our-programs/past-programs/youth-initiative/interventions-for-black-children%27s-exposure-to-violence/black-children-exposed-to-violence>.

²¹ Ctr. for Disease Control and Prevention, *Leading Causes of Death by Age Group, Black Males-U.S., 2015*, (last reviewed Apr. 17, 2018), <https://www.cdc.gov/healthequity/lcod/men/2015/black/index.htm>.

²² Ctr. for Disease Control and Prevention, *Leading Causes of Death by Age Group, Black Females-U.S., 2015*, (last reviewed Apr. 10, 2018), <https://www.cdc.gov/women/lcod/2015/black/index.htm>.

²³ The Nat’l Ctr. for Victims of Crime, *Action Partnership on Interventions for Black Children Exposed to Violence and Victimization*, <https://victimsofcrime.org/our-programs/past-programs/youth-initiative/interventions-for-black-children%27s-exposure-to-violence/black-children-exposed-to-violence>.

²⁴ *Id.*

²⁵ Nat’l Child Traumatic Stress Network, Justice Consortium, Schools, Committee, and Culture Consortium, *Addressing Race and Trauma in the Classroom: A Resource for Educators*, Los Angeles, CA, and Durham, NC: National Center for Child Traumatic Stress, 3 (2017), https://www.nctsn.org/sites/default/files/resources//addressing_race_and_trauma_in_the_classroom_educators.pdf.

results from experiencing racism and discrimination.²⁶ Common traumatic stress reactions reflecting racial trauma include “increased vigilance and suspicion, increased sensitivity to threat, sense of a foreshortened future, and more maladaptive responses to stress such as aggression or substance use.”²⁷ In addition, research shows for children and youth experiencing racism there was an increase in Attention Deficit Hyperactivity Disorder (by 3.2 percent), regardless of socioeconomic background, as well as anxiety and depression.

Exposure to multiple traumatic events worsen traumatic stress reactions. This is particularly concerning for youth in low-income urban communities where there is increased risk for community violence and victimization. 83 percent of inner city youth report experiencing one or more traumatic events, and 1 out of 10 children under the age of six living in a major American city report witnessing a shooting or stabbing.²⁸ Notwithstanding these facts, research shows poor children and racial minority children have less access to mental health services, and the services that they do receive are more likely of poorer quality.²⁹

According to “Children’s Mental Health Needs, Disparities and School-Based Services: A Fact Sheet,” on average, only one-fourth of all children in need of mental health care receive mental health services.³⁰ Roughly 70 to 80 percent of children receiving mental health services receive those services in a school setting. Unfortunately, research suggest that the response to Black and Hispanic children exhibiting mental health symptoms, which can include behavioral problems, is often school punishment. Black middle and high school students are over three times more likely to attend a school with more security staff than mental health personnel, with 4.2 percent of white students and 13.1 percent of black students attending such schools.³¹ Among high schools where more than 75 percent of students were Black and Hispanic, 51 percent had a law

²⁶ *Id.*

²⁷ *Id.*

²⁸ Family-Informed Trauma treatment Ctr., Understanding the Impact of Trauma and Urban Poverty on Family Systems: Risks, Resilience and Interventions 7 (2010), https://www.nctsn.org/sites/default/files/resources/resource-guide/understanding_impact_trauma_urban_poverty_family_systems.pdf.

²⁹ See Dep’t of Health and Human Services, U.S. Public Health Service *Executive Summary Mental Health: Culture, Race, and Ethnicity. A supplement to Mental Health: A Report of the Surgeon General*, 4, <https://www.ct.gov/dmhas/lib/dmhas/publications/mhethnicity.pdf> (explaining racial and ethnic minorities are also underrepresented in mental health research); see also Shefali Luthra, *Race, Ethnicity Affect Kids’ Access to Mental Health Care*, Kaiser Health News, August 2016, <https://khn.org/news/race-ethnicity-affect-kids-access-to-mental-health-care-study/> (research suggests that mental health professionals sometimes discriminate based on race when seeing patients).

³⁰ The Ctr. For Health and Health Care in Sch., *Children’s Mental Health Needs, Disparities and School-Based Serv.: A Fact Sheet 2* (updated February 28, 2012), <http://healthinschools.org/wp-content/uploads/2016/10/cfkfacts.pdf>.

³¹ Kristen Harper, et al., Child Trends Blog, *Compared To Majority White Sch., Majority Black Sch. Are More Likely To Have Sec. Staff* (Apr. 2018), <https://www.childtrends.org/compared-to-majority-white-schools-majority-black-schools-are-more-likely-to-have-security-staff>.

enforcement officer. Latinos were 1.4 times more likely than whites to attend a school without a school counselor, but with a law enforcement officer.³²

Overall, many poor children and children of color experience trauma, but are not receiving the mental health services and the support that they need. Although schools can be an ideal place for children to receive services to help support learning, adequate funding, resources, and training for school staff is required.³³ Consequently, this resolution calls for Congress to appropriate funding to address the needs of children experiencing mental health problems due to poverty, racism and living in high crime communities.

IV. Conclusion

The American Bar Association can and should urge stakeholders to do everything possible to ensure that these issues are thoroughly researched, and that children experiencing mental health problems due to racism, poverty, or high exposure to crime and community violence receive the in-school supports that they need.

Respectfully submitted,

Tommy D. Preston, Jr.
Chair, Young Lawyers Division
August 2019

³² Natalie Gross, *What Federal Civil Rights Data Reveal about Hispanic Students*, *Educ. Writers Ass'n*, June 9, 2016, <https://www.ewa.org/blog-latino-ed-beat/what-federal-civil-rights-data-reveal-about-hispanic-students>, citing U.S. Dep't of Educ. Office of Civil Rights Civil Rights Data Collection.

³³ Nat'l Ass'n of School Psychologist, *School-Based Mental Health Services Improving Student Learning and Well-Being*, 2016, <https://www.nasponline.org/resources-and-publications/resources/mental-health/school-psychology-and-mental-health/school-based-mental-health-services>.

GENERAL INFORMATION FORM**1. Summary of Resolution**

This recommendation seeks to ensure that children who live in poverty, high crime communities, or experience race-based trauma receive the in-school mental health services needed to maintain or restore good health. It further urges federal, state, local, territorial, and tribal governments and school districts to appropriate and allocate funds to support this initiative.

2. Approval by Submitting Body

The ABA Young Lawyers Division (“YLD”) Assembly approved this resolution at its 2019 Midyear Meeting.

3. Has this or a similar Resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

This resolution is consistent with and expands upon policies previously adopted by the ABA, including the following:

- (1) A resolution urging the development of trauma-informed, evidence-based approaches and practices on behalf of justice system-involved children and youth (14M109B);
- (2) A resolution urging the adoption of policies, legislation and initiatives designed to eliminate the school-to-prison pipeline (16A115); and
- (3) A resolution urging the enactment of laws and adoption of policies that prohibit the use of out-of-school suspension and expulsion of pre-kindergarten through second grade students (18A116B).

5. If this is a late Report, what urgency exists which requires action at this meeting of the House?

N/A.

6. Status of Legislation (if applicable).

N/A.

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7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

After adoption, the Young Lawyers Division will work with the Governmental Affairs Office to determine the most effective way to advocate for this Resolution.

8. Cost to the Association (both indirect and direct costs).

None.

9. Disclosure of Interest.

None.

10. Referrals:

ABA Center on Children and the Law
ABA Section on Civil Rights and Social Justice
ABA Commission on Disability Rights (confirmed supporter)
ABA Commission on Homelessness and Poverty (confirmed supporter)
ABA Criminal Justice Section
ABA Commission on Youth at Risk (confirmed supporter)
ABA Litigation Section
ABA Judicial Division
ABA Law Student Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address.)

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12. Contact Name and Address Information. (Who will present the Resolution with Report to the House?)

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EXECUTIVE SUMMARY**1. Summary of Resolution.**

This recommendation seeks to ensure that children who live in poverty, high crime communities, or experience race-based trauma receive the in-school mental health services needed to maintain or restore good health. It further urges federal, state, local, territorial, and tribal governments and school districts to appropriate and allocate funds to support this initiative.

2. Summary of the Issue which the Resolution addresses.

Children living in poverty and high crime communities, as well as children of color who experience racism, often encounter multiple or prolonged traumatic events. This can greatly impact a child's academic performance, social, emotional, and behavioral health, and overall ability to be successful both in and out of school. Unfortunately, due to various factors, many of these children do not get the mental health support that they need. Furthermore, research suggest that many of these children are disproportionately punished in school when mental health services and interventions may be more appropriate.

3. An explanation of how the proposed policy position will address the issue.

Through additional research, governments and interested entities will gain a deeper appreciation of these issues, which ideally will result in evidence-informed policy decisions. This can include additional funding to train both teachers and health professionals in race-based trauma as well as in identifying symptoms of trauma. Finally, with appropriate in-school mental health services, student learning and overall-wellbeing will improve.

4. A summary of any minority views or opposition internal and/or external to the ABA which have been identified.

No minority or opposing views have been identified.