

116TH CONGRESS
2D SESSION

S. 4360

To divert Federal funding away from supporting the presence of police in schools and toward evidence-based and trauma informed services that address the needs of marginalized students and improve academic outcomes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2020

Mr. MURPHY (for himself and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To divert Federal funding away from supporting the presence of police in schools and toward evidence-based and trauma informed services that address the needs of marginalized students and improve academic outcomes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Counseling Not Crim-
5 inalization in Schools Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Over the last 50 years, our Nation's schools
2 have become sites for increased criminalization and
3 surveillance of young people, particularly Black, Na-
4 tive American, and Latinx students, immigrant stu-
5 dents, students with disabilities, LGBTQ+ students,
6 students experiencing homelessness, students in-
7 volved in the foster care system, and other histori-
8 cally marginalized students.

9 (2) Despite significant decreases in the rate of
10 serious crimes and violence on school campuses over
11 the past 20 years, improving upon already low rates,
12 67 percent of high school students, 45 percent of
13 middle school students, and 19 percent of elemen-
14 tary school students attend a school with a police of-
15 ficer.

16 (3) Since 1999, the Federal Government has in-
17 vested more than \$1,000,000,000 to subsidize the
18 placement of police in schools, resulting in roughly
19 46,000 school resource officers patrolling the halls of
20 elementary and secondary public schools across the
21 Nation.

22 (4) A growing body of research has not found
23 any evidence that school resource officers make
24 schools safer, and school resource officers have been
25 shown to increase the likelihood that children will be

1 arrested, often by the school resource officer while
2 on campus.

3 (5) Research has shown that schools with a des-
4 ignated school law enforcement officer on duty ar-
5 rested students at 5 times the rate of comparable
6 schools without such an officer.

7 (6) When police are present in schools, students
8 of color face an increased risk of being assaulted by
9 police. Student-recorded videos of police violence in
10 schools regularly circulate through news channels,
11 articles, and social media, exposing violence per-
12 petrated by police within schoolhouse gates.

13 (7) Black, Native American, and Latinx stu-
14 dents are more likely than their White peers to at-
15 tend schools with police officers on campus and are
16 more likely to be referred to law enforcement or ar-
17 rested while in school.

18 (8) Black students represent 31 percent of all
19 school-related arrests, despite making up only 15
20 percent of all public school students, and are 3 times
21 more likely to be suspended or expelled than White
22 students. Native American and Pacific Islander and
23 Native Hawaiian students are more than twice as
24 likely to be arrested as White students.

1 (9) Students with disabilities are more likely
2 than their peers without disabilities to be referred to
3 law enforcement or arrested. Students of color with
4 disabilities are more likely to be referred to law en-
5 forcement than either their White peers with disabil-
6 ities, or their peers of color without disabilities.
7 These students are also disproportionately restrained
8 and secluded in schools. Of the 87,000 students who
9 were restrained during the 2015–2016 school year,
10 71 percent received special education services and 27
11 percent of students restrained were Black.

12 (10) According to the Department of Edu-
13 cation, while Black girls comprise only 16 percent of
14 girls in elementary and secondary schools, they make
15 up 42 percent of girls receiving the most severe
16 forms of school discipline and severe punishment,
17 such as corporal punishment, and represent 34 per-
18 cent of girls arrested on campus.

19 (11) Research shows that these racial dispari-
20 ties in discipline rates are not a result of differences
21 in student behavior but instead reflect the ways in
22 which students of color face more punitive discipline
23 than their White peers for similar behavior.

24 (12) Students who are LGBTQ+ often have
25 intersecting marginalized identities and experience

1 exclusionary discipline at disproportionate rates that
2 make it more likely they will interact with the juve-
3 nile justice system than their non-LGBTQ+ peers.

4 (13) Students who are suspended or expelled
5 are nearly threefold more likely to be in contact with
6 the juvenile justice system the following year.

7 (14) According to the Federal Bureau of Inves-
8 tigation, more than 30,000 children under the age of
9 10 were arrested since 2013. On school campuses,
10 more than 290,000 students were referred to law en-
11 forcement. The United States spends \$240 daily, on
12 average, per youth detained in juvenile facilities.

13 (15) While schools should be sanctuaries for all
14 students, reports have shown instances where school
15 resource officers collect tips and disciplinary infor-
16 mation from teachers and school administrators and
17 share it with U.S. Immigration and Customs En-
18 forcement agents to build deportation cases against
19 students and their families.

20 (16) School hardening, including the presence
21 of school resource officers on campus, causes stu-
22 dents to experience higher levels of fear, perpetuate
23 the school to prison pipeline, and undermine the
24 ability of schools and educators to build learning en-

1 vironments undergirded by mutual trust, respect,
 2 and safety.

3 (17) Ninety percent of students are in public
 4 schools where the number of counselors, social work-
 5 ers, nurses, and psychologists do not meet rec-
 6 ommended professional standards. Professional
 7 standards recommend at least 1 counselor and 1 so-
 8 cial worker for every 250 students and at least 1
 9 nurse and 1 psychologist for every 750 students and
 10 every 700 students, respectively.

11 (18) 1,700,000 students attend schools with po-
 12 lice but not 1 counselor.

13 (19) 3,000,000 students attend schools with po-
 14 lice but not 1 school nurse.

15 (20) 6,000,000 students attend schools with po-
 16 lice but no school psychologists.

17 (21) 10,000,000 students attend schools with
 18 police but no social workers.

19 **SEC. 3. PURPOSE.**

20 It is the purpose of this Act to—

21 (1) address the needs of marginalized students,
 22 ensure schools are welcoming for students, and im-
 23 prove academic outcomes by eliminating Federal
 24 funding for school-based law enforcement and estab-
 25 lishing a continuum of care and positive schoolwide

1 systems of services that are evidence-based, inclu-
 2 sive, racially and gender responsive, and trauma in-
 3 formed; and

4 (2) support local educational agencies that
 5 choose to terminate their contracts with local law en-
 6 forcement agencies or, where applicable, dissolve or
 7 disband district-based police departments, and invest
 8 resources in personnel and services that create truly
 9 safe and inclusive schools for all students based on
 10 community engagement and deliberative consulta-
 11 tion.

12 **SEC. 4. DEFINITIONS.**

13 In this Act:

14 (1) **ESEA TERMS.**—The terms “elementary
 15 school”, “evidence-based”, “local educational agen-
 16 cy”, “parent”, “professional development”, “school
 17 leader”, “secondary school”, “Secretary”, and “spe-
 18 cialized instructional support personnel” have the
 19 meaning given those terms in section 8101 of the
 20 Elementary and Secondary Education Act of 1965
 21 (20 U.S.C. 7801).

22 (2) **POSITIVE BEHAVIOR INTERVENTION AND**
 23 **SUPPORT.**—The term “positive behavior intervention
 24 and support” means using a systematic and evi-

dence-based approach to achieve improved academic and social outcomes for students.

(3) SWORN LAW ENFORCEMENT OFFICER.—The term “sworn law enforcement officer” means any person who—

(A) has the power to detain, arrest, issue a citation, perform a custodial investigation, or refer a person to criminal or juvenile court; or

(B) is considered under State law to meet the definition of law enforcement.

(4) TRAUMA-INFORMED SERVICES.—The term “trauma-informed services” means a service delivery approach that—

(A) recognizes and responds to the impacts of trauma with evidence-based supports and intervention;

(B) emphasizes physical, psychological, and emotional safety for both providers of services and survivors of trauma; and

(C) creates opportunities for survivors of trauma to rebuild a sense of healing and empowerment.

1 **SEC. 5. PROHIBITION OF FEDERAL FUNDS FOR POLICE IN**
 2 **SCHOOLS.**

3 (a) FEDERAL FUNDS PROHIBITION.—Notwith-
 4 standing the Omnibus Crime Control and Safe Streets Act
 5 of 1968 (34 U.S.C. 10101 et seq.), including subpart 1
 6 of part E of title I of that Act (34 U.S.C. 10151 et seq.)
 7 (relating to the Edward Byrne Memorial Justice Assist-
 8 ance Grant Program) and part Q of title I of that Act
 9 (34 U.S.C. 13081 et seq.) (relating to the “Cops on the
 10 Beat” grant program), or any other provision of law, no
 11 Federal funds may be appropriated or used for hiring,
 12 maintaining, or training sworn law enforcement officers
 13 to be used or employed in elementary or secondary schools,
 14 preschools, or programs based in elementary or secondary
 15 schools in any capacity.

16 (b) COPS GRANT PROGRAM.—Section 1701 of title
 17 I of the Omnibus Crime Control and Safe Streets Act of
 18 1968 (34 U.S.C. 10381) is amended—

19 (1) in subsection (b)—

20 (A) by striking paragraph (12);

21 (B) by redesignating paragraphs (13)
 22 through (23) as paragraphs (12) through (22),
 23 respectively; and

24 (C) in paragraph (21), as so redesignated,
 25 by striking “through (21)” and inserting
 26 “through (20)”; and

1 (2) by adding at the end the following:

2 “(n) PROHIBITION ON USE OF FUNDS FOR SWORN
3 LAW ENFORCEMENT OFFICERS.—A recipient of a grant
4 under this part may not use the grant funds for sworn
5 law enforcement officers who operate in and around ele-
6 mentary and secondary schools.”.

7 **SEC. 6. SUPPORTING LOCAL EDUCATIONAL AGENCIES IN**
8 **TRANSITIONING AWAY FROM POLICE IN**
9 **SCHOOLS.**

10 (a) GRANT PROGRAM ESTABLISHED.—The Secretary
11 of Education shall award grants, on a competitive and roll-
12 ing basis, to local educational agencies to enable those
13 local educational agencies—

14 (1) to replace sworn law enforcement officers in
15 elementary and secondary schools with personnel
16 and services that support mental health and trauma-
17 informed services; and

18 (2) to reform school safety and disciplinary
19 policies so they reflect evidence-based practices that
20 do not rely on the criminal justice system and pro-
21 vide the necessary staff training and support to im-
22 plement such policies.

23 (b) APPLICATION.—A local educational agency desir-
24 ing a grant under this section shall submit an application
25 to the Secretary at such time, in such manner, and con-

1 taining such information as the Secretary may require, in-
2 cluding an assurance that—

3 (1) the local educational agency will terminate
4 any existing contract with local law enforcement or,
5 where applicable, dissolve school district-based police
6 departments, at least 30 days prior to the entity re-
7 ceiving funds under this section; and

8 (2) the local educational agency will not estab-
9 lish any new contract with law enforcement or create
10 its own school police department for the duration of
11 the grant.

12 (c) PRIORITY.—In awarding grants under this sec-
13 tion, the Secretary shall give priority to—

14 (1) local educational agencies that terminated
15 their contract with all law enforcement or disbanded
16 their school district police department prior to sub-
17 mitting an application and provide assurances that
18 the local educational agency will not create or re-
19 start a contract with State or local law enforcement,
20 create or reinstate a school district police depart-
21 ment, or create or restart a program of other armed
22 school personnel during the duration of this grant;

23 (2) local educational agencies with a larger
24 share of students who are economically disadvan-

1 taged, in the event that funds are insufficient to
2 award grants to all eligible applicants; and

3 (3) local educational agencies that identify the
4 uses of funds in subsection (d) based on meaningful
5 community engagement and deliberative consulta-
6 tion.

7 (d) USES OF FUNDS.—A local educational agency re-
8 ceiving funds under this section shall use such grant funds
9 to carry out 1 or more of the following:

10 (1) Hiring or training school counselors, school
11 psychologists, nurses, or social workers, community
12 health workers and trauma-informed personnel,
13 dedicated staff specifically trained in deescalation
14 and violence interruption practices, staff trained in
15 anti-bias practices, doctoral level specialists in be-
16 havior planning and intervention, or other specialists
17 or individuals with expertise in school climate and
18 behavior.

19 (2) Implementing schoolwide positive behavior
20 interventions and supports, restorative justice pro-
21 grams and interventions, mediators, social and emo-
22 tional learning programs, or other evidence-based
23 trauma-informed services.

24 (3) Providing professional development to
25 teachers, teacher assistants, school leaders, coun-

1 selors, specialized instructional support personnel,
2 and mental health professionals that—

3 (A) fosters safe, inclusive, and stable learn-
4 ing environments that support the social, emo-
5 tional, mental, and academic well-being of stu-
6 dents and prevent and mitigate the effects of
7 trauma, including through social and emotional
8 learning;

9 (B) improves school capacity to identify,
10 refer, and provide services to students in need
11 of trauma support services;

12 (C) reflects the best practices for trauma-
13 informed identification, referral, and support
14 developed by the Interagency Task Force on
15 Trauma-Informed Care;

16 (D) reduces the number of students with
17 disabilities experiencing school discipline for
18 their disability-related behavior through specific
19 training on the identification, development, and
20 implementation of Behavior Intervention Plans
21 (BIPs); and

22 (E) reduces the number of Black, Latinx,
23 Native American, and LGBTQ+ students who
24 are disciplined for minor, age-appropriate be-
25 haviors that should be addressed through evi-

1 dence-based, trauma-informed services and sup-
2 port.

3 (e) PROHIBITION.—No portion of any grant funds
4 awarded under this section may be used for—

5 (1) the development, establishment, implemen-
6 tation, or enforcement of zero-tolerance school dis-
7 cipline policies, including the commission, con-
8 tracting of, or agreements with law enforcement that
9 support the presence of police in schools, including
10 formal or informal partnerships or data and infor-
11 mation sharing agreements with the Department of
12 Justice or Secretary of Homeland Security, includ-
13 ing U.S. Immigration and Customs Enforcement or
14 U.S. Customs and Border Protection;

15 (2) the purchase, maintenance, or installation
16 of surveillance equipment, including metal detectors,
17 facial recognition technology, or software programs
18 that monitor or mine the social media use or tech-
19 nology use of students; or

20 (3) arming teachers, principals, school leaders,
21 or other school personnel.

22 (f) GRANT AMOUNTS.—The amount of grant funds
23 received under this section by a local educational agency
24 shall be based on the number of students enrolled in the
25 local educational agency.

1 (g) REPORTING.—Each local educational agency re-
2 ceiving a grant under this section shall prepare and submit
3 a report to the Secretary containing information about—

4 (1) how the grant funds were used;

5 (2) the number of students who were arrested
6 by or referred to sworn law enforcement officers in
7 the previous year compared to the number arrested
8 or referred during the term of the grant;

9 (3) the reasons for arrests; and

10 (4) demographic data of students arrested or
11 referred to sworn law enforcement officers,
12 disaggregated by race, ethnicity, age, gender, status
13 as a child with a disability, and socioeconomic sta-
14 tus.

15 (h) SUPPLEMENT NOT SUPPLANT.—A local edu-
16 cational agency shall use Federal funds received under this
17 section only to supplement the funds that would, in the
18 absence of such Federal funds, be made available from
19 State and local sources for the activities described in sub-
20 section (d), and not to supplant such funds.

21 (i) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated to carry out this section
23 \$2,500,000,000.

○