

**State Headquarters**

2966 Woodward Avenue
Detroit, MI 48201
Phone 313.578.6800
Fax 313.578.6811
E-mail aclu@aclumich.org
www.aclumich.org

Legislative Office

115 West Allegan Street
Lansing, MI 48933
Phone 517.372.8503
Fax 517.372.5121
E-mail aclu@aclumich.org
www.aclumich.org

West Michigan Regional Office

1514 Wealthy St. SE, Suite 260
Grand Rapids, MI 49506
Phone 616.301.0930
Fax 616.301.0640
Email aclu@aclumich.org
www.aclumich.org

April 30, 2019

VIA e-mail: MDCRServiceCenter@michigan.gov

Agustin Arbulu, Director
Michigan Department of Civil Rights
3054 W. Grand Boulevard, Suite 3-600
Detroit, MI 48202

RE: Complaint of [REDACTED], on behalf of [REDACTED], a Minor, of Race, National Origin, and Color Discrimination by the Grand Rapids Police Department

Dear Director Arbulu,

The American Civil Liberties Union of Michigan (ACLU) hereby files this complaint on behalf of [REDACTED], on behalf of her son, [REDACTED], a minor. The Grand Rapids Police Department (GRPD) discriminated against [REDACTED] based on his race, color, and national origin on March 11, 2019, when GRPD Officer Austin Diekevers stopped [REDACTED] and his friend, who were merely walking down a residential street, and then drew his gun on the two unarmed teens. We find it extremely unlikely that such a trivial infraction as jaywalking would have resulted in white boys lying face down on the sidewalk with a gun pointed at them.

Facts

[REDACTED] is 15 years old. He is of Mexican descent, has a medium-dark complexion, and is visibly Latino. He was born and raised in Grand Rapids, Michigan. [REDACTED] has a slight build and weighs approximately 160 pounds. [REDACTED] has light facial hair that is beginning to come in, and has a youthful appearance. His friend is also a minor and is also visibly Latino.

On March 11, 2019, [REDACTED] and a friend decided to walk to a nearby barber shop so that [REDACTED] could get a haircut. As they started walking, they saw a patrol vehicle drive past in the opposite direction. The boys began walking down Lynch Street, which is a quiet residential street with speed bumps. The day was bright and clear, but cold. The temperature was approximately 32 degrees and [REDACTED] and his friend were wearing winter jackets to keep warm. While the sidewalk pavement was clear in some places, patches of the sidewalk were partially or completely covered by ice, snow, and puddles of water. The officer's police report itself notes that there was scattered ice on the south-side sidewalk. Snow was also piled up in mounds on the strips between the street and the sidewalk. There is one driveway on Lynch Street where the resident regularly parks a car, so as to block the sidewalk. [REDACTED] believes that that car was also parked across the sidewalk that day.

Shortly after the boys began walking, the GRPD patrol vehicle came back, driving up behind them towards Century Ave SW. GRPD officer Austin Diekevers, who is Caucasian, stopped them. He told the boys to take their hands out of their pockets, which they did. The officer also told them to get out of the street. Again, they complied.

█████ was surprised, confused and frustrated about why they were being stopped since all they were doing was walking down the street. He believed that he and his friend were being profiled because they were Latino, an impression reinforced by the fact that the officer approached them with his hand on his holstered gun.

The officer demanded that the teens provide their full names and addresses. █████ said that he had somewhere he needed to be. He pointed out that the officer could have just asked them to get out of the street and let them be on their way. █████'s friend pointed out that portions of the sidewalk still had snow. The officer responded by pointing to parts of the sidewalk that were clearer. The officer kept insisting that they could not leave and that they had to provide their information. His friend provided his full name and █████ provided his first name. █████'s friend asked whether, if █████ gave his full name, the officer would let them be on their way. Officer Diekevers responded that he would check if they had warrants.

Although frustrated, █████ eventually gave his full name, which the officer wrote down. The boys then said they had to go somewhere and began to walk away. The officer said loudly, “no you don’t, you’re staying right here.” He then ordered them to put their hands on top of their heads. Without giving the boys time to comply, the officer immediately grabbed █████ by the arm and repeated his demand for █████ to put his hands on his head. █████ pulled away from the officer’s grip. The teens repeatedly asked the officer to “chill out,” and insisted that █████ had not done anything wrong. Officer Diekevers grabbed █████ again, yelled that he was under arrest, and shouted for █████ to show his hands. Without giving █████ any time to comply, the officer drew his gun and pointed it at █████ and his friend, while shouting at them to put their hands on their heads and get down on the ground. Two other GRPD officers also arrived on the scene, one of whom pointed a taser at the boys. On the body camera video, █████ can be heard crying out in pain as he is cuffed by one of those officers.¹

The teens were handcuffed, searched, and questioned. █████ was charged with resisting or obstructing a police officer, booked at Kent County Jail and then held at the Kent County Juvenile Detention Center.

¹ The bodycam footage released by the GRPD can be found at this link: <https://www.woodtv.com/news/grand-rapids/grpd-addresses-police-incidents-involving-teens-driver/1858262299> (second video). MDCR may also want to obtain copies of a bystander video, part of which are available here: <https://www.woodtv.com/news/grand-rapids/caught-on-camera-again-grpd-draws-down-on-teens/1853261879>.

Inconsistencies Between the Police Report and Body Camera Evidence

The GRPD police report for the incident conflicts with the body camera evidence. The report states that all [REDACTED] would provide was his first name. While parts of the publicly-released body camera video sound are redacted, after Officer Diekevers requests [REDACTED]'s last name, there is a redacted answer, and then the officer asks "how do you spell that." There is then another redacted moment, and the officer starts writing something down. Officer Diekevers says to another officer on the video that he arrested [REDACTED] for failure to identify, yet the redacted body camera video suggests that [REDACTED] had in fact identified himself.

The report also states that [REDACTED] was walking away when the officer first grabbed him. The body camera video shows that while he did take a few steps away from the officer, [REDACTED] had already walked back and was standing in place and talking with the officer when Officer Diekevers suddenly grabbed his arm. The police report states that Officer Diekevers informed [REDACTED] that he was under arrest and then he grabbed [REDACTED]'s arm. The body camera video shows that the officer did not state that [REDACTED] was under arrest until after he grabbed [REDACTED] for the second time.

The report also states that the boys were refusing commands to remove their hands from their pockets. The video shows that the boys repeatedly displayed their hands when asked to do so, although they then sometimes put their hands back in their pockets, which is unsurprising given the cold weather. The report also states that [REDACTED]'s hand was near his waistband and that he appeared to be holding something. While that could have happened outside of the views captured by the body camera video, what the video seems to show is [REDACTED] gesticulating with his hands in exasperation, not reaching for or holding anything.

Finally, although the police report states that the teens were walking in the street while the north sidewalk was clear, the body camera footage released by the GRPD shows several patches where the allegedly "clear" sidewalk was partially or completely covered by snow, ice, or puddles of water, particularly in the area behind where the officer was standing (i.e. the direction from which the youths had come).

Violation of Elliott-Larsen Civil Rights Act

Section 302 of the Elliott-Larsen Civil Rights Act (ELCRA) prohibits the denial of "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a [. . .] public service because of [. . .] race, color [or] national origin." MCL 37.2302(a). A department or agency "owned, operated, or managed by or on behalf of" the state or a local government is a public service under ELCRA. MCL 37.2301(b). GRPD is a public service under ELCRA because it is a department or agency "owned, operated, or managed by or on behalf of" the City of Grand Rapids.

A plaintiff can establish a claim of unlawful discrimination under ELCRA by either (1) producing direct evidence of discrimination, or (2) presenting a prima facie case of discrimination in accordance with the tripartite burden-shifting *McDonnell Douglas/Burdine* framework. *Brintley v St Mary Mercy Hosp*, 904 F Supp 2d 699 (ED Mich, 2012). See also *White v Baxter Healthcare Corp*, 533 F3d 381, 391 (CA 6, 2008). One method for establishing discrimination is to show that the plaintiff is a member of a class deserving protection under the

statute, and is being treated differently than others who are similarly situated. *Schellenberg v Rochester Michigan Lodge No 2225*, 228 Mich App 20, 33 (1998).

Here, █████ was profiled by GRPD because of his race, color, and national origin. It is common knowledge that many white residents of Grand Rapids regularly jog or walk in the street without being detained by GRPD officers, especially during the winter months when the sidewalks are frequently obstructed by ice and snow. White residents, and certainly white children, who upon the request of a GRPD officer move out of the street to the sidewalk, are allowed to continue on their way, without being detained, checked for warrants, or held at gunpoint.

The circumstances here show that Officer Diekevers selectively enforced the City's jaywalking ordinance against █████, an ordinance that is rarely if ever enforced against white residents, much less white children. Moreover, even after █████ identified himself, the officer refused to let him leave because he wanted to see if █████ had a warrant. White children who step onto the sidewalk and identify themselves, by contrast, are not held for a warrant check. Finally, the officer's needless escalation of the encounter by drawing a gun when the youths sought to leave was discriminatory. Such discrimination violates Section 302 of the Elliott-Larsen Civil Rights Act.

The GRPD's Response to the Incident

The GRPD's official response to this incident is incredibly concerning. █████'s arrest was filmed by a neighbor, who can be heard expressing shock that a GRPD officer would pull a gun on two teens who were obviously young and who were simply walking in the street. After the bystander's video received widespread attention, the GRPD released body camera footage of the encounter and Interim Police Chief David Kiddle held a press conference at which he praised the officer and sought to blame the incident on the youth. Chief Kiddle said that the video showed a "textbook example of how we expect our officers to conduct themselves in a professional and tactically safe manner." The Interim Chief claimed that the officer was professional, restrained and had appropriate demeanor throughout the contact. He blamed the escalation of the incident on the boys.

When we look at the video, we see something entirely different: an officer who singles out Latino youth for walking in the street, and then aggressively escalates the encounter. We are extremely concerned that when two unarmed children of color who are walking in the street in their neighborhood end up held at gunpoint, the response of the GRPD's leadership is to applaud the officer for model behavior.

We have shown this video to a police consultant who is an expert on law enforcement practices. He indicated that based on the images and audio captured in the officer's body camera video, there does not appear to be any legitimate reason for the encounter to escalate as it did.

The Violation of the GRPD's Youth Interaction Policy

We are particularly concerned, given the history of the GRPD of pulling guns on children of color, that the GRPD leadership did not consider the fact that Officer Diekevers' treatment of █████ violated the GRPD's own Youth Interaction Policy.² That policy requires officers to take

² A Copy of the Youth Interaction Policy is attached as Exhibit A.

age into account when interacting with youth. The Youth Interaction Policy sets out guidelines for officer interaction with youth, recognizing that “youth characteristically lack the capacity to exercise mature judgment and possess an incomplete ability to understand the world around them.” Youth Interaction Policy, at ¶ B.2. Among the factors that officers must consider are “the nature of the complaint or contact” (in this case jaywalking) and the subject’s cooperation (in this case the fact that the youth immediately went to the sidewalk when asked). *Id.* at ¶ D.1.a and ¶ D.1.e. “All youth are to be treated fairly regardless of race, gender, sexual orientation, ethnic and religious background, or any other specified characteristic in accordance with the Impartial Policing Policy, MOP 8-15.” *Id.* at ¶ D.2

Importantly, the Youth Interaction Policy provides that “Communication with a youth should begin with a contact, unless an officer concludes that an arrest should be made or that a stop is justifiable and appropriate.” *Id.* at ¶ E.2.a. Since jaywalking is not typically an offense resulting in more than a warning, even for adults, it is unclear why the officer thought a stop or arrest of a child would be justified here.

Walking on a quiet residential street, particularly during the winter, is extremely common and not the sort of offense that should lead a youth to be arrested. Indeed, the Youth Interaction Policy specifically provides that “[w]hen interacting with juvenile offenders, officers should consider a wide range of alternatives and select the most reasonable, and least restrictive, alternative consistent with public safety, officer safety, maintenance of public order, department policy and the rights of the juvenile, including, but not limited to: a. Warning, with no enforcement action taken...” *Id.* at ¶ G.1.

Had the officer simply followed that Youth Interaction Policy, he would have issued a warning and been on his way. The entire incident could have been avoided. Instead, the officer violated the Youth Interaction Policy, and decided to detain the youth so he could get their names and check if they had warrants. It is hard to imagine white youth in wealthier neighborhoods would have been treated the same way.

Finally, the Youth Interaction Policy also specifically provides that “Officers shall not draw and display a firearm on a youth unless the officer has a fear for the safety of the officer or the safety of others.” *Id.* at ¶ E.6. Nothing in the video shows any action by either youth that would have justified the officer in drawing a firearm. Officer Diekevers, instead of recognizing that “youth characteristically lack the capacity to exercise mature judgment and possess an incomplete ability to understand the world around them,” *id.* at ¶ B.2, chose to needlessly escalate the situation. Anyone who has ever interacted with teenagers knows that they sometimes give adults, particularly authority figures, a hard time when answering questions. But that is not a reason to draw a gun, especially after they have given you the information you want. Here, Officer Diekevers should have deescalated the encounter. He did the opposite, something that could have resulted in the teens’ deaths, particularly because Officer Diekevers and Officer Hall gave them conflicting orders.

From the beginning, when Officer Diekevers made a huge issue of the fact that the boys were walking in the street, the officer’s actions escalated rather than deescalated the situation. The whole point of the Youth Interaction Policy is to recognize that precisely because youth are less mature in interacting with police, officers must be particularly careful not to escalate a situation

or draw a weapon unnecessarily. Yet the GRPD leadership is still willing to blame this interaction on the youth, without recognizing that the officer violated the Youth Interaction Policy.

In sum, this traumatic experience could and should have been avoided. On behalf of our client, we ask that your office investigate this matter.

Sincerely,

Miriam Aukerman
Senior Staff Attorney

Elaine Lewis
Legal Fellow

Attachment: Youth Interaction Policy

Exhibit A:
GRPD Youth Interaction
Policy

A. **PURPOSE.** The Grand Rapids Police Department recognizes the impact of its involvement with youth. While youth are afforded the same constitutional protections as adults, the Grand Rapids Police Department acknowledges and appreciates the need for additional protective measures while encountering youth.

B. GOALS

1. To recognize that youth are still in the stage of developing and learning and may have already experienced trauma that is shaping their behavioral response.
2. To recognize that the law has historically reflected that youth characteristically lack the capacity to exercise mature judgment and possess an incomplete ability to understand the world around them.
3. To recognize that the formal juvenile justice process should be avoided, unless clearly indicated by the youth's behaviors and unless alternatives do not exist.
4. To provide guidance on additional measures when interacting with youth and juveniles.

C. DEFINITIONS

1. "Youth" means an individual under the age of eighteen (18).
2. "Juvenile" means a youth under the age of seventeen (17) who is accused of violating a law or ordinance or of committing a status offense. MCL 712A.1; 764.27. "Juvenile" does not include a youth that is seventeen (17) years old.
3. "Juvenile status offender" means a juvenile that is alleged to fall within the jurisdiction of the Family Division of circuit court as a runaway, incorrigible, truant, wayward minor, or for violations of the curfew ordinance. MCL 712A.2 and MCL 764.27.

D. GENERAL PROCEDURES FOR INTERACTING WITH YOUTH

1. Officers shall take the following factors, if known, into consideration when interacting with youth, including but not limited to:
 - a. Nature of the complaint or contact, including probability of

- possessing a weapon;
 - b. Age, intelligence, mental capacity, and physical condition;
 - c. Prior contacts/history with officers;
 - d. Likelihood to comply with parental control;
 - e. Cooperation and attitude of all parties and the likelihood of the offense being repeated; and
 - f. Likelihood that the youth can be successfully referred to a supporting social service agency.
2. All youth are to be treated fairly regardless of race, gender, sexual orientation, ethnic and religious background, or any other specified characteristic in accordance with the Impartial Policing Policy, MOP 8-15.

E. FIELD INTERROGATIONS AND PRELIMINARY INVESTIGATIONS INVOLVING YOUTH

1. In addition to the requirements of MOP 8-1 (Field Interrogations) and 8-2 (Preliminary Investigation) the following procedures shall apply when interacting with youth during Field Interrogations and Preliminary Investigations.
2. Officers are encouraged to initiate contacts with youth in the community in order to conduct positive, non-enforcement interactions and gain knowledge of their patrol districts and the community.
 - a. Communication with a youth should begin with a contact, unless an officer concludes that an arrest should be made or that a stop is justifiable and appropriate.
 - b. Since a contact is not a stop or an arrest, and youth contacted may be innocent of wrongdoing of any kind, officers should take special care to act in a restrained and courteous manner.
3. *Notification.* If during a Field Interrogation or Preliminary Investigation a youth has been patted down, searched or handcuffed, officers shall notify the youth's parent or guardian as soon as reasonably practical. The notification may be either in person or by telephone and shall be documented in the incident report, along with the identity of the parent

or guardian who was notified. If the officer is unable to notify a parent or guardian, every attempt shall be documented in the field interrogation or incident report.

4. *Handcuffs*. When safe, under the totality of the circumstances, officers shall consider a youth's age, whether known or objectively apparent to a reasonable officer, when determining whether or not to apply handcuffs or restraints. While there is no set age, the Supreme Court indicated, in *JDB v North Carolina*, that officers must realize a 7-year-old is not a 13-year-old and neither is an adult.
 - a. Handcuffs shall only be used for as long as reasonably necessary. Officers shall remove handcuffs as soon as reasonable to do so.
 - b. Officers shall notify a supervisor, as soon as reasonable to do so, when a youth under thirteen (13) has been handcuffed. Notification shall be documented in the accompanying report.
 - c. The supervisor shall respond to the scene when possible. If it would extend the duration of the stop beyond a reasonable length of time, the officer shall release the youth and review the incident with the supervisor as soon as practical.
5. When safe, under the totality of the circumstances, officers shall consider a youth's age, whether known or objectively apparent to a reasonable officer, when determining whether to confine a youth in the back of a police cruiser. All confinement of youth in a police cruiser must be reasonable and within the scope of the incident, or as necessary to transport the youth.
6. Officers shall not draw and display a firearm on a youth unless the officer has a fear for the safety of the officer or the safety of others.
7. *Youth Supervision*. If, during a preliminary investigation, it is determined that a youth is not a suspect, all efforts should be made to ensure the youth is not left unattended for the remainder of the incident. These efforts shall be documented in the incident report and may include, but are not limited to:
 - a. Placing the youth(s) with a non-offending parent or guardian;
 - b. Utilizing appropriate resources, such as Children's Protective Services (CPS) or the Domestic Assault Response Team (DART); or

- c. Assigning an officer to the youth(s), when reasonable and practical.

F. YOUTH CONSENT

1. Youth may consent to a contact, search, questioning, or other police interaction if consent is free and voluntarily given. It is the officer's responsibility to establish the presence of consent in all circumstances.
 - a. Recognize that personal characteristics of youth are factors that can affect the voluntariness of consent including but not limited to:
 - (1) age, intelligence, level of education,
 - (2) prior contacts/history with officers, and
 - (3) awareness of right to refuse or revoke consent.
2. If an officer knows a youth's age at the time of an interview, or the youth's age is objectively apparent to a reasonable officer, the officer shall evaluate the effect of the youth's age for the determination whether the youth is in custody for purposes of providing *Miranda* warnings.
3. When a report is required, officers shall articulate the facts and circumstances that caused the officer to determine that a youth consented to a particular police interaction.

G. INTERACTING WITH JUVENILE OFFENDERS

1. When interacting with juvenile offenders, officers should consider a wide range of alternatives and select the most reasonable, and least restrictive, alternative consistent with public safety, officer safety, maintenance of public order, department policy and the rights of the juvenile, including, but not limited to:
 - a. Warning, with no enforcement action taken;
 - b. Refer the youth and parent/guardian to a Diversion Program (i.e. The Bridge, HQ, etc.);
 - c. Citation (Municipal Civil Infractions and Traffic Citations);
 - d. Referral to family court in lieu of a custodial arrest; or

- e. Custodial arrest with lodging at Kent County Juvenile Detention.

H. ARREST OF JUVENILE OFFENDERS

1. Juveniles under the age of ten (10) years old are presumed incompetent to stand trial. MCL 330.2062. For juveniles under the age of ten (10), officers must consult with a prosecutor before an arrest is made or petition is filed unless the circumstances surrounding the incident are particularly heinous (e.g., violent felony).
2. Juveniles ten (10) years of age and older but less than seventeen (17) years of age who have been arrested by a member of the Grand Rapids Police Department **shall be processed** at the Kent County Correctional Facility when:
 - a. Arrested for a felony or for a misdemeanor for which the maximum possible penalty exceeds 92 days imprisonment or a fine of one thousand dollars (\$1000) or both;
 - b. At the request of the arresting officer or investigating officer; or
 - c. At the request of a supervisory officer.
3. Officers shall not issue appearance tickets to juveniles, 16 years and younger.
4. Youth seventeen (17) years of age but less than eighteen (18) who have been arrested shall be processed according to adult arrest procedures in MOP 10-5.
5. All arrested juveniles shall be handcuffed behind their back. The exceptions to this rule are:
 - a. When the subject has an injury that does not permit his/her arms to move behind the back.
 - b. When, at the officer's discretion, the subject's age, physical condition, or physical limitations indicate an appropriate change in this procedure.
 - c. When the subject is a juvenile status offender and is compliant to the officer's directions.
6. All arrested juveniles shall be searched for weapons and contraband prior

to transporting.

7. If a juvenile is processed at the Kent County Correctional Facility, he or she shall immediately:
 - a. Be released to an appropriate responsible adult.
 - b. Be taken to and lodged at the Kent County Juvenile Detention Center.
 - c. Be taken to Kids First or another appropriate shelter.
8. Reports shall detail the names of parents/guardians along with their contact information and attempts to contact them. When a juvenile is released to an appropriate responsible adult, that person's information shall be listed in the "parties involved" section of the report.

I. JUVENILE POST-ARREST MEDICAL SCREENING REQUIREMENT

1. Any juvenile arrestee for whom admission is being sought to Kent County Juvenile Court detention facilities must be examined at and cleared by a medical care facility prior to admission to detention if:
 - a. Reasonable cause exists to question the arrestee's physical condition.
 - b. A physical condition exists that may be related to medical circumstances, alcohol ingestion, drug involvement, etc.
2. Examination for medical safety of a juvenile arrestee must be made if the juvenile has been using alcohol or drugs and any of the following symptoms are exhibited:
 - a. Speech is incoherent or slurred;
 - b. Difficulty with standing or walking (staggering);
 - c. Shaking, spasms, convulsions, passed out, stupor, dilated pupils, pallor;
 - d. Violent, very aggressive toward others;
 - e. Suicide attempts or threats;
 - f. Inability to comprehend or respond; or

- g. Having hallucinations or delusions.
3. In these circumstances, a statement must be obtained from the examining medical care facility which indicates that the juvenile may be safely cared for in a non-medical facility. This statement must then be presented at the detention facility for admission.
 4. Officers requesting detention of juveniles who require medical screening, shall:
 - a. Notify their supervisor.
 - b. Attempt to determine what substance was taken and how much of it was taken.
 - c. Contact the parents of the juvenile, requesting them to meet the officer at a local hospital to sign approval for medical examination.
 - d. Release the juvenile to the parents after the examination unless there is cause other than intoxication to request detention.
 - e. Transport the juvenile to the detention facility for admission, submitting the medical approval statement, if there is cause for detention or if the parents refuse custody.
 5. If parents of the juvenile cannot be contacted or refuse to authorize a medical examination, the arresting officer shall, in addition to the steps in subsection I.4:
 - a. Transport the arrestee to Juvenile Detention admissions, complete the admission form and obtain a court authorization for medical examination as appropriate from the Juvenile Court Supervisor.
 - b. Transport the juvenile to a medical care facility for the medical examination. (The City of Grand Rapids will not accept responsibility for the costs associated with such medical examinations. Medical facility personnel should be advised that the juvenile's parents/guardian are the appropriate responsible party.)
 - c. Return to Juvenile Detention after the examination for admissions, along with the medical examination certificate. Juvenile Court employees will continue efforts to contact the parents. If the parents are contacted by them in time, the provision is subsection I.4.d. may apply.