



# Gatekeepers: The Role of Police in Ending Mass Incarceration

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## From the Director

Reforming the criminal justice system has become a bipartisan priority and a topic of intense public interest. Much of the focus is on reversing mass incarceration—lowering the numbers of people in prison and jail, creating constructive pathways for people returning to their communities, and addressing the stark racial and ethnic disparities that have been a primary feature of the American criminal justice system. This work remains essential: in the United States, half of all adults have an immediate family member who is or has been incarcerated. Moreover, black adults are 50 percent more likely than their white counterparts to have had an incarcerated immediate family member.

But ending the practice of mass incarceration and repairing its extensive collateral consequences must begin by focusing on the front end of the system: police work. A police officer's encounter with a civilian, if it ends in custodial arrest, is where mass incarceration begins. And the enforcement numbers—most notably arrests—are staggering. According to the Federal Bureau of Investigation (FBI), as of 2017, some 70 million Americans had been arrested. If everyone with an arrest record held hands, they would circle the globe three times.

Researchers looking at arrest data for the years 1997 to 2008 found that one out of three young adults—and nearly half of all black men—had an arrest record by age 23. It wasn't always this way;

young adults today are 36 percent more likely to be arrested than were their parents at the same age. And something else has changed: a person arrested today is far more likely to land in jail.

Rewinding to the moment of arrest, several striking patterns emerge. First, police disproportionately use enforcement against black people. Second, mental illness, drug and alcohol abuse, homelessness, and poverty are frequently the subtexts of encounters with police—in fact, police have become the default first responders to numerous social issues that they are neither trained nor equipped to properly handle. And third, officers—flooded with 911 calls for things that might not constitute true public safety emergencies—often respond with the tool most expedient and available to them by arresting or citing people for low-level offenses.

Beyond unleashing the steep human and financial costs of jail time, punitive actions by police often saddle already poor people, and a disproportionate number of people of color, with onerous fines and fees and limit their life opportunities by branding them as criminals. Moreover, a punitive approach to law enforcement makes policing vastly more dangerous for both members of the public and officers, creates ripples of social and emotional harm that burden entire communities, and drives a wedge between officers and the people they are sworn to serve and protect.

All of these dynamics are well known. Yet efforts to address them at their point of origin, when an officer is deciding whether to arrest someone, have been far more limited compared with interventions at points downstream—from bail reform, to the election of progressive district attorneys, to campaigns to remove criminal record information from employment criteria. Some police departments are experimenting with alternatives to arrest, but those efforts are largely ad hoc, with little systematic examination of what works and why. That’s not enough to change the front end of the criminal justice system in ways that address racial disparities in criminal justice contact and reduce mass incarceration.

We expect police to support community safety and security, a job that often has negative consequences for the officers’ mental and physical health. Yet because of insufficient training and resources, perverse organizational incentives,

individual and systemic biases, and other drivers, police often default to enforcement in lieu of less intrusive interventions. Recognizing the roughly 18,000 police agencies around the country as gatekeepers of the system, this report explores the factors driving mass enforcement, particularly of low-level offenses; what police agencies could do instead with the right community investment, national and local leadership, and officer training, incentives, and support; and policies that could shift the policing paradigm away from the reflexive use of enforcement, which unnecessarily criminalizes people and leads directly to the jailhouse door.

A handwritten signature in black ink, appearing to read "S. Rebecca Neusteter". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping underline.

S. Rebecca Neusteter  
Policing Program Director  
Vera Institute of Justice

## About this report

This report is one of a series that the Vera Institute of Justice (Vera) is releasing with the Safety and Justice Challenge—the John D. and Catherine T. MacArthur Foundation’s initiative to reduce overincarceration by changing the way America thinks about and uses jails. The initiative is supporting a network of competitively selected local jurisdictions committed to finding ways to safely reduce jail incarceration. Other publications in the series to date include:

- › *Incarceration’s Front Door: The Misuse of Jails in America*;
- › *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*;
- › *Overlooked: Women and Jails in an Era of Reform*;
- › *Out of Sight: The Growth of Jails in Rural America*;
- › *Divided Justice: Trends in Black and White Incarceration 1990–2013*;
- › *The New Dynamics of Mass Incarceration*;
- › *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*; and
- › the multimedia storytelling project, *The Human Toll of Jail*.

Through the Safety and Justice Challenge, Vera’s office in New Orleans, and direct partnerships with jurisdictions nationwide, Vera is providing expert information and technical assistance to support local efforts to stem the flow of people into jail, including using alternatives to arrest and prosecution for minor offenses, recalibrating the use of bail, and addressing fines and fees that trap people in jail. For more information about Vera’s work to reduce the use of jails, contact Nancy Fishman, project director, Center on Sentencing and Corrections, at [nfishman@vera.org](mailto:nfishman@vera.org). For more information about Vera’s policing work, contact Rebecca Neusteter, policing program director, at [RNeusteter@vera.org](mailto:RNeusteter@vera.org). For more information about the Safety and Justice Challenge, visit [www.safetyandjusticechallenge.org](http://www.safetyandjusticechallenge.org).

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# Introduction

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Everyone is familiar with the image of a police car driving away with a person in handcuffs—but to where? In the United States, some people wind up at a police station, from which they are later released. More often, however, people in police custody eventually land in local jails—county or municipal detention facilities that primarily house people who have been charged but not yet convicted of a crime. In fact, the likelihood that arrest will lead to jail incarceration has increased steadily

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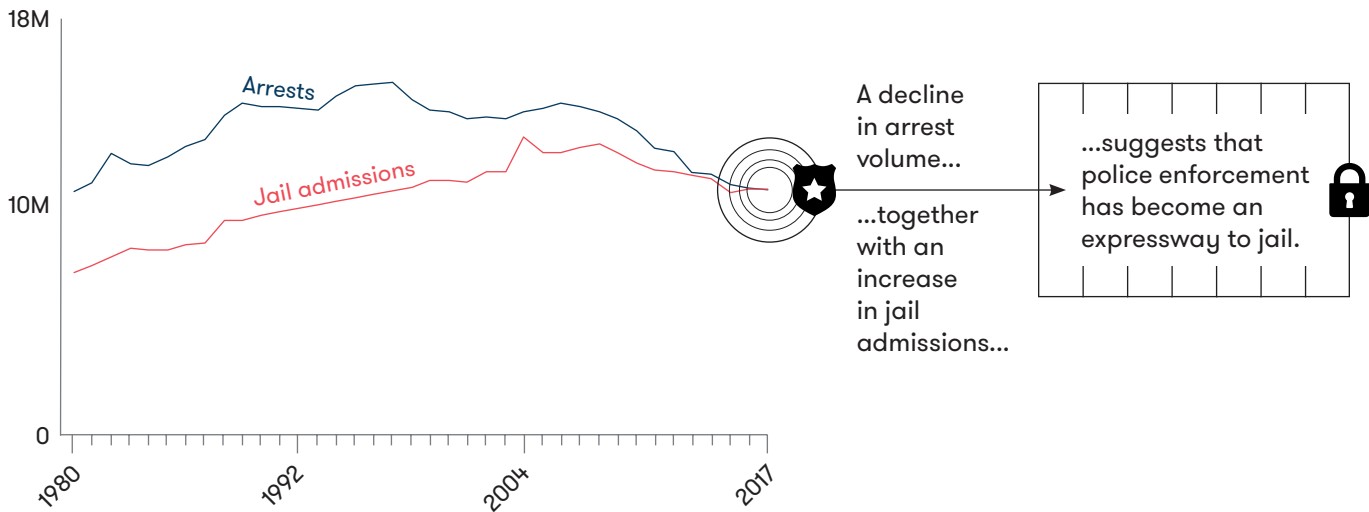
Growth in jail admissions as crime and arrest rates have fallen to lows not experienced since 1970 and 1980, respectively, strongly suggests that police enforcement has become an expressway to jail.

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over the years. For every 100 arrests police officers made nationwide in 2016—the most recent year for which data is available—there were 99 jail admissions.<sup>1</sup> Twenty-five years ago, when crime rates and arrest volume overall were higher, the ratio of arrests to jail admissions was much lower—there were 70 jail admissions for every 100 arrests.<sup>2</sup> While not all jail admissions stem from arrests—people suspected of violations of probation or parole can end up in jail too, for example—the growth in admissions as crime and arrest rates have fallen to lows not experienced since 1970 and 1980, respectively, strongly suggests that between then and now, police enforcement has become an expressway to jail.<sup>3</sup> (See Figure 1 on page 2.)

Figure 1

## Jail admissions and arrest volume, 1980–2017



Sources: For arrests from 1980–2016, see Vera Institute of Justice, “Arrest Trends,” <https://arresttrends.vera.org/arrests?unit=rate#bar-chart> and for arrests in 2017, see Federal Bureau of Investigation, “2017 Crime in the United States: Persons Arrested,” <https://perma.cc/W7GJ-GPDV>. For jail admissions from 1980–2015, see Vera Institute of Justice, “Incarceration Trends”; for jail admissions in 2016, see Zhen Zeng, *Jail Inmates in 2016* (Washington, DC: Bureau of Justice Statistics, 2018), <https://perma.cc/HN73-Q8FY>; and for jail admissions in 2017, see Zhen Zeng, *Jail Inmates in 2017* (Washington, DC: Bureau of Justice Statistics, 2019), <https://perma.cc/FD5J-7ZUC>.

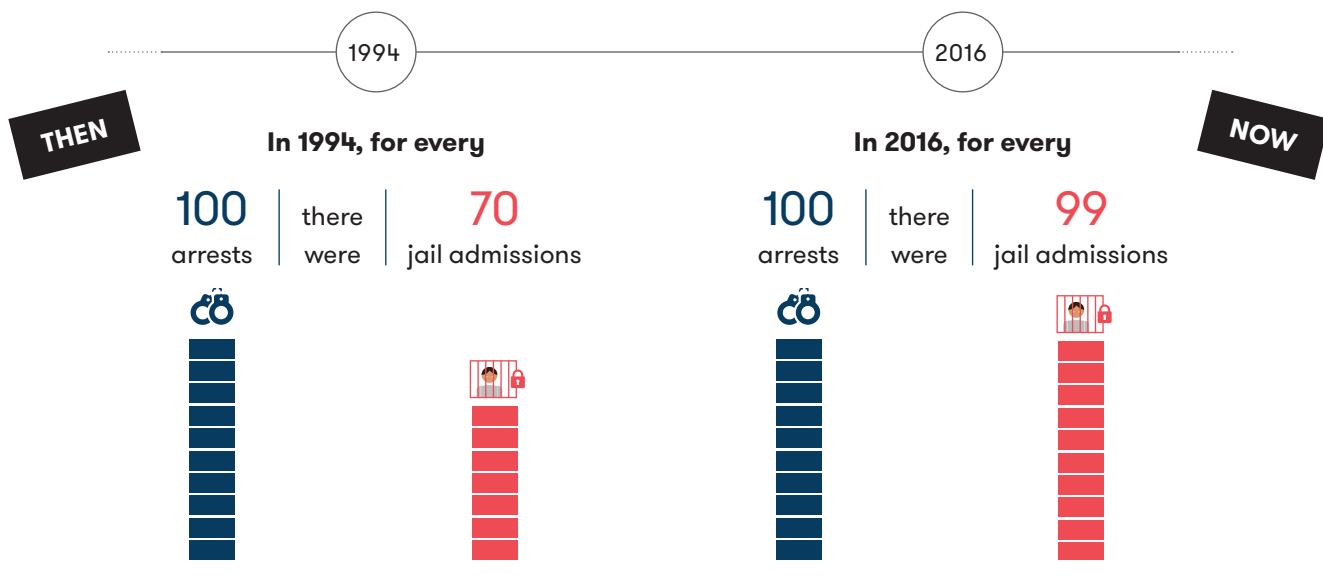
With a growing consensus that local jails are a primary locus of mass incarceration, data on arrest trends points to an urgent need to focus more deliberately on one of the problem’s primary points of origin: policing practices. (For more on arrest data, see “Arrest Trends: Unlocking police data” on page 18.) Police officers, as gatekeepers of the criminal justice system, hold almost exclusive authority—by way of citations, arrests, and even physical force—to enforce and regulate the law. And they have increasingly been asked to do this in situations that involve societal problems that would be better resolved in the community—problems like homelessness, mental illness, and substance use. Although arrest volume is down across almost all offense categories since its high-water mark of 15 million in 1997, nationally there are still roughly 28,000 arrests every day, which equates to one arrest every three seconds or approximately 10.5 million every year.<sup>4</sup> By virtue of their arrest, all these people face probable jail incarceration. This volume does not reflect an increase in arrests for serious crimes. In fact, the proportion of serious violent crimes among all arrests—less than 5 percent—has not changed in decades.<sup>5</sup> Rather, arrests most often occur in response to minor offenses—including drug use violations and disorderly conduct—which account for more than 80 percent of total arrests.<sup>6</sup> This mass enforcement of relatively minor law



violations suggests that policing practices currently tend toward punitive approaches—that is, those that prioritize arrest and frequently lead to time behind bars—in ways that are often not necessary to achieve public safety.<sup>7</sup>

But jail incarceration isn't the only negative consequence of police overreliance on arrest. Just a few days in jail increase a person's likelihood of being found guilty, receiving a harsher sentence, and committing a future crime.<sup>8</sup> As a result of a bewildering number of legal and regulatory penalties, disabilities, or disqualifications that flow from involvement with the criminal justice system, people with arrest records—even if the charges against them are later dropped—have a harder time maintaining or finding employment, credit, or housing.<sup>9</sup> In one state alone, Maryland, the American Bar Association's National Inventory of Collateral Consequences of Conviction (NICCC) catalogued 348 occupational licensing or certification restrictions limiting employment opportunities for people with a criminal record, including those merely accused of a crime.<sup>10</sup>

### Someone arrested today is much more likely to spend time in jail



Source: For 1994: Craig A. Perkins, James J. Stephan, and Allen J. Beck, *Jails and Jail Inmates 1993-94* (Washington, DC: Bureau of Justice Statistics, 1995), 13, <https://bjs.gov/content/pub/pdf/jaji93.pdf>. For arrests in 2016, see Vera Institute of Justice, "Arrest Trends," (arrest rates from 1980-2016), <https://perma.cc/QCY2-TWJD>; for jail admissions in 2016, see Zhen Zeng, *Jail Inmates in 2016* (Washington, DC: Bureau of Justice Statistics, 2018), <https://perma.cc/HN73-Q8FY>.

Young people who are arrested but not convicted are more likely to be impoverished compared with those who have a similar background but no history of arrest.<sup>11</sup> Overreliance on enforcement also produces profound emotional impacts. Anxiety and other symptoms of trauma are more common among those stopped by police.<sup>12</sup> The more intrusive the stops, the more pronounced the negative effects—an especially concerning finding given that a history of trauma is itself strongly correlated with subsequent justice system involvement and incarceration.<sup>13</sup> Moreover, some people are arrested repeatedly without ever having their underlying needs identified or treated, precipitating a cycle of enforcement that for some ends only on death and results in significant human and financial costs.<sup>14</sup>

American policing's overreliance on punitive enforcement—particularly for low-level offenses—has also had real life consequences for communities of color that extend far beyond the arrest of any one person.<sup>15</sup> Communities of color have endured practices such as stop, question, and frisk; excessive enforcement of minor offenses; and concentrated policing in targeted areas far disproportionate to their percentage of the population and likelihood of violating the law. All of this has resulted in increasingly fractured community-police relationships—and far worse.<sup>16</sup> In 2016, for example, black people were arrested at more than twice the rate of whites, approximately 5,313 and 2,444 per 100,000, respectively.<sup>17</sup> This rate has remained consistent for the past 15 years.<sup>18</sup> Police violence against black Americans is regularly documented in the media.<sup>19</sup> Numerous high-profile deaths of unarmed black people during seemingly routine police encounters—from Michael Brown in Ferguson, Missouri, to Eric Garner in Staten Island, New York, to Sandra Bland in Waller County, Texas, and many others—have further galvanized community mistrust in law enforcement, leading to national movements such as #BlackLivesMatter that aim to build local power to end police violence against black and other marginalized communities.<sup>20</sup> According to the *Washington Post*, which tracks police shootings of civilians through reviews of media reports in its “Fatal Force” database, an estimated 996 people were shot and killed by police during 2018, following 987 such deaths in 2017—disproportionately people of color.<sup>21</sup>

Policing in the United States has historically been used by powerful elites as a mechanism of social control over marginalized communities, from its roots in the subjugation of black people from slavery to the Jim

Crow era to the Civil Rights movement; to the ethnic violence committed against Mexican-Americans by the Texas Rangers; to the targeting of LGBTQ people at Stonewall; to recent collaborations between some local law enforcement agencies and Immigration and Customs Enforcement (ICE) to apprehend immigrants.<sup>22</sup> Deep cleavages between police and communities persist, as evidenced by findings of the U.S. Department of Justice following investigations of local police departments in Baltimore, Chicago, Cleveland, and Ferguson.<sup>23</sup> Such rifts continue to raise questions of basic fairness, undermining the perceived legitimacy of police by the public they serve and heightening the risk that communities may be unwilling to rely on and cooperate with police in order to help prevent and solve crimes.<sup>24</sup>

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This mass enforcement of relatively minor law violations suggests that policing practices currently tend toward punitive approaches in ways that are often not necessary to achieve public safety.

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Overrelying on punitive enforcement—particularly for low-level offenses—can also have negative effects on police departments. It can place officers themselves in jeopardy, either directly—in 2017, according to the FBI, more than 60,000 police officers were assaulted on the job and nearly 100 died—or indirectly by harming their physical and mental well-being.<sup>25</sup> Officer suicide rates, for example, far exceed that of the general population.<sup>26</sup> In part because of these risks, policing today faces a crisis in recruitment and attrition, resulting in many police departments being understaffed; officers excessively working overtime, contributing to exhaustion and other personal and intrapersonal challenges; and, in

some instances, agencies lowering the standards to become a police officer simply to fill the ranks, resulting in a less qualified workforce.<sup>27</sup>

Yet despite the harm it has brought to individuals, communities, and police, enforcement remains an officer's principal tool. To chart a new course in American policing, police should use arrest sparingly, intentionally, and transparently. To foster dialogue and set out a roadmap to achieve this goal, this report explores national data to understand the scope of mass enforcement today—most specifically examining the wide reach of arrests through publicly available data—and discusses the determinants of its growth. It explores some of the reasons why police officers currently default to punitive action and identifies some of the dynamics that are likely at play, including agency-level messages and policies set by police leadership, as well as an officer's level of experience, temperament, and personal biases. It also analyzes larger structural incentives that drive the use—and overuse—of enforcement, such as widely adopted police performance measures that reward detection, capture, and sanction while ignoring or even chastising what are often considered softer responses. And it highlights the scarcity of effective alternatives to punitive enforcement, reviewing research into the reach and efficacy of such programs.

What is clear is that far from being synonymous with rote enforcement of laws, policing actually operates in a gray area: it depends on an officer's judgment, in which the law is just one variable and enforcement only one of many possible responses. Police have wide discretion to make choices other than arrest: they can, for example, choose to cite and release, issue a warning, or do nothing. There is always a risk that officers can misuse or abuse such discretion. But police departments can encourage officers to use their discretion to rein in punitive enforcement and to employ what are often safer and more effective responses.

As this report discusses, a number of mostly small-scale experiments in alternatives-to-arrest programs provide some evidence of what police can choose to do, along with some cautionary lessons for their future replication. They are just the beginning of reimagining the gatekeeper role for more effective and equitable public safety outcomes.

This change is not the responsibility of police alone. The problems that have led to mass enforcement are, to some extent, the result of societal issues that have been laid at the feet of police but are not theirs alone to



solve. Addressing issues like mental illness, homelessness, and substance use will require a coordinated effort by local elected officials, public health providers, and social services agencies working with and investing in community-based services to prevent crime at its roots. An open exchange and dialogue between local officials, police, and the community is needed to come up with alternative solutions. And all of this will require commitment by elected officials and agency-level leadership to make the necessary investments and stay the course to effect organizational change in entrenched policing culture.

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To chart a new course in American policing, police should use arrest sparingly, intentionally, and transparently.

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This paper concludes by proposing a set of actions that, if applied collectively nationwide, have the potential to stem the tide that is pushing people toward the jailhouse door and into deeper involvement in the criminal justice system. They include

- › identifying alternative responses to societal problems outside the criminal justice system, such as reengineering the nation's 911 systems and investing in community-based resources, that if taken to scale could establish other entities beyond police agencies as the default responders to noncriminal but critical circumstances;
- › homing in on categories of offenses that do not require police enforcement, recognizing that in many instances it is not the best response;

- › expanding the reach and scope of current alternative-to-arrest programs, policies, or procedures, in particular by rethinking how police should respond to violence;
- › investing in institutional changes that support and reward officers when they properly use nonpunitive problem-solving tools in the service of justice and public safety (such as referring people to needed services); and
- › researching and evaluating the impact of implemented policing reforms to ensure they are achieving their intended outcome by, for example, studying whether increasing the use of citations in lieu of arrest is a genuine pathway away from—rather than a back door to—incarceration.

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This work will likely require systemic shifts in how everyone from local elected officials to the public to law enforcement agencies views policing itself.

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These steps may require leadership to provide clear guidance on how officers should exercise their discretion—or even limiting that discretion outright—in order to reduce an overreliance on enforcement. And such guidance should be based on arrest data, particularly with the aim of reducing unwarranted disparities across race, ethnicity, and gender. But, more broadly, this work will likely require systemic shifts in how everyone from local elected officials to the public to law enforcement agencies views policing itself.

# Mass enforcement by the numbers

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By and large, policing in America is a local endeavor. Most of the roughly 18,000 police agencies nationwide are city or county entities.<sup>28</sup> State police, by comparison, generally have less contact with the public, except in isolated rural areas and through highway patrol.<sup>29</sup> Because policing happens and is overseen locally, there is very little national-level data quantifying and describing it. Most existing national data focuses on arrests, although there have been some attempts—mainly at the local level—to collect and understand data on other enforcement activities, such as citations in lieu of arrest. The International Association of Chiefs of Police, for example, surveyed U.S. police departments in 2016 and found that nearly 87 percent of responding agencies offer officers the option of writing

## Defining arrest

The Uniform Crime Reporting Program (UCR)—launched more than 80 years ago by the FBI—is a nationwide, cooperative, statistical effort to collect and collate data on crimes brought to the attention of law enforcement agencies.<sup>a</sup> Today, many local law enforcement agencies voluntarily report data through this program.

The UCR is widely known for generating the most reliable and comprehensive set of statistics on crimes reported to the police. This program is also responsible for the most expansive data available nationally on enforcement through the “persons arrested” tables. These tables include each separate instance—categorized by month, age, sex, race, and ethnicity—in which a person is arrested, cited, or summoned for all violations, except traffic offenses. But because reporting data to the UCR program is voluntary, it does not capture information on every law enforcement agency, arrest, or demographic characteristic. To account

for missing data, the FBI adjusts the reported data with estimated counts. For the purposes of the UCR program, the FBI defines an arrest as “when a law enforcement officer detains an adult with the intention of seeking charges against the individual for a specific offense(s) and makes a record of the detention.”<sup>b</sup> (For more information on persons arrested, see Vera’s report, *Every Three Seconds: Unlocking Police Data on Arrests*, the associated data visualization tool *Arrest Trends*, and “Arrest Trends: Unlocking police data” on page 18 of this report.)

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<sup>a</sup> FBI, “Uniform Crime Reporting (UCR) Program,” <https://perma.cc/6DXX-26HL>.

<sup>b</sup> FBI, *Uniform Crime Report Program: Summary Reporting System User Manual* (Washington, DC: FBI, 2013), 140, <https://perma.cc/53TX-Y499>.

citations in lieu of arrest. However, data on and research demonstrating the application and impact of this practice is currently limited.<sup>30</sup>

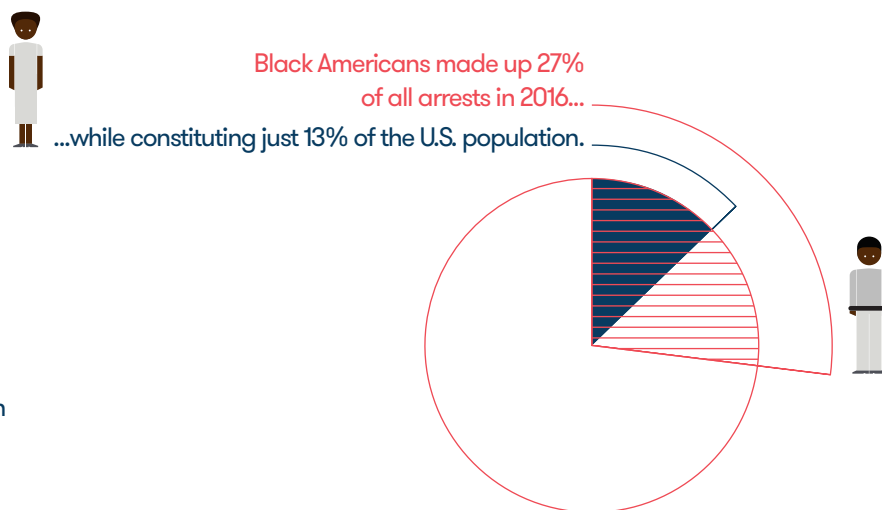
## Volume of arrests nationally

In the most recent published data—for 2017—the FBI reported an adjusted figure of more than 10.5 million arrests.<sup>31</sup> (For an explanation of the FBI methodology in arriving at this figure, see “Defining arrest” on page 9.) Even with the adjustment, the FBI count is generally regarded as conservative, meaning the actual number of arrests—combined with other forms of punitive enforcement—is likely much higher.

Although arrests have been declining for more than a quarter-century, 10.5 million is still a lot of arrests, even in a country with more than 300 million people.<sup>32</sup> Arrests are not spread evenly across the population; they are concentrated among both younger people and marginalized people and disproportionately affect people of color. In 2016, the most recent year for which data on racial disparities is available, black Americans made up 27

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### Black Americans are disproportionately arrested



Sources: FBI, “2016 Crime in the United States,” table 21, <https://perma.cc/CCK5-P8A9>; and U.S. Census Bureau, “QuickFacts,” <https://www.census.gov/quickfacts/fact/table/US/RHI225218>.

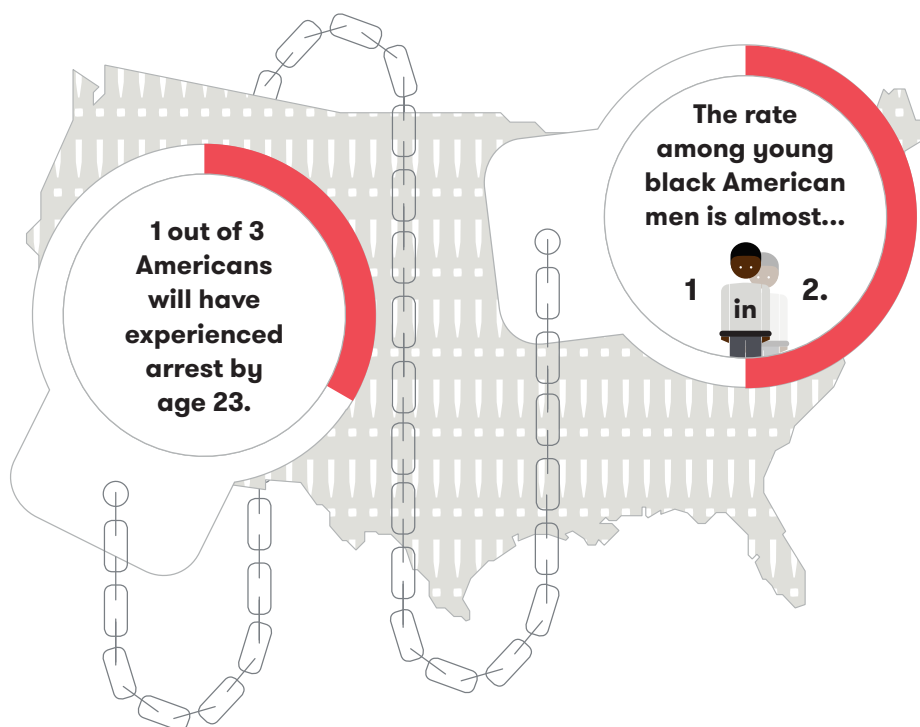


percent of all arrests nationally even though they constitute just 13 percent of the U.S. population, and Native Americans were arrested at nearly double the rate of white people.<sup>33</sup> According to one study, fully one out of three Americans will have experienced arrest by age 23.<sup>34</sup> Among young black men, that number is almost one in two.<sup>35</sup> (The FBI has not collected arrest data by ethnicity since 1991, so current Hispanic/non-Hispanic arrest rates are not known.)<sup>36</sup>

Nor are arrests spread evenly geographically. Police enforcement is largely concentrated in metropolitan and suburban areas. Suburbs within metropolitan areas have the highest average arrest rates (at 4,604 per

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## Arrest numbers in the United States are staggering



Source: Robert Brame, Michael G. Turner, Raymond Paternoster, and Shawn D. Bushway, "Cumulative Prevalence of Arrest from Ages 8 to 23 in a National Sample," *Pediatrics* 129, no. 1 (2012), 21-27; and Robert Brame, Michael G. Turner, Raymond Paternoster, and Shawn D. Bushway, "Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23," *Crime & Delinquency* 60, no. 3 (2014), 471-486, <https://perma.cc/E49B-SGHY>.

100,000), followed by cities outside of metropolitan areas (4,090 per 100,000).<sup>37</sup> Principal cities—cities in a metropolitan area with populations of 50,000 people or more—and nonmetropolitan counties have the lowest arrest rates at 3,332 per 100,000 and 2,322 per 100,000 respectively.<sup>38</sup> In 2017, fewer than 20 percent of the nation’s total arrests were made outside of cities and suburban areas.<sup>39</sup>

## Serious or not?

The FBI includes type of offense in the arrest data but doesn’t always distinguish between more and less serious forms of the same type of crime. It is impossible, for example, to separate shoplifting from grand larceny—both are grouped under the category “larceny/theft.”<sup>40</sup> This way of organizing the data precludes drawing a broad distinction between arrests for serious versus nonserious offenses (such as between felony and misdemeanor arrests.) Nevertheless, the FBI data provides compelling evidence that very few arrests annually are for the most harmful crimes and, conversely, a large number of arrests are for behaviors commonly considered nuisance offenses.<sup>41</sup>

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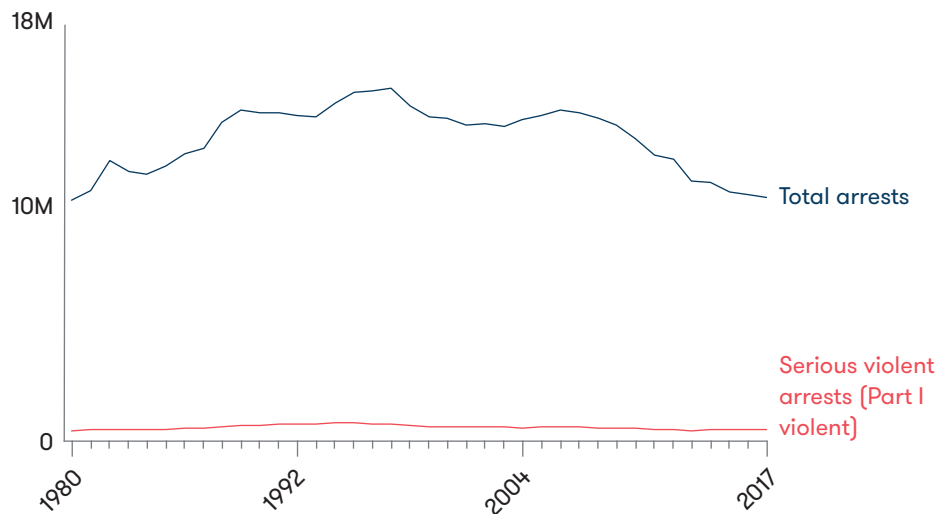
Serious violent offenses have constituted less than 5 percent of all arrests annually for decades, despite fluctuations in the total number of arrests year to year.

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For example, in 2017, just under 5 percent (or 518,617) of all recorded arrests pertained to the four crimes that involve the most significant violence or threat of violence against a person: murder and nonnegligent manslaughter, rape, robbery, and aggravated assault.<sup>42</sup> This followed a

Figure 2

## Total arrests and arrests for serious violent offenses, 1980–2017



Source: Derived from the FBI's Uniform Crime Reporting program, available at FBI, "Uniform Crime Reporting (UCR) Program," <https://fbi.gov/services/cjis/ucr>. Part I violent crimes include murder, nonnegligent manslaughter, rape, robbery, and aggravated assault.

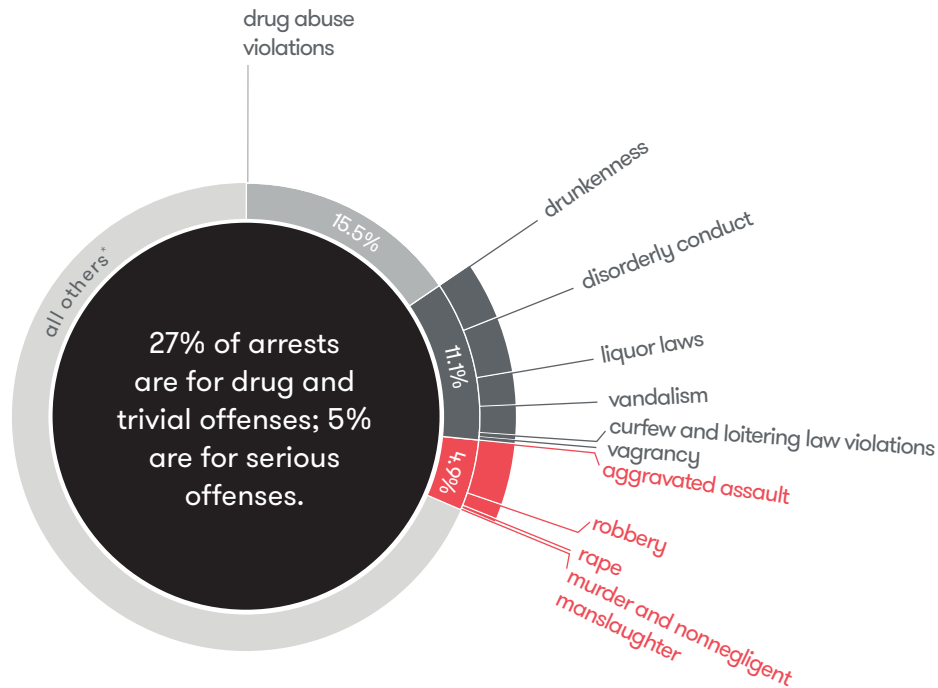
lengthy trend: serious violent offenses have constituted less than 5 percent of all arrests annually for decades, despite fluctuations in the total number of arrests year to year.<sup>43</sup> (See Figure 2 on page 13.)

At the other end of the spectrum, there were 1.2 million arrests in 2017 for disorderly conduct, public drunkenness and other liquor law violations (not including driving while under the influence), vagrancy, loitering and curfew violations, and vandalism.<sup>44</sup> And, even though drug arrests are down in recent years after an increase of 171 percent between 1980 and 2016, they continue to account for more than 1.5 million arrests annually—the vast majority of which are made for drug possession generally, and marijuana possession most often.<sup>45</sup> (See Figure 3 on page 14.)

Independent studies of local arrest practices corroborate the national data that suggests that significantly more arrests are made for minor offenses than for serious ones. For example, in 2016, the New York City Police Department made twice as many misdemeanor arrests (approximately 179,000) than felony arrests (approximately 88,000) and issued more than triple the number of criminal summonses (271,000), which include a "notice-to-appear" or "desk appearance" ticket (a form of noncustodial arrest that secures a promise from the person to appear in court when required).<sup>46</sup> This data parallels the findings of the Criminal

Figure 3

### Low-level and serious arrests by offense type, 2017



Source: Federal Bureau of Investigation, "UCR: 2017 Crime in the United States," table 29, <https://perma.cc/7P43-SY74>.

\* Burglary | Larceny-theft | Motor vehicle theft | Arson | Other assaults | Forgery and counterfeiting | Fraud | Embezzlement | Stolen property; buying, receiving, possessing | Weapons; carrying, possessing, etc. | Prostitution and commercialized vice | Sex offenses (except forcible rape and prostitution) | Gambling | Offenses against the family and children | Driving under the influence | All other offenses | Suspicion

Justice Agency (CJA)—a pretrial services organization in New York City that interviews defendants after arrest, just prior to arraignment.<sup>47</sup> Of the 272,294 defendants that CJA interviewed in 2016, 73 percent had a most serious charge of a misdemeanor, and 9 percent a violation or infraction.<sup>48</sup> Similarly, in Oklahoma City, municipal charges—a violation of Oklahoma City’s municipal code, which includes offenses such as public drunkenness, driving without a license, trespassing, or petit larceny—constituted the most common arresting charges in 2015 that landed people in jail.<sup>49</sup>

Many offenses are deemed to be so trivial that the people arrested aren’t even fingerprinted. In New York State, for example, the list of offenses for which suspects need not be fingerprinted runs to more than 160 pages, including common arresting charges such as multiple forms of disorderly conduct, vagrancy, loitering, criminal trespass, and public intoxication.<sup>50</sup> If a charge is not significant enough to trigger fingerprinting, it is reasonable to question whether the arrest itself is necessary.



## Lesser forms of enforcement

Full custody arrest is the most dramatic form of police enforcement, but it is not the only type. In response to nonserious offenses, in most states officers can employ “least harm” or less intrusive forms of enforcement. These include issuing a written order requiring a person to appear in a designated court at a specified time and date (known variously as “tickets,” “citations,” “summonses,” “desk appearance tickets,” or “cite and release”).<sup>51</sup> Police officers can issue such tickets in the field—at (or near) the scene of a disturbance—or at the stationhouse.<sup>52</sup> Citations are commonly associated with misdemeanors, traffic offenses, and local ordinance violations or infractions and can come in many forms.<sup>53</sup> They are often issued in lieu of arrest, but can also be issued after an arrest, with officers releasing a person with instructions to appear in court, pay a fine, and/or adhere to other outlined conditions. Such citations are common, yet there has been no routine and systematic collection of national-level data describing the volume issued annually, for what types of offenses, or their impact.<sup>54</sup>

However, the data that does exist—some of which dates back 40 years—confirms that many law enforcement agencies use citations in lieu of custody arrest. As noted above, a 2016 survey conducted by the International Association of Chiefs of Police found that citation in lieu of arrest is a widely used law enforcement tool, with nearly 87 percent of 1,300 responding agencies engaged in the practice—more than 80 percent of those for 10 years or more.<sup>55</sup> Drilling down to the local level, data also suggests that the use of citations may be on the rise in certain places. The New Orleans Police Department, for example, is just one among many law enforcement agencies that is relying more on citation and release than on custodial arrest in certain situations. After the passage of a new city ordinance mandating the use of a summons rather than arrest for most municipal offenses, the use of summonses in cases other than domestic violence and public intoxication increased from 41 percent to more than 70 percent between 2009 through 2011.<sup>56</sup> Arrests correspondingly dropped from 59 percent to 30 percent.<sup>57</sup>

The use of citations is less invasive of individual liberty than is arrest and avoids many of the hardships associated with custodial arrest and jail detention—including damage to reputation or financial burdens such as the need to raise bail. Nevertheless, an increasing emphasis on citations

may inadvertently fuel their use in cases where officers would otherwise not have made an arrest, potentially widening the net of enforcement and thus the criminal justice system writ large. No research has yet tracked and analyzed whether this phenomenon has occurred, either locally or nationally.

It is also true that, in some cases, citation in lieu of arrest may only delay rather than replace more punitive action. For example, without support to address a person's underlying needs, it may be unrealistic to expect someone with untreated mental illness and drug addiction to appear in court at a specific day and time. And, if people fail to show up in court as required, judges often issue arrest warrants that police officers are compelled to enforce.<sup>58</sup>

## Disparate racial impact

America's overreliance on punitive enforcement has not affected everyone equally. According to the most recent national data, the estimated volume of arrests of black people across the country rose by 23 percent between 1980 and 2014 and now accounts for an estimated 28 percent of all arrests—even though black people make up only 13 percent of the U.S. population. The greatest racial disparities occur for low-level offenses of all types.

- › Black Americans are nearly three times more likely than whites to be arrested for disorderly conduct.<sup>59</sup> (See Figure 4 on page 17.)
- › In 2014, black people were an estimated 2.39 times more likely to be arrested for “drug abuse violations” than white people—even though research suggests that black people and white people use drugs at similar rates.<sup>60</sup>
- › Racial disparities are especially acute for low-level marijuana possession. A 2010 study found that black people were 3.7 times more likely to be arrested for marijuana possession than white people, even though both groups use the marijuana at similar rates.<sup>61</sup>

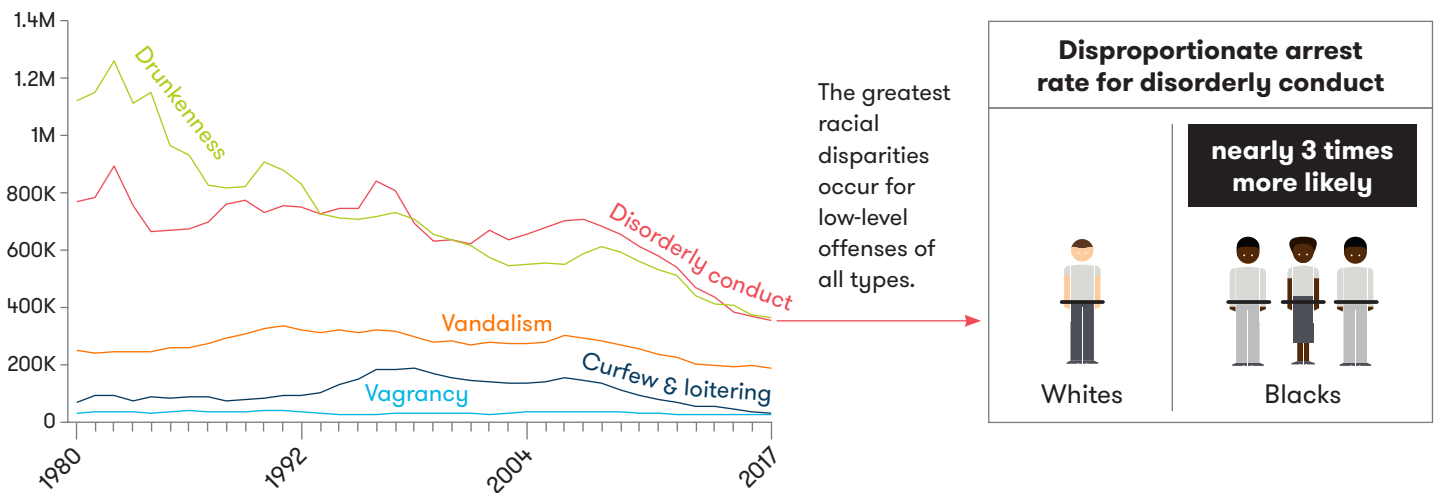
These enforcement disparities are likely a result of widely used policies that encourage more aggressive enforcement of minor drug and quality-of-

life violations through vehicle and pedestrian stops and other practices that often result in increased police presence in neighborhoods where large numbers of people of color and economically disadvantaged people reside.<sup>62</sup> (For more information about such policies, see “The consequences of ‘broken windows’” on page 30.) Pursuit of such seemingly trivial offenses can become a pretext for investigatory actions that lead to enforcement—and heightened risk of future arrests—pulling disproportionate numbers of black and poor people into the criminal justice system. Such disparities in enforcement strategies then create disparities in other parts of the criminal justice system, including incarceration rates.<sup>63</sup>

At the same time, the inverse also seems to be accurate: white people are more likely to benefit from lesser forms of enforcement—and perhaps leniency—than people of color. It is difficult to track or quantify what many people believe to be true: that police are more likely to ignore or informally confront white people committing low-level offenses than they are people of color in the same circumstances. But a 2015 study in New York City

Figure 4

**Arrest trends for certain low-level offenses, 1980–2017**



Source: Information on arrests by type from 1980–2017 is derived from the FBI’s Uniform Crime Reporting (UCR) Program, <https://perma.cc/8NB2-X6YP>.

## Arrest Trends: Unlocking police data

Researchers, practitioners, and advocates alike need information on the dynamics of policing to better understand how the overreliance on arrests drives mass incarceration and deepens other social inequities. Until recently, finding out how many people are arrested every year where you live, whether the number is rising or falling, and how your city, county, or state ranks nationally would have been difficult for anyone without the skills of a data analyst and willingness to devote significant time and effort.

Arrest Trends—a new online tool at [arresttrends.vera.org](http://arresttrends.vera.org)—makes it easy for anyone to look at arrest volumes and rates, types of offenses, and the people who are targets of those arrests broken out by race, sex, age, and location—and to examine trends over time, in most cases as far back as 1980 and in some cases back to 1964. Users can choose to display the results of their queries as charts and graphs or as tables and can also compare what is happening where they live with trends elsewhere.<sup>a</sup> There are gaps in this data based on what local departments report to the FBI—data on arrests by

ethnicity, notably, is not currently provided—but it represents a broad starting point to begin to understand the far reach of arrests.

In addition to arrest data, results from victimization surveys provide another measure of crime rates and also include statistics on how often victims report these crimes to the police. Separately, clearance rates indicate how successful police are at solving reported crimes.

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<sup>a</sup> In the future, Arrest Trends will incorporate more census data—drilling down to the municipal level to augment higher-level population data that is already available—and incorporate socioeconomic data, enabling a rich intersectional analysis of how arrest practices affect different groups of people. There are also plans to deepen the ability to compare law enforcement agencies—not only by type, which is already possible—but also by factoring in Law Enforcement Management Statistics such as agency size and particular policies and practices.

confirmed that a white person arrested for possession of marijuana is still more likely to be offered a desk appearance ticket (DAT)—in lieu of full custodial arrest—than a black or Latino person, even after a 2013 policy change that directed the police to issue a DAT in all arrests with a top charge of marijuana possession.<sup>64</sup> This trend continued despite a 2014 policy change that directed police to stop making arrests for possession of small amounts of marijuana in public view.<sup>65</sup> (In these instances, police were instructed to issue a criminal court summons for a noncriminal violation.<sup>66</sup>) Conviction rates for black and Latino people, in both cases, were still nearly twice those of white people.<sup>67</sup>

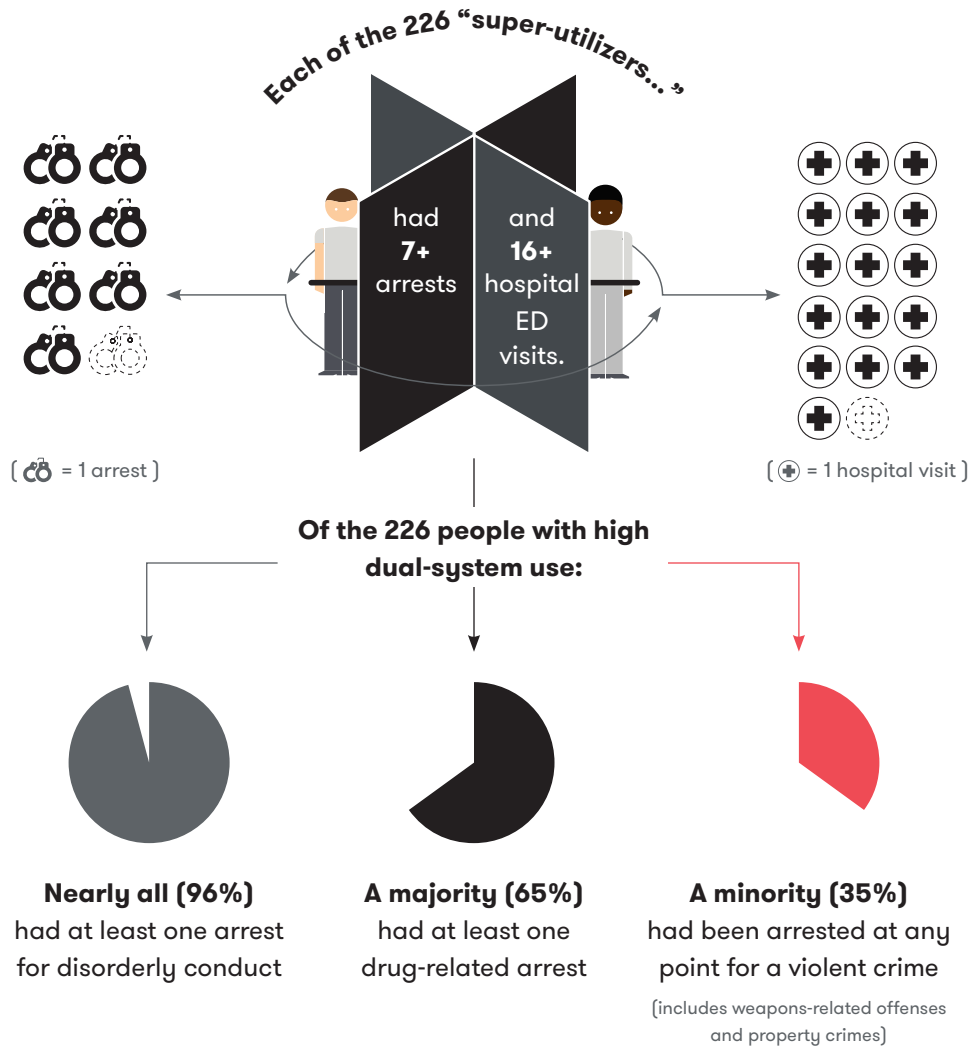
## The revolving door

National data captures the number of arrests annually, but it does not reveal how many people are arrested repeatedly over the course of a year. If the goal is to break this cycle, it is important to know how many people are being arrested and incarcerated repeatedly and why.

Research published in 2018, for example, shows that a very small number of people in Camden, New Jersey, make up a disproportionate share of all arrests in the city. Specifically, just 5 percent of people arrested



## The revolving door of arrests and emergency room visits in Camden, New Jersey



Source: Anne Milgram, Jeffrey Brenner, Dawn Wiest et al., *Integrated Health Care and Criminal Justice Data—Viewing the Intersection of Public Safety, Public Health and Public Policy Through a New Lens: Lessons from Camden, New Jersey* (Cambridge, MA: Harvard Kennedy School, 2018), 7-8, <https://perma.cc/9HQF-AE62>.

in Camden during the five-year study period were involved in one out of every four arrests.<sup>68</sup> Furthermore, a small subset of 226 people, described as “super-utilizers,” were arrested at least seven times and also made at least 16 visits to hospital emergency departments—suggesting that health issues may be driving their criminal behavior.<sup>69</sup>

Not surprisingly, the same dynamic is at play in jail incarceration: a relatively small number of people are responsible for a large share of jail admissions. In Chicago, for example, 21 percent of people admitted to jail between 2007 and 2011 accounted for 50 percent of all admissions.<sup>70</sup> In New York City, from 2008 through midyear 2013, approximately 400

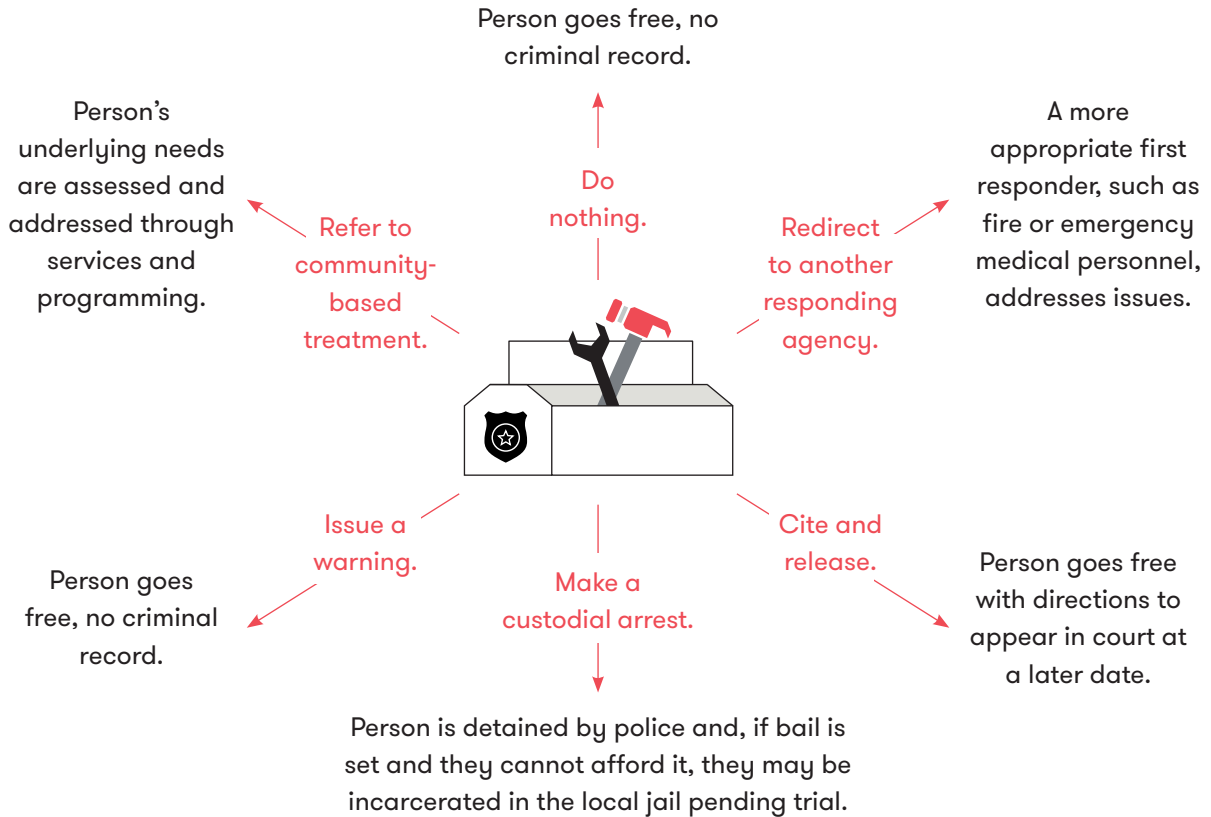
people were admitted to jail 18 times or more, accounting for more than 10,000 jail admissions and 300,000 days in jail.<sup>71</sup> Vera analyses of data from Oklahoma City and Oklahoma County found similar results. For example, 104 people were admitted to the Oklahoma County jail six or more times in 2015.<sup>72</sup> The research further found that there was a significant likelihood that these people suffered from mental illness, substance use disorders, or both.<sup>73</sup> In addition to jail and police resources, frequent users of the criminal justice system consume many other services, at significant cost to the community. A 2005 study suggests that one cause of frequent admissions is the exhaustion of community resources for housing and health care among this high-need population, leaving jails as an inadequate social safety net—and police on the front lines responding to social service needs.<sup>74</sup>

## What's driving the overreliance on punitive enforcement?

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**H**ow do so many interactions between the public and police—many of which either do not involve crimes or revolve around minor low-level offenses—escalate toward policing activities that end in arrest?<sup>75</sup> After all, a punitive approach to enforcement is only one of many possible responses that the police can take in a case. There are many tools in an officer's toolbox, including the decision to cite and release, issue a warning, make a referral to community-based treatment, redirect to another responding agency or, indeed, do nothing. (See “An officer's toolbox,” on page 21.) There is good reason for having a variety of possible responses: the same offense can occur under very different circumstances.<sup>76</sup> Consider, for example, the difference between someone with a suspended license driving home alone after meeting friends at a local bar versus driving an injured child to the emergency room for stitches.

## An officer's toolbox



A number of factors other than the law—singly or in combination— influence an officer's decision to invoke the criminal process and enforce the law in a given circumstance. These include everything from the in-the-moment, person-to-person dynamics of a particular interaction; to training and job performance measures; to individual biases; to enforcement priorities set by a department or municipality—all of which can combine to induce officers to believe that there is no choice but to arrest someone in order to prevent crime, maintain order, and keep streets safe.

There is a subtle but important distinction between the terms “law enforcement” and “policing,” which are often used interchangeably. Enforcement is simply an action taken in response to the letter of the law. Policing, by comparison, describes a much wider set of actions beyond enforcement and often includes more pragmatic, problem-solving approaches that can help address long-term needs and problems.

## Person-to-person factors

Routine policing usually requires officers to make split-second judgments when responding to a 911 call or when on patrol, not only relying on what they have observed, been told by witnesses, or deduced from other available evidence, but also on the basis of a mix of training and street smarts gained through on-the-job experience. Consider an officer on foot patrol who smells marijuana in a jurisdiction where public use is illegal and sees a young man smoking what appears to be a joint. If she approaches and confirms her suspicion, she has a few options. She could respectfully inform him that smoking pot in public is against the law and ask him to stop. She could make the same statement and then hand him a summons, which might result in the imposition of a fine—or worse if he fails to pay or appear in court as may be required. Or she could arrest him.

Some studies suggest the young man's demeanor and, in particular, how he responds to the officer will have a strong influence on what action she decides to take. In one such study, researchers observed numerous police encounters in which officers had sufficient evidence to make an arrest, mostly for low-level offenses, and found that they were less likely to resort to arrest when the person they encountered was respectful, compliant, and sober.<sup>77</sup> Similarly, a study on traffic enforcement in a large police department showed that leniency by an officer corresponded to the person's attitude and demeanor during the stop.<sup>78</sup>

Of course, police commonly arrest and cite people who are both sober and essentially compliant. An officer's temperament and level of experience come into play. Race and ethnicity in some instances also matter. As noted above, black people are nearly three times more likely than whites to be arrested for disorderly conduct in circumstances where the behavior is comparable.<sup>79</sup> Some researchers and other experts have suggested that analysis of data from police body cameras should be the first step to better understand officer decision making and minimize the influence of officer variations and biases.<sup>80</sup> In one such study, Stanford University researchers analyzed Oakland Police Department body camera data and found that officers consistently spoke less respectfully to black community members as compared to their white counterparts.<sup>81</sup> This finding was consistent despite the race of the officer and the type, severity, location, and outcome of the encounter.<sup>82</sup>

## Messages from above

Law enforcement agencies operate as quasi-military organizations.<sup>83</sup> Officers wear uniforms, use military ranks, carry weapons and are authorized to use force, engage in military-style tactics, such as patrolling, and follow a body of rigid rules.<sup>84</sup> Most important, they function according to a strict authoritarian organizational style with a clear hierarchy and chain of command.<sup>85</sup> At the agency level, official policies and informal messages from the top of this hierarchy thus have a significant effect on how frequently officers resort to enforcement in the course of policing.

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Many police departments—whether deliberately or not—incentivize the use of enforcement, measuring officers’ performance in large part by the number of stops, arrests, summonses, and tickets they generate—all of which are much easier to quantify than enforcement alternatives (especially when an officer decides to do nothing).<sup>86</sup> And this may be driven by an executive policy decision in a department or precinct to prioritize certain arrest-based crime enforcement and response strategies, such as those that focus on the enforcement of low-level misdemeanor offenses

and civil infractions (including such things as disorderly conduct, public drinking, public marijuana smoking and other minor drug offenses, noise pollution, public indecency, verbal harassment, aggressive panhandling, vagrancy, and obstruction). (See “The breaking of ‘broken windows’” on page 30.) A supervisor in such a department is likely to praise one officer for making several arrests during the week, particularly if it is in service of a department’s adopted enforcement priorities, while calling someone else who has made none a “zero.”<sup>87</sup> At least anecdotally, officers who log more arrests have been reported to receive preferential treatment in schedules, assignments, and promotions.<sup>88</sup>

One of the most widely studied examples of how departmental policies can greatly incentivize—or de-incentivize—police behavior comes from New York City. In response to surging crime rates in the 1990s — particularly violent crime—the New York City Police Department (NYPD) developed a management framework called Computer Statistics (CompStat) that the city still uses.<sup>89</sup> It allows police executives to track geographic trends in crime, requiring the commanders responsible for those areas to account for fluctuations through regular CompStat meetings.<sup>90</sup> As part of this data-driven approach, middle managers are held responsible and accountable for reducing crime in their regions.<sup>91</sup> A majority of large—and many small- and medium-sized—police departments nationwide now use an adapted version of the CompStat model.<sup>92</sup>

Through this performance-management approach, NYPD commanders quickly established a systemwide expectation: they measured officers’ success in combating crime in part through high levels of enforcement activities including stop, question, and frisks; citations; summonses; and arrests. Immediately following CompStat’s implementation, enforcement activities grew dramatically, especially in poor communities and black communities.<sup>93</sup> The NYPD began tracking the use of stops in 2003 and, in that year, almost 161,000 stops were reported.<sup>94</sup> In the years that followed, police executives encouraged the use of stops as a crime-fighting tactic at CompStat meetings and continued tracking this metric.<sup>95</sup> The number grew precipitously, up to a peak of almost 686,000 stops in 2011, a 326 percent increase.<sup>96</sup> Felony and misdemeanor arrests, as well as summonses, increased on a similar trajectory—though not as pronounced—even as crime was decreasing significantly.<sup>97</sup> After several lawsuits and resulting reforms designed to address policing culture, including updated policies



and training, reported stops plunged to about 46,000 in 2014, a 93 percent decrease from 2011.<sup>98</sup>

In contrast to the incentives that the original CompStat method spawned, a police department may choose to discourage the use of enforcement in response to low-level offenses and support officers in making different choices where appropriate. By prioritizing non-arrest options in some cases, such as issuing a warning to that young man caught smoking marijuana or not approaching him in the first place, leadership can communicate that sometimes doing nothing is the best response.

Even in departments that give clear agency-level guidance to rein in enforcement responses to specific offenses, officers may still default to it. They do so in part because of longstanding incentive structures and the fact that the vast majority of police training focuses on tactical enforcement operations such as pursuing suspects, operating firearms and other weapons, executing arrests, and understanding the concept of probable cause (the legal prerequisite for police enforcement activities).<sup>99</sup> Most police training, in fact, follows the military model and emphasizes four areas: driving, firearms, apprehension, and arrest.<sup>100</sup>

Alternatives to enforcement and other problem-solving tactics are not yet prominent features of formal police training. Where such training does exist, communication about priorities from agency executives will heavily influence its quality and content, as well as how seriously officers approach it.<sup>101</sup> Some departments have made the use of alternatives to enforcement a priority in training.<sup>102</sup> (See page 45 for a discussion of one such department, in Durham, North Carolina.)

## Lack of alternatives

Reliance on enforcement may simply be the result of the absence of policy or lack of appropriate training in nonenforcement options—from doing nothing policies to use of summons or tickets— but it is also likely to flow from a scarcity of or lack of working relationship with vital community referral services, such as those that focus on mental illness, substance use, employment, or homelessness.

Take, for example, an officer who encounters a person in a park who is clearly inebriated, possibly mentally ill, and scaring local residents.

Complicating the situation, the person is homeless. Without a mental health clinic, sobering center, or fully equipped homeless shelter ready to take in the person, an officer might default to arrest, not having other available options or thinking it is the easiest way to ensure both the person and community are safe. Even where these services exist, officers might still default to arrest in this situation because they are either unaware of such services or resources, or because the incentive structure or ideological climate of their agency may not yet support channeling the exercise of police discretion toward alternative action.

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A growing number of police departments are beginning to explore alternatives to enforcement, focusing on creating or fine-tuning community crime prevention strategies.

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Yet the fact is that police are frequently the first and sometimes only responders in situations like these, where the tools and stock responses at their disposal are a mismatch with what is needed and may make the situation worse.<sup>103</sup> This issue is especially acute in nonmetropolitan and rural communities, where appropriate community-based interventions or treatment modalities are less available than in urban areas.<sup>104</sup> Even if partnerships or programs exist in these areas, distance and scarcity—as well as stigmatization—can make their practical application impossible.<sup>105</sup>

However, a growing number of police departments are beginning to explore alternatives to enforcement. These jurisdictions are focused on creating or fine-tuning community crime prevention strategies—often partnering with local health departments and behavioral health or human service providers to develop alternatives to making an arrest or booking a person into jail.<sup>106</sup> Such partnerships increase police capacity to respond

more constructively to people who regularly come into contact with police, such as those who have mental health or substance abuse issues or who are homeless. The community-based services that these departments are tapping into typically provide everything from 24-hour respite care; crisis beds for short-term stays; case management; detox services; health education; and referrals to ongoing treatment, housing, and other social services.<sup>107</sup> These policies and programs hold the promise of reducing the volume of unnecessary arrests and jail bookings and, for the people involved, avoid some of the negative consequences that follow arrest, prosecution, and incarceration—including deteriorating mental or physical health, imposition of court fines and fees, and disruption of employment or education. Nevertheless, these programs remain small in scope and reach. (See “Working at the margins: Alternatives-to-arrest programs” on page 32.)

## Perverse incentives

Perverse incentive structures sometimes exist in policing, turning arrests into a tool to achieve some other purpose. For example, officers may use their power to arrest to increase the pool of fingerprints and DNA samples available to solve past or future crimes.<sup>108</sup> Officers may also default to arrest to ensure the alleged suspect’s appearance in court via pretrial detention.<sup>109</sup> Or they might use arrest in response to financial incentives.<sup>110</sup>

Indeed, money is often the root of unnecessary arrests.<sup>111</sup> In the NYPD, for example, an arrest triggers overtime pay—a phenomenon known as “collars for dollars”—because processing an arrest can be very time consuming.<sup>112</sup> Officers may have a financial incentive to wait until the ends of their shifts to make arrests so they are eligible for overtime pay. It is unclear how common this practice is, but there have been several high-profile cases where officers have arrested innocent people in order to receive overtime.<sup>113</sup> Money at the agency level may also drive arrests. One study revealed the negative impact of the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, which makes federal grants that police agencies can use to fund enforcement of drug-related and violent crimes and is designed to incentivize agencies to develop and expand their drug interdiction activities.<sup>114</sup> When researchers looked at cities that received Byrne grants between 1987 and 2004, they found a

corresponding increase in drug-trafficking arrests that disproportionately affected black community members.<sup>115</sup>

Civil asset forfeiture—a legal tool that gives law enforcement agencies the authority to seize cash, property, and other possessions believed to be associated with alleged illegal activity—can also serve as a perverse incentive motivating enforcement.<sup>116</sup> Through this process, police can seize property, including cars, houses, jewelry, and cash, even when the owner has not been charged with a crime.<sup>117</sup> According to a 2015 study, seven states and Washington, DC, prohibit law enforcement agencies from accessing forfeiture proceeds for department use; while 42 states and the federal government allow law enforcement to access at least 45 percent—and in many cases, including the federal government’s, up to 100 percent—of the value of forfeited property.<sup>118</sup>

Asset forfeiture has been a feature of law enforcement for centuries, but its use expanded significantly during the 1980s with the advent of the War on Drugs and the 1984 Comprehensive Crime Control Act.<sup>119</sup> Civil asset forfeiture was originally proposed to halt large criminal enterprises by seizing their resources, but it has been used to seize everything from vehicles in suspected drunk driving cases to homes in which illegal drug sales have occurred—whether or not the homeowner was aware of these sales.<sup>120</sup> This practice has disproportionately affected poor communities and communities of color and focuses too often on people suspected of low-level offenses—such as a \$60 marijuana sale or a minor traffic infraction.<sup>121</sup>

Police departments and prosecutors (including at the federal level) who employ this practice typically use seized property as a direct revenue source to pay for equipment, vehicles, building improvements, and even officer salaries and overtime pay.<sup>122</sup> Annual reports submitted to the Department of Justice show that civil asset forfeiture funds are also used to purchase surplus military-grade equipment and vehicles, such as automatic weapons, night vision gear, armored cars, and Humvees.<sup>123</sup> While some law enforcement executives argue that this spending is necessary, it contributes to an increasingly militarized local law enforcement presence in many communities around the country. As a 2014 study by the ACLU notes, “[t]he change in equipment is too often paralleled by a corresponding change in attitude whereby police conceive of themselves as ‘at war’ with communities rather than as public servants concerned with keeping their communities safe.”<sup>124</sup> In contrast, seized assets are seldom spent on nonenforcement

activities such as community engagement. For example, data from 43,000 state and local police agency annual reports on forfeiture (obtained through a series of Freedom of Information Act requests by the *Washington Post*) revealed that less than 1 percent of money the agencies gained through civil asset forfeiture since 2008 had gone to community outreach.<sup>125</sup>

Criminal justice fines and fees are another example of how money can influence policing activities in a potentially damaging way. “Fines” are financial obligations imposed on someone as punishment or restitution; “fees”—sometimes referred to as “user fees”—are financial obligations imposed on people ostensibly as payment for their passage through the criminal justice system and whose explicit purpose is to raise revenue to fund courts or other governmental services and functions.<sup>126</sup>

Most municipalities generate just a small amount of their total revenue from fines and fees. But some have come to rely on them to support core government operations, with a direct and distorting impact on police officers’ work.<sup>127</sup> The example of Ferguson, Missouri, stands out. After the August 2014 police shooting of Michael Brown, an investigation by the U.S. Department of Justice found that the city was funding much of its government operations through fining poor black residents for low-level offenses, along with other patterns of racially biased applications of enforcement such as stops, arrests, and use of force.<sup>128</sup> A 2016 review of the characteristics of cities that rely most heavily on fines for revenue found that they have significant black populations—five times greater than the national median.<sup>129</sup>

Even a small fine can place a significant burden on poor and low-income people.<sup>130</sup> When money is tight, people face tough choices. They weigh the importance of paying a fine versus, for example, paying the utility bill, buying school supplies for their children, or fixing the broken taillight that generated the ticket in the first place. When the amount owed is compounded by interest on unpaid fines, the choices become even harder, which is why the people who police target for fines and fees sometimes end up in jail.<sup>131</sup> This trickle of revenue may not even offset the direct cost of punishing those who cannot pay: a study conducted by Vera found that the City of New Orleans spent approximately \$2 million more to jail people for failure to pay bail, fines, and fees than the total amount collected from these revenue sources.<sup>132</sup> It is a cautionary tale for any jurisdiction that seeks to reduce arrests by increasing the use of fines.

## The consequences of “broken windows”

Order-maintenance policing—sometimes referred to as “broken windows” policing—is a crime and disorder control strategy based on the idea that police can stop or mitigate the growth of more serious crime patterns and problems from taking hold in any one neighborhood by systematically and aggressively using their enforcement authority against minor crimes and other public order incivilities—from graffiti to loitering to trespassing to public intoxication.<sup>a</sup>

Research has shown that policing strategies focused on disorder are associated with a small but statistically significant reduction in crime overall, with community and problem-solving interventions showing more beneficial effects than aggressive strategies targeting minor individual disorderly behavior that often has little if any impact on major crime.<sup>b</sup> These aggressive strategies—relying primarily on arrests—have, however, been found to have direct negative effects on community-police relations, making community members feel unsafe and reducing trust in and cooperation with the police.<sup>c</sup>

Broken windows evolved in an era of rising crime as a way for police departments to attempt to increase order in challenged communities, with the goal of reducing crime. The strategy’s logic may seem intuitively attractive. But in practice, its widespread application has had many negative unintended consequences for the neighborhoods most affected—usually places with concentrated poverty and often communities of color. This has been particularly apparent when implemented in conjunction with other proactive policing activities such as hot-spots policing—a strategy that focuses resources on the locations where crime or 911 calls for police service are highly concentrated—as well as extensive use of pedestrian stops (the use of temporary detention and interrogation in the field) to detect and disrupt potential criminal activity.<sup>d</sup>

Indeed, because of increases in the probability of police contact for people in targeted communities—again, often disproportionately those with large concentrations of poor people and people of color—such impacts include heightened risk of further downstream criminal justice involvement, along with the full breadth of collateral consequences that flow from such contact, including barriers to housing, employment and credit.<sup>e</sup> Beyond the personal toll, the large-scale cycle of enforcement, arrest, removal, and return of people damages familial and community relationships and disrupts neighborhood life, including the number of social networks that can exert informal social control and encourage social cohesion among community members.<sup>f</sup>

At the extreme, this kind of overpolicing can turn fatal. One example is the violent confrontation that led to the death of Eric Garner in 2014—the pretext for which was Garner’s participation in the tobacco gray market through the sale of single cigarettes on a Staten Island street corner.<sup>g</sup> Deaths at the hands of police have also occurred during traffic stops, such as the 2015 death of Walter Scott, who was shot in the back as he fled the police after being stopped for a nonfunctioning brake light; and the 2016 death of Philando Castile, who police shot as Castile was reaching for his license and registration during a stop purportedly for a broken taillight.<sup>h</sup> The aggressive use of such intrusive policing tactics can have wider adverse impacts for communities and police: from an increase in the number of unproductive police contacts that can sow the seeds of mistrust in the communities police are meant to serve, to the noxious effect of encouraging racially problematic behaviors to grow and proliferate under the guise of police discretion and/or officers’ perceived fears for their personal safety.<sup>i</sup>

<sup>a</sup> George L. Kelling and James Q. Wilson, “Broken Windows: The Police and Neighborhood Safety,” *Atlantic*, March 1982, 29-38, <https://perma.cc/3MJ3-ZY6J>.

<sup>b</sup> For a synthesis of research on policing strategies focused on disorder, see Anthony A. Braga, Brandon C. Welsh, and Cory Schnell, “Can Policing Disorder Reduce Crime? A Systematic Review and Meta-analysis,” *Journal of Research in Crime and Delinquency* 52, no. 4 (2015), 567-588, <https://perma.cc/T39B-X7TA>. The researchers identified 30 studies that met the Campbell Collaboration criteria. In combining the results of these studies, the researchers found that general policing disorder strategies are associated with a small reduction in crime. However, when the researchers compared “community and problem-solving interventions” to “aggressive order maintenance strategies” they found differing results. “Community and problem-solving interventions,” defined as community problem-solving programs that attempted to engage residents, local merchants, and others in the identification of local crime and disorder problems and the development and implementation of appropriate responses, produced a large and significant effect in reducing crime. On the other hand, “aggressive order maintenance interventions” that focus on individual disorderly behaviors, primarily relying on arrests, ordinance violation summonses, and other law enforcement strategies, and not typically involving the community, resulted in much smaller crime reductions.

<sup>c</sup> Jacinta M. Gau and Rod K. Brunson, “Procedural Justice and Order Maintenance Policing: A Study of Inner-City Young Men’s Perceptions of Police Legitimacy,” *Justice Quarterly* 27, no. 2 (2010), 255-279.

<sup>d</sup> Bernard E. Harcourt, *Illusion of Order: The False Promise of Broken*



*Windows Policing* (Cambridge, Massachusetts: Harvard University Press, 2004).

<sup>e</sup> Elizabeth Hinton, LeShae Henderson, and Cindy Reed, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System* (New York: Vera Institute of Justice, 2018), 10 & n.103, <https://perma.cc/UQ8D-5KUB>.

<sup>f</sup> Research that focuses on the community-level impact of incarceration has demonstrated that these harms extend far beyond direct collateral consequences for formerly incarcerated people. Incarceration strains ties not only between incarcerated people and their community, but also between their family and the community—and diminishes social capital for themselves, their children, and their extended family. When an incarcerated parent is a mother, these harms can be compounded in significant ways as childcare needs go unmet and children enter the foster system. Communities disorganized by financial and personal strain in this way are unable to form and sustain informal social control mechanisms that can prevent antisocial behavior by community members. Normative behaviors in communities affected by incarceration tend to be less social, less cooperative, and less likely to be trusting of law or law enforcement. And the disenfranchisement and exclusion of formerly incarcerated people in matters of civic participation or labor opportunities make them less likely to be able to reintegrate or regain social capital in the community. Dorothy Roberts, “The Social and Moral Cost of Mass Incarceration in African American Communities,”

*Stanford Law Review* 56, no. 5 (2004), 1271-1305, 1281-96, <https://perma.cc/6YM5-XV4B>. Besides undermining the development of informal social controls and trust in formal enforcement, community exposure to incarceration also undermines trust in informal social controls as a positive influence. Dina Rose and Todd Clear, “Who Doesn’t Know Someone in Jail? The Impact of Exposure to Prison on Attitudes toward Formal and Informal Controls,” *Prison Journal* 84, no. 2 (2004), 228-247. See also Todd Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (New York: Oxford Press, 2007).

<sup>g</sup> Joseph Goldstein and Nate Schweber, “Man’s Death after Chokehold Raises Old Issue for the Police,” *New York Times*, July 18, 2014, <https://perma.cc/3JH9-G4HC>.

<sup>h</sup> For the death of Walter Scott, see Matthew Vann and Erik Ortiz, “Walter Scott Shooting: Michael Slager, Ex-officer, Sentenced to 20 Years in Prison,” NBC, December 7, 2017, <https://perma.cc/Q55Q-5K37>. For the death of Philando Castile, see Bill Kirkos and Holly Yan, “Philando Castile Death: Fate of Police Officer Now in Jury’s Hands,” CNN, June 12, 2017, <https://perma.cc/U2FQ-6F5L>.

<sup>i</sup> For negative community impacts, see Gau and Branson, “Perceptions of Police Legitimacy,” 2010. For problematic patterns of enforcement under the guise of discretion, see U.S. Department of Justice (DOJ), Civil Rights Division, *Investigation of the Baltimore City Police Department* (Washington, DC: DOJ, 2016), 26.

## Working at the margins: Alternatives-to-arrest programs\*

Despite an array of factors incentivizing reliance on punitive enforcement, police have long understood that “full enforcement”—the expectation that they enforce the letter of the law in every situation—is not practicably possible; nor is it in many circumstances an effective response to widespread social problems that may underlie lawbreaking—from poverty, to homelessness, to substance use, to mental illness.<sup>1</sup> More and more, society is coming to understand that there are some problems that, in the frequently used phrase, “We cannot arrest our way out of.”<sup>22</sup>

Some police departments, individual officers, and communities are recognizing that they must moderate the use of punitive enforcement as a matter of policy and practicality as well as public safety. Thus, police routinely use a process called “diversion,” a variety of informal and formal practices that filter certain cases out of traditional criminal justice processes.<sup>3</sup> For police, this can mean employing informal responses such as issuing warnings or requesting people to discontinue certain behaviors.<sup>4</sup> Sometimes police also refer people to third parties—friends, family members, community-based services, or other resources—when they perceive that cases may be better handled outside the criminal justice system.<sup>5</sup>

Some law enforcement agencies have collaborated with community organizations and other criminal justice stakeholders to develop formal diversion programs and practices that channel certain categories of people—usually those considered low risk or in need of specialized treatment—away from the criminal justice system.<sup>6</sup> A number of these collaborations have been in existence for decades.<sup>7</sup> They represent a notable example of law enforcement agencies making deliberate decisions to elevate and validate nonpunitive approaches—rather than depending on ad hoc decisions made by street-level officers or the informal policing culture of a particular department—as an organizational crime response and prevention strategy that prioritizes the values of restraint and minimization of harm.

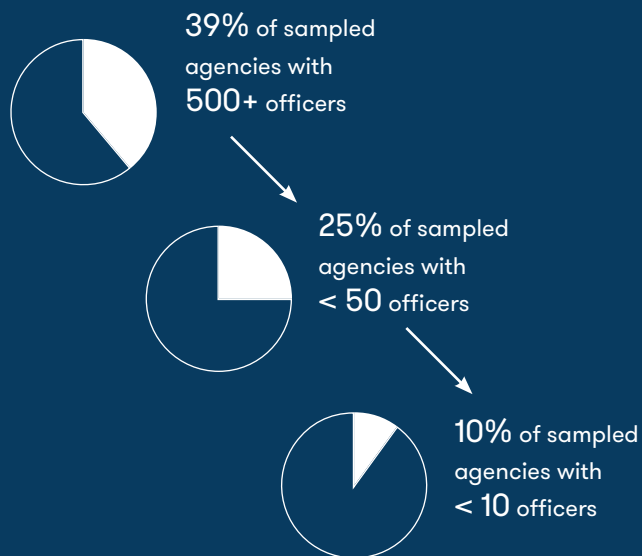
Formal diversion programs remain limited in both scale and scope. Yet they have demonstrated that alternatives to enforcement not only can produce public safety gains, they can also align with the broader goals and culture of law enforcement agencies. But the challenges these programs face in terms of acceptance, impact, and effectiveness also demonstrate the obstacles that stand in the way of bringing them to scale.

### Prevalence, scale, and scope of police diversion

In a large survey of police agencies nationwide conducted by the Center for Court Innovation (CCI) and published in 2016, roughly a third of police agencies surveyed reported

engaging in diversionary practices of some kind, but only one in five were operating what could be described as a formal and intentional program.<sup>8</sup> Not surprisingly, the survey found that formal programs are more common in larger police departments.<sup>9</sup> Thirty-nine percent of sampled agencies with 500 or more officers reported operating a formal initiative of some type, but that rate dropped to 25 percent for agencies with fewer than 50 officers and 12 percent for agencies with 10 or fewer officers.<sup>10</sup> The impact of these programs also ranged widely, from diverting a few thousand people to none at all during the period studied.<sup>11</sup>

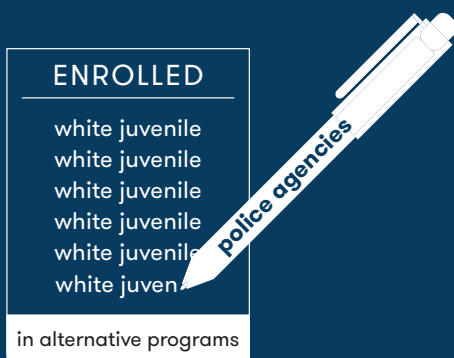
### Percent of police agencies operating a formal diversion initiative, CCI survey



The CCI survey, along with research compiled by the International Association of Chiefs of Police in partnership with other organizations, also suggests that when police control diversion they tend to focus narrowly on specific groups of people: typically juveniles, people with mental illness, sex workers, and people who use drugs, all of whom are usually charged with relatively minor, nonviolent offenses and/or are being charged with a crime for the first time.<sup>12</sup> There is growing interest in diverting people who come into contact with the criminal justice system by repeatedly committing the same or similar low-level, nonviolent offenses because of underlying needs and circumstances, but rules governing eligibility for such programs still shut out too many people—often excluding those who have certain offenses in their criminal histories.<sup>13</sup>

There is also evidence—most robust in the realm of juvenile diversion—that racism and other biases unfairly influence who reaps the benefits of these alternatives, as they do in other realms of police enforcement.<sup>14</sup> In 2016, researchers examined how demographic factors affect juvenile justice system outcomes and the likelihood of diversion by analyzing a year’s worth of data from eight different police agencies and prosecutors’ offices in a large Midwestern metropolitan county.<sup>15</sup> The results suggest that many more juveniles were eligible for diversion than police and prosecutors diverted and, moreover, that they were likely to overlook young people of color.<sup>16</sup> Specifically, in five of the eight agencies (63 percent), police enrolled eligible nonwhite juveniles in alternative programs less often than their white peers, even when all other factors were the same or controlled for through statistical means.<sup>17</sup>

## Police enrolled eligible nonwhite juveniles in alternative programs less often than their white peers



### Formal alternative-to-arrest programs

Most formal alternative-to-arrest programs keep people under the umbrella of the criminal justice system. Diversion can occur before someone is arrested and formally charged with a crime (known as pre-arrest diversion); or it can happen after normal arrest procedures, but prior to arraignment and/or a potential stay in local custody (known as pre- or post-booking diversion).<sup>18</sup> Regardless of when diversion occurs, legal coercion is involved. The criminal case against the person is not dismissed, but held in abeyance and if participants do not successfully fulfill obligations imposed by a diversion program—which can be anything from remaining arrest-free to completing community service to participating in a drug education program—the criminal case is reinstated, and the person will face prosecution and trial.<sup>19</sup>

**Law Enforcement Assisted Diversion (LEAD)** is perhaps the most widely replicated police diversion program, although the point at which diversion occurs varies by city.<sup>20</sup> In some jurisdictions, police divert people instead of arresting them, while in others, diversion happens after an arrest but before the person is booked into jail.<sup>21</sup> But everywhere the goal is the same: to connect people, often through referrals to community-based providers, with services and supports that can help them change their lives for the better.<sup>22</sup> It might be medical care, mental health or drug treatment, safe housing, counseling, or something else.<sup>23</sup> In this way, LEAD addresses the root causes of crime.<sup>24</sup>

**Pre-arrest diversion.** The Pre-Arrest Diversion Initiative (PAD) in Fulton County (Atlanta), Georgia—similar to LEAD, but limited, as its name indicates, to pre-arrest action—takes a harm reduction approach, which addresses people’s needs while trying to minimize the adverse impacts of criminal justice involvement. The program also takes a housing-first approach and is both trauma-informed and culturally competent.<sup>25</sup> PAD was spurred by grassroots organizers and the very people it seeks to help: mainly poor people, many of them sex workers, whose health care and other needs have gone unmet while they have had multiple negative encounters with the criminal justice system.<sup>26</sup> Today, PAD partners with the Atlanta Police Department to connect people who otherwise would be arrested with the care they need.<sup>27</sup>

**Post-booking diversion.** A prime example of a post-booking diversion program is Richmond County, New York’s Heroin Overdose Prevention and Education (HOPE) program.<sup>28</sup> Officers have the option to process people with little to no criminal history who are arrested on low-level drug possession charges and qualify for a desk appearance ticket (DAT) for a seven-day return date, rather than the 30-day return date typical of DATs.<sup>29</sup> At the same time, officers contact a peer coach who meets participants on their release, provides them with a Naloxone kit and training on how to use it, and encourages them to visit a local resource and recovery center that can provide assessment and treatment option recommendations.<sup>30</sup> If they do so before their return date, their cases are adjourned for 30 days; if they engage with treatment within the adjournment period, they will not be prosecuted.<sup>31</sup>

**Outcomes of formal diversion programs.** Because formal diversion is still relatively uncommon and small in scale, the research on its effects is limited. There is, however, evidence that diversion reduces recidivism. For example, two meta-analyses examining the effects of youth diversion programs showed they are more effective at reducing recidivism than traditional criminal justice interventions such as arrest, probation, and incarceration.<sup>32</sup> Another systematic literature review, looking at the effects of diversion for people with mental illnesses, also found reductions in recidivism as measured by the number of subsequent arrests—although the authors note the need for more research.<sup>33</sup>

Despite a general lack of literature, there are evaluations of programs from single jurisdictions with encouraging findings. Leon County, Florida, for example, operates a PAD program that allows responding officers to cite instead of arrest people suspected of committing select misdemeanors—including trespassing, disorderly conduct, petty theft, possession of small amounts of marijuana, non-domestic simple battery/simple assault, and others—for whom this would be the first offense.<sup>34</sup> Those in PAD have to complete a program tailored to the nature of their alleged offenses—for example, drug education, behavior management, counseling sessions, and/or community service—and, if they successfully complete the program, the case is closed.<sup>35</sup> A study of 854 PAD participants published in 2017 shows that 91 percent successfully completed the program.<sup>36</sup> There was no comparison group, but 87 percent of participants avoided re-arrest through the end of the study, a period ranging from five to 44 months post-program completion.<sup>37</sup> The study showed that PAD was especially effective for women and for men and women without substance use or behavioral health problems, as they were the least likely to drop out or recidivate.<sup>38</sup>

Several evaluations show that in jurisdictions that have adopted LEAD programs, the programs are associated not only with lower recidivism but also with greater stability

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## One study of LEAD outcomes found that participants were...



**Twice** as likely to find shelter



**89%** more likely to obtain permanent housing



**46%** more likely to be employed or training for employment



**33%** more likely to connect with supplemental income and benefits

and quality of life for those who participate. In one study, researchers tracked LEAD participants' housing, employment, income, and benefits before and after program referral and found significant improvements in all of these areas.<sup>39</sup> Participants were twice as likely to find shelter; 89 percent more likely to obtain permanent housing; 46 percent more likely to be employed or training for employment; and 33 percent more likely to connect with income and benefits such as veteran pensions, unemployment, supplemental security income, and Temporary Assistance for Needy Families.<sup>40</sup>

The value of diversion programs is not limited to participants: a cost-benefit study of Seattle's LEAD program in 2015 also indicates the program's economic value to the jurisdiction. Participation in LEAD was associated with a net savings of \$2,100 per person, compared with a cost increase of \$5,961 for a matched comparison group.<sup>41</sup> The difference is a function of the reduction of costs associated with jail bookings, days spent in jail, and prison incarceration.<sup>42</sup> Thus, while the programmatic costs of diversion are relatively high, long-term participation in LEAD is associated with statistically significant reductions in criminal justice system use and the higher costs associated with it.

However, other cost-benefit studies in the area of pre-arrest diversion have produced widely differing results: several meta-analyses reveal that there is a widely varying but positive chance of producing benefits greater than the overall costs.<sup>43</sup> Every evaluation of pre-arrest diversion programs that the researchers studied in these comprehensive meta-analyses found either slight or significant improvements in outcomes, suggesting that even small-scale programs can generate positive results and that greater investments and attention can expand improved outcomes.<sup>44</sup>

## Bypassing the criminal justice system entirely

Some law enforcement agencies have developed problem-solving programs aimed at keeping people out of the criminal justice system altogether. For instance, police officers have increasingly become the primary first responders to situations involving people living with a mental or behavioral health disorder—and, in many cases, their de facto health providers.<sup>45</sup> Rather than arrest people who are struggling, these departments have focused on making police contact a pathway to care.<sup>46</sup>

The Crisis Intervention Team (CIT) model is a collaborative effort between law enforcement and mental health professionals that is designed to allow officers to become conduits to treatment in situations where enforcement is neither necessary nor the best option.<sup>47</sup> The heart of the model is a 40-hour training course for officers in the dynamics of mental illness and how to respond effectively to people in crisis.<sup>48</sup> Most agencies that have adopted the model aim to train roughly 25 percent of uniformed staff.<sup>49</sup> Several Texas counties have taken a more expansive

approach: Bexar County (San Antonio), had 95 percent of its officers CIT-trained by 2016.<sup>50</sup> The Houston Police Department expanded its CIT initiative department-wide and had more than 3,100 CIT-certified officers by 2018.<sup>51</sup> Houston police also added an escalated response option for especially difficult CIT calls: Crisis Intervention Response Teams (CIRTs) in which a licensed masters-level clinician is paired with a CIT-certified officer.<sup>52</sup> As of 2016, there were 12 CIRTs serving Houston's Harris County, with plans to add more, making it one of the largest co-responder programs in the nation.<sup>53</sup>

While full-scale evaluations of CIT programs are limited, research has shown that they improve officers' knowledge, attitudes, self-efficacy, and inclination to use de-escalation strategies.<sup>54</sup> Evidence also suggests that CIT programs increase referrals and linkages to mental health services.<sup>55</sup>

CITs are not the only such co-response model being investigated by police departments. *Disability Response Teams* (DRTs) bring together law enforcement, victim service providers, legal professionals, and advocates to uncover and problem-solve community-specific challenges around the intersection of criminal justice and disability; *co-responder teams* embed mental health clinicians with responding police officers; and *case management teams* provide coordinated follow-up from police and mental health professionals

for people who have been identified as frequent users of emergency response systems.<sup>56</sup>

Meanwhile, the current epidemic of drug overdose deaths—particularly those related to opioids—has prompted some law enforcement agencies to take other proactive measures, such as joining wider community and government overdose prevention efforts by creating non-arrest, stigma-free pathways to treatment and recovery. For example, in 2015, the then-police chief of Gloucester, Massachusetts, established its Angel Program, which encourages drug users to walk into the police station with their drugs and/or paraphernalia and ask for treatment.<sup>57</sup> Rather than processing these people for arrest, police officers contact treatment facilities to find a space for a presenting person and contact a local volunteer recovery and addiction expert who can provide emotional support.<sup>58</sup> With the Angel Program now incorporated into the Police Assisted Addiction and Recovery Initiative (PAARI)—a movement of police departments across 35 states and the federal government—more than 20,000 people had received treatment through nearly 500 participating law enforcement agencies as of March 2019.<sup>59</sup>

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\* Box notes at end of report.

# Shifting the paradigm

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There is a real appetite for reducing America's reliance on incarceration. Yet there have been only scattered efforts to approach the goal by starting at the point of first contact for the vast majority of people who end up in jail or prison—through changing policing practices and priorities—and scant study of these initiatives. Expanding alternatives to police enforcement from a marginal practice to a defining aspect of American policing requires a clear path forward. Such a monumental shift

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A monumental shift in policing culture and practice will require a nationally concerted effort that engages local elected officials and police leadership, collaboration with and investment in community-based service providers, and the support of the general public.

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in policing culture and practice will require a nationally concerted effort that engages local elected officials and police leadership, collaboration with and investment in community-based service providers, and the support of the general public. Patience, as police leaders update policies, innovate training, and work to alter an entrenched organizational culture that rewards and encourages arrest, is necessary. America will not reduce its reliance on enforcement overnight.



Specifically, for police to figure out how they can move away from the mass enforcement status quo, they need a comprehensive set of strategies on how to better channel their wide reservoir of discretion when deciding what laws to enforce, against whom, and in what circumstances. To protect against risks of arbitrary, haphazard, or discriminatory enforcement that have led to so many unnecessary arrests—whether through practices such as overintensive and misplaced police surveillance or unnecessary use of force—these strategies also need to make police exercise of discretion much more focused, deliberate, reflective, and transparent. In many circumstances, this may mean giving greater discretion to police *not* to use their authority to arrest, and providing the appropriate infrastructure and set of incentives to support less intrusive and nonenforcement options.<sup>133</sup>

To help spur discussion and inspire change, Vera offers a number of recommendations about how to move along this path based on lessons drawn from the small body of research on alternatives to date and an assessment of what has driven the current overreliance on enforcement (including the messages received from superiors, departmental priorities or directives, institutional incentives, and the current scarcity of alternatives). Based on what is known, it will then be possible to build from existing informal and formal alternative-to-arrest programs, practices, and policies and lay the foundation for a different paradigm in American policing.

## Recommendation 1: Identify, promote, and invest in alternatives to enforcement that don't involve the criminal justice system



The earliest stage at which alternatives to punitive enforcement can come into play is prior to any call for service or observation of criminal activity. And those alternatives depend in large part on police partnering with—and localities investing in and enhancing—community-based services and supports that focus on dealing with the root causes of crime and social disorder, such as mental illness, homelessness, substance use, and poverty outside the criminal process. There are many circumstances in which an officer can provide potentially helpful information and walk away—or not

engage at all—but there are other situations in which doing nothing is neither safe nor responsible. It is precisely in these difficult circumstances that officers need a validated alternative to arrest as well as an established protocol for accessing these services.

Thus, a necessary step in creating robust alternatives to enforcement is expanding the service-provision capacity of health care and ancillary systems in the community. This will require local political will beyond policing, though the support of police can help catalyze such efforts. The broader success of such services rests on their capacity to evaluate people and respond accordingly without delay. Such rapid response requires that police agencies and officers develop sustained connections with an array of local human service providers and other community-based organizations and resources to connect people with whom they often come into contact to such things as behavioral health care, housing, and other social services as an alternative to arrest and detention. Doing so can deepen the engagement of police with the communities they serve.

## Community drop-off centers

One option is for police departments to expand their use of community-based drop-off centers, which can provide shelter, clinical, and other social services for people in crisis—particularly those with a mental illness and/or substance abuse problem, who are more likely to be arrested and are overrepresented in jail and prison populations.<sup>134</sup> Police in multiple localities—for example, Johnson County, Kansas; Miami-Dade County, Florida; Salt Lake County, Utah; and the city of San Antonio, Texas—have increasingly used such centers to connect people with appropriate clinical assessments, crisis services, and referrals to other resources and services.<sup>135</sup> In Houston, Texas, the Houston Recovery Center, which is open 24/7 year-round, provides short-term crisis care as well as a voluntary sobering center that offers a safe, supportive environment for intoxicated people, including those referred by law enforcement.<sup>136</sup> The authors of a 2001 review of three substance abuse and mental health diversion programs (in Memphis, Tennessee; Montgomery County, Pennsylvania; and Multnomah County, Oregon) suggest, as best practices, that such centers must adopt a no-refusal policy—accepting people whether or not they meet criteria for

involuntary treatment—and that the process must be less difficult and less time consuming for officers than making an arrest.<sup>137</sup> In Tucson, according to the city crisis center’s former CEO, police can drop someone at the center and be back on the street within 15 minutes, compared to the several hours required to process an arrest.<sup>138</sup>

However, the mere existence of such centers may not be enough to reduce criminal justice contact in the long term, particularly among people with behavioral health problems. A 2010 meta-analysis of research into programs both inside and outside the criminal justice system aimed at people with mental illness found that even evidence-based mental health interventions that have proven successful in improving clinical outcomes are largely ineffective in lowering police contact and arrest or reducing risk of incarceration or recidivism.<sup>139</sup> The analysis indicates that such programs have not yet yielded positive criminal justice outcomes primarily because they begin with the assumption that reoffending is caused solely by untreated mental illness, rather than by a variety of factors.<sup>140</sup> This suggests that if community-based interventions such as community drop-off centers are to be successful in lowering criminal justice involvement, they need to offer, or have access to, comprehensive services addressing the holistic needs of high-risk populations (including unemployment, homelessness, and involvement with peers who are engaged in criminal behavior) and not simply focus on behavioral health symptoms and treatment.

As officials in Camden, New Jersey, discovered, addressing people’s needs more comprehensively requires agencies to share crucial health data across systems to help both community-health providers and law enforcement responders better identify people’s needs and tailor appropriate interventions.<sup>141</sup> (See “Camden’s policing transformation” on page 41.) Vera researchers found a similar phenomenon and need through an effort to share behavioral health information across justice and health systems in the District of Columbia. Vera’s research revealed that although clinicians, officers, and other decision makers infrequently have full access to behavioral health information about the justice-involved people with whom they come into contact, together health and justice agencies had access to behavioral health data for six out of every 10 arrestees.<sup>142</sup> If shared across agencies, this information could help clinicians and police officers alike fashion better-tailored interventions or treatments for people

who need it. The findings suggest that greater access to behavioral health data can better identify people for treatment and improve continuity of care, with the goal of reducing their contacts with both the criminal justice and health care systems.<sup>143</sup>

## Responses that tackle underlying causes that trigger police enforcement

Because enforcement is the response to far too many violations rooted in poverty, police need alternatives to arrest for such encounters as well. In response to the 2016 death of Philando Castile, who was shot and killed by a Minnesota police officer after a traffic stop purportedly involving a broken taillight, Minnesota-based nonprofit MicroGrants created Lights On!, a program that authorizes officers who stop motorists for minor violations such as broken taillights to issue a \$50 voucher—in lieu of a traffic ticket—that the motorist can redeem at participating auto repair shops.<sup>144</sup> The program is a more humane and effective response that provides law enforcement with a creative intervention to decrease unnecessary arrests and avoid a vicious cycle of mounting fines when people who cannot afford to repair their vehicles get ticketed repeatedly.<sup>145</sup> The program has been replicated in Iowa City, Iowa, and other jurisdictions in the Midwest hope to adopt the idea.<sup>146</sup>

## Crime prevention programs

Seeding community-based violence prevention programs and neighborhood watch organizations that deal directly with crime and related community issues can also enhance safety while reducing arrests and incarceration. The Audre Lorde Project in Brooklyn, New York, provides two such programs. The Safe Neighborhood Campaign encourages community members to promote nonviolence and to intervene in the wake of a violent event.<sup>147</sup> The Safe OUTside the System (SOS) Collective is another antiviolence program with the goal of creating community-based strategies to address crime instead of relying on the police.<sup>148</sup>

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## Camden's policing transformation

Over the past five years, Camden, New Jersey, has remade its law enforcement culture. In December 2013, *Rolling Stone* featured Camden in an article titled “Apocalypse New Jersey: A Dispatch from America’s Most Desperate Town.”<sup>a</sup> At the time, Camden, across the Delaware River from Philadelphia, was one of the nation’s most dangerous cities, with a murder rate of about 85 per 100,000 residents.<sup>b</sup> Today, while this city of roughly 75,000 residents still faces endemic poverty as well as myriad social and economic challenges, crime is falling.<sup>c</sup>

Camden County Police Chief J. Scott Thomson jumpstarted the changes by going back to the drawing board. In 2013, he disbanded the city’s police department, rethinking its approach to policing and reconstituting it as the Camden County Police Department, with fewer officers and an emphasis on community policing.<sup>d</sup> Crime overall is at a 50-year low, and 2017 marked the lowest number of murders since 1969 (the number of aggravated assaults with a firearm, however, rose over the past three years).<sup>e</sup> The turnaround happened, in large part, through community policing initiatives.

Thomson, a Camden native, began the transformation by instructing his officers to get out of their cars and walk the streets so they could get to know people.<sup>f</sup> The department also began hosting free communitywide events such as “Movies with Metro” film events that include popcorn, snacks, and drinks, and pop-up block parties featuring burgers, hotdogs, and hoops.<sup>g</sup> Because violent crime remains a concern in Camden, the department leads an Office of

Juvenile Justice and Delinquency Prevention-funded program called G.R.E.A.T., for Gang Resistance and Education Training; as well as Project Guardian, which taps local churches and community centers to spread messages of nonviolence to young people.<sup>h</sup>

Today, the department is working closely with the Camden Coalition of Healthcare Providers to understand and address the considerable overlap between people who make repeated visits to hospital emergency rooms and are also arrested multiple times.<sup>i</sup> This data-sharing initiative, known as Camden ARISE (Administrative Records Integrated for Service Excellence), has identified a group of people known as super-utilizers, who each experienced 16 or more emergency room visits and seven or more arrests over a five-year period—a sign that neither system is meeting their needs.<sup>j</sup> Because an analysis of this data revealed that most of these arrests were for nonviolent, low-level offenses—disorderly conduct in particular—the police department is now working with health care and other local service providers to create a screening tool to divert such high-need people away from the criminal justice system.<sup>k</sup>

Camden faces steeper challenges than most cities—37.4 percent of the population lives below the poverty line, including nearly half of residents under 18—but the city continues to benefit from a police department that views its officers as guardians of the community as opposed to just enforcers of the law.<sup>l</sup>

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<sup>a</sup> Matt Taibbi, “Apocalypse, New Jersey: A Dispatch from America’s Most Desperate Town,” *Rolling Stone*, December 11, 2013, <https://perma.cc/D5EY-GW57>.

<sup>b</sup> For crime rates in Camden, see Vera Institute of Justice, “Arrest Trends,” (Camden), <https://perma.cc/87XJ-YK55>. See also Andy McNeil, “2013 Marks Deadly Year in Camden,” *Courier-Post*, January 5, 2014, <https://perma.cc/AHS3-663K>.

<sup>c</sup> Camden County, “Camden Officials Celebrate Topping-Off of New Office Headquarters,” press release [Camden, NJ: Camden County, June 12, 2018], <https://perma.cc/2DQK-B2R4>.

<sup>d</sup> Sara Holder, “What Happened to Crime in Camden?,” *CityLab*, January 10, 2018, <https://www.citylab.com/equity/2018/01/what-happened-to-crime-in-camden/549542/>.

<sup>e</sup> “Camden Had Lowest Homicide Rate in 33 Years in 2017,” *SNJ Today*, July 24, 2018, <https://perma.cc/8RCH-3QRQ>; and Sara Holder, “What Happened to Crime in Camden?,” 2018.

<sup>f</sup> J. Scott Thomson, “Five Voices on Reforming the Front End of Justice: Where Police are Told to Be ‘More Peace Corps than Special Forces,’” *The Marshall Project*, July 17, 2016, <https://perma.cc/254S-3MCS>.

<sup>g</sup> ESI Econsult Solutions Inc., *The Positive Impacts of Investments in Camden, NJ on Social Determinants of Health* (Camden, NJ: ESI Econsult Solutions Inc., 2019), 12, <https://perma.cc/77ZL-FQ4P>.

<sup>h</sup> For more on G.R.E.A.T., see G.R.E.A.T. Gang Resistance Education and Training, “History,” <https://perma.cc/9HEJ-LX5T>; and Mike Dougherty, “Dozens of Camden Students Complete Gang Resistance Program with Police,” 3 CBS Philly, June 14, 2017, <https://perma.cc/L7PR-Y5SE>. For more on Project Guardian, see George Woolston, “Camden Police Program Helps Get At-Risk Teens on the Right Path,” *Tap into Camden*, June 16, 2018, <https://perma.cc/6ZRM-R845>.

<sup>i</sup> Camden Coalition of Healthcare Providers (CCHP), *About the Camden Coalition* (Camden, NJ: CCHP, 2018), <https://perma.cc/SC4G-TYD4>.

<sup>j</sup> Anne Milgram, Jeffrey Brenner, Dawn Wiest et al., *Integrated Health Care and Criminal Justice Data—Viewing the Intersection of Public Safety, Public Health and Public Policy Through a New Lens: Lessons from Camden, New Jersey* (Cambridge, MA: Harvard Kennedy School, 2018), 4-6, <https://perma.cc/9HQF-AE62>.

<sup>k</sup> CCHP, “Creating a Police Screening and Diversion Tool with Camden ARISE,” *CCHP News*, July 10, 2017, <https://perma.cc/UWW7-4T3F>.

<sup>l</sup> For poverty statistics in Camden, see U.S. Census Bureau, “American Fact Finder: Community Facts—Camden, NJ,” *Selected Economic Characteristics 2013-2017 American Community Survey 5-Year Estimates*, <https://perma.cc/6NF2-26PD>. For the police department’s role, see Thomson, “More Peace Corps than Special Forces,” 2016.

## Recommendation 2: Reengineer the 911 system



Nationally there are an estimated 240 million calls to 911 over the course of a year.<sup>149</sup> The number of such calls that are for police—rather than emergency medical or fire—service is unknown, but a study in San Francisco found that police calls for service constituted just under half of all calls.<sup>150</sup> Many calls for service involve people in crisis or other situations that police are not well-equipped to handle.<sup>151</sup> Others involve minor inconveniences, such as a parked car blocking a driveway. The nation’s police officers have become the first responders to society’s

### Mapping 911 calls in two counties

Tracking call trends is a crucial first step in overhauling the 911 system. Research in Surrey, British Columbia, for example, found that mental health-related calls occurred most often on weekdays (especially Mondays and Wednesdays), and domestic violence calls peaked on weekends (especially Sundays).<sup>a</sup> Other differences emerged as well, including that mental health-related calls peaked midafternoon through 10:00 p.m., whereas domestic violence-related calls peaked between 9:00 p.m. and midnight.<sup>b</sup> The nature and timing of calls may vary greatly among jurisdictions, but the study highlights the value of examining 911 call data to inform resource allocation and strategic planning.

Ultimately, much more research is needed to fully understand and sharpen the role of 911 call-takers and police dispatchers with the goal of reducing unnecessary enforcement. Vera is currently engaged in one of the most in-depth studies to date of 911 data, looking at calls placed in Tucson, Arizona, and Camden, New Jersey, over a two-year period. The goal is to develop a comprehensive picture of who is seeking help and why as the first step toward developing responsive, practical, and scalable alternatives to police enforcement. The analysis looks at type, frequency, and time of calls, along with caller demographics and location, to identify salient trends in help requests. The study will also examine

outcomes—the time it takes police to arrive on the scene, what (if any) enforcement actions officers take, and any social service referrals they make.

More can be done to better analyze existing 911 data and to standardize data collection across jurisdictions to aid research and policy development.<sup>c</sup> Using technology that recognizes and sorts text to discover patterns would allow systems to, for example, create more meaningful menu options in lieu of “fill in the blank” fields for requests, responses, and outcomes. Having these menu options would, in turn, help future researchers identify trends more quickly.

<sup>a</sup> Adam Vaughan, Kathryn Wuschke, Ashley Hewitt et al., “Variations in Mental Health Act Calls to Police: An Analysis of Hourly and Intra-Week Patterns,” *Policing: An International Journal* 41, no. 1 (2018), 58-69, 64.

<sup>b</sup> *Ibid.*, 62-63.

<sup>c</sup> See S. Rebecca Neusteter, Maris Mapolski, Mawia Khogali, and Megan O’Toole, *The 911 Call Processing System: A Review of the Literature as it Relates to Policing* (New York: Vera Institute of Justice, 2019), [www.vera.org/911-call-processing-review](http://www.vera.org/911-call-processing-review).



ailments, major and minor, and too often respond with the tool that is most familiar, expedient, and rewarded: enforcement.

This trend is at odds with the widely shared belief that police should be developing better community relations and preventing and solving serious crime.<sup>152</sup> The search for better options in responding to 911 calls is not just about conserving scarce resources, it is also about building bridges between law enforcement and the communities it serves. 911 call centers and police dispatchers can and likely will play a critical role in advancing the use of alternative responses to enforcement.<sup>153</sup> For example, by directing the right resources to the right callers, dispatchers can save scarce police resources and bolster community relationships. But before they can do this, they will need to be able to identify calls that require highly specialized responses—such as those involving mentally ill people and others in crisis—and differentiate them from calls meriting a nonemergency, nonclinical response.<sup>154</sup> (See “Mapping 911 calls in two counties” on page 42.)

## Divert calls to crisis or nonemergency help hotlines

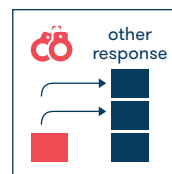
Calls that do not require an emergency law enforcement response should be diverted to more appropriate resources. Review of data from two very different places—New York City and Tucson, Arizona—suggests that three out of four calls in which police respond don’t involve a crime in progress.<sup>155</sup> Data from Seattle offers an even more nuanced picture. In 2017, of the approximately 450,000 911 calls for police service citywide, two of the top three concerns were related to traffic and other disturbances.<sup>156</sup> Seattle police were just as likely to respond to a traffic-related 911 call as they were to a call about a suspicious circumstance.<sup>157</sup> Many of these traffic-related calls likely do not involve serious damage or injury: nationally about 70 percent of traffic accidents involve property damage only.<sup>158</sup> The default to police—especially in places with already frayed community-police relations—can lead to worse outcomes than if no one had responded, including unnecessary arrests.<sup>159</sup>

Ideally, dispatchers can direct nonemergency 911 calls away from immediate police response, preserving law enforcement resources and

deploying responses tailored to the individual circumstance. Training call-takers and dispatchers on the manifestations of mental illness can promote more accurate routing of calls. A survey by the Police Executive Research Forum found that while some police agencies believe it is easy to determine if a call is mental-health related, others believe this judgment requires officers on the scene.<sup>160</sup> Some police agencies have already directly linked 911 call-takers and police dispatchers with mental health professionals to more accurately assess the nature of calls and trigger the best response.<sup>161</sup> There is also evidence that in communities known to have mental health crisis intervention teams, callers may specifically ask for the team.<sup>162</sup> Crisis hotlines, too, can reduce the use of expensive—and often less effective—hospital emergency services by connecting people with much-needed behavioral health services.<sup>163</sup>

Many cities already have nonemergency help lines that ease the burden on 911.<sup>164</sup> In the United States and Canada, 211 is reserved as a nonemergency number for information and referrals to nonemergency health services, human service providers, and social service organizations. In 2017, more than 13 million 211 calls were placed, the majority of which were referrals for physical and mental health services, employment opportunities, homelessness prevention services, and housing assistance.<sup>165</sup> Many cities, including New York City, also have 311 lines, where callers can get city-specific help. Callers to 311 can receive information about local services, make complaints, or report issues such as graffiti or potholes.<sup>166</sup>

### Recommendation 3: Increase the number and types of offenses that don't require punitive enforcement



Efforts to pursue targeted reductions in punitive enforcement should be rooted in data analysis. These analyses should look at both the volume of punitive enforcement and where the greatest disparities in enforcement occur vis-à-vis race, ethnicity, age, gender, and neighborhood. (See “Understanding and mitigating racial and ethnic disparities in policing

practices” on page 47.) Such reforms must incorporate policies or protocols that track enforcement activities demographically and outline the discretion of individual officers, such as establishing do-nothing policies related to some low-level offenses and requiring a supervisor’s approval before arresting or citing someone for a particular category of offense under certain circumstances.

Work in Durham, North Carolina, provides a good example of targeted reductions in law enforcement use of arrests. For decades, going back to 1980, police in Durham overrelied on arrests, logging roughly 10,000 annually.<sup>167</sup> In 2008, this trend began to shift dramatically and, over the next nine years, the number of arrests dropped 64 percent, down to about 3,500 in 2016.<sup>168</sup> Several factors have contributed to these declines. In 2016, the Durham Police Department changed its policy to explicitly require officers to use their “personal judgment, knowledge, skill, and insight” to evaluate all possible responses.<sup>169</sup> The department also permitted noncustodial alternatives unless an arrest is required by law or there is a clear safety concern.<sup>170</sup> In 2016, the department directed officers to cite, rather than detain, people charged with misdemeanor marijuana offenses when “there is no danger to person or property, the suspect has valid identification and address, isn’t wanted on other charges, and has no previous charges other than traffic citations.”<sup>171</sup> That policy appears to be working: arrests for misdemeanor marijuana possession or possession of drug paraphernalia fell 65 percent between 2013 and 2017.<sup>172</sup> (See Figure 5 on page 46.)

For jurisdictions looking to significantly lower the incidence of unnecessary arrests, law enforcement agencies can consider do-nothing policies in relation to offenses that drive arrest volume but have little impact on public safety. Liquor law violations, curfew violations, and loitering are good examples of such offenses. Between 2010 and 2016 in the United States, there were more than 430,000 arrests for curfew violations and loitering, and more than 2.6 million arrests for liquor violations.<sup>173</sup> These types of offenses clearly constitute a significant portion of arrests nationwide, but jurisdictions instituting such a policy should confirm whether these offenses drive overall arrests in their localities.

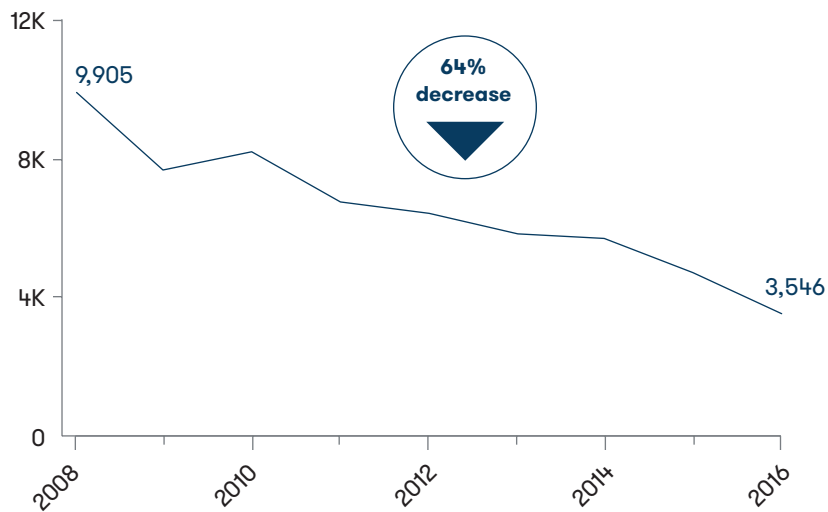
Reform-oriented policy changes of this kind hold much promise. But law enforcement agencies should be mindful that there may be unintended

detrimental effects in their implementation. For example, after Colorado legalized marijuana in 2012 for personal use, arrests were cut in half, but the racial disparity in arrests among people less than 21 years of age—who are not allowed to use marijuana under the new law—widened.<sup>174</sup> A survey by the Colorado Department of Public Health and Environment found little difference in teenage marijuana use by race or ethnicity in the state, but the arrest rate for white 10- to 17-year-olds fell by 8 percent from 2012 to 2014, while arrest rates for Latino and black youths rose 29 percent and 58 percent respectively.<sup>175</sup> Arrest disparities also exist for adults. Again, although there is little difference in marijuana use by race and ethnicity among adults in Colorado, after legalization, the arrest rate fell by 51 percent for white people, but only by 33 percent for Latino people and 25 percent for black people.<sup>176</sup>

Similarly, Durham, North Carolina, has seen significant overall reductions in marijuana arrests, but racial disparities in those arrests

Figure 5

**Total arrests, Durham, North Carolina, 2008–2016**



Source: Vera Institute of Justice, “Arrest Trends” [Durham Police Department, 1980-2016], <https://arresttrends.vera.org/arrests?location=15701&estimated=0#bar-chart>.

have persisted, and there has been a rise in marijuana-related citations as a proportion of overall marijuana-related charges.<sup>177</sup> And while Durham has made strides in reducing its reliance on custodial arrests for low-level marijuana offenses, an increase in the use of citations can still inadvertently lead to arrest down the line: if people are unable to appear in court, pay required fines, or fulfill any other condition imposed by the court, a judge may issue a bench warrant that can exponentially increase the risk of future jail time. More work is thus required to ensure that people's heightened risk of jail time because of conditions imposed by citations—even if a delayed risk—can be mitigated.

### Understanding and mitigating racial and ethnic disparities in police practices

In order to understand where racial and ethnic disparities exist in police enforcement, law enforcement agencies need to develop research and management protocols designed to find and address them. Data is needed to

- › track enforcement patterns and practices by demographic group;
- › identify institutional factors that may lead to disparate racial or ethnic outcomes;
- › track and assess how officers are applying their discretion; and
- › implement policies and strategies focusing on racial and ethnic fairness to correct discriminatory practices where discovered.

Some law enforcement agencies are beginning to address implicit bias in policing through officer training about the phenomenon.<sup>a</sup> Implicit biases are unconscious attitudes that people hold about groups of people—often linked to race, ethnicity, economic class, and gender—that influence perception and behavior despite conscious intention to view people as individuals.<sup>b</sup> Because people have a strong propensity to lean on stereotypes to fill in the blanks about people they don't know, such reflexive responses may affect

police action.<sup>c</sup> Existing implicit bias training modules are limited in nature: at present, there are few specific guidelines for police departments on what courses should include, how to teach the material, whether it is effective, or how to measure any effects it may have. A 2016 meta-analysis of implicit bias studies showed that unconscious biases can be altered, but it remains to be seen what type of training—and how much—will be most effective in addressing this unconscious process.<sup>d</sup>

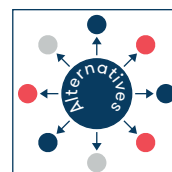
<sup>a</sup> Bailey Maryfield, *Implicit Racial Bias* (Washington, DC: Justice Research and Statistics Association, 2018), <https://perma.cc/Q3J8-57FL>.

<sup>b</sup> *Ibid.*, 1.

<sup>c</sup> Cheryl Staats, Kelly Capatosto, Robin A. Wright, and Danya Contractor, *State of the Science: Implicit Bias Review 2015* (Columbus, OH: Ohio State University Kirwan Institute, 2015), 5, 9-12, <https://perma.cc/UAZ3-UTTE>.

<sup>d</sup> Patrick Forscher, Calvin K. Lai, Jordan R. Axt et al., "A Meta-Analysis of Change in Implicit Bias," *Journal of Personality & Social Psychology* (2016), <https://perma.cc/XA3U-33L2>.

## Recommendation 4: Expand the reach of alternatives to arrest



Existing police diversion programs remain limited in scope and in application. Narrow eligibility criteria restrict most programs to people who are alleged to have committed low-level, nonviolent offenses—often excluding anyone with a lengthy criminal history, particularly those charged with typically ineligible violent and sex offenses. Indeed, research discussed earlier highlighted the small scale and reach of existing formal diversion programs—and suggested that police officers may not be diverting people even in circumstances where they have met all objective prerequisites or eligibility requirements, resulting in smaller programs than if all eligible people were participating.<sup>178</sup> (See “Working at the margins: Alternatives to arrest programs” on page 32.)

Given that the majority of arrests nationwide are for minor violations—drug possession, disorderly conduct, public drunkenness, vagrancy, loitering, curfew violations, and vandalism—current alternatives to punitive enforcement could cast a wider net and mitigate the number of traditional arrests.

To reduce the number of people needlessly burdened by the collateral impacts of criminal justice contact, police and policymakers should link both criteria for diversion and decisions on when to use such programs to the drivers of arrest volume in their localities. By focusing on the groups or activities responsible for the most arrests, police can optimize efforts to divert more people more quickly. More importantly, the exercise of police discretion may need to be more clearly operationalized and limited. For example, police authorities should define the circumstances in which officers should reroute cases to an alternatives-to-arrest track in order to minimize ambiguity or confusion. Existing alternative-to-arrest programs have only begun to scratch the surface in terms of who might be eligible and benefit from such approaches.

## Recommendation 5: Create structural incentives for police to use alternatives



Rank and file officers will only begin to treat arrests as an outcome with broad negative collateral consequences for the people they arrest—rather than a simple output of policing activity—when police executives and middle managers convey that message clearly. Leadership must back up those messages with policies—and performance metrics—that encourage and reward officer use of alternatives to punitive enforcement.<sup>179</sup> This could include everything from measuring levels of community satisfaction, trust, and perceptions of safety to the number of times officers refer someone to a community service provider instead of arresting them—and attaching these metrics to professional incentives and rewards.<sup>180</sup> What law enforcement agencies choose to measure can send a strong signal to both officers and the public about what is valued and important in policing. Such a change would amount to a major shift in police culture, but one for which there are no published examples from which agencies can learn.

As the CompStat discussion on page 24 demonstrated, data can be a powerful tool for constructing law enforcement interventions. Indeed, CompStat's implementation and replication across the country proved how counting something—in this case, punitive enforcement—can inherently “confer a status on, or suggest the importance of, the thing counted.”<sup>181</sup> After CompStat's widespread adoption, high numbers of arrests, citations, and stops became synonymous with police success.<sup>182</sup>

Police agencies that want to change how they define success need to create quantifiable measurements for interventions beyond punitive enforcement and then measure and reward officers' use of those alternatives. With this goal in mind, Vera and the National Police Foundation have created a new framework to facilitate this challenging work: CompStat360.<sup>183</sup> Developed through a public-private partnership between Vera and the National Police Foundation, and with support from the MacArthur and Ford foundations and the U.S. Department of



Justice's Community Oriented Policing Services (COPS) Office and Bureau of Justice Assistance, this management and accountability framework offers a new performance management model that is rooted in problem-solving and community satisfaction as a crucial balance to CompStat's traditional enforcement metrics. In contrast to CompStat's original primary (and often exclusive) focus on violent crime and responses that typically encourage and incentivize enforcement, CompStat360 uses a proactive, problem-solving approach that factors in community needs and feedback to its interpretation of quantitative data. By encouraging creativity and collaboration in setting police policy, it aims to avoid defaulting to and rewarding enforcement-based responses.

## Recommendation 6: Find out what works best through experimentation, research, and analysis



Research on alternatives to enforcement is very limited. The reasons why and under what circumstances officers default to enforcement are still unclear. There is more to learn about what is needed in terms of alternative responses—and, most importantly, what types of alternatives-to-arrest work, for whom, and why. Studies should also examine common challenges to implementation. If interventions aim to reduce enforcement—as measured by arrests, citations, and incarceration—then research is needed to assess whether they achieve these goals. One necessity to further research, experimentation, and analysis is complete data. Local, state, and federal governments should prioritize and invest in infrastructure and processes to collect and analyze arrest data in uniform ways so that it can be compared across agencies and jurisdictions, including closing one huge data gap: the number and nature of arrests by ethnicity. Moreover, additional data is needed to further understand the application, spread, and impact of enforcement and diversion activities more broadly.

One pitfall when expanding alternatives to enforcement such as citations in lieu of arrest or diversion programs is that they still require

justice system oversight. Thus, police initiatives intended to apply a lighter touch can end up pulling people into the criminal justice net who wouldn't be there otherwise. As these initiatives are implemented, it is essential for police departments, policymakers, and the public to track whether they inadvertently lead to justice system net-widening and if certain groups are less likely to reap the benefits of diversion from arrest.

Some funders are taking note of this gap in both practice and empirical evidence. The MacArthur Foundation's Safety and Justice Challenge funds work in 52 jurisdictions nationwide to reduce the use of local jails and to support needed research that seeks to advance policy and practice in this space, in part by reining in punitive enforcement.<sup>184</sup> This initiative involves deep collaborations between local justice stakeholders—including

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law enforcement leaders—to examine and implement policies, programs, cultural transformations, and incentives all toward the outcome of reducing the local criminal justice footprint.<sup>185</sup> And, in September 2018, the Laura and John Arnold Foundation (now Arnold Ventures) released a request for proposals from organizations and individuals seeking to evaluate programs that aim to increase the capacity of police and other first responders to recognize people in crisis and channel them toward treatment and other services in lieu of enforcement.<sup>186</sup>

# Conclusion

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There is little doubt that when people and communities call on the police for help—with maintaining order, responding to crime, or resolving community problems like homelessness, substance use, mental illness, and intrafamilial disputes—police too often employ a set of punishing responses they should use more sparingly. Indeed, police have become the default first responders to a number of issues that would be better handled by the public health system or community-based social services. And, in carrying out their duties, police officers have increasingly relied on and defaulted to more and more intrusive measures: aggressively patrolling communities, stopping and frisking residents, issuing tickets and summonses, and making far too many custodial arrests in situations where other responses—including nonlegal strategies—may be more appropriate. These policing practices leave residents feeling both overpoliced and underprotected, undermining police legitimacy and overall community health and safety.

Communities of color, which often also suffer from concentrations of poverty, have suffered most under this paradigm. Mass enforcement ends up criminalizing people—disproportionately black Americans—who pose no or very little threat to public safety, and it too often results in incarceration. But after landing in jail, sometimes repeatedly, people who have been arrested fall more deeply into the criminal justice system, often saddled with debt from unpaid fines and fees. Moreover, the criminalizing process rarely addresses the underlying life issues that led them to criminal justice contact in the first place. Rank and file police officers suffer too, from the risks inherent in such interventions to the strain that the job of policing places on their mental and physical well-being—and that of their families.

This leaves police and communities in an untenable position. Police officers remain the go-to source of help for many people, but they lack the training, tools, and resources to adequately respond to or solve many of the issues they encounter. Instead, by defaulting to enforcement and often arrest, police allow fear, distrust, and rancor to germinate between them

and the communities they serve. A new model is needed: one that rebuilds trust, maintains public safety, and reserves arrest as a last resort. There is a moral and strategic imperative to reshape police culture and incentives to ensure that the exercise of police discretion is more deliberate, transparent, and accountable and that policing practices are focused more tightly on dramatically reining in arrests, while promoting lesser forms of enforcement and holding officers and departments accountable.<sup>187</sup>

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This will require hard work, patience, political will, and an enormous shift in worldview. Police leaders must give officers training, support, and incentives to forego punitive responses and problem-solve instead, as well as to collaborate with and, in many circumstances, defer to non-law enforcement agencies and others—such as community organizations, mental health service providers, social workers, detoxification centers, mediators, and even families—that are far better positioned to respond to many of the crises that police now routinely find themselves forced to reflexively react and respond to first. And elected officials and other leaders who are responsible for appointing or otherwise supporting police executives must clearly focus in on policing culture, data, and outcomes the communities they serve wish to see and provide those communities and police executives with the resources and time required to achieve those desired results.

Police officers alone cannot repair the breach in trust or uphold the peace. It takes a village to fix a village. The work requires a holistic approach to investing in long-neglected communities that demands the

engagement of civil society and community groups as well as professionals in policing, public health, and social services. Approaching these issues on multiple fronts is essential if America wants to end the crisis of criminalization—and, by extension, mass incarceration—and to refashion policing into a pursuit that truly operates in the public interest, worthy of public trust.

## Endnotes

- 1 The Federal Bureau of Investigation's Uniform Crime Reporting (UCR) program gathers voluntarily produced data from more than 18,000 city, university and college, county, state, tribal, and federal law enforcement agencies. In 2016, the UCR program reported that there had been 10,662,252 arrests. In the same year, the Bureau of Justice Statistics reported 10.6 million jail admissions. Federal Bureau of Investigation (FBI), "UCR: 2016 Crime in the United States," table 18: Estimated Number of Arrests, United States, 2016, <https://perma.cc/9RPD-G7MZ>; and Zhen Zeng, *Jail Inmates in 2016* (Washington, DC: U.S. Department of Justice (DOJ), Bureau of Justice Statistics (BJS), 2018), 1, <https://perma.cc/R57H-9XQD>.
- 2 In 1994, there were 14 million arrests and approximately 9.8 million jail admissions. Craig A. Perkins, James J. Stephan, and Allen J. Beck, *Jails and Jail Inmates 1993-94* (Washington, DC: BJS, 1995), 13, <https://bjs.gov/content/pub/pdf/jaji93.pdf>.
- 3 In 1970, the violent crime rate was 363.5 per 100,000 and the property crime rate was 3,621 per 100,000; in 2014, the most recent year available in the database, the rates were 375.7 and 2,596.1 per 100,000, respectively. FBI, UCR, "Uniform Crime Reporting Statistics, UCR Data Online, Violent Crime and Property Crime rates from 1960-2014," database (Washington, DC: BJS), <https://www.bjs.gov/ucrdata/Search/Crime/State/StatebyState.cfm>. In 1980, the arrest rate was 4579.1 per 100,000 people; by 2016 it had fallen to 3,239.3 per 100,000. Vera Institute of Justice, "Arrest Trends," (arrest rates from 1980-2016), database (New York: Vera Institute of Justice), <https://arresttrends.vera.org/arrests?unit=rate#bar-chart>.
- 4 Vera Institute of Justice, "Arrest Trends," <https://arresttrends.vera.org/arrests>.
- 5 For current arrest data and proportion of offenses, see FBI, "UCR: 2016 Crime in the United States," table 18; and FBI, "UCR: 2017 Crime in the United States," table 29: Estimated Number of Arrests, United States, 2017, <https://perma.cc/6M35-NFP4>. For historical comparison data see FBI, "UCR: 2010 Crime in the United States," table 29: Estimated Number of Arrests, United States, 2010, <https://perma.cc/LQ9B-7V89>; Howard N. Snyder, *Arrest in the United States, 1990-2010* (Washington, DC: BJS, 2012), 1-15, <https://perma.cc/U2VN-UXTA>; DOJ, Office of Justice Programs, *Crime and Justice Atlas 2000* (Washington, DC: DOJ, Office of Justice Programs, 2000), 34-41, <https://perma.cc/HHK5-CDZY>; and FBI, "Uniform Crime Reporting Program Data [United States]: County Level Arrest and Offenses Data, 1977-1983," database (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2006), <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/8703>.
- 6 For the frequency and nature of arrests, see Vera Institute of Justice, "Arrest Trends"; Vera Institute of Justice, "Incarceration Trends," database (New York: Vera Institute of Justice, 2018), <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/8703>; and S. Rebecca Neusteter and Megan O'Toole, *Every Three Seconds: Unlocking Police Data on Arrests* (New York: Vera Institute of Justice, 2019), 6, <https://perma.cc/YBL9-GNXT>.
- 7 Whether increased enforcement of low-level offenses improves public safety is a subject of ongoing debate; research has not definitively demonstrated that it does. See George L. Kelling and James Q. Wilson, "Broken Windows: The Police and Neighborhood Safety," *Atlantic*, March 1982, 29-38, <https://perma.cc/5FCD-3JXE>; Bernard E. Harcourt, *Illusion of Order: the False Promise of Broken Windows Policing* (Cambridge, MA: Harvard University Press, 2004); and Jacinta M. Gau and Rod K. Brunson, "Procedural Justice and Order Maintenance Policing: A Study of Inner-City Young Men's Perceptions of Police Legitimacy," *Justice Quarterly* 27, no. 2 (2010), 255-279, <https://perma.cc/Z3EB-TJQS>.
- 8 Mary T. Phillips, *Pretrial Detention and Case Outcomes, Part 1: Nonfelony Cases* (New York: New York City Criminal Justice Agency, 2007), 4-5 & 55-60, <https://perma.cc/TLK7-EARH>; Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (Houston, TX: Laura and John Arnold Foundation, 2013), 10-11, <https://perma.cc/YE7L-RDEF>; and Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention* (Houston, TX: Laura and John Arnold Foundation, 2013), 10-11, <https://perma.cc/YM25-4MZL>.
- 9 See for example Gary Fields and John R. Emshwiller, "As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime," *Wall Street Journal*, August 18, 2014, <https://perma.cc/CH3X-32LH>; Benjamin Geffen, "The Collateral Consequences of Acquittal: Employment Discrimination on the Basis of Arrests without Convictions," *University of Pennsylvania Journal of Law and Social Change* 20, no. 2 (2017), 81-103, <https://perma.cc/662T-NJD8>; Corinne Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing* (New York: Human Rights Watch, 2004), <https://perma.cc/WQK8-EPQX>; and Rebecca Oyama, "Do Not (Re)Enter: The Rise of Criminal Background Tenant Screening as a Violation of the Fair Housing Act," *Michigan Journal of Race and Law* 15, no. 1 (2009), 182-222, <https://perma.cc/8LYM-J9JM>.
- 10 Alexander Williams Jr., *Final Report of the Collateral Consequences Workgroup* (College Park, MD: University of Maryland College of Behavioral and Social Sciences, 2016), 7, <https://perma.cc/9MVF-LQSC>; and NICCC, "Collateral Consequences Inventory," database (Washington, DC: CSG Justice Center), <https://niccc.csgjusticecenter.org/database>.
- 11 Mike Males and Elizabeth Brown, "Teenagers' High Arrest Rates: Features of Youth or Poverty?" *Journal of Adolescent Research* 29, no. 1 (2014), 3-24.

- 12 Amanda Geller, Jeffrey Fagan, Tom Tyler, and Bruce G. Link, "Aggressive Policing and the Mental Health of Young Urban Men," *American Journal of Public Health* 104, no. 12 (2014), 2321-2327, <https://perma.cc/JFF4-UPU6>.
- 13 For links between trauma and justice system involvement of youth, see Geller, Fagan, Tyler et al., "Aggressive Policing," 2014; Carly B. Dierkhising, Susan J. Ko, Briana Woods-Jaeger et al., "Trauma Histories among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network," *European Journal of Psychotraumatology* 4, no. 1 (2013), 1-12, <https://perma.cc/RH4X-QUFW>; Julian D. Ford, John Chapman, Daniel F. Connor, and Keith R. Cruise, "Complex Trauma and Aggression in Secure Juvenile Justice Settings," *Criminal Justice and Behavior* 39, no. 6 (2012), 694-724, <https://perma.cc/75B4-XP98>; and Julian D. Ford, J. Kirk Hartman, Josephine Hawke, and John F. Chapman, "Traumatic Victimization, Posttraumatic Stress Disorder, Suicidal Ideation, and Substance Abuse Risk Among Juvenile Justice-Involved Youth," *Journal of Child & Adolescent Trauma* 1, no. 1 (2008), 75-92.
- 14 See for example Malcolm Gladwell, "Million Dollar Murray," *New Yorker*, February 13, 2006, <https://perma.cc/S5ZL-ZJTU>.
- 15 Overpoliced—and, by extension, overincarcerated—communities suffer significant damage to social networks and long-term opportunities. The damage affects children, parenting relationships, family functioning, mental and physical health, employment opportunities, and economic and political infrastructures. For examples of ways in which black communities experience disproportionate policing and enforcement, see Elizabeth Hinton, LeShae Henderson, and Cindy Reed, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System* (New York: Vera Institute of Justice, 2018), <https://perma.cc/KRN7-4SFD>. For the impacts of these policies, see Todd Clear, "The Effects of High Imprisonment Rates on Communities," *Crime and Justice* 37, no. 1 (2008), 97-132.
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## Spread notes

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