NEW ERA OF PUBLIC SAFETY

A GUIDE TO FAIR, SAFE, AND EFFECTIVE COMMUNITY POLICING

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New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing.
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The Leadership Conference is a 501(c)(4) organization that engages in legislative advocacy. It was founded in 1950 and has coordinated national lobbying efforts on behalf of every major civil rights law since 1957.

The Leadership Education Fund is a 501(c)(3) organization that builds public will for laws and policies that promote and protect civil and human rights of every person in the United States. The issues the Education Fund works on have deep roots in its organizational history and across the communities it represents.

LETTER FROM THE PRESIDENT AND CEO

Policing has laid bare the fault lines in America — and our report, ***New Era of Public Safety***, is about the possibility of healing and transformative reform.

In 2014, the police shooting of Michael Brown in Ferguson, Missouri, renewed a necessary national conversation about racial justice, policing, and public safety. As awareness and activism increase, so too must our commitment to realizing a vision for public safety that honors the dignity of all people.

Throughout my career, I have spent time with community members, local leaders, and police officers across America. The pain and frustration are profound. It is no understatement that we are confronting serious challenges in solving the erosion of trust between police and the communities they serve. But we bear the responsibility to try.

This report serves as a guide forward. It aspires to redefine public safety in such a way that serves every person and every community. The report does so by asserting that real transformation — transformation that can take root and thrive — must involve stakeholders working together, bridging deep divides, and committing to the promise of safe, fair, and effective policing.

I want to thank our dedicated staff members who shared their expertise and thoughtful analysis in this report, as well as our many partners who supported and contributed to the development of this report. In partnership with communities and police departments, we will continue to fight for public safety that respects people's humanity and keeps everyone, in all communities, safe.

Vanita Gupta
President and CEO
Leadership Conference on Civil and Human Rights
Leadership Conference Education Fund

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The information in this report and its accompanying toolkit is for informational purposes only. It is not intended to be legal advice, and should not be characterized or relied on as legal advice.

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EXECUTIVE SUMMARY

In 2014, the death of Michael Brown in Ferguson, Missouri set off waves of protest that renewed the long-standing question around the proper role of law enforcement. It prompted reflection in communities, across law enforcement, and up to the president of the United States.

That year, President Barack Obama convened a task force to identify best policing practices to increase trust between police and the communities they protect and serve while effectively addressing crime. Released in 2015, the Final Report of the President's Task Force on 21st Century Policing (the President's Task Force Report) makes recommendations to police departments to ensure fair, safe, and effective policing. It has inspired hope in the prospect of change, as police departments across America have wrestled with how to increase trust, fairness, justice, and mutual respect and put its recommendations into policy and practice.

Many departments, however, have yet to reach the report's aspirations, and communities continue to struggle with how to ensure fair, safe, and effective policing. Police officer shootings of unarmed Black men comprise a disproportionately high number of police officer shootings; and Blacks and Latinx are overrepresented in other enforcement activities, including pedestrian and vehicle stops.[1] Recently, we have seen the improper exercise of discretion in police interactions, from arrests of people sitting in a coffee shop to questioning and frisking teenagers visiting a college campus.

These events have deepened distrust in the nation's police force, especially in communities of color. They have reopened old wounds and cut new ones, and they remind us of our historically fraught relationship with a profession that swears to serve and protect. They remind us of violence against activists during the civil rights movement, of the enforcement of segregation and Jim Crow laws during the 19th and 20th centuries, and of fugitive slave laws in centuries past.

We know that hundreds of thousands of police officers report for duty every day, with a mission to keep us safe and protect us from harm. And we are grateful to the majority of these officers who carry out their mission with dignity and honor, and especially to those who give their lives to the cause. They respond to violent crime, mental health and developmental disability crises, people with substance use disorders, interpersonal conflicts and intimate partner violence, mass shootings, terrorist attacks, and other tragedies that afflict our nation. We also recognize that there is no panacea to problematic police practices. Indeed, police officers work at some 18,000 departments in every type of community across America: large and small; urban, rural, and suburban; homogenous and diverse. We know that each department faces its own challenges and must create its own solutions to meet community needs and interests.

Nevertheless, we also believe that all departments should follow emerging best practices when protecting the public and preserving public safety. Police departments should develop policies and practices that support fairness, equity, procedural justice, legitimacy, transparency, and accountability — the values that build trust in policing, restore confidence in police, and, ultimately, heal wounds. More work is needed to achieve this goal.

Police departments can be resistant to change. Indeed, the warrior culture, which emphasizes police as enforcers of law rather than keepers of the peace, is deeply embedded in many police departments. This mindset heightens tension and widens the separation between departments and communities by propagating an "us-versus-them" mentality.

Yet, all sides should come to realize that law enforcement and the public share the same general goal: to live in safe communities. Reframing the narrative of police-community

interaction away from opposition and around a shared set of goals will promote a healthier policing culture and create a stronger society, one where communities and police work together to coproduce public safety. Indeed, policing reform ***depends*** on community engagement. Those who know and understand their public safety needs are best positioned to help police departments develop policies and practices to meet those needs.

This report was developed to give individuals, communities, activists, advocacy organizations, law makers, and police departments the knowledge to carry out this important work. Its accompanying toolkit is intended to empower communities to hold police departments accountable by working together to address problems and to find the best way forward to coproduce public safety. The best practices recommended here are adaptable to every department, in every community across the nation; the ultimate goal is fair, safe, and effective policing that respects and protects human life and ensures safety for all.

The good news is that change is possible, and indeed is already well underway. We hope these resources spread these best practices farther, and faster, so that all people, of all backgrounds and all characteristics, are truly safe in America.

POLICING REFORM FOR THE 21ST CENTURY

The Leadership Conference Education Fund advocates for communities impacted by unconstitutional practices by federal, state, and local governments. Police misconduct and abuse of power are antithetical to our country's ideals of justice and equality for all. All people deserve to feel safe in their homes, in their communities, and in their country. Safety is a civil and human right without which society cannot thrive and democracy cannot function.

We must rethink what public safety means and engage in collaborative reform to ensure that every person is safe, and every person ***feels*** safe, regardless of race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, disability, familial status, immigration status, veteran status, health status, housing status, economic status, occupation, proficiency with the English language, or other personal characteristic. By integrating community voices into police policies and practices, developing a shared language to build trust between departments and communities, bringing people with diverse perspectives to the decision-making table, and harnessing the power of data to identify and address problems, police departments and communities can coproduce public safety.

This report serves as a starting point for communities and police departments to work together to achieve policing reform in the 21st century. It covers best practices in a dozen areas that are fundamental to fair, safe, and effective policing. To be sure, more work is needed to bridge the divide between departments and communities impacted by harmful police practices. Together, through mutual respect and understanding, communities and police departments can coproduce public safety in a way that serves community interests as defined by the community — not the department that serves it.

The President's Task Force Report establishes six pillars as the foundation for police practices that effectively reduce crime while building trust with the community. The best practices presented here build on those recommendations and are aimed at communities, advocacy organizations, police departments, and lawmakers who are interested in moving toward 21st-century policing, addressing the proper role of police in crime and social problems, and advocating for community-based responses to noncriminal matters.

This guide provides ***specific*** policy recommendations for achieving the principles laid out in the President's Task Force Report. We believe that by working together and using data to understand when policies and practices are not working, communities and police departments can realize fair, safe, and effective policing that protects and serves all members of the public, including police officers.
For each chapter, we surveyed the field for best policies and practices; consulted with advocates, members of impacted communities, and subject-matter experts; and reviewed reports and publications from leading police organizations, such as the International Association of Chiefs of Police and the Police Executive Research Forum; national advocacy organizations, such as the American Civil Liberties Union; and government agencies, such as the U.S. Department of Justice Office of Community Oriented Policing Services (COPS) and Civil Rights Division. This report offers best practices that are grounded in research and provides examples of model policies, practices, and programs at departments around the country.

SUMMARY OF RECOMMENDED BEST PRACTICES

Recognizing problems with policing is the easy part; fixing them is less so. This report aims to help. It draws from the policies and practices of departments across the country that have adopted innovative reforms, informed by experience, community feedback, and expert advice, to address long-standing challenges. In total, we provide over 100 recommendations to reform policing, many of which include additional sub-recommendations that address specific topics in detail. The topline recommendations that follow lay out a roadmap to 21st-century policing.

Community Policing

Community trust and confidence in police are foundational to community policing. The absence of trust and confidence arises from police tactics that disproportionately and negatively affect certain communities, especially those of color. These tactics fray relationships and impede criminal investigations, making everyone less safe.

Police officers should understand that they earn trust — and can restore it — through actions that reflect the principles of community policing. A large body of evidence shows that people in communities that have collaborative partnerships with police departments feel safer in their communities and that positive police-community relationships encourage cooperation. To practice community policing, departments should work with communities to:

1.1	Support local resolutions that embrace and require community policing as the key operational philosophy.
1.2	Commit to community policing in mission statements, strategic plans, and leadership development programs.
1.3	Commit sufficient resources to implement community policing.
1.4	Embrace procedural justice as a guiding principle that informs policies, practices, and training.
1.5	Reconcile with the community.
1.6	Give communities a direct, ongoing say in police practices.
1.7	Develop performance measures that reflect the principles of community engagement, collaboration, problem-solving, and trust-building.
1.8	Give officers ample time to engage with community members and solve community problems.
1.9	Build understanding of the societal causes and consequences of social problems.
1.10	Implement policies for encounters with people with limited English proficiency.
1.11	End the use of police in schools as a solution to student discipline.
1.12	Prohibit officers from asking people about their sexual orientation or immigration status.

Bias-Free Policing

People experience discrimination based on a wide range of factors. Discriminatory police practices have sowed a deep distrust of law enforcement across our nation, especially in communities of color, and sparked outrage over systemic injustice and discrimination. To build trust, engage communities, and improve public safety, police leaders should make clear that discriminatory and biased-based policing have no place in police departments. To achieve this goal, they should develop policies and training programs that explain how officers can carry out law enforcement duties without bias, and they should specify prohibited conduct and behavior to ensure policing is fair, safe, and effective. To practice bias-free policing, departments should work with communities to:

2.1 Adopt comprehensive bias-free policies.

2.2 Ensure officers are trained in bias-free policing.

2.3 Supervise, monitor, and hold officers accountable for policy violations.

2.4 Take corrective action when data indicate bias-based policing.

2.5 Address complaints and calls for service based on racial and ethnic profiling.

2.6 Identify and investigate hate crimes.

2.7 Collect, analyze, and publicly report data relating to bias-based policing.

2.8 Create cultures of inclusivity and accountability and diverse workplaces.

2.9 Work for broad social change.

Stops Searches and Arrests

Stops, searches, and arrests impose significant costs on liberty, disproportionately affect communities of color, and undermine vital relationships necessary for effective law enforcement. Federal and state constitutions establish the minimum protections — but they are just that: minimum standards that are not necessarily best practices or even common standards. Police departments should adopt best practices that go beyond these standards to better protect individual liberty, communicate performance expectations, and promote safe, bias-free, and respectful interactions between officers and community members. To protect privacy and allow for greater freedom of movement without compromising safety or effectiveness, departments should work with communities to:

3.1 Encourage officers to consider the costs of stops, searches, and arrests.

3.2 Ban formal and informal quotas.

3.3 Ensure officers inform people of their rights to refuse or revoke consent and to document it.

3.4 Limit the use of pretextual stops.

3.5 Seek search warrants whenever possible.

3.6 Integrate procedural justice into all enforcement activities.

3.7 Eliminate discriminatory and bias-based stops, searches, and arrests.

3.8 Safeguard against unconstitutional surveillance.

3.9 Provide comprehensive training on stops, searches, and arrests.

3.10 Require detailed reporting of stops, searches, and arrests.

3.11 Reduce reliance on arrests and incarceration.

The Use of Force

Officers take an oath to uphold the law, their department, and the community they serve, and to hold themselves and their fellow officers accountable for their actions. Yet they do not always do so, particularly when it comes to the use of force. Indeed, the use — and misuse — of police force is and has long been a flash point in American life.

To ensure fair, safe, and effective policing now in the future, community members and police leaders should work together to create clear and specific guidance and expectations on appropriate uses of force and equip officers to meet these expectations through training on implicit bias, procedural justice, de-escalation and harm-reduction tactics, and other areas. Communities that hold departments accountable for meeting expectations set forth in policy will change how departments understand and approach using force — without sacrificing public or officer safety. To protect communities and officers, departments should:

4.1 Commit to respecting and protecting human life and ensuring safety for all.

4.2 Permit the use of force only when necessary to resolve conflict and protect public and officer safety.

4.3 Prohibit and regulate tools and tactics with a high risk of death or injury that are disproportionate to the threat.

4.4 Set clear policies applicable to ***all*** force instruments.

4.5 Set clear policies regarding ***specific*** force instruments.

4.6 Ensure officers consider personal characteristics before using force.

4.7 Require officers to intervene in improper uses of force.

4.8 Require officers to render aid until medical assistance arrives.

4.9 Provide continual, scenario-based training.

4.10 Establish robust processes for reporting and investigating uses of force.


POLICE

Responding to Crises

Police officers respond to a wide variety of calls, including — increasingly — crises relating to mental health or developmental disabilities and substance use disorders. This places a great burden on officers, who often respond repeatedly to the same people in crisis, and poses significant enforcement challenges. Indeed, police officers are not equipped to fill the role of psychologist, social worker, or behavioral health specialist. As such, our society should aim for the least "police-involved" responses to crises.

By providing adequate prevention, support, and referral services, departments and communities can divert people with mental health and developmental disabilities, physical disabilities, and substance use orders, from the criminal justice system. All departments should develop crisis intervention approaches that connect people in crisis to appropriate health services, and all officers should be trained to identify and handle crises. They should, in other words, see themselves as guardians of public safety. To limit their role in and respond more appropriately to crises, departments should work with and support communities, government officials, and service providers to:

5.1 Develop integrated community-based support services to prevent crises.

5.2 Develop integrated community-based services to respond to crises.

5.3 Establish protocols for interactions with people with mental health or developmental disabilities or who are experiencing substance use disorder crises.

5.4 Train emergency call operators.

5.5 Train all officers in basic techniques to identify and manage crises.

5.6 Pair crisis response teams with mental health and developmental disability co-responders.

5.7 Carefully select crisis response program coordinators and officers.

5.8 Partner with local service providers to coordinate responses.

5.9 Adopt harm-reduction models for people with substance use disorders.

5.10 Track officer responses to crises and assess crisis response programs.

The First Amendment and Free Speech

The First Amendment to the U.S. Constitution protects some of our most cherished rights: our right to speak and publish freely, to gather publicly in large groups, to petition and lobby our government, and to practice religion. These rights lie at the heart of our democracy, yet they are often a source of tension between police departments and the communities they serve.

Police leaders should implement policies and practices that respect and protect the public's constitutional rights while maintaining public safety. To strike this balance, departments should train officers to serve in a wide range of unpredictable situations. Most importantly, they should create and sustain a culture that understands and respects both keeping the peace and exercising individual freedom. To respect and protect the public's First Amendment rights while ensuring safe public assemblies, departments should:

6.1 Clearly instruct officers about the public's right to record law enforcement activities.

6.2 Limit and closely supervise information-gathering techniques that target activities protected by the First Amendment.

6.3 Engage in cooperative and strategic advance planning.

6.4 Demilitarize officers and require them to interact with assemblers in a respectful and positive manner.

6.5 Promote crowd-control tactics that are less likely to cause injury and set clear limits on the use of force.

6.6 Hold officers accountable for their responses to public assemblies.

Accountability

Accountability is central to fair, safe, and effective policing; it deters misconduct and heals communities if and when officers violate law or policy. Officers and departments should be held accountable for performing in a way that complies with federal, state, and local laws, departmental policies, and community values. Doing so sends a message to communities that unjust and unconstitutional conduct is not tolerated and will receive swift discipline. It builds public trust and, in turn, strengthens the legitimacy of police departments and the criminal justice system at large. A lack of accountability, in contrast, weakens the relationship between police and the people they serve, undermining departments' efforts — and the ability of the entire justice system — to protect and preserve public safety.

Strong accountability systems also strengthen departments from within. Police departments, like all professional organizations, flourish when employees know what is expected of them and understand the consequences if they fail to meet expectations. Officers are also more likely — and more motivated — to consistently make good decisions if they know that leaders and colleagues are also accountable for their actions.

Accountability systems include internal mechanisms (e.g., rules, policies, and practices that ensure that department members are held responsible for their conduct) and external mechanisms (e.g., civilian oversight boards and independent prosecutors who hold officers accountable for misconduct). To create robust internal and external accountability systems, departments should work with communities to:

7.1 Create transparent, effective processes to receive and respond to ***external*** misconduct complaints.

7.2 Create transparent, effective processes to receive and respond to ***internal*** misconduct complaints.

7.3 Delineate policies about how and by whom misconduct complaints are investigated.

7.4 Develop policies for investigating and addressing sexual misconduct and intimate partner violence.

7.5 Create transparent, effective processes for conducting misconduct investigations.

7.6 Ensure supervisors address and discipline officer misconduct.

7.7 Integrate the principles of procedural justice into disciplinary processes.

7.8 Use early intervention systems to track officer behavior and address officer needs and deficiencies at the earliest opportunity.

7.9 Investigate misconduct to the extent permissible after statutory or contractual time limitations for discipline have passed.

7.10 Identify, maintain, and share material evidence relating to officer misconduct or credibility with prosecutors in criminal cases.

7.11 Inform officers of their right to file complaints with outside agencies.

7.12 Expand the role of community/civilian review boards and independent monitors in discipline.

7.13 Establish clear protocols for determining who investigates and prosecutes officer-involved crimes and shootings.

7.14 Oppose provisions that weaken accountability systems when negotiating collective bargaining agreements.

Data Information and Video Footage

Robust data collection allows leaders to evaluate policies and practices and to modify or eliminate those that are ineffective or have unintended negative consequences. Collecting and sharing data are important steps toward achieving transparency, as they allow communities to see what officers and departments are doing and enable community members to hold officers and departments accountable.

When collecting and sharing data, departments should not collect personal information (about personal characteristics, associations, activities, etc.) or use technologies that risk infringing on privacy rights. Body-worn cameras (BWCs) and "dashcams" play a valuable role in policing because they increase accountability and transparency — but they do so only when properly used. Without policies regulating how and when to use them, BWCs and dashcams can result in disproportionate surveillance and enforcement of heavily policed communities, especially communities of color, raising significant privacy concerns. To foster transparency and accountability and protect privacy, departments should work with communities to:

8.1 Collect and publish demographic and enforcement data.

8.2 Make data and information publicly available in accessible and alternative formats.

8.3 Procure adequate systems to collect and store data.

8.4 Release information about critical events in a timely manner.

8.5 Develop clear BWC policies with community input.

8.6 Implement storage practices and systems to preserve the integrity of video footage.

Leadership and Culture

Police culture refers to departmental beliefs and processes that influence how officers do their jobs. Culture manifests formally, in policies, procedures, and training programs, and informally, in the decisions and actions of those who are recruited and hired by the department, and in environments that encourage and discourage certain behaviors and attitudes.

Chiefs and other department leaders are uniquely empowered to shape departmental culture and ensure it reflects community values. But they cannot create culture change on their own. To adopt the values of 21st-century policing in their departments, leaders should work closely with colleagues and community members. Chiefs and other department leaders can create buy-in for culture change via procedural justice — that is, through transparency, communication, and opportunities for input — during the decision-making process. To create a culture that promotes and supports community policing, departments should:

9.1 Ensure that core departmental values reflect community values and communicate them to all department members.

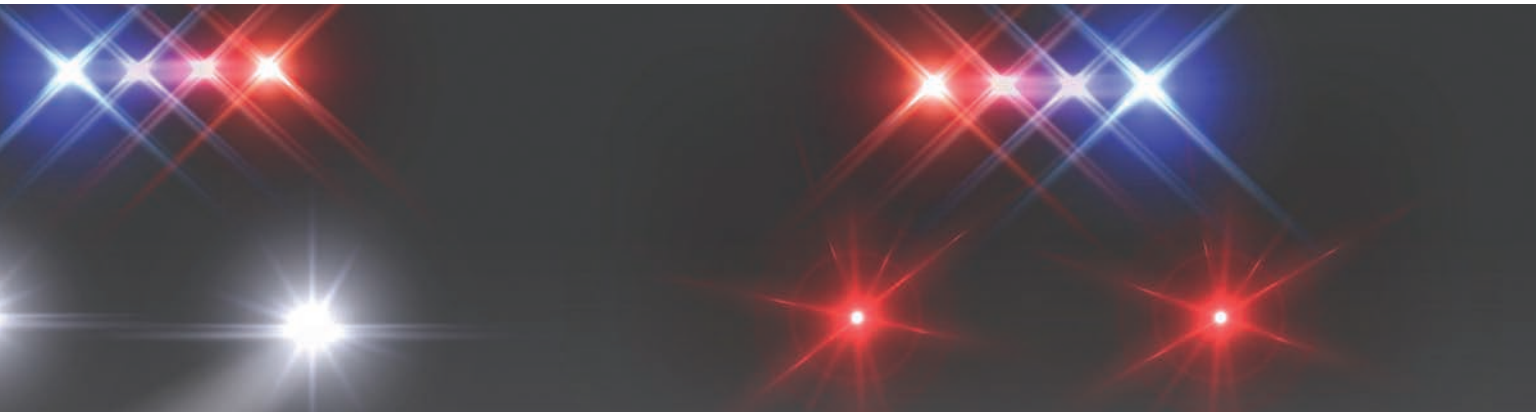
9.2 Develop specific and actionable strategic plans.

9.3 Create opportunities to actively develop leadership skills for all personnel.

9.4 Develop performance-based requirements for promotion.

9.5 Prioritize diversity and create a culture of equity and inclusion by working to eliminate racial, ethnic, and gender bias in the workplace.

9.6 Ensure that field training incorporates core values and communicates them to new officers.




POLICE DEPARTMENT
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Recruitment Hiring Promotion and Retention

Police departments should reflect the communities they serve and take a community-centered approach to their work — one that embeds the values and voices of all community members into department policy and practice. Doing so builds community trust and confidence in the vital work of law enforcement.

To achieve these goals, departments should employ and promote officers with community-centered mindsets toward policing; create and maintain transparent processes for recruitment, hiring, promotion, and retention; and assess — and remove — barriers to advancement facing underrepresented groups (e.g., people of color, religious groups, women, LGBTQ and gender non-conforming people, and others); and create and sustain inclusive cultures. To attract and retain officers who reflect the communities they serve and embody the values of equity, fairness, and procedural justice, departments should:

10.1 Promote policing as a legitimate, honorable profession, especially to young people from underrepresented groups.

10.2 Seek community input when making decisions about hiring and resource allocation.

10.3 Develop recruitment plans that reflect departmental missions and community priorities.

10.4 Reevaluate hiring qualifications and testing.

10.5 Provide mentoring opportunities and test preparation support to candidates from underrepresented backgrounds in policing.

10.6 Implement transparent policies and practices that are centered on internal procedural justice.

Academy and In-Service Training

Training is the foundation by which departments teach practices and tactics to police officers in a way that reflects and affirms a commitment to community values. It is the most effective way to reduce harm (both physical and psychological), preserve community relations, and protect and preserve public safety.

Training enables departments to ensure that officers have the knowledge and skills they need to engage in fair, safe, and effective policing. To serve communities well, officers should stay up to date on best practices and continually develop their skills. Yet no universal standards for police training exist; each state and jurisdiction has different requirements. To ensure officers understand and carry out departmental requirements and are trained to adhere to community-centered values, departments should:

11.1 Ensure that basic recruit and in-service training covers a wide variety of skills, including crisis response, de-escalation, cultural competency, and leadership.

11.2 Prioritize the development and implementation of rigorous in-service training.

11.3 Directly involve community members in the development of training initiatives and curricula.

11.4 Use contemporary adult education techniques in training programs.

11.5 Carefully select field training officers (FTOs) and training staff.

11.6 Develop robust programs to train officers to serve as FTOs.

11.7 Treat service as an FTO as an important career step that factors into decisions about promotion.

11.8 Keep complete, accurate, and up-to-date records of training curricula, materials, and attendance.

11.9 Periodically review, audit, and assess training programs.

Officer Health Wellbeing and Safety

Police officers often respond to violent situations and crises, and many work in communities with high levels of gun violence and regularly bear witness to human tragedy. This puts them under great physical and mental stress, which can undermine their health and wellbeing and affect other parts of their lives. These effects go beyond officers themselves; they also affect loved ones and family members.

Officers who are equipped to handle stress at work and at home are more likely to make better decisions on the job and have positive interactions with community members. Officer wellbeing has a direct impact on communities, and improved mental health and emotional wellbeing are associated with better outcomes in police encounters. To take a holistic approach to health, wellbeing, and safety and support officers' spouses, partners, and family members, departments should:

12.1 Create a culture that supports and promotes wellbeing.

12.2 Implement robust employee assistance programs.

12.3 Create peer support and mentoring programs.

12.4 Attend to and promote officer health and wellbeing.

12.5 Incorporate officer health, wellbeing, and safety into operations.

12.6 Establish post-crisis evaluation and treatment protocols.

12.7 Provide officers with appropriate equipment.

IMPORTANT NOTES ABOUT THIS REPORT

The Community. America's 18,000 police departments operate in our nation's smallest hamlets and its largest metropolises, and the populations they serve vary greatly from place to place. In other words, there is no monolithic community or prototypical department.

But there are key principles and emerging best practices that should be embedded in all departments' policies, programs, and practices. All departments should strive to promote the values of fairness, equity, procedural justice, legitimacy, transparency, and accountability. These values apply to every department across the country, whether it serves one large, homogenous community or a collection of micro-communities, each with its own culture, traditions, and language.

Departments that serve multiple constituencies sometimes face conflicting demands. To ensure that policies and practices do not disproportionately impact marginalized groups, departments should analyze data to identify how particular communities are impacted and seek input and collaboration from them when evaluating policy and practice.

Thus, when we speak of "communities" or "marginalized communities" we generally refer to those most impacted by biased or discriminatory police practices. This includes but is not limited to: people of color (inclusive of Black people, Latinx people, Native Americans, Asian Americans, and Pacific Islander Americans); people of various religions; LGBTQ and gender-nonconforming people; immigrants; people with disabilities, including mental health and developmental disabilities; people with substance use disorders, Deaf and hard-of-hearing people; people experiencing homelessness; low income people; and people with limited proficiency in English.

Accordingly, community values are defined and articulated by the people living in these communities. Departments should work with communities to listen and understand their specific and unique challenges, needs, and interests. Together, communities and departments should develop a shared vision of public safety and a language that respects and recognizes the perspectives of all people.

Department Diversity. Because departments differ from each other, every recommendation in this report may not be appropriate for every department. But the underlying principles of each recommendation are applicable to all departments and can be adapted accordingly.

For example, if a small department does not have the capacity to purchase and implement a robust electronic intervention system, it can implement a manual system to record data related to officer activities and performance. Regardless of size or place, departments can apply the broad principles laid out in this report as they strive to achieve fair, safe, and effective policing and coproduce public safety with the community.

Rules Governing Police Departments and Officers. It is important to understand how the field of law enforcement is structured in order to advocate for change. Several entities regulate police departments and the rules and laws that govern them. Policing is governed by federal and state constitutions, and police officers are bound to work within the confines of the law.

The federal government is responsible for ensuring that policing meets constitutional standards and can condition federal grants on the adoption of policies and/or training. State governments are responsible for protecting the rights guaranteed by state constitutions. State legislators can also pass laws setting general standards for departments — including certification of police officers; stops, searches, arrests, and uses of force; and investigations of officer misconduct. They can also mandate or incentivize policy change through conditions on state funding.

Mayors usually appoint chiefs of police or superintendents and oversee police departments. Local governments, usually through city councils, also enact laws on policing, approve budget proposals, and create and fund mechanisms to oversee departments. These mechanisms include short-term mechanisms, such as commissions and task forces, and long-term mechanisms, such as inspector generals, independent monitors, and civilian oversight agencies. Local governments can also empower existing city officials, like ombudspeople or public advocates, to monitor department activities and receive complaints.

Independent oversight bodies are established by mayors or legislators as permanent offices that have authority to investigate individual complaints and recommend appropriate discipline. They also review internal administrative investigations as well as department policies and practices.
Police departments (and law enforcement agencies in general) develop and enforce policies, set departmental priorities, and impose discipline for policy violations. They are accountable to the mayor and local legislators, as well as to the community at large.

Police unions also have a great deal of power. They negotiate union contracts that govern wages and conditions of employment, such as requirements to use body-worn cameras, administrative investigation processes, and discipline and accountability processes. Union contracts typically are approved by city councils or similar municipal entities.

Policy Examples. Throughout this report, we provide examples of model policies and programs. We caution that references to a department's particular policy does not mean that the rest of its policies or programs reflect best practices. Likewise, reference to a specific provision within a policy does not mean that the policy as whole is regarded as a best practice.

This is to be expected. Policing is dynamic and fluid. Technologies are developing at a rapid pace, social problems are ever-changing, standards of fairness and justice are constantly evolving, and departments have to keep up. Moreover, department policies and practices are tailored to meet the needs of that department; some policies push boundaries and try new ideas, while others slowly embrace change. Many policies are described in the text of the report. However, many additional examples are included in the endnotes, which should be used when seeking more information.

CONCLUDING THOUGHTS

Everyone in America deserves to live in safe communities. This is one thing that we can all agree on, even in a time of partisanship and polarization. And yet, while we are on common ground, we need a common language to foster better communication and collaboration among those seeking change. We believe that true public safety requires communities and police departments to work together to coproduce it. As such, The Leadership Conference Education Fund's Policing Campaign is proud to partner with all stakeholders, including individuals and communities, activist groups, advocacy organizations, and police departments, to realize this goal.

For guidance on how to implement the solutions recommended in this report, please read the accompanying toolkit, which is available at http://policing.civilrights.org/toolkit. Please also visit our website at www.policing/civilrights.org for information about the campaign and local initiatives. And please sign up for our mailing list at http://policing.civilrights.org/ to receive news and information about our policing work.

“IT WAS A TRUE HONOR TO PARTICIPATE IN THE DEVELOPMENT OF THIS SEMINAL PUBLICATION. AS A FORMER POLICE CHIEF AND 30 YEAR POLICE VETERAN, I KNOW FIRSTHAND JUST HOW IMPORTANT IT IS FOR THE POLICE AND COMMUNITY TO WORK TOGETHER TO MAKE OUR COMMUNITIES SAFER.

THIS PUBLICATION PROVIDES CRITICAL INFORMATION THAT CAN EMPOWER COMMUNITIES TO HOLD POLICE ACCOUNTABLE TO ESTABLISH MEANINGFUL COMMUNITY PARTNERSHIPS AND OPERATE TO THE HIGHEST STANDARDS OF THE PROFESSION. THIS PUBLICATION IS A MUST READ FOR ALL COMMUNITIES AND THEIR POLICE AGENCIES.”

– RON DAVIS,
PARTNER 21CP SOLUTIONS, LLC; FORMER DIRECTOR OF THE OFFICER OF COMMUNITY ORIENTED POLICING SERVICES (COPS OFFICE) OF THE U.S. DEPARTMENT OF JUSTICE.

1

COMMUNITY POLICING

High-profile police shootings of unarmed Black men and other incidents of police misconduct, coupled with heavy enforcement of low-level offenses, have eroded trust in law enforcement in many communities — and especially in communities of color. This lack of trust strains police-community relationships and undermines public safety, but trust can be restored and safety improved with community policing.

Community policing is a process in which police departments actively build meaningful relationships with community members to improve public safety and advance community goals. It puts the community's voice at the center of decision-making processes and ensures that it is reflected in departmental policies, practices, training, resource allocation, and accountability systems.[1]

Community policing does not mean simply delegating a handful of officers to show up at local events. It is an approach to law enforcement that is adopted and implemented across departments by all officers at all levels. Nor does community policing mean saturating neighborhoods with officers so they can get to know residents — only to increase law enforcement activity (such as stops, frisks, tickets, and arrests). Officers should get to know residents

of the communities they police, but they should engage with them to understand how to best approach dealing with problems.

Community policing is grounded in the fact that police departments and communities with strong ties are better able to work together to support public safety and community wellbeing.[2] It builds trust with communities, aligns with community values, and prioritizes community engagement. And it applies the principles of procedural justice (the way in which officers and departments treat the people with whom they interact) to all aspects of policing. Ultimately, it strengthens policing, improves safety, and enhances democracy.

The Final Report of the President's Task Force on 21st Century Policing (the President's Task Force Report) establishes community policing as a pillar of trust between police and the communities they serve.[3] The concept of community policing, however, is often misunderstood and misapplied — and doesn't fully capture the deep and sustained role that communities can and should play in policing. This chapter aims to establish a unifying philosophy of community policing that can be uniformly implemented in all departments across the nation.

RECOMMENDED BEST PRACTICES

To practice community policing, departments should work with communities to:

1.1

Support local resolutions that embrace and require community policing as the key operational philosophy.

1.2

Commit to community policing in mission statements, strategic plans, and leadership development programs.

1.3

Commit sufficient resources to implement community policing.

1.4

Embrace procedural justice as a guiding principle that informs policies, practices, and training.

1.5

Reconcile with the community.

1.6

Give communities a direct, ongoing say in police practices.

1.7

Develop performance measures that reflect the principles of community engagement, collaboration, problem-solving, and trust-building.

1.8

Give officers ample time to engage with community members and solve community problems.

1.9

Build understanding of the societal causes and consequences of social problems.

1.10

Implement policies for encounters with people with limited English proficiency.

1.11

End the use of police in schools as a solution to student discipline.

1.12

Prohibit officers from asking people about their sexual orientation or immigration status.

THE HISTORY OF COMMUNITY POLICING

Police departments have not been around since the nation's founding. In colonial times, volunteer "night watchmen" were responsible for maintaining order and "controlling" slaves.[4] In 1838, Boston created the first publicly funded, organized police department, and other cities followed.[5] In the South, early police departments continued to focus on the preservation of slavery, as slave patrols apprehended runaway enslaved people and prevented revolts, according to crime historian Gary Potter.[6] This emphasis continued during Reconstruction, as local sheriffs used their power to enforce the racial segregation.[7]

By the 1930s, officers were "professionalized" and narrowed their focus to crime control and criminal apprehension.[8] Technological advances, like the patrol car and radio dispatch, physically separated officers from their communities. Instead of immersing themselves in their communities, officers began to drive around to answer calls, which weakened relationships and ultimately undermined public safety. During this period, police officers continued to be a source of oppression for Black communities through the enforcement of "Black Codes" — laws restricting the rights of Black people — and Jim Crow laws, which mandated racial segregation.

In the 1950s, civil rights activists organized to end legal discrimination, but they faced strong opposition — including from law enforcement. This police function grew increasingly problematic, as it widened the distance — both physical and psychological — between officers and community members. In response to civil unrest in the 1960s, President Johnson formed two presidential commissions — the President's Commission on Law Enforcement and Administration of Justice (the Crime Commission) and the National Advisory Commission on Civil Disorders (the Kerner Commission) to improve law enforcement practices and reform the criminal justice system.

Both noted the divide between communities and the police. The Crime Commission argued that "[p]olice agencies cannot preserve the public peace and control crime unless the public participates more fully than it does now in law enforcement."[9] In the initial draft of their report, the Kerner Commission's social scientists concluded that the country was deeply divided along racial lines, with law enforcement as "symbol and enforcer of white power."[10] The bipartisan commission, however, ordered the scientists to change the report, and the final draft submitted to the president watered down its criticism of police.[11]

It wasn't until decades later that community policing began to crystalize into a clear philosophy. In 1989, Lee Brown, the first Black chief of a major city department (Houston's), vividly described the approach that came to be known as community policing. He said police should recognize "the merits of community involvement" and decentralize authority to allow officers to "interact with residents on a routine basis and keep them informed[.]"[12] He also encouraged "power-sharing" to enable community members to participate in decisions about policing.[13]

The concept of community policing took hold in the early 1990s and has since been adopted by hundreds of departments — but not in the same way.[14] Indeed, community policing programs vary widely in their approach; some treat it as a philosophy that underscores all enforcement activities, while others treat it as a set of discrete and discretionary programs and practices.

Even leaders who express a commitment to community policing sometimes view it as separate and distinct from "real" law enforcement. Some delegate the task of cultivating community relationships to a handful of officers and assign others to patrolling streets and responding to calls. To be clear, community policing is not the responsibility of a few officers; it is an approach that all officers should take in their work. It is rooted in the idea that all members of police departments — from new recruits to chief executives — should work in partnership with communities to define community problems and coproduce solutions to public safety.

BENEFITS AND CHALLENGES OF COMMUNITY POLICING

A large body of evidence shows that people in communities that have collaborative partnerships with police feel safer.[15] Positive relationships also encourage cooperation and improve neighborhood safety. Research shows that foot patrols — police officers who patrol neighborhood "beats" on foot rather than by car — improve community life. To quote one study, foot patrols "reduced fear, increased citizen satisfaction with police, improved police attitudes toward citizens, and increased the morale and job satisfaction of police[.]"[16]

Research also suggests that officers solve more crime by gathering and sharing information with community members. "If information about crimes and criminals could be obtained from citizens by police … investigative and other units could significantly increase their effect on crime."[17] In other words, when communities and police departments trust each other and interact positively, public safety improves because people are more likely to cooperate with police to address problems.

Community trust and confidence in police lay the foundation of community policing.[18] Police tactics that disproportionately and negatively affect certain communities, especially those of color,[19] erode trust and confidence in police, fray police-community relationships, and impede criminal investigations.[20] Cultural differences and language barriers also contribute to misunderstanding and distrust.[21] Officers should understand that they ***earn*** trust — and can restore it — through actions that reflect the principles of community policing.

BEST PRACTICES IN COMMUNITY POLICING

Many departments have implemented community policing models in recent decades, shedding light on how they can best be adopted and implemented.[22] To practice community policing, departments should work with communities to:

RECOMMENDATION 1.1
SUPPORT LOCAL RESOLUTIONS THAT EMBRACE AND REQUIRE COMMUNITY POLICING AS THE KEY OPERATIONAL PHILOSOPHY.

Mayors, city council members, and other community officials set priorities for police departments and should commit their municipalities to the principles of community policing. Community members should advocate for government resolutions and/or ballot initiatives that embrace community policing, and they should require departments to adopt it as an operational philosophy.

In Columbia City, Missouri, city officials passed a resolution declaring "support for community oriented policing" and developed a citywide program to implement it in the Columbia Police Department.[23] This type of resolution is a good starting point for those seeking to meaningfully implement community policing. Seeing the resolution through to implementation and designing an optimal model of community policing requires ongoing collaboration between communities, police departments, and municipalities.

RECOMMENDATION 1.2
COMMIT TO COMMUNITY POLICING IN MISSION STATEMENTS, STRATEGIC PLANS, AND LEADERSHIP DEVELOPMENT PROGRAMS.

Department leaders should partner with community members to establish an overriding mission statement and a strategic plan that integrates community policing into all operations. These documents should articulate the vision, goals, and objectives of community policing and include measurable outcomes across the department.[24] Research suggests successful implementation of community policing depends on mission statements that include it.[25]

Many departments articulate their commitment to community policing in their mission statements. For example, the Dover (New Jersey) Police Department's mission is "to promote a partnership between the community, businesses, government, the media, and law enforcement designed to reduce crime and improve the overall quality of life while encouraging the community to determine its own needs through the exchange of ideas and problem solving techniques[.]"[26]

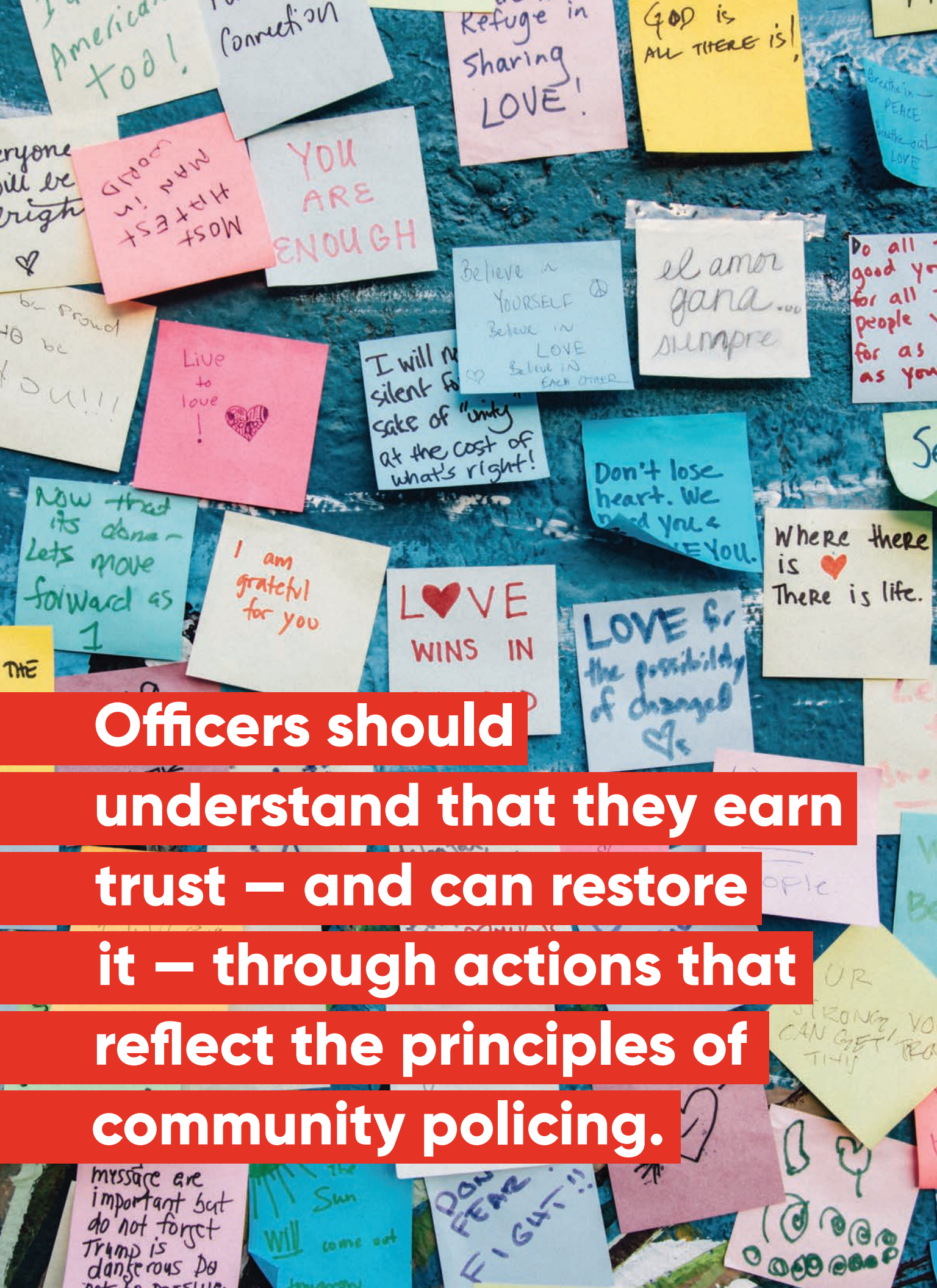
The Belmont (Massachusetts) Police Department, meanwhile, works "in partnership with all citizens of our community in the delivery of police services, raising the quality of life for all[,]" and recognizes that police and the community should have a better relationship to problem-solve together.[27] The Glendora (California) Police Department states the department's values related to community policing, such as: "human life and the dignity of all persons;" "honest and ethical behavior by all members of the department;" and "sensitivity in our interaction with others as the key to maintaining public support and trust."[28]

Strategic plans should also be created in coordination with community leaders and lay out strategies for achieving community goals. The International Association of Chiefs of Police (IACP) has noted that the philosophy of community policing "calls for police and community cooperation to determine the problems and desires of the community and develop a strategy of partnership that will address those needs."[29]

The Durham (New Hampshire) Police Department sought community input and worked with community members to determine the direction of the department.[30] By treating its constituents as customers, the department was able to identify community goals and improve relationships.[31] Department and community leaders should also create processes to evaluate the effectiveness of community policing strategies and determine whether they accomplish their goals.[32]

To make community policing the foundation of day-to-day operations, department leaders should explore ways to instill its values in officers from the beginning of their careers. In Washington, D.C., the Metropolitan Police Department (MPD) partnered with Georgetown Law's Program on Innovative Policing to create the Police for Tomorrow Fellowship Program. The program helps new officers bond with the communities they serve, which supports effective and impartial policing.[33]

Fellows learn about important community issues and participate in workshops covering everything from race and criminal justice to the history and demographics of local communities.[34] During the two-year program, fellows work with a community organization or community members to develop a project to benefit the community.[35] The program — the first of its kind in the country — is designed to create leaders within the MPD who embrace and exhibit the values of community policing. It is an innovative model for providing new officers with opportunities to engage and work with the communities they serve.


Refuge in Sharing LOVE!
GOD is ALL THERE IS!
YOU ARE ENOUGH
Believe in YOURSELF
Believe IN LOVE
el amor gana... siempre
Live to love!
I will not be silent for the sake of "unity" at the cost of what's right!
Don't lose heart. We
Where there is ♥ There is life.
Now that it's done - Lets move forward as 1
I am grateful for you
LOVE WINS IN
LOVE for the possibility of change
Officers should understand that they earn trust — and can restore it — through actions that reflect the principles of community policing.

RECOMMENDATION 1.3 COMMIT SUFFICIENT RESOURCES TO IMPLEMENT COMMUNITY POLICING.

A community policing model may require changes in departments' staffing levels, deployment patterns, and the like, which can require cutting costs, raising additional funds, and/or using resources more efficiently. Studies suggest that insufficient resources and/or inefficient resource allocation block effective implementation of community policing initiatives.[36]

Fortunately, departments don't necessarily need additional funds to implement community policing initiatives; they may be able to secure adequate funding by reallocating or reinvesting existing resources. As such, government bodies that oversee police departments and department leadership should ensure that departments are using resources ***efficiently*** to promote community policing and that they are allocated ***equitably*** across neighborhoods served by departments.

In addition to advocating for more funding for community policing initiatives, community members should advocate for investment in social and community services that improve public safety, such as after-school programs, street lighting, and homeless shelters.

RECOMMENDATION 1.4
EMBRACE PROCEDURAL JUSTICE AS A GUIDING PRINCIPLE THAT INFORMS POLICIES, PRACTICES, AND TRAINING.

Procedural justice refers to the way that police and police departments treat the people with whom they interact. It reflects the fact that people assess police legitimacy based on **how they are treated** rather than on the outcomes of interactions.[37] External procedural justice concerns officers' interactions with the community. When people are treated fairly and with respect, they are more likely to comply with the law and cooperate with police, thereby improving public and officer safety.[38] Police departments should integrate external procedural justice into all interactions with the public.

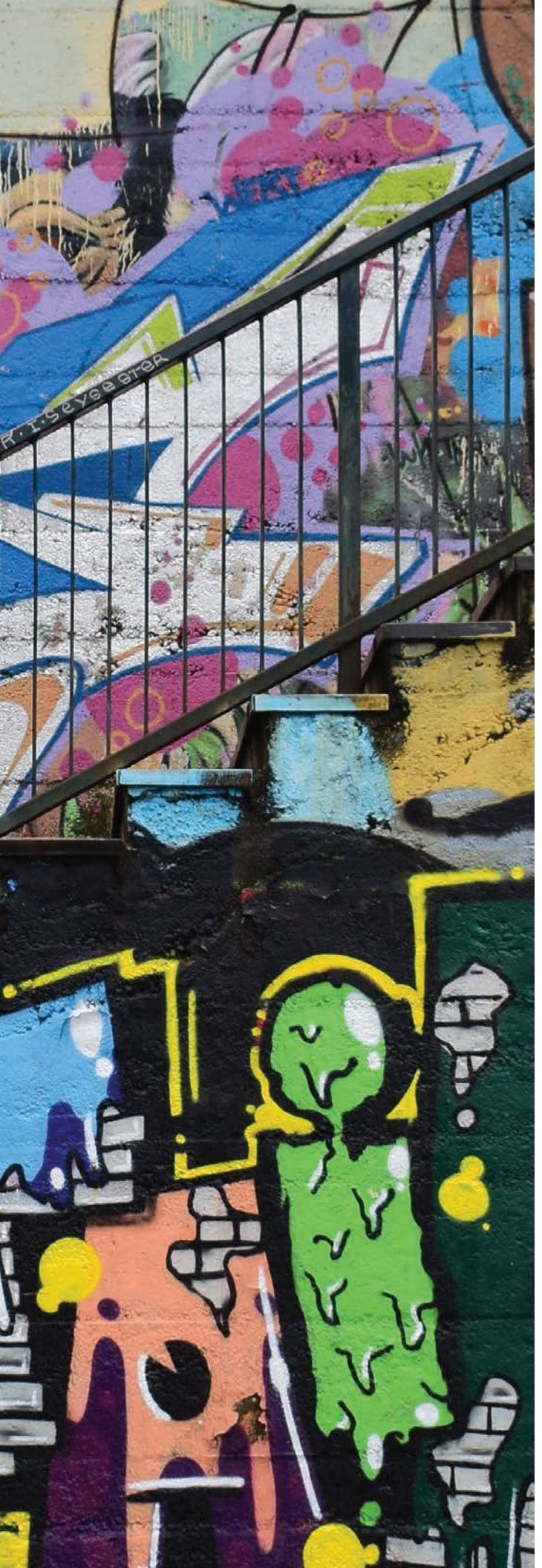
Internal procedural justice concerns actions within departments, including the involvement of officers in the development of policies and training. This includes (1) engaging communities in the development and review of police and (2) training new recruits, officers, and supervisors in impartial policing, implicit bias, and cultural competency. Research shows that ***internal*** procedural justice is central to ***external*** procedural justice.[39] When officers feel they are treated fairly, their job performance, wellbeing, and relationships with communities improve.[40] For this reason, leaders should infuse procedural justice throughout department operations to motivate officers to embrace it. (For more detail, see Chapter 9.)

RECOMMENDATION 1.5
RECONCILE WITH THE COMMUNITY

To rebuild trust, departments should acknowledge the long and complex history between communities of color and police officers. Police-community reconciliation is a process that opens communication between communities and police; both engage each other to openly discuss the damage that policing has caused communities historically, to air grievances, and to address the narratives that interfere with efforts to improve public safety.[41]

The National Initiative for Building Community Trust and Justice created a reconciliation model to improve police-community relations.[42] In this model, departments recognize past harms (**e.g.**, the police violence during the civil rights movement); listen to community stakeholders; and explicitly commit to advancing a set of core ideas that govern policing.[43] This involves investigating the causes of breakdowns in trust; engaging face-to-face to understand the experiences that shape police and community narratives; identifying specific policy changes to improve relationships; and creating a formal body for carrying out changes.[44]

Gary, Indiana, is one of the initiative's six pilot sites; as of 2017, all sworn officers at the Gary Police Department had been trained in procedural justice.[45] The department began the reconciliation process by holding listening sessions with various community stakeholders, including youth, intimate partner violence survivors, and residents who live in neighborhoods with high crime and incarceration rates.[46] The sessions initiated a process to overcome distrust and to work together to develop policies that represent a shared vision of public safety.



RECOMMENDATION 1.6
GIVE COMMUNITIES A DIRECT, ONGOING SAY IN POLICE PRACTICES.

The cornerstone of community policing is an authentic, cooperative relationship between police departments and the communities they serve. Many leaders reduce community policing to outreach efforts such as basketball games with community members or "coffee with a cop." While valuable, these efforts won't effect change on their own.[47] As previously noted, community policing is not merely a series of programs or initiatives; it is an overarching philosophy that hinges on community involvement in departments' decision-making processes. To incorporate community input and collaboration, departments should work with communities to:

Maintain and optimize a range of community partnerships. A central tenet of community policing is that community members play a key role in public safety.[48] As such, police leaders and officers should actively partner with the community to "coproduce" public safety.[49] This means community members and officers need opportunities to work together to identify community problems and develop strategies to address them.

When developing a community policing model, many departments start by "power mapping" (***i.e.***, identifying and getting to

know) community organizations, businesses, and leaders.[50] This helps department leaders understand where community relationships are strong, where they are weak, and where there are opportunities to connect. It also helps ensure that officers interact with people who don't regularly engage with the department (which gives them a fuller perspective on community needs and preferences).

Community policing requires departments to facilitate and promote a wide range of community partnerships.[51] This means developing long-term, sustained relationships not only with the organizations that are easiest to reach or the community stakeholders who are most supportive of law enforcement. It also means reaching out to communities and organizations that are skeptical of law enforcement, have not traditionally engaged with police departments or officers, or that may be outside of a department's comfort zone.

Leaders and officers should also ***not*** assume that self-appointed community leaders speak for the whole community. Community policing means getting to know communities well enough to understand who plays ***true*** leaderships roles — not only those who call themselves leaders. Some communities, especially marginalized ones, don't have delegated representatives who speak on their behalf or resources that enable people to get involved in community life. Departments need strategies to hear from and engage with ***all*** types of leaders.

After power mapping comes relationship-building. Leaders and officers should hold targeted community outreach programs to connect with all segments of the community, especially marginalized ones, such as racial, ethnic, religious, immigrant, and LGBTQ communities, and people with disabilities or limited English proficiency (LEP).[52] Leaders should formally track these efforts so they can develop a comprehensive understanding of existing assets and strategic initiatives across the community.

End "broken windows policing" and other models that emphasize quantity over quality. Departments should collaborate with communities to identify community problems and develop strategies to improve safety while also respecting concerns about over- and underpolicing.

Some communities, especially marginalized ones, are underpoliced, in that they lack adequate police attention to crime and services to prevent and address it. To address these concerns, department leaders should adopt strategies to improve response times in communities while continuing to ensure that officers stay on their beats. Again, this requires that departments work with communities and elected officials to prioritize and re-allocate services to make community policing models work. A natural response to long call times is to hire more officers. Rather than solely focusing on increasing staff, though, communities and departments should assess how officers spend their time to determine whether it is possible to reset priorities.

At the same time, some communities, and again, often marginalized ones, experience over-policing due to hyper-enforcement of low-level offenses and over-utilization of traffic and pedestrian stops. Under the "broken windows" theory of policing, minor offenses — such as drinking alcohol in public and not paying for public transit — create a sense of social disorder that begets more serious offenses; under this theory, cracking down on minor offenses mitigates the conditions that lead to serious crime.[53]

Police departments across the nation bought in to this theory in the 1980s and began to make high volumes of low-level arrests. In the 1990s, this strategy gave way to more aggressive models, such as "order-maintenance" policing.[54] Under these models, departments poured resources into specific communities — mainly communities of color — and aggressively enforced low-level offenses by dramatically increasing the number of stops, searches, citations (***i.e.***, tickets), and arrests.

The increased enforcement activity eroded police-community relations and heightened distrust of police in communities that were disproportionately and unfairly targeted. Ultimately, the "broken windows" theory and its progeny — including "stop-and-frisk" (when police temporarily detain people and pat down their outer clothing based on suspected criminal activity) — have been discredited. Indeed, when the New York Police Department (NYPD) ended its aggressive use of stop-and-frisk practices in New York City, it saw no increases in crime.[55]

Departments can move away from aggressive enforcement by deprioritizing enforcement of nonviolent, minor offenses and adopting other community policing strategies. They can also implement deflection programs, which refer people with substance use disorders, mental health problems, and other conditions to service providers rather than arresting them. (For more detail, see Chapter 5.)

Communities might urge legislators to decriminalize some types of minor offenses, such as marijuana possession.[56] To be clear, fixing the proverbial broken windows, cleaning up neighborhood blight, and addressing the social conditions and disparities that contribute to these issues

are important, but these problems can and should be addressed through community-based responses.

Tailor policing strategies to meet the needs of specific neighborhoods. The community's voice should inform all aspects of department operations, from how departments are structured to how officers use their time. Department leaders should seek community members' concerns and desires when devising policing strategies, and community members should be able to provide input when policies are created and revised. Engaging community members in these processes improves understanding of policing and increases community buy-in to police policies and practices.

Communities and their constituent parts (neighborhoods, subcommunities, and micro-communities) have overarching values and concerns about police performance as well as specific needs and expectations. Seattle and Philadelphia recently established formal plans targeting specific policing initiatives and approaches in different neighborhoods.[57] Seattle's Micro-Community Policing Plans are "based on the premise that public safety can be enhanced and crime reduced through collaborative police-community attention to distinctive needs of … neighborhoods with focused crime control, crime prevention, and quality of life strategies on neighborhood-specific priorities."[58] Community engagement and feedback enable the department to better understand crime (and the perception of crime) than do crime data alone and allow it to structure policing services to serve communities' specific needs.[59]

Seek community feedback and respond to input. Community policing only works when communities have a direct, ongoing voice in how they are policed. Community "voice" and participation occur at the neighborhood and city levels. Departments that seek community voice enhance police legitimacy and strengthen democracy.

Many cities are experimenting with models that amplify community perspectives on police operations. These range from formal civilian advisory boards that make recommendations about how to improve public safety to informal discussions between community members and the police. In New Orleans, police-community advisory boards,

comprising volunteer representatives from all city districts, make recommendations on public safety strategies, operations, resource deployment, and policies.[60] In the early 2000s, city officials in Anaheim, California, began working with city agencies to address problems facing the city and established permanent neighborhood councils to facilitate neighborhood problem-solving.[61] After officers began working with the neighborhood councils, neighborhood crime decreased 80 percent.[62]

But community input is needed on more than broad public safety priorities. As the President's Task Force Report recommends, communities need to collaborate with departments regarding specific policies, protocols, and procedures.[63] To truly coproduce public safety, department leaders should include community members in the development, implementation, and evaluation of policies and procedures in all areas of police operations, and especially in critical areas like the use of force.[64] One way to involve communities in police governance is to create spaces where community members can provide input on improving public safety. Such community meetings should be held in accessible locations and at varying times to accommodate work and family schedules.

Encourage communities to participate in the development and delivery of community policing training. Department leaders should train officers in the goals and methods of community policing, and community members should be directly involved in the development and delivery of training. They can play advisory roles in the development of training curricula on topics such as de-escalation, crisis intervention, bias, procedural justice, cultural competency, and the history of the community.[65]

All officers should receive training on procedural justice, cross-cultural communication, cultural competency, implicit bias, and the history of the community.[66] Officers should also receive training on **why** building relationships strengthens policing and public safety, including the concept of police legitimacy (***i.e.***, the idea that communities that view the police as a legitimate source of public safety and protection are more likely to support and cooperate with them).[67] Studies find that officers who are trained in community policing are more inclined to embrace and implement it in their work.[68]

Training in community policing has been formally integrated into some police academies and institutes. In New Jersey, all officers receive enhanced training in cultural awareness and implicit bias through the Community-Law Enforcement Affirmative Relations (CLEAR) Continuing Education Institute.[69] Numerous organizations oversee this training, including the County Prosecutors' Association of New Jersey, the New Jersey State Police, the New Jersey Office of Law Enforcement Professional Standards, the New Jersey State Association of Chiefs of Police, and civic, faith-based, educational, and advocacy organizations.[70]

RECOMMENDATION 1.7
DEVELOP PERFORMANCE MEASURES THAT REFLECT THE PRINCIPLES OF COMMUNITY ENGAGEMENT, COLLABORATION, PROBLEM-SOLVING, AND TRUST-BUILDING.

Many police departments evaluate and promote officers in part on enforcement-based metrics, such as the number of stops and arrests they make, because these data are easily aggregated and scrutinized. Evaluating and promoting officers based on these metrics incentivizes these types of interactions. Tracking officers' positive interactions, such as helping residents solve problems or talking with local shop owners, is more difficult. Nevertheless, leaders can evaluate and promote officers based on community policing metrics. They can measure trust by tallying the number of compliments and complaints officers receive, and they can measure community engagement by counting the number of community events officers attend and actively engage in and, when possible, the number of new people officers speak with while on duty.

To evaluate entire departments, leaders can survey community members to track satisfaction with policing services. Because people are more likely to help police officers when they trust them, police leaders should also consider indicators of the quality of police-community relationships, such as rates of homicide clearance (the number of cases that end in a charge) and victim participation in criminal investigations. The volume of calls to tip lines may also indicate the public's willingness to cooperate with police (though departments should remember that witnesses may be reluctant to cooperate with police if they fear retaliation, especially in cases relating to intimate partner violence and gang activity).

RECOMMENDATION 1.8
GIVE OFFICERS AMPLE TIME TO ENGAGE WITH COMMUNITY MEMBERS AND SOLVE COMMUNITY PROBLEMS.

When implementing a community policing program, department leaders should consider logistics such as time and place. Officers need time to meaningfully engage with communities and should be assigned to the same general areas or neighborhoods so they can familiarize themselves with communities and build trust with community members. To support strong police-community relationships, departments should:

Assign officers to specific geographic areas or "beats." Assigning officers to specific neighborhoods enables them to develop an understanding of the areas they police, which can lead to better decision-making and more effective law enforcement. Officers who patrol defined geographic areas get to know residents and become familiar with neighborhoods. This helps reduce the effects of negative implicit bias; officers who are from or who know certain neighborhoods well are better able to differentiate between suspicious and everyday conduct.[71]

When officers have nuanced understandings of the culture and norms of neighborhoods, sub-communities, and micro-communities, and of the people who live there, they are less likely to rely on assumptions or biases when assessing and responding to suspicious behavior.[72] For this reason, leaders should assign officers to specific beats, and they should carefully consider decisions to re-assign officers so as to avoid disrupting established relationships with community members.[73]

Another community policing strategy is to create incentives for officers to live in the communities they serve and consider community ties during recruitment and hiring processes.[74] The IACP observes that "[h]aving some number of officers who live, shop, play, and/or have children in schools in the community they serve lends itself to creating strong community-police bonds."[75] Whether officers live in the communities they serve or patrol the same neighborhoods over time, community policing is most effective when "officers and community members share a sense of ownership of 'their neighborhood.'"[76]

Give officers ample time to engage in community policing and problem-solving. To work well, community policing approaches should be implemented departmentwide and should be central to all officers' duties. As noted above, many departments delegate community policing and engagement work to a handful of officers and assign the rest to traditional enforcement activities. Instead, leaders should give all officers opportunities to focus on community engagement.

"THE ABSENCE OF JUSTICE WILL CONTINUE TO CHALLENGE THE FAITH OF THE PEOPLE AND THE NOTION THAT LAW ENFORCEMENT IS MEANT TO PROTECT AND SERVE. ONLY AN UNMEASURABLE TRUTH ROOTED IN EQUITY, RESPECT, AND CARE FOR MANKIND WILL ENSURE JUSTICE."

– NATHANIEL HAMILTON,
BROTHER OF DONTRE HAMILTON AND
CO-FOUNDER OF THE COALITION FOR JUSTICE.

One challenge of community policing relates to time management. Most officers spend their shifts responding to (often backlogged) service calls, which leaves little time for community engagement. Leaders can work with community members to identify the types of calls that need police attention and develop community-based responses for those that don't. For example, a resident who complains about a neighbor who consistently plays loud music could be referred to a community mediation team. Leaders can also promote relationship-building by assigning officers to community police activities, as does the NYPD. Leaders there relieve officers from answering service calls for periods of time so they can spend time getting to know and working with the community.[77]

RECOMMENDATION 1.9
BUILD UNDERSTANDING OF THE SOCIETAL CAUSES AND CONSEQUENCES OF SOCIAL PROBLEMS.

Social problems are at the root of crime. To respond effectively, officers should understand the societal causes and consequences of social problems, such as poverty, unemployment, homelessness, poor mental health, substance use disorders, and the role of race in police-community relationships. Police officers alone cannot solve these complex problems, but they can use certain techniques to mitigate them. All police personnel should receive cultural competency and leadership training throughout their careers so they can understand the societal causes and consequences of crime and police-related solutions to it.

Elected officials — and society at large — are ultimately responsible for addressing social problems, but the unfortunate reality is that this responsibility often falls to police. An enforcement-only approach, of course, cannot adequately address complex problems, so leaders should create a departmental culture that understands these challenges and raises awareness of them. Department leaders should work with community members to develop approaches that go beyond citations and arrests, which fail to address the root causes of social problems (and, in fact, often result in repeat offenses). In Tucson, Arizona, police leaders recognized that officers were repeatedly arresting the same individuals with substance use disorders. In response, they teamed up with a treatment provider and created a "deflection program" that allows people to receive treatment instead of jail time.[78] (For more detail, see Chapter 5.)

RECOMMENDATION 1.10
IMPLEMENT POLICIES FOR ENCOUNTERS WITH PEOPLE WITH LIMITED ENGLISH PROFICIENCY.

Community policing requires leaders and officers to effectively communicate with the communities they serve and implement policies to protect vulnerable community members. Language barriers complicate communications; some people may not know or understand their rights or be able to communicate with police officers. LEP individuals include people who don't speak English as a primary language, such as those who are immigrants; are Deaf or hard of hearing; have autism, are nonverbal, or have sensory or stimulation sensitivities.[79]

Most, if not all, departments serve LEP individuals and communities, but many officers, understandably, don't have the skills they need to engage with them. This raises safety concerns: If officers misperceive LEP individuals as noncompliant, they can marginalize entire communities. As indicated by federal law and the U.S. Department

of Justice (DOJ), departments should create policies and procedures to (1) ensure that community members aren't discriminated against based on their language ability or national origin; and (2) ensure meaningful access to police services.[80] Such policies allow officers to effectively communicate with LEP individuals, which increases engagement and cooperation and reduces misunderstanding.

Title II of the Americans with Disabilities Act (ADA) prohibits officers from discriminating against people with disabilities when delivering police services, such as receiving complaints and arresting and booking people.[81] Thus, departments should ensure that officers communicate as effectively with people with disabilities as they do with people without disabilities.[82] To meet the ADA's legal requirements,[83] officers should be trained to recognize disabilities and understand the unique needs of people with specific disabilities. Officers need disability competency training to recognize when people have "communication" disabilities and to be able to communicate effectively with them.

Departments should also hire people who speak American Sign Language to communicate with Deaf and hard-of-hearing people;[84] these officers or interpreters can also serve people with developmental disabilities that interfere with their ability to communicate, such as people with autism, that use ASL to communicate. Departments should also provide people who are Deaf and hard of hearing with communication aids and services if doing so does not pose an undue burden.[85]

Departments should assess communities to determine the need for language assistance services, such as bilingual officers, interpreters, and interpretation services, and they should consider hiring a LEP coordinator to oversee the provision of language assistance services.[86] Family members, especially children, should never interpret except in cases of emergency.[87]

Departments should also hire experts from the disability community to develop policies and programs;[88] engage people from the disability community in the development and delivery of trainings, including use-of-force training; and give officers one-on-one experience interacting with people with various types of disability during training.[89]

RECOMMENDATION 1.11
END THE USE OF POLICE IN SCHOOLS AS A SOLUTION TO STUDENT DISCIPLINE.

School discipline has traditionally fallen under the purview of teachers and administrators. But school districts are increasingly turning disciplinary matters over to school police[90] — police officers who are deployed to schools to improve safety and prevent crime, often under the mantle of community policing.[91] As the presence of police in schools has grown, students — and primarily students of color, students with disabilities, and students

who identify as LGBTQ — have increasingly been subject to arrest and excessive force for minor misbehavior or behavior that arises from a disability.[92] Police officers should have no role in student disciplinary matters, and school districts should limit school requests for police assistance.[93]

Antagonistic interactions between officers and students disrupt learning environments and violate the principles of community policing. Moreover, they funnel students into the criminal justice system, which has long-lasting negative consequences for individuals and society.[94] For these reasons, elected officials should end the use of police in disciplinary matters and instead invest in and prioritize hiring school counselors, mental health counselors, community intervention workers, and restorative justice coordinators to respond to student behavioral problems.[95] Teachers and school administrators should also receive training in de-escalation, mediation, and crisis intervention so they have the skills and techniques to respond appropriately to student misbehavior.[96]

Immigrant and undocumented youth are especially vulnerable to the presence of police in schools, and many face detention or deportation when police are involved in disciplinary matters. For this reason, communities should ask school districts that retain school police whether they share information with the U.S. Department of Homeland Security Office of Immigration and Customs Enforcement (ICE) or with state or federal gang taskforces, and they should ensure existing agreements between police departments and schools don't give officers access to student records.[97]

Departments, along with community members, should pressure school districts in their communities to use police in schools only for dealing with serious crimes that cannot be addressed by teachers and administrators, and to invest instead in effective, evidence-based strategies to respond to school discipline, including facilitating better communication between school staff and students, increased teacher training, peer mediation interventions, and educational and therapeutic approaches to ensure students feel physically and psychologically safe in school.[98] Decriminalizing age-appropriate student behavior, such as disruptive behavior in the classroom, and using alternatives to arrests, will end the school-to-prison pipeline.[99]

RECOMMENDATION 1.12
PROHIBIT OFFICERS FROM ASKING PEOPLE ABOUT THEIR SEXUAL ORIENTATION OR IMMIGRATION STATUS.

Effective law enforcement rests on a foundation of community support and cooperation. Officers and prosecutors rely on witnesses to report crimes, cooperate fully in investigations, and, when necessary, testify in court. Police departments are more effective when community members report potential criminal activity and summon aid when officers need help.

Trust depends on many factors, including community members' belief that officers value them and their safety and that they will not use information they provide for purposes outside of public safety. LGBTQ people should be assured that officers won't inquire about, record, or disclose information about their sexual orientation. The same principle applies to immigrant communities, where people may fear that reporting crimes or cooperating with police will lead to deportation or otherwise complicate life for themselves, their families, or neighbors. Departments should prohibit officers from asking people about their sexual orientation or immigrations status. Officers may record this information only if (1) people ***voluntarily*** provide it and (2) it relates to the incident (**e.g.**, a potential hate crime).[100]

Such fears may cause people to underreport violent crimes, such as intimate partner violence or hate crimes. U.S. citizens and documented residents may share these fears, because many live with or know and are concerned about undocumented people. Eighty-five percent of immigrant households in the United States — and 10 percent of U.S. families with children — are "mixed-status," meaning that at least one member is a U.S. citizen and one is not.[101] A single police interaction that compromises a community member's immigration status can undo months and years of trust-building.[102] Additionally, some officers engage in racial and ethnic profiling to determine whether to report immigrants to ICE, which further erodes trust.[103]

To overcome fear and distrust, department leaders and state and local governments should prohibit officers from asking people about their immigration status.[104] This policy comports with Title 8, United States Code, Section 1373, which states that government entities such as police departments can't restrict officials from sharing immigration information with the U.S. Citizenship and Immigration Services. Section 1373 does ***not*** prohibit departments from adopting policies instructing officers not to inquire about immigration status.[105] In 2017, New York Gov. Andrew Cuomo issued an executive order prohibiting law enforcement officers from doing so unless they are investigating illegal criminal activity.[106] In 2018, the Orlando City Council passed a resolution barring questions about immigration status entirely.[107]

While law enforcement agencies often collaborate with federal authorities regarding matters of public safety (**e.g.**, terrorism, drug and human trafficking, etc.), few have interest in or resources to devote to civil immigration matters, such as deportation proceedings. As of December 2018, more than a dozen cities and states had filed suit against the DOJ to challenge its efforts to condition congressionally authorized law enforcement grants on increased cooperation and information-sharing with federal immigration authorities.

In one suit, a federal judge ruled that the federal government could not block grants to Philadelphia because of its policy to turn immigrants over to federal authorities only when agents have a signed warrant.[108] This area of law is developing as cases like these work their way through the courts. Nonetheless, police departments still have the discretion to restrict when officers may ask members of the public about their immigration status. If departments wish to preserve or build trust among immigrant communities, they should limit inquiries to cases where immigrant status is directly relevant to the criminal investigation or prosecution.

2

BIAS-FREE POLICING

Equal treatment of all people, regardless of background, class, or characteristic, protects and preserves public safety and builds trust and confidence in policing. Yet much work remains to be done to achieve this ideal in the field of law enforcement. Uprisings in cities like Detroit and Newark in the 1960s, Los Angeles in the 1990s, and Baltimore in the 2010s were reactions to discrimination against Black people by police officers. And yet, even after decades of protest, discrimination against people of color continues, sometimes with lethal effects. Indeed, police shootings of Michael Brown in Ferguson, Missouri; Tamir Rice in Cleveland, Ohio; and Stephon Clark in Sacramento, California — all unarmed Black men — have led many to question whether these deadly incidents would have occurred had these men been White.

Discriminatory policing, which targets people of color more often than others,[1] has serious consequences not only for individuals and communities but also for law enforcement and for society. Indeed, it fosters distrust of and a lack of confidence in law enforcement, which, as the National Institute of Justice notes, "undermines the legitimacy of law enforcement and, without legitimacy[,] police lose their ability and authority to function effectively."[2] As police officers well know, police need the community on their side to function well.

Distrust of and lack of confidence in police stem from a long history of police violence against people of color, from early enforcement of fugitive slave laws to beatings of civil rights protesters to the modern-day impact of bias-based police practices on communities of color[3] and other marginalized groups.[4] This history is perpetuated by police cultures of "warriors at war with the people [they] are sworn to protect and serve."[5]

Discriminatory policing is, as the Police Executive Research Forum states, "antithetical to democratic policing."[6] Yet inadequate policies and accountability systems allow it to continue. The good news is that better policing is possible. Through training, policy, and practice, departments can prevent discriminatory policing and reduce and mitigate its disparate impact on marginalized communities. To achieve this goal, departments should work with communities to create cultures of inclusivity and accountability and promote bias-free policing; condemn bias and discrimination in all police practices; ensure that all officers are trained to counteract biases; implement robust accountability systems; and track data on disparate outcomes.

RECOMMENDED BEST PRACTICES

To practice bias-free policing, departments should work with communities to:

2.1

Adopt comprehensive bias-free policies.

2.2

Ensure officers are trained in bias-free policing.

2.3

Supervise, monitor, and hold officers accountable for policy violations.

2.4

Take corrective action when data indicate bias-based policing.

2.5

Address complaints and calls for service based on racial and ethnic profiling.

2.6

Identify and investigate hate crimes.

2.7

Collect, analyze, and publicly report data relating to bias-based policing.

2.8

Create cultures of inclusivity and accountability and diverse workplaces.

2.9

Work for broad social change.

PROFILING

Racial and ethnic profiling and other discriminatory police practices arise from biases — beliefs and attitudes about people and groups.[7] Explicit biases are deliberate attitudes or beliefs that can predict discriminatory behavior and, indeed, lead to it.[8] Discriminatory behavior harms individuals and communities, such as when police officers stop young Black men because they believe that they're more likely to carry contraband than other people. This kind of bias is clear-cut, unambiguous, and contrary to the Fourteenth Amendment, which prohibits government action where a "discriminatory purpose has been a motivating factor in the decision."[9]

Implicit biases are subconscious assumptions formed by automatic associations people make about groups of people based on their personal characteristics.[10] These associations shape how people understand the world and influence their decisions and actions.[11] This neurological process is innate and, in general, helps people navigate life.[12] Children, for example, learn early on to associate fire with heat, which protects them from burns.

But this process also causes people to associate specific personal characteristics with larger social groups and to overgeneralize about, or stereotype, them.[13] In fact, people can make negative associations about social groups even if they ***consciously*** disagree with them.[14] Implicit biases about social groups are reflected in scientific research. One study found that White people perceive Black faces with certain expressions as angry — but they don't come to the same conclusion about White faces with the same expression.[15] Another study found that people reacted similarly to computer-based "shoot/don't shoot" scenarios: They were more likely to

misperceive an object as a gun when displayed by a Black person and to automatically associate Black male faces with guns.[16]

In policing, racial biases can lead officers to assume that some people are inherently more dangerous than others, more prone to criminal activity, and more prone to certain types of crime based on their personal characteristics — and then to act on those assumptions in a way that has a discriminatory effect.[17] Such biases may cause an officer to assume that a young Black man in a nice car has stolen it and to stop him without cause. Or, they may cause an officer to make ***positive*** — but also problematic — assumptions that certain groups of people do **not** commit crime.

Negative implicit biases also lead to racial and ethnic profiling in stops, searches, arrests, and other police activity and, as noted above, to inappropriate, and sometimes lethal, uses of force.

Despite their danger, implicit social biases are pervasive and persistent across human society. All people, including those with firm commitments to justice and equality, make assumptions about people based on their personal characteristics, whether they are aware of it or not.[18] Even people from marginalized groups can hold negative implicit biases against people from their own groups. These biases result in inequity and discrimination, which harms individuals and communities and erodes trust and confidence in law enforcement and the government, especially when officers and departments are not held accountable.

Police leaders should be clear that explicit bias is against the law, morally and ethically wrong, and antithetical to the field's fundamental mission to provide services equitably to all people. Implicit biases are more difficult to detect than explicit biases and, consequently, more complicated to address. But the result is the same for those on the receiving end: discrimination. Fortunately, departments can address and mitigate the harm caused by implicit biases through education, training, inclusive cultures, and diverse workplaces. Discrimination, in short, is not merely a problem of the past. It exists today, but, with the right interventions, does not have to in the future.


Never
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EQUAL PROTECTION UNDER THE LAW

The equal protection clause of the Fourteenth Amendment to the U.S. Constitution guarantees equal protection under the law and safeguards the public from unlawful police conduct. This means that police officers can't treat some people differently than others based on race, national origin, religion, or gender.[19] Discriminatory policing occurs when police officers selectively enforce, or fail to enforce, the law based on these — or other — personal characteristics.[20]

Police leaders should address discrimination and bias in policing; otherwise, they undermine their ability to protect and serve the public and expose themselves and their departments to civil liability. To ensure police practices meet legal and constitutional antidiscrimination requirements, departments should develop policies, training, and accountability systems to address officer behavior and department practices.[21] Equal protection violations arise when departments implement practices with express classifications (**e.g.**, a policy to stop all Latinx drivers) or enforce facially neutral policies (***i.e.***, nondiscriminatory as written) in a discriminatory manner.[22] If the policy is facially neutral, then someone who challenges it must show that the department's enforcement was motivated by a discriminatory purpose and had a disproportionate impact on a certain group; moreover, they must show that the enforcement action could not be justified on a legitimate basis.[23]

Direct evidence of discriminatory intent is hard, if not impossible, to obtain.[24] For this reason, courts allow circumstantial evidence to show discriminatory intent.[25] This can include contemporaneous statements by decision-makers that reveal discriminatory intent; the disproportionate impact of an action on a particular group (***i.e.***, its "disparate impact" or "disproportionately adverse effect"); actions, decisions, or events leading to the adoption of a policy or enforcement practice; and evidence of departure from normal practices or procedures.[26]

Under this analysis, police departments have been held accountable for discriminatory policies and practices that violate the Fourteenth Amendment. In ***Floyd v. New York***, a federal court found the New York Police Department's (NYPD) stop-and-frisk program unconstitutional because, while not discriminatory on paper, it targeted Blacks and Latinxs in a discriminatory manner and had a disproportionate impact on them.[27] The plaintiffs presented statistical evidence showing that young Blacks and Latinx men were more likely than their White counterparts to (1) be stopped, (2) be arrested rather than given a citation, and (3) have force used against them.[28] (For more detail, see Chapter 3.)

This statistical evidence of a disproportionate effect — coupled with the department's policy of targeting "the right people" (which meant, in practice, people of color) and the NYPD commissioner's acknowledgment that stops focused on Blacks and Latinxs — showed that the program "violated the bedrock principles of equality."[29] As a remedy, the court appointed an independent monitor to oversee the NYPD's reform of stop-and-frisk policing and required the department to work with community stakeholders to develop policies and provide input on the reform process.[30]

Profiling constitutes intentional discrimination in violation of the equal protection clause if it involves an express classification based on race or ethnicity, as was the case at the Maricopa County Sheriff's Office (MCSO) in Arizona. In 2013, a federal judge found that, despite its written ban on racial profiling, the MCSO allowed deputies to use race as a factor in immigration sweeps and traffic stops.[31] The plaintiffs in the case (***Melendres v. Arpaio***) produced evidence revealing that then-Sheriff Joe Arpaio forwarded racially charged constituent letters to his deputies, who exchanged racially charged emails with each other.[32]

This evidence, combined with the department's express permission for officers to make racial classifications in law enforcement decisions, led the court to conclude that the department's policies and practices violated the equal protection clause.[33] As a result, the court ordered the MCSO to stop ethnically profiling Latinx people. Arpaio was later found guilty of criminal contempt of court for defying the judge's order[34] and lost his bid for reelection. (See Chapter 3 for a discussion of racial profiling on the New Jersey Turnpike.)

RACIAL BIASES CAN LEAD OFFICERS TO ASSUME THAT SOME PEOPLE ARE INHERENTLY MORE DANGEROUS THAN OTHERS, MORE PRONE TO CRIMINAL ACTIVITY, AND MORE PRONE TO CERTAIN TYPES OF CRIME BASED ON THEIR PERSONAL CHARACTERISTICS.


we
aren't
so
different

SOCIETAL COSTS AND CAUSES

Over time, the U.S. Supreme Court has recognized the disparate impact of seemingly neutral policies by tracing them back to invidious racial discrimination practices in areas such as employment, housing, and education.[35] Indeed, Black people have been subject to a long history of discrimination. After slavery was outlawed, the Black Codes continued a legalized system of oppression, followed by Jim Crow laws that enforced racial segregation in virtually all walks of life. In 1954, the Supreme Court declared segregation in public schools (i.e., "separate but equal" education) unconstitutional.[36] And, in the 1960s, Congress banned segregation in public places and discrimination in employment, voting practices, and in the sale, rental, and financing of housing.[37]

Nevertheless, discrimination continues. Though outlawed more than 50 years ago, "redlining" — the systematic practice of denying loans and housing insurance to people based on race or ethnicity — continues to concentrate people of color in low-income communities.[38] Other forms of discrimination have also arisen. In the 1990s, for example, lenders targeted subprime loans to people of color,[39] which influenced residential patterns and rates of home ownership.

These patterns led to police practices that have had a disparate impact on communities of color. To cite one example, Baltimore's history of city-sponsored racial segregation denied Black residents economic and educational opportunities by systematically preventing them from moving to neighborhoods with better jobs and schools.[40] In 2016, the Baltimore Police Department's "zero tolerance" approach

to crime, which involves stopping and searching people and arresting them for minor offenses, such as drug possession, was found to have a disparate impact on the city's Black community because it focused on predominantly Black neighborhoods.[41]

While the full impact of bias-based policing on individuals and communities remains unclear, criminal justice experts suspect it has long-term negative psychological and social effects.[42] A recent study identified symptoms of post-traumatic stress disorder (PTSD) and anxiety among young men in New York City who had been subjected to intrusive or "more invasive [police] tactics[,] such as frisks, threats and use of force, or handcuffing."[43] Research also shows that contact with police officers and the criminal justice system suppresses engagement with the political system. People who have had negative experiences with police officers are more likely to distrust authority figures and less likely to advocate for themselves through the political and democratic processes.[44] But much more research is needed to quantify the full impact that discriminatory police practices have on individuals, communities, and society.[45]

DATA-DRIVEN AND PLACE-BASED ENFORCEMENT

Data used to "predict" or "forecast" crime compound problems. Predictive policing technologies often use data that originate from biased decision-making by officers and, thus, produce biased results.[46] If discriminatory practices yield the crime data that are analyzed, then the results and conclusions will be inherently biased. More heavily patrolled neighborhoods naturally have more enforcement activity, which is then reflected in crime data. In other words, an initial enforcement decision to patrol a certain community produces data that then determine future decisions about which neighborhoods to patrol and how to do so.[47] This creates a "feedback loop" in which officers consistently return to the same neighborhoods.[48]

This phenomenon also occurs in "proactive policing," whereby departments use crime data to determine which communities to saturate with officers to enforce minor offenses. This practice exacerbates racial and ethnic disparities and creates the appearance of higher crime rates in communities of color. The Tampa (Florida) Police Department's bike-stop practice, for example, was found to have racial disparities "related to place-based differences in bicycle law enforcement" because stops occurred at substantially higher rates in higher crime areas than in lower-crime areas and because Black bicyclists faced a disproportionate risk of being stopped.[49] The U.S. Department of Justice (DOJ) concluded that the racial disparity arose from the department's focus on high-crime areas and on Black cyclists.[50] Moreover, enforcement based on "going where the crime is" has been found to be largely ineffective in reducing crime.[51]

TO BUILD TRUST, ENGAGE COMMUNITIES, AND IMPROVE PUBLIC SAFETY, POLICE LEADERS SHOULD MAKE CLEAR THAT DISCRIMINATORY POLICING HAS NO PLACE IN POLICE DEPARTMENTS OR LAW ENFORCEMENT.

BEST PRACTICES IN BIAS-FREE POLICING

The effects of discriminatory policing can't be reversed — but they can be changed. To reduce and mitigate the effects of bias in policing, departments and communities should confront the current reality, and long history, of racism and discrimination in America and its impact on individuals, families, communities, and society. They should reevaluate existing strategies and practices to account for this reality and history. Otherwise, solutions will be nothing more than stopgaps.

To build trust, engage communities, and improve public safety, police leaders should make clear that discriminatory policing has no place in police departments or law enforcement. To ensure policing is fair and impartial, they should develop policies that explain how officers can carry out law enforcement duties without bias and explain prohibited conduct and behavior in detail. Training should reinforce the principles of bias-free policing, explore how biases influence decisions and actions, and instruct officers in cultural competency so they can better appreciate and understand the norms and traditions of various communities.

Supervisors should closely monitor officers to detect and address biased enforcement activities. This involves not only reviewing and analyzing officer-generated reports but also department wide data that may indicate officers who are statistical outliers (when compared with fellow officers) and if any policies or practices have disproportionate effects on marginalized communities. (For more detail, see Chapter 8.) If and when bias-based policing is discovered, supervisors should swiftly address it through interventions and discipline. To practice bias-free policing, departments should work with communities to:

RECOMMENDATION 2.1 ADOPT COMPREHENSIVE BIAS-FREE POLICIES.

To affirm their commitment to treat everyone equitably and with respect, police departments should develop written policies that lay out expectations of bias-free police services. These policies should provide guidance on bias-free policing, implicit bias, cultural competency, and procedural justice, and they should be reinforced through academy and in-service training.

Many departments have formal policies (some of which are also reflected in their mission or values statements) that endorse fair and equal treatment of all people and that prohibit discrimination. Policies that address ***explicit*** bias should be updated and expanded to cover ***implicit*** bias as well. Departments should invite community members and stakeholders to participate in this effort to ensure that bias-free policies adequately address community concerns and comport with community views on fairness and equity. Specifically, departments should:

Identify equity and fairness as core values in their mission statements. Departmental mission and values statements set out the principles that animate external and internal activities, such as police practices, community relationships, and accountability systems. Equity and fairness should be identified in these documents as core values and perpetual goals. The Baltimore Police Department, for example, revised its mission statement after entering into a federal consent decree, or settlement agreement, to "fostering trust with community members, safeguarding life and property, and promoting public safety through enforcing the law in a fair and impartial manner."[52] Departments should weave these principles into all other policies and training to reinforce their commitment to bias-free policing.

Provide protections for broad categories of people. Bias-free policies should describe all categories of people that officers are prohibited from discriminating against. They should also explain that discrimination and bias can be based on how a person **perceives** another's race, ethnicity, or other specific characteristic. An officer who is biased against Muslims and unlawfully stops a Sikh man because she thinks he's Muslim has discriminated against him. In other words, it doesn't matter whether the

person who was discriminated against identifies with a protected class or belongs to the intended target group; the discriminatory act, whoever perpetrated against, constitutes discrimination.

While most departments recognize race, ethnicity, national origin, and gender as protected classes, bias-free policies should go beyond federal and state law protections to proscribe discriminatory treatment of people from other marginalized groups.[53] The Seattle Police Department, for example, defines bias-based policing as differential treatment of anyone of a protected class but goes on to include "other discernible characteristics" including age, disability, economic status, familial status, gender, gender identity, mental illness, housing status, sexual orientation, and veteran status.[54]

Prohibit bias in all law enforcement decisions. Departments should strictly prohibit bias-based policing and should clearly state how to carry out law enforcement duties without bias or engaging in prohibited conduct. They should also address the **perception** of bias, which is also detrimental to police-community relationships.

PROCEDURAL JUSTICE IN POLICE INTERACTIONS WITH COMMUNITIES INCLUDES:

1. Being professional and polite.
2. Explaining the reason for the contact.
3. Detaining a person no longer than necessary.
4. Explaining the reason for any delay.
5. Answering the person's questions.
6. Providing name and badge number when requested.
7. Apologizing for any inconvenience if the officer determines the person was not engaged in criminal activity.

Sources: New Orleans Police Dep't, Operations Manual Chapter 41.13: Bias Free Policing 3-4 (eff. July 10, 2016), https://www.nola.gov/getattachment/NOPD/Policies/Bias-Free.pdf/; Baltimore Police Dep't, Draft Policy 317: Fair and Impartial Policing 4 (Aug 24, 2018), https://www.baltimorepolice.org/317-draft-fair-and-impartial-policing.

To prevent bias-based policing, departments should ensure that officers:

+ Conduct all law enforcement activities without discrimination and based on observable conduct or specific information that provides a legal basis for the activity.

+ Record and report demographic information for law enforcement activities, including pedestrian and vehicle stops, detentions, frisks, searches, seizures, arrests, uses of force, and complaint data, according to departments' formal data collection processes.

+ Intervene to prevent or stop discriminatory enforcement activities.[55]

+ Report bias-based incidents that they witness or are aware of.[56]

+ Use procedural justice principles in all interactions with community members to prevent the perception of bias.

+ Provide complaint forms and information about how to file a complaint upon request in all circumstances and make them publicly available in alternative and accessible formats.[57]

Departments should ensure that officers do not:

x Make any decision about any law enforcement activity based on someone's actual or perceived race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, disability, familial status, immigration status, veteran status, health status, housing status, economic status, occupation, proficiency with the English language, or other personal characteristic.[58]

x Determine reasonable suspicion or probable cause based a perceived or actual characteristic (***i.e.***, profile), unless it is part of a reliable description of a ***specific person*** suspected of a crime that includes other nondemographic identifying factors.[59]

x Engage in, encourage, or ignore discriminatory enforcement decisions by other officers.[60]

x Profile (***i.e.***, take a law enforcement action against a person or group of people based on a personal characteristic), even when the officer has reasonable suspicion or probable cause to believe a violation has occurred.[61]

x Deny police services based on someone's actual or perceived characteristics. [62]

x Use discriminatory or biased language (verbal or written), or make derogatory or disparaging remarks or gestures about any discernable characteristics, including on personal social media accounts.[63]

x Ask or record a person's actual or perceived sexual orientation or gender identity, or immigration status, in reports.[64]

x Retaliate against anyone who reports incidents involving discrimination or bias.[65]

Prohibit gender bias. Because of the unique nature and complexity of gender bias, which acutely affects women and LGBTQ people, departments should have stand-alone policies and training to circumscribe behaviors and practices that lead to it.

Gender bias manifests in a variety of ways in policing. Female officers may not be considered for promotions because of their gender or be subject to harassment or "locker room" talk. (For more detail, see Chapter 9.) Survivors of sexual assault and intimate partner violence may have claims dismissed or not investigated.[66] And women, especially those who work in the sex trade, may be profiled or victims of officer-involved sexual violence.[67]

Sexual misconduct encompasses a variety of behaviors. The International Association of Chiefs of Police (IACP) lists behaviors including, but not limited to, sexual assault and rape; shakedowns for sexual favors in exchange for not being ticketed or arrested; inappropriate or unnecessary touching during searches or pat-downs; sexual contact while on duty; and sexual harassment of coworkers.[68]

Departments' failure to properly respond to allegations of sexual assault or intimate partner violence[69] or to adequately investigate them denies victims equal protection under the law.[70] The under-enforcement of these cases constitutes discrimination because it disproportionately affects women and LGBTQ people.[71] The impact is compounded by the fact that many people are reluctant to report sexual assault because they think they won't be believed or that they'll be shamed and blamed. When the DOJ found that the Missoula (Montana) Police Department had a pattern of inadequately responding to women's reports of sexual misconduct, it noted that this type of discrimination erodes "confidence in the criminal justice system, places women … at increased risk of harm, and reinforces ingrained stereotypes about women."[72]

To avoid the breakdown in confidence and legitimacy of police, departments should have policies for handling cases of sexual assault and intimate partner violence.[73] IACP calls for trauma-informed, victim-centered responses to and investigations of sexual assault cases. This includes clarifying all department members' roles in these processes; adopting strategies to prevent prejudging the validity of cases; responding in a respectful, objective manner; offering survivors forensic exams and medical care; referring survivors to community-based services and sexual assault survivor advocates; and holding perpetrators accountable.[74]

The DOJ, for its part, warns against determining a victim's "credibility" based on gender stereotypes when responding to cases of sexual assault and intimate partner violence.[75] To counter the effects of stereotypes on officer conduct, departments should revise policies and training to ensure that officers treat survivors with dignity and respect, use trauma-informed investigation techniques, and gather evidence in an unbiased manner.[76]

Sexual misconduct is a crime that should be taken seriously by department leaders.[77] Yet more than half of the nation's largest police departments have no policy addressing sexual misconduct or harassment by police officers.[78] Department leaders can't simply rely on sexual harassment policies to hold officers accountable for sexual misconduct; without proper policies, departments effectively condone misconduct.[79]

The Final Report of the President's Task Force on 21st Century Policing (the President's Task Force Report) and the IACP's guide on addressing officer-involved sexual misconduct recommend that departments adopt policies to effectively prevent, detect, and ensure accountability.[80] Department leaders should create a culture of accountability and set priorities and expectations for officer conduct. Otherwise, negative attitudes and misconduct internally can spill over to officers' interactions with the public and proliferate sexual misconduct.[81] Departmental policies should also reflect the fact that LGBTQ people are often victims of officer-involved sexual misconduct and should articulate appropriate practices, including search-and-seizure procedures, for interactions with LGBTQ people.[82]

Develop stand-alone policies for fair and objective interactions with specific groups. While the principles of bias-free policing apply to interactions with all people, specific groups have unique needs. The President's Task Force Report recommends that departments adopt policies and train officers for interactions with LGBTQ people (including whether to determine gender identity for arrest placement); the Muslim, Arab, and South Asian American communities; and immigrants and communities with limited English proficiency (LEP).[83]

The New Orleans Police Department adopted a bias-free policy directed at interactions with immigrants in 2016. The policy forbids enforcement action based on actual or perceived immigration status; asking people about their immigration status; or helping with immigration enforcement unless life or public safety is at risk.[84] In 2007, the Metropolitan Police Department in Washington, D.C., implemented a policy for interactions with transgender people that defines key terms and addresses use of proper pronouns, prohibitions against using demeaning language, and proper search-and-frisk techniques (including having an officer of the gender requested conduct the search, absent exigent circumstances).[85] To build trust and legitimacy, group-specific policies and training should be developed with input and support from members of protected classes and advocacy groups that are the target of bias, as recommended by the President's Task Force Report.[86]

Mandate reporting of biased policing. To properly hold officers accountable, departments should establish clear protocols for officers to report biased incidents, whether witnessed or learned about through other means. The Seattle Police Department's Bias-Free Policing policy is a good example. It states: "Employees who have observed or are aware of others who have engaged in bias-based policing [must] specifically report such incidents

to a supervisor, providing all information known to them before the end of the shift during which they make the observation or become aware of the incident."[87]

The New Orleans Police Department establishes the same duty to report bias-based policing and also requires officers do so by the end of the shift during which it happened or they learned of it.[88] Policies should clarify that the failure to report misconduct is itself misconduct and will be disciplined accordingly.[89] To assuage fear, departments should also create safeguards to protect officers who report bias-based policing from retaliation or discipline and articulate them in policy.[90]

Bias-free policies should clearly address disciplinary consequences for violations. Discriminatory police practices are detrimental to communities and to police legitimacy. Addressing these types of violations should be departments' highest priority, and officers should be on notice that biased behavior and enforcement activities are not tolerated and will be disciplined.

In New Jersey, the Newark Police Department, for example, notes that discipline for policy violations applies to all officers, including supervisors, and includes counseling, mediation, training, and, when warranted, termination.[91]

RECOMMENDATION 2.2
ENSURE OFFICERS ARE TRAINED IN BIAS-FREE POLICING.

Officers should be trained in bias-free policing in order to put bias-free policies to work, and officers should know how to recognize implicit biases before taking action. Bias-free principles and tools should be taught during training in bias-free policing and in other subjects as well. For example, use-of-force training should instruct officers to identify and combat biases when deciding to use force.

Departments should ensure that officers are trained in:

- The impact of arbitrary classifications, stereotypes, and biases, including subconscious, or implicit, biases.
- How to minimize the effects of bias when officers recognize it.
- Cultural competency, including cross-cultural communication skills (so officers can understand and appreciate cultural and ethnic norms and traditions).
- The negative effects of discriminatory policing on police legitimacy.
- Constitutional and other legal protections that safeguard against unlawful discrimination.
- Identification of key decision points when bias can influence actions.
- Data collection protocols to evaluate patterns of discriminatory policing.
- Strategies for defusing conflicts.
- The history of racism and discrimination in the United States and around the world.
- Procedural justice principles, including: respect, bias-free decision-making, explaining processes during interactions, and allowing people to express themselves during interactions with community members (***i.e.***, allowing community voices to be heard).[92]
- How to intervene to prevent and stop misconduct.[93]

Bias and discrimination are difficult topics to discuss and sometimes trigger defensive responses. For this reason, trainers should create learning spaces that are open and engaging. Department leaders should carefully select officers to teach this sensitive subject matter and train them to do so in a non-threatening, non-accusatory way so that it does not lead to disengagement. What's more, trainers should not be forced into the job; they should be willing participants who volunteer for the assignment and who do not have records of misconduct complaints.

Department leaders should regularly review and evaluate training programs and curricula to ensure they reflect new developments in the field, and they should analyze data (**e.g.**, the number of complaints alleging discriminatory treatment) to measure the effect of training on police practices.[94] The Center for Policing Equity also recommends rigorous post-training testing to determine whether officers' perceptions and attitudes change as a result of training.[95] Supervisors should maintain accurate attendance records to ensure that officers complete required training.

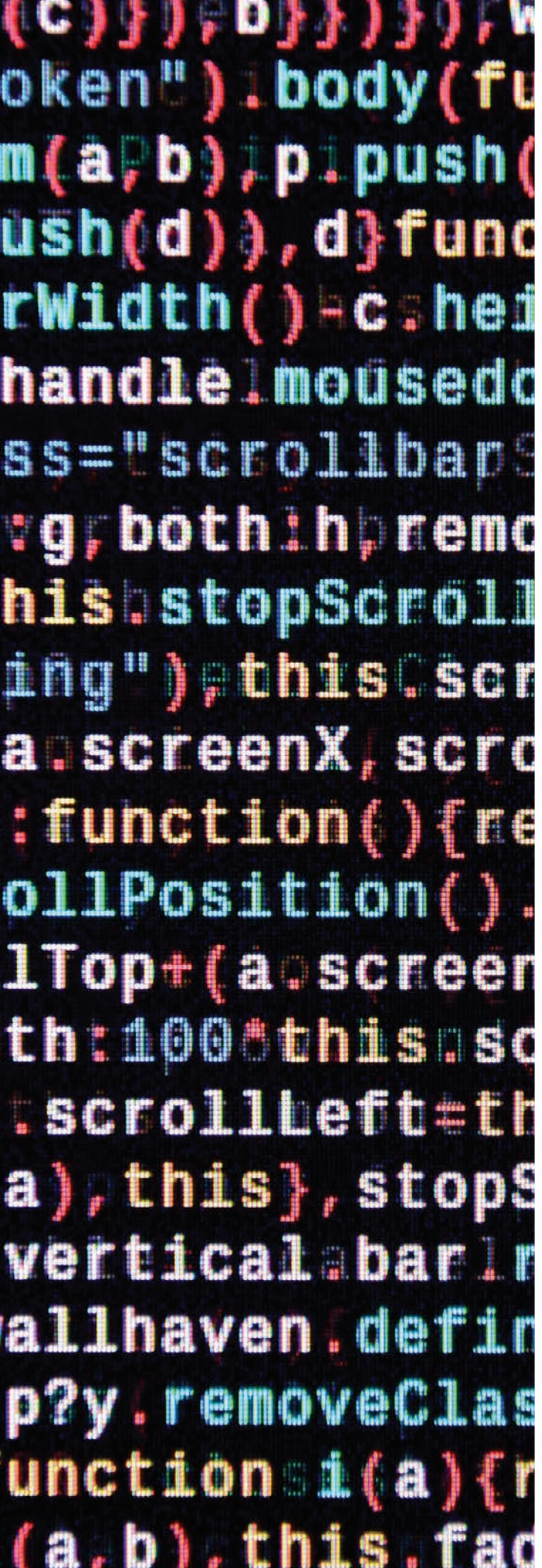
RECOMMENDATION 2.3
SUPERVISE, MONITOR, AND HOLD OFFICERS ACCOUNTABLE FOR POLICY VIOLATIONS.

Creating a departmental culture of bias-free policing requires consistent, proactive supervision. Supervisors should monitor officers under their command for biased or discriminatory behavior, investigate complaints of bias, and impose discipline when required.

Direct supervisors are primarily responsible for ensuring that officers are policing in a bias-free manner. They also have enormous influence over officers and are able to shape their beliefs and attitudes about policing and police practices. In other words, they set the departments' tone and create its culture. (For more detail, see Chapter 9.) Leaders should make sure that all officers under their command understand the department's bias-free policies[96] and have been trained to police accordingly, and they should monitor officers to detect behavior that conflicts with bias-free policies and/or violates constitutional and legal requirements.[97]

Specifically, supervisors should observe officers daily, check in regularly, and conduct periodic reviews of body-worn camera and dashcam footage.[98] They should also review officers' enforcement activities and analyze other data (**e.g.**, complaints) to detect and respond to indications of bias-based policing.[99] Supervisors who discover that officers have violated policy should immediately address it and impose proper discipline, such as retraining, counseling or other remedial intervention,[100] mediation, and, when warranted, termination.[101]

As noted above, departments should (1) ensure that people within and outside of the department are able to easily file complaints and (2) prohibit retaliation against those who do. Departments should make complaint forms available at police stations, in community centers, libraries, and other community spaces, and they should post them online in alternative and accessible formats. Complaint forms should also be available upon request.



When departments receive complaints alleging bias or discrimination, they should prioritize them, notify supervisors, and conduct thorough investigations.[102] Complaints alleging bias should be classified as discrimination. Supervisors should investigate all complaints of discrimination and bias in a timely manner and impose appropriate discipline, including termination when warranted. Supervisors who fail to do so should be subject to discipline.[103] (For more detail, see Chapter 7.)

RECOMMENDATION 2.4
TAKE CORRECTIVE ACTION WHEN DATA INDICATE BIAS-BASED POLICING.

In addition to preventing biased conduct at the individual level, department leaders should also prevent it at the department level. They should look for indications of bias-based policing and practices that have a disparate impact on marginalized communities, and they should take corrective action when found. Specifically, supervisors should:

Evaluate policies, training, and enforcement data. To prohibit and prevent discriminatory policing, bias-free policies generally address conduct at the individual level. These policies focus in part on intentional, or explicit, bias and unintentional, or implicit, bias. Nevertheless, even the strongest policies can't prevent all biased outcomes. As the Seattle Police

Department's bias-free policy states: "The long-term impacts of historical inequality and institutional bias could result in disproportionate enforcement, even in the absence of intentional bias."[104]

The absence of policies and/or underenforcement of the law can also contribute to disparate impacts. Departments that lack policies about how to interact with people with limited English proficiency, or who fail to train officers to provide language assistance, deny them equal police services.[105] Likewise, failure to investigate allegations of sexual assault or intimate partner violence disproportionately impacts women and LGBTQ people.

To reduce disparities, department leaders should periodically review, analyze, and evaluate training programs and curricula and data about enforcement activities (**e.g.**, stops, searches, and arrests, the number of complaints, community feedback, etc.).[106] If statistical or other data indicate that a facially neutral policy is producing disparities or negative perceptions, leaders should review and evaluate — and possibly rescind — it, and they should consider updating training curricula to address practices that lead to disparities. When policies or practices are found to have a disparate impact or produce discriminatory outcomes, leaders should work with communities and other stakeholders (**e.g.**, businesses or police affinity groups) to explore alternatives.[107]

Require supervisory review and approval for enforcement of minor offenses that involve a large degree of discretion. Racial and other disparities often arise when officers are enforcing minor incidents, which involve a high degree of discretion. Officers sometimes stop or ticket people for no reason other than they've stereotyped them. Departments can remedy this problem by removing discretion from activities where bias heavily influences decisions to enforce. By requiring supervisory approval and review before acting (**e.g.**, before an officer arrests someone for disorderly conduct), departments can reduce bias-based enforcement and ensure that officers take action with a legal basis and in a bias-free manner.

The Baltimore Police Department took steps to achieve this goal after the DOJ found that its officers arrested Black people in disproportionately high numbers. The investigation found that Black people comprised 88 to 91 percent of arrests for "quality-of-life" offenses, such as resisting an officer, disorderly conduct, failure to obey, and misdemeanor trespassing.[108] In response, department leaders required officers to get supervisory approval before making arrests for minor offenses.[109] The Newark Police Department also requires supervisors to respond to the scene and approve any arrests for minor offenses.[110] This policy serves as a check on officers and helps ensure that arrests are lawful and based on probable cause.

RECOMMENDATION 2.5
ADDRESS COMPLAINTS AND CALLS FOR SERVICE BASED ON RACIAL AND ETHNIC PROFILING.

To create a culture in which discrimination and bias are not tolerated, department leaders should promote equity and fairness in all department actions and responses. To restore trust and confidence in policing, departments should address officer biases but also take into account how bias-based policing affects communities — as well as community perceptions of police. To build credibility and promote bias-free policing, leaders should take a firm stand against discrimination and bias not only within their departments but also within their communities. Promoting bias-free policing internally will, in short, promote it externally.

Police officers face serious challenges when asked to intervene in situations motivated by bias, such as calls to respond to people who are engaging in ordinary, innocuous activities. To cite a few recent cases, White people have recently asked police officers to respond to Black people sitting in a coffee shop, barbequing at a park, and sleeping in a college library.[111]

Officers are required to respond to such calls, but they should take special care when doing so. Officers who know ahead of time that the complaint or allegation is the result of bias are best-positioned to respond properly. Thus, departments need clear policies about how to respond. The Baltimore Police Department's bias-free policy prohibits officers from taking any "law enforcement action based on information from members of the public that they know or should know is the product of, or motivated by, bias based on any … personal characteristics[.]"[112] Departments also need procedures to identify bias-based calls. Dispatchers should vet calls so officers know what to expect and don't become tools of discrimination.

When responding to bias-based calls, officers should maintain a professional and courteous manner and avoid making presumptions about people involved. Officers should employ procedural justice techniques and explain why they are there, ask questions and listen to both parties, defuse the situation, and, if bias is the apparent motivation, end the interaction and explain that no violation has occurred and that the people have a right to proceed as before. If the basis for the call is technically legal, such as a permit requirement, officers can inform complainants that they are aware of the violation and have declined to enforce it. In general, departments should not allow people to use police officers as instruments of discrimination; when this happens, it delegitimizes police and strains relationships. Communities and departments should work together to craft procedures for addressing this issue.

RECOMMENDATION 2.6
IDENTIFY AND INVESTIGATE HATE CRIMES.

In 2017, the number of hate crimes in the United States jumped 17 percent over 2016 (from 6,121 to 7,175 incidents), continuing an upward trend for the third straight year.[113] These numbers likely understate the true number of hate crimes; victims are often too scared to report them and police departments sometimes miscategorize them. To practice bias-free policing, departments should encourage reporting of hate crimes and educate communities about hate crime law.[114]

Officers should also take preventive steps by reaching out to communities targeted by hate-based violence and harassment, which will open channels of communication and reassure people that they take this type of victimization seriously.[115] Officers should also assuage fears by communicating that reporting hate crimes won't have negative consequences (**e.g.**, that undocumented people won't be deported if they file hate crime reports). Community outreach also raises awareness about hate crimes and signals that departments view officers as guardians of public safety and that all people deserve equal treatment under the law.

Hate crimes investigators, meanwhile, should know which hate groups are active in the community and be familiar with hate signs and symbols. They should also be trained to understand survivors' experiences with and responses to trauma and to respond appropriately when interacting with survivors during investigations.[116]

RECOMMENDATION 2.7
COLLECT, ANALYZE, AND PUBLICLY REPORT DATA RELATING TO BIAS-BASED POLICING.

A critical part of identifying bias-based policing is through audits of departments' complaint and data systems. Without this knowledge, departments can't identify biased-based policing or take measures to assess behavioral change and correct problems, and communities can't address problematic practices.

Collecting enforcement data is not controversial: Roughly 20 states have passed statutes mandating that law enforcement agencies collect data about stops by race.[117] In the absence of state legislation, departments should collect and analyze enforcement and complaint data (including data about stops, searches, arrests, and uses of force). Data forms should be practical, and officers should not be asked to produce unnecessary paperwork. They should include demographic information, such as perceived gender, race or ethnicity, national origin, and age,[118] but not personal characteristics, such as LGBTQ status, religion, or immigration status — unless this information is offered voluntarily and is relevant to the incident (**e.g.**, a hate crime).[119]

To ensure enforcement activities don't have biased outcomes, departments should also collect data such as the location, duration, and reason for a stop, whether a consent search was performed, and disposition (***i.e.***, whether a citation was issued or an arrest was made).[120]

Data analysis enables departments to identify disparities, patterns, and trends that may warrant intervention, as well as statistical outliers (***i.e.***, officers who receive more complaints than their peers). The New Orleans Police Department has a robust data policy. It requires the deputy superintendent to analyze data about programs and activities on an annual basis to ensure they're not applied or administered in a discriminatory manner against marginalized groups.[121] The data include complaints involving discrimination, uses of force, stops, and arrests, and geographical deployment tactics and strategies that may be based on stereotypes or biases toward residents.[122]

Departments should also measure enforcement activities before and after implementing bias-free policies and training to determine whether they led to changes in conduct. Departments that don't collect enforcement and demographic data or that have unreliable data should assess data collection processes and establish protocols to ensure that data are accurate and reliable.

Transparency is essential to building public trust and legitimacy, and data are useful only insofar as they can be used to drive policy change. For this reason, departments should require data analysis and make data publicly available by posting them online and making them available in alternative and accessible formats.[123] Departments should also issue reports providing assessments of data. If data show patterns of bias-based policing, ensuing reports should include steps that the department will take to rectify the problem.

RECOMMENDATION 2.8
CREATE CULTURES OF INCLUSIVITY AND ACCOUNTABILITY AND DIVERSE WORKPLACES.

To promote bias-free policing, police leaders should understand how discrimination and biases affect internal decision-making and officer morale. Treating officers unfairly or in a prejudiced manner, or even creating the perception of unfair treatment, affects officer conduct and interactions with the public.[124] Department leaders should strive to eliminate racial, ethnic, gender, and other biases to create work environments that truly include all members. (For more detail, see Chapter 9.) They should send a clear message that discrimination, bias, and harassment are not tolerated externally in policing practices. And they should ensure this message is reflected internally as well, in policies and practices relating to discipline, accountability, opportunities for professional development, promotions, and other areas.

Clear and transparent policies and swift discipline of discriminatory and bias-based policing signal to officers and the community that the department is committed to fairness and equity. (For more detail, see Chapter 7.) Department leaders can create cultures of inclusivity and accountability and enhance workforce diversity by encouraging ties with affinity groups and by mentoring young people from groups that have historically been underrepresented in policing. (For more detail, see Chapter 10.) Department leaders and supervisors should also listen to officers about their experiences and incorporate their input it into their decision-making processes. (For more detail, see Chapter 9.)

RECOMMENDATION 2.9
WORK FOR BROAD SOCIAL CHANGE.

Leaders and officers can **reduce** bias-biased policing in their departments and communities, but only broad social and cultural change will **prevent** future generations of officers from developing negative implicit biases about social groups.[125] Indeed, racism and bias are not the result of law enforcement practices and attitudes alone; they are a reflection of the social systems that create and perpetuate them.[126] To begin to change the broader social systems within which they operate, police leaders and officers should first acknowledge the role of police in maintaining and enforcing laws and systems built on racism and oppression. (For more detail, see Chapter 1.)

Police leaders and officers should partner with communities impacted by discriminatory policing to support change at the local, state, and federal levels to end discriminatory practices, such as the use of pretextual stops. (For more detail, see Chapter 3.) They should also support measures that address the societal factors that influence criminal behavior, such as homelessness, poverty, and access to health care, and solutions that prevent crime, such as increased social services and economic opportunities. And they should support efforts to reform the criminal justice system, such as decriminalizing marijuana possession and other low-level offenses; eliminating or reducing fines for low-level offenses; and emphasizing rehabilitation over punishment through deflection programs that connect people in crisis to needed services and diversion programs that reduce involvement with the criminal justice system. (For more detail, see Chapter 5.)

Ending bias takes more than changing laws; it takes changing minds. Departments can join broader efforts to change narratives around crime and those associated with it: namely, low-income people and people of color. Understanding and talking about challenges in a holistic manner — and in a way that acknowledges the structural racism underpinning social problems — will advance broad social reform. In sum, preventing discriminatory policing doesn't ***only*** require changing police policies and practices and implementing new training. It ***also*** requires a larger effort to create a fairer and more just society. Police leaders and officers have a tremendous amount of influence in their communities, and they should use it strategically to address the societal causes and consequences of bias — and to build a better, less-biased world.

3

STOPS SEARCHES AND ARRESTS

Every day, police officers across the United States stop drivers and pedestrians to ask them questions — and sometimes to detain them. They search people and their property — their belongings, their cars, and their homes — with and without their consent. They arrest people, handcuffing them, putting them in police cars, inking their finger prints, and taking their mug shots.

For officers, stops, searches, and arrests are everyday activities, but for members of the public, they are hardly routine. They deprive people of their liberty and harm individuals, families, and sometimes entire communities. The use of force can cause trauma, injury, and death, and arrests can lead to negative outcomes in education, employment, housing, earnings, social stigma, and other areas. This is true even when arrests don't result in conviction. These effects are amplified in Black and Latinx communities, where stops, searches, and arrests are more common than in White communities and which may have histories of police abuse.[1]

Officer interactions affect the public's perception of police. Officer conduct during a stop, search, or arrest affects people's confidence in police and can build — or destroy — trust between departments and the communities they serve. When officers act fairly and impartially, explain their actions, and listen to people they encounter, they enhance the legitimacy of their department, of local government, and of police generally.[2] As a 2004 study put it, police legitimacy:

> … increases the stature of the police in the eyes of citizens, creates a reservoir of support for police work, and expedites the production of community safety by enhancing cooperation with the police. … Research has found that people obey the law not just because they are afraid of being punished or because they believe the law is morally right, but also because they believe the law and its enforcement are fairly administered. The public's judgment can be heavily influenced by the conduct of the police, one of the most visible representations of law and government in most citizens' lives.[3]

Federal and state constitutions (and their interpretation by courts) establish the legal baseline for stops, searches, and arrests. These standards establish the ***minimum*** protections departments must provide; department leaders can and should build on this threshold to protect personal liberty, communicate performance expectations, and promote safe, bias-free, and respectful interactions between officers and community members. Virtually all departments, for example, prohibit officers from firing "warning shots" because doing so, even though permitted by constitutional law, is widely regarded as dangerous and unprofessional.

This chapter lays out the minimum standards — ***i.e.***, the "constitutional floor" — that all departments are required to meet when making stops, searches, and arrests and the best practices that go beyond these standards to better protect individual liberty.

RECOMMENDED BEST PRACTICES

To protect privacy and allow for greater freedom of movement without compromising safety or effectiveness, departments should work with communities to:

3.1

Encourage officers to consider the costs of stops, searches, and arrests.

3.2

Ban formal and informal quotas.

3.3

Ensure officers inform people of their rights to refuse or revoke consent and to document it.

3.4

Limit the use of pretextual stops.

3.5

Seek search warrants whenever possible.

3.6

Integrate procedural justice into all enforcement activities.

3.7

Eliminate discriminatory and bias-based stops, searches, and arrests.

3.8

Safeguard against unconstitutional surveillance.

3.9

Provide comprehensive training on stops, searches, and arrests.

3.10

Require detailed reporting of stops, searches, and arrests.

3.11

Reduce reliance on arrests and incarceration.

FEDERAL STATE AND LOCAL PROTECTIONS

Stops, searches, and arrests must meet standards laid out in the U.S. Constitution and interpreted by the courts. These standards are ***minimum*** standards; they are not necessarily best practices or even common standards. The Fourth Amendment, for example, permits strip searches (a practice in which officers remove clothing to search for concealed items) in circumstances that many find offensive and traumatic. It also gives officers the discretion to conduct "lawful but awful" activities (legal activities that cause negative outcomes), which undermines community trust. State and local governments can — and should — enact laws that provide **more** protection from government intrusion, and police departments can implement policies that do so as well.

Many state constitutions grant broader protections than those provided by the U.S. Constitution. The U.S. Supreme Court, for example, ruled that the Fourth Amendment permits officers to stop vehicles regardless of their pretextual motives (***i.e.***, their true intent) so long as they have probable cause to investigate traffic violations. The Washington state constitution, however, forbids the use of pretext to justify warrantless traffic stops.[4]

The New York and Vermont constitutions, meanwhile, provide broader protections regarding search warrants. To search a person or place for specific objects, officers must obtain a warrant — a court order finding probable cause that there's a high probability that officers will find evidence of a crime at the place or on the person to be searched. Probable cause is an officer's reasonable belief that a crime has or is about to occur;[5] it is generally established on the basis of sworn testimony, usually in the form of an affidavit signed by an officer.

The Supreme Court has held that police officers don't need a warrant to search areas immediately outside of homes (***a.k.a.*** "curtilages") because it found no reasonable expectation of privacy in an "open field."[6] Vermont and New York, however, extend privacy protections to curtilages if landowners post "no trespassing" signs; thus, officers in these states must obtain warrants to search curtilages if these signs are present.[7]

Many state laws also grant greater protections than those afforded by the U.S. Constitution. States such as Arkansas, California, Maine, and Utah limit the use of

automated license plate readers (which capture and upload license plate and other data),[8] and Florida and Vermont regulate the use of government drones.[9] State lawmakers have often enacted laws such as these after coming under community pressure to provide more protections in public spaces than granted by the U.S. Constitution.[10] These types of state laws demonstrate that departments and communities can and should enact statutes and policies that give individuals greater freedoms than those provided for by federal law without compromising public and officers safety.

THE FOURTH AMENDMENT

The Fourth Amendment to the U.S. Constitution protects people's rights to be free from unreasonable searches and seizures, and thus governs how police conduct stops, searches, frisks, and arrests.

Stops and Searches. The Fourth Amendment secures "persons, houses, papers, and effects against unreasonable searches and seizures." (The term "seizure" applies not only to property but also to people — ***i.e.***, arresting or temporarily stopping people without consent.) This means that officers must have probable cause to stop or search people they suspect are engaging in unlawful activity.[11] For brief stops, they must meet the lower standard of "reasonable suspicion" — the belief, based upon specific circumstances, that criminal activity **may** be afoot (***i.e.***, that it is happening or is about to happen).[12]

Courts have, however, recognized that obtaining warrants before searches is not always practicable. Thus, they have long permitted officers to conduct warrantless searches in "exigent circumstances" — emergencies where the delay required to obtain a warrant presents real and immediate risks of injury or destruction of evidence. In the case of armed robbery, for example, officers are permitted to chase suspects into a house without a warrant to prevent injury to others — but they still need probable cause to conduct the search or seizure.[13] Courts have, in fact, found so many exceptions to the warrant requirement that many officers conduct more searches without a warrant than with one.[14]

The rules — and rationales — for stops and searches have evolved over time. For example, courts initially exempted vehicle searches from the warrant requirement because vehicles are mobile, but they have since permitted warrantless searches even when there is little danger the vehicle will be moved.[15] Courts initially justified warrantless searches when making a lawful arrest on the grounds of safety (***i.e.***, to disarm suspects) and to prevent the destruction of evidence.[16] However, courts now permit such searches, even for minor offenses and even when officers have no reason to believe they will find anything.[17]

Stop-and-frisk practices. In the 1960s, the Supreme Court approved "stop-and-frisk" practices in ***Terry v. Ohio***,[18] a case in which a plainclothes police officer in Cleveland saw two men standing on a street corner behaving in a manner he found suspicious. One of the men walked down the block, peered into the window of a closed store, and returned to the corner to talk to the other. Then the other man did the same. This pattern repeated several times. A third man then appeared on the corner, spoke to the men, and left. The two men joined him a few blocks away.

The officer suspected that the men were "casing" the store so they could rob it. He stopped the men and asked them their names but did not get a clear answer. He then spun Terry around, quickly patted down the outside of his overcoat, and found a gun. He also frisked the other men and felt a second gun in one of their overcoat pockets (Richard Chilton's).

The case went to court, and Terry and Chilton were convicted of unlawful possession of a firearm. They challenged the convictions, arguing that the officer had conducted an unlawful search. The Supreme Court disagreed, ruling that the frisk did not substantially invade their privacy and was justified because the officer had reasonable suspicion that they may be about to commit unlawful activity (***i.e.***, armed robbery).

Courts have applied the ***Terry*** holding to two types of stops and searches. First, when officers have reasonable suspicion that people are engaged in or are about to engage in unlawful activity —***i.e.***, that criminal activity may be "afoot" — they may briefly stop them without a warrant. Second, when officers have reasonable suspicion that people are armed and dangerous, they may "frisk" them by quickly running their hands over their outer clothing to determine whether the person presents an armed threat.[19] Communities have so many ordinances governing people's behavior in public that even innocuous behavior, such as loitering, can violate the law. As a result, police can easily justify stopping and frisking people, which gives officers a "pretext" for detaining people they consider suspicious.

Consent searches. Long ago, the Supreme Court found that the Fourth Amendment protects people from unreasonable searches only when they do not give their consent. In other words, if people allow officers to search their cars or homes without a warrant or without suspicion of wrongdoing, their constitutional rights are not violated.[20]

This begs the question: What constitutes ***voluntary*** consent? Most people who are stopped by an officer are apprehensive and uneasy; officers are, after all, armed and in positions of power. When asked, "May I search?" many people don't feel at liberty to decline. As one study observed, "When a community member encounters an officer in full uniform who requests a search of their person, belongings, vehicle or home, a very thin line exists between voluntariness and coercion."[21] The power difference, in short, is difficult to ignore.

When considering what constitutes genuine consent, the Supreme Court has often sided with law enforcement. It ruled, for example, that officers are not required to tell people they have a right not to consent or that they can refuse consent.[22] If a motorist stopped for a traffic violation has received a ticket and is free to go, the officer may search the vehicle without ***telling*** the motorist they are free to go — a type of search the Court has deemed consensual.[23]

Pretextual stops. The Supreme Court has ruled that officers can use minor traffic violations as a "pretext" for stopping people they suspect of criminal activity as long as they have probable cause for the violation.[24] Police can stop drivers for a broken taillight even if the real reason, or pretext, for the stop is to search for evidence of criminal activity, such as drug paraphernalia, and even if they would not have made the stop otherwise.[25] Because so many laws govern behavior in public — especially when it relates to

driving — officers can easily justify stopping people on the pretext of a minor traffic violation. Officers acknowledge they can follow almost any driver for a short distance and identify at least one infraction that would allow them to pull the driver over.

The cumulative effect of these laws and rulings gives officers broad leeway to stop, search, and arrest people. Officers in many departments use stop-and-frisk practices and consent searches as primary enforcement tactics. In some departments, officers are **rewarded** for stopping and searching people in communities with high rates of crime, substance use, or violence. In these departments, officers use stops and searches to find evidence of crime and to deter people from carrying weapons or contraband. This practice, known as "fishing," is especially concerning when people of color are stopped in predominantly White neighborhoods because they are seen as "fish out of water."

In sum, the Supreme Court has, over time, granted officers increasing stop-and-search powers. These activities interfere with liberty, invade privacy, and contribute to racial and ethnic disparities in police interactions.[26] The wide latitude officers have to stop and frisk people also damages community trust and can reduce cooperation with law enforcement.

Yet little evidence suggests stop-and-frisks are making us safer — and, in fact, they may be having the opposite effect. In New York City, the number of stop-and-frisks plummeted 98 percent between 2011 and 2017. During the same period, the homicide rate hit its lowest point since the 1960s, and

the rate of serious crime also declined.[27] Hit rates — the rate at which officers find contraband after stopping or searching — are quite low. The New York Police Department's (NYPD) large-scale stop-and-frisk program was, in fact, held unconstitutional in part because of the department's low hit rate.[28]

Arrests. Courts have also given officers substantial discretion to make warrantless arrests. In communities where minor offenses, such as driving without a seatbelt, are treated as misdemeanors rather than civil infractions, officers have broad authority to arrest — even when arrests don't advance law enforcement goals or improve public safety. In 1997, Gail Atwater was arrested in front of her two young children because she had violated a seatbelt law, which was punishable by a $50 fine. Atwater sued the city and police chief for violating her Fourth Amendment protection from unreasonable seizure. The Supreme Court held that the arrest met constitutional requirements because the violation was a misdemeanor under state law. The officer, according to the Court, "was accordingly authorized (not required, but authorized) to make a custodial arrest without balancing costs and benefits or determining whether or not [Atwater's] arrest was in some sense necessary."[29]

Such broad constitutional authority risks unequal enforcement — a fear that is backed up by empirical data on arrest rates. A national study of misdemeanor offenses conducted in 2018 found "substantial racial disparity" in most misdemeanor arrest rates. For many offenses, officers arrested Black people at ***two to nearly 10 times*** the rate at which they arrested White people.[30]

THE FOURTEENTH AMENDMENT

The Fourteenth Amendment prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law; nor deny[ing] any person … the equal protection of the laws." The Amendment's due process clause thus guarantees that the process by which officers deprive people of life, liberty, or property must be fair. For example, it bars coercive interrogations because they deprive people of the liberty of deciding whether and when to speak.[31]

Police practices that intentionally discriminate based on race, ethnicity, religion, national origin, or gender violate the Fourteenth Amendment's equal protection clause.[32] Under certain circumstances, violations can also occur when officers enforce "facially neutral" laws or policies in a discriminatory manner or in a way that has a discriminatory effect.[33]

Thus, an officer can comply with the Fourth Amendment (**e.g.**, arresting people for marijuana possession) but violate the Fourteenth Amendment (disproportionately arresting Black members of the community despite similar marijuana usage rates among White community members). Targeting and arresting people of color who reside in high-crime areas may also run afoul of the Fourteenth Amendment. Officers' actions, regardless of their intentions, are unlawful if they have a racially discriminatory impact. (For more detail, see Chapter 2.)

Racial and ethnic impacts. Courts have largely been unwilling to curb the use of race and other personal characteristics in policing where abuse is not obvious or egregious. If race, gender, nationality, or another factor is used to describe someone suspected of the crime (**e.g.**, a Latinx man in his late 40s wearing a yellow T-shirt), officers are allowed to use that description to find him. The use of race or ethnicity faces the strongest judicial scrutiny, but the courts have said officers can consider these characteristics so long as they are not the sole factor in their decisions or the basis of intentional discrimination.[34]

In 1992, officers investigating an alleged assault by a young Black man in a small, predominantly White town "swept" the area, stopping and questioning people of color in public spaces and inspecting their hands for cuts. Officers questioned more than 200 people but did not apprehend anyone.[35] In a challenge to the constitutionality of the sweep, the court recognized that it was "understandably upsetting to the innocent plaintiffs who were stopped" and acknowledged the "impact of this police action on community relations."[36] But it

found no violation because race was not the "sole" basis for the stops; age and gender were also factors.

Officers engage in profiling when they target people of a certain race or ethnicity because they believe (consciously or not) they are more likely to commit crime or have information about others' criminal behavior. (For more detail, see Chapter 2.) A large body of evidence finds that profiling disproportionately affects people of color during stops, searches, and arrests.[37]

A recent study of misdemeanor arrests found that Black people were arrested at least twice as often as White people for petty offenses like vagrancy and disturbing the peace.[38] This pattern emerges even when researchers take into account other factors that might play into decision-making, such as local crime rates, socioeconomics, and the like. What's more, searches of people of color result in "hits" for contraband and weapons at a ***lower*** rate than searches of White people.[39]

In 1996, 17 Black motorists moved to suppress evidence in a criminal case (***New Jersey v. Soto***) because they claimed that institutional racism resulted in the New Jersey State Police selectively enforcing traffic laws according to race. The motorists (***i.e.***, the "defendants") and the state both studied traffic stops and post-stop outcomes for presentation to the court, and experts tracked who was driving and who was violating traffic laws.

In reviewing the evidence, the New Jersey Superior Court found that state police disproportionately stopped Black motorists, constituting a "de facto policy" of "targeting Blacks for investigation and arrest."[40] The motorists' study found that, overall, 13 percent of motorists and 15 percent of people violating speed limit laws were Black, but between 35 and 46 percent of those stopped were Black.[41] The court explained that the constitutionality of stops and searches hinges on whether the officer's conduct is "objectively reasonable," regardless of motive or intent. A stop is unconstitutional if the "objective evidence" evinces a de facto policy of racially or ethnically biased treatment.[42]

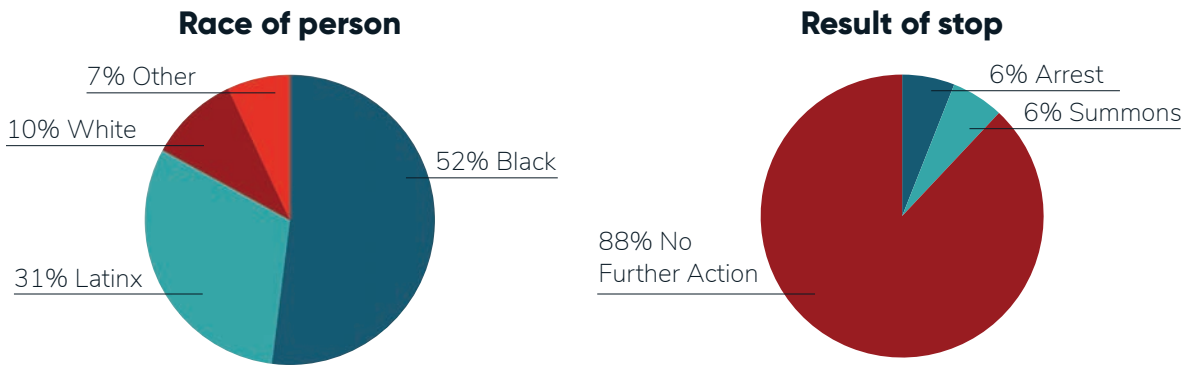
The Superior Court's analysis squared with a subsequent investigation by the U.S. Department of Justice (DOJ) that found a pattern and practice of racial profiling by the New Jersey State Police. The result was a federal consent decree (***i.e.***, a settlement agreement between the parties) that began December 30, 1999, and ended September 21, 2009.[43]

A federal court weighed in on racial profiling again in ***Floyd v. City of New York***, in which NYPD witnesses conceded that NYPD officers used race-based assumptions about which stops would increase "productivity" to target "the right people."[44] The evidence — presented during nine weeks of testimony from more than 100 witnesses — demonstrated not only racial disparities but also the severe burden that aggressive police stops impose on people of color.

For reference, between 2004 and 2012, the NYPD conducted more than 4 million stop-and-frisks.[45] Frisks are lawful when officers have a reasonable suspicion that detainees are armed — and therefore pose a danger to officers. But the NYPD found weapons in only 1.5 percent of frisks and found guns specifically in less than 0.1 percent of frisks.[46]

Data presented at trial showed additional evidence of racial disparities and ineffective practices. In 2010, the population of New York City was 23 percent Black, 29 percent Latinx, and 33 percent White.[47] But more than 80 percent of NYPD stops between 2004 to 2012 were of Black people and Latinxs; weapons were seized from Black people in 1 percent of stops, from Latinxs in 1.1 percent of stops, and from White people in 1.4 percent stops.[48] Only 6 percent of stops resulted in an arrest, and only 6 percent led to a summons.[49] In response, the court ordered the NYPD to end its stop-and-frisk policy and appointed an independent monitor to oversee substantial changes in NYPD policies, training, and practices.

NEW YORK POLICE DEPARTMENT STOP-AND-FRISKS (2004-2012)



Source: Floyd v. City of New York, 959 F. Supp. 2d 540, 558-59 (S.D.N.Y. 2013).

New York City officials had claimed that its stop-and-frisk policies were needed to curb crime.[50] But the numbers tell a different story. By May 2017, NYPD stops had dropped from 686,000 in 2011 to under 11,000. During this period, crime rates ***declined***.[51]

Harmful patterns in policing aren't fully explained by overt discrimination. Implicit, or subconscious, bias is also a factor, as is systemic, or institutional, bias. (For more detail, see Chapter 2.) Indeed, the same types of patterns exist in the broader criminal justice system and in society at large.[52] Officers often claim that they stop people "where the crime is" — and crime, they say, tends to be in lower-income neighborhoods with larger communities of color.[53]

Some officers who are sensitive to allegations of intentional bias note that they patrol neighborhoods in which most — and sometimes virtually all — residents, employees, and motorists are of color. The issue then is ***how*** officers engage with people in those neighborhoods, such as whether they rely heavily on pretextual stops or consent searches. Another question relates to the use of resources: Do departments use resources to crack down on low-level offenses (**e.g.**, daily arrests for sex work or marijuana possession) or do they invest in addressing higher-level offenses (**e.g.**, human trafficking or organized narcotics networks).

Even when officers comply with the letter of the law, bias, whether individual or institutional, can devastate communities of color, weaken police-community relationships, and allow "big fish" criminals to prosper. (For more detail, see Chapter 2.) High rates of stops, searches, and arrests also undermine community health and wellbeing. Studies show that people who have been stopped and frisked experience higher levels of anxiety.[54] Frequent stop-and-frisk interactions demean and humiliate people.[55]

Stopping and arresting young people, meanwhile, increases their likelihood of future delinquency and amplifies deviant attitudes.[56] Real or perceived racial and ethnic profiling reduces trust in police and undermines public safety. Young people who have been stopped multiple times are less likely to report crimes or seek police help, research shows.[57] And communities with high levels of police interactions are less likely to cooperate with officers to combat crime.

BEST PRACTICES IN STOPS SEARCHES AND ARRESTS

To integrate the values of community policing, departments need policies and practices that serve and protect the interests of communities. Because stops, searches, and arrests intrude on liberty — and disproportionately affect communities of color — departments should adhere to practices that build community trust and foster community-police cooperation. To protect privacy and allow for greater freedom of movement without compromising safety or effectiveness, departments should work with communities to:

RECOMMENDATION 3.1
ENCOURAGE OFFICERS TO CONSIDER THE COSTS OF STOPS, SEARCHES, AND ARRESTS.

Policing, like other government functions, requires cost-benefit analysis. Officers should weigh not only the benefits of their actions but also their costs, such as the use of time and resources, infringement on personal liberty, and strain on community relationships. An officer who spies a reliable informant drinking from an open container of alcohol, for example, should consider whether to cite (***i.e.***, ticket) the informant (and possibly lose them as a source) or simply tell them to empty the container and issue a verbal warning.

Even when officers have legal justification to stop people, doing so isn't always in the best interests of departments or communities. The NYPD's stop-and-frisk policy, for example, demeaned and humiliated thousands of young men of color,[58] which, in turn, frayed police-community relationships. The department ultimately curtailed the practice (after a court found it had engaged in a pattern of unconstitutional stops) even when stops were legal, which purportedly began to improve community relationships.[59]

In some departments, the cost-benefit analysis is out of step with community needs. Officers in some departments frequently stop motorists for traffic violations as part of aggressive policies to deter serious crime. During a stop, they might see something suspicious inside a car, smell alcohol or illegal substances, or persuade the driver to consent to a search. This is the idea behind "fishing": more stops yield more "catches." The question is whether these stops enhance public safety or detract from it. The effectiveness of fishing has not been proven;[60] but it **does** interfere with individual liberty and fuels cynicism and resentment.

RECOMMENDATION 3.2
BAN FORMAL AND INFORMAL QUOTAS.

Many departments require officers to issue a certain number of tickets and arrests within a specified period. A 2017 study by the Pew Research Center found that only 3 percent of officers were ***formally*** expected to meet a predetermined number of citations and arrests, but 34 percent of officers were ***informally*** expected to do so.[61] In short, quotas — whether formal or informal — pressure officers, particularly patrol officers,[62] to produce.[63]

Some officers have challenged the use of quotas in court on the grounds that they have a disproportionate impact on communities of color.[64] Informal quotas contributed to disproportionately high ticketing of Black residents in Ferguson, Missouri. Black people comprise 67 percent of the city's population but received 90 percent of the local department's citations, according to a civil rights investigation

by the DOJ. This discriminatory practice imposed financial hardship and resulted in debt, jail time, and the loss of driver's licenses, housing, and employment.[65]

Some states have outlawed formal and informal quotas because they cause unnecessary and intrusive interactions between police and individuals, especially in communities with a heavier police presence.[66] California, for example, adopted a vehicle code that states: "No state or local agency employing peace officers or parking enforcement employees engaged in the enforcement of this code or any local ordinance adopted pursuant to this code may establish any policy requiring any peace officer or parking enforcement employees to meet an arrest quota."[67]

In addition to banning quotas, department leaders should not use the number of stops, arrests, and citations as a primary metric for evaluating officers. This is an example of measuring what is **easy** to count rather than what is ***important*** to count — and implies that arrests and citations are more important than uncounted activities. Performance evaluations should also include metrics such as the number of contacts officers make with community members (including with owners and employees of small businesses); the number of community engagements they attend and actively participate in; and the number of complaints and commendations they receive. (For more detail, see Chapters 1 and 10.)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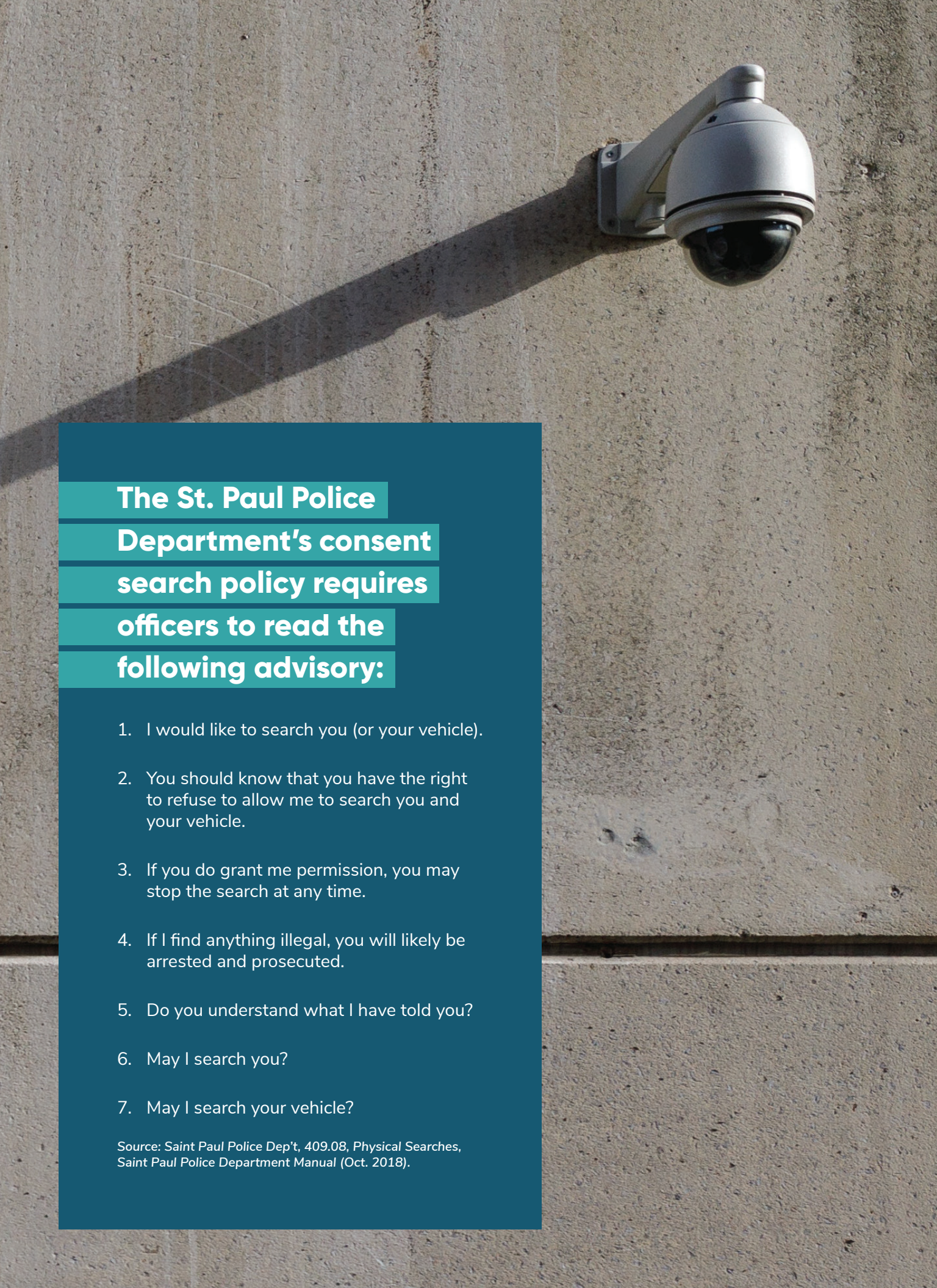


The St. Paul Police Department's consent search policy requires officers to read the following advisory:

1. I would like to search you (or your vehicle).
2. You should know that you have the right to refuse to allow me to search you and your vehicle.
3. If you do grant me permission, you may stop the search at any time.
4. If I find anything illegal, you will likely be arrested and prosecuted.
5. Do you understand what I have told you?
6. May I search you?
7. May I search your vehicle?

Source: Saint Paul Police Dep't, 409.08, Physical Searches, Saint Paul Police Department Manual (Oct. 2018).

RECOMMENDATION 3.3
ENSURE OFFICERS INFORM PEOPLE OF THEIR RIGHTS TO REFUSE OR REVOKE CONSENT AND TO DOCUMENT IT.

Consent searches are particularly problematic because they unnecessarily and unproductively intrude on liberty and disproportionately affect communities of color. At the same time, they place officers in close contact with people who are not handcuffed or otherwise restrained, which puts them at risk. Communities have dealt with consent searches in a variety of ways. Some, such as the Baltimore Police Department (as the result of a DOJ investigation), require officers to tell people they have the right to refuse or revoke consent at any time after giving it.[68] Others, such as St. Paul Police Department in Minnesota, require officers to clearly state that people are free to leave (if and when they are).[69]

Some departments require officers to document consent in writing,[70] and others require officers to document the reason for the search.[71] A few departments require officers to obtain supervisor approval before conducting consent searches.[72] These practices protect people from unwarranted intrusions and enable those who don't know their rights to make more informed decisions.

In Austin, Texas, data indicated a pattern of stops with disparate racial effects. In response, the local police department implemented a policy[73] requiring officers to obtain approval from their supervisors before conducting a consent search; to tell motorists of their right to refuse consent; and to document consent in written form.[74]

Disparities also exist in consent searches. A study of consent searches in four states found that Black motorists are more likely to be consent-searched than White motorists, even though police find contraband less often when drivers are Black.[75]

In sum, departments should adopt policies to avoid unnecessary searches, ensure that consent is truly voluntary, prevent coercion, and reduce disparate impacts on communities of color.

RECOMMENDATION 3.4
LIMIT THE USE OF PRETEXTUAL STOPS.

Pretextual stops pose a difficult challenge. Although upheld by the Supreme Court, they are not necessarily ethical or effective.[76] Departments appear dishonest and untrustworthy when officers stop someone to "fish" for evidence of other, unrelated crimes. Studies find that pretextual stops contribute "heavily to police mistrust and ill will" among Black communities.[77]

Motorists of all races and ethnicities generally feel they are treated fairly when pulled over for speeding, research shows. But people become upset and resentful when stopped for a minor infraction and then asked prying questions and/or to search the vehicle.[78] The feeling is more pronounced among Black and Latinx motorists, who are subject to traffic stops more often than White motorists. This **de**legitimizes police and decreases people's willingness to engage and cooperate with officers, especially in communities of color.

Pretextual stops may have a role in rare and limited circumstances. Police may have reliable information that someone is involved in a serious crime and may want to conduct a lawful stop for another legitimate reason (such as a traffic infraction) to try to learn more. To increase legitimacy, though, departments should adopt policies that curtail, or, ideally, end, pretextual stops.[79] Doing so will alleviate strained relationships between departments and communities.

Indeed, several states and jurisdictions have limited or banned pretextual stops. In 1999 and 2008, state appellate courts in Washington and New Mexico ruled that their state constitutions prohibit using traffic law violations as a pretext for stopping vehicles for other investigative purposes.[80] The Delaware Superior Court held that purely pretextual stops violate the state constitution, noting that the state's traffic code is so extensive that virtually everyone is in violation of some regulation as soon as they get in their car.[81]

In 2003, California relinquished the use of pretextual stops by highway patrol officers as part of a civil rights settlement.[82] More recently, in 2019, Los Angeles Mayor Eric Garcetti ordered the Los Angeles Police Department to scale back pretextual stops because of the disproportionate rate at which Black drivers were stopped.[83] Because the city had experienced a decrease in homicides and violent crimes, Garcetti directed the police chief to focus instead on strategies that that not only stop crime but also strengthen community trust.

RECOMMENDATION 3.5
SEEK SEARCH WARRANTS WHENEVER POSSIBLE.

Neutral judges issue search warrants when officers have probable cause that the search location contains evidence of past or current crimes. Officers must present judges with specific facts to justify this finding; hunches and suspicions are not enough. This process protects people from privacy intrusions — especially when officers are more focused on obtaining evidence than protecting privacy.

Whenever possible, officers should get warrants — even when not required to— to ensure they have probable cause when conducting searches. Warrants give officers greater confidence that evidence seized will be admissible in court and increase police legitimacy. They are also easy to obtain in most cases, especially now that telephonic warrants enable officers in the field to obtain warrants quickly.

RECOMMENDATION 3.6
INTEGRATE PROCEDURAL JUSTICE INTO ALL ENFORCEMENT ACTIVITIES.

To police fairly and build community trust, departments should adhere to the principles of procedural justice — that is, treating people with dignity and respect, and giving them a voice during police encounters; making neutral and transparent decisions; and having trustworthy motives.[84] All officers should be trained in procedural justice at the academy and on the job.

Leaders should integrate the principles of procedural justice externally, into all enforcement activities, and internally, into how they treat officers. Creating and sustaining a culture of procedural justice encourages officers to speak with

members of the public (including those suspected of criminal activity) with fairness and respect; to listen to what people have to say; and to explain what is happening and why during encounters.[85]

Some departments incorporate procedural justice concepts into fair and impartial policing policies. In California, the Sacramento Police Department acknowledges that "[d]uring a contact, misunderstandings may occur from an officer's failure to explain why contact was made."[86] Even if the circumstances call for detaining someone, the policy nonetheless says officers "should inform the detainee of the reason for the contact if it will not compromise the safety of officers or other persons or an investigation."[87] The Charleston (South Carolina) Police Department's Fair and Impartial Policing policy applies procedural justice principles to all stops.

The Charleston Police Department requires officers to use procedural justice techniques in day-to-day practice.[88] Other departments view procedural justice training as an essential component of community policing. In 2016, the Fort Worth Police Department in Texas established a stand-alone Procedural Justice Unit tasked with "providing training and support to the Fort Worth Police

The Charleston Police Department's Fair and Impartial Policing Policy

In an effort to prevent inappropriate perceptions of biased law enforcement, each officer shall do the following when conducting pedestrian and vehicle stops:

- Introduce themselves to the person (providing name and assignment within the department) and state the reason for the stop as soon as practical, unless providing this information will compromise officer or public safety. In vehicle stops, the officer shall provide this information before asking the driver for their license and registration.
- Ensure that the detention is no longer than necessary to take appropriate actions for the known or suspected offense, and the citizen understands the purpose of reasonable delays.
- Answer any questions the citizen may have, including explaining options for traffic citations disposition, if relevant.
- Provide their name and badge number in writing on a business card as they are disengaging from the stop.

Source: City of Charleston Police Dep't, City of Charleston Police Department Policy and Procedure Manual Administrative General Order 8: Fair and Impartial Policing, (Apr. 6, 2018), https://www.charleston-sc.gov/DocumentCenter/View/18114.

Department and citizenry that enhances internal and external police legitimacy thereby increasing trust, reducing crime, [and] improving officer and public safety."[89] The unit also hosts meetings on topics of particular interest to the community, including implicit bias and intimate partner violence.[90]

The Washington State Criminal Justice Training Commission (WSCJTC) integrates procedural justice into its entire curriculum through the LEED Model (Listen and Explain with Equity and Dignity), which simplifies the key components of procedural justice.[91] Recruits participate in mock scenarios and are graded on whether they listen to parties involved and effectively explain the reasons for their actions. Explanations must reflect fair and equitable decision-making, and all parties must be treated with dignity.

Departments can use this model to assess performance in the field by calling people whom officers contacted and asking them: Did officers take the time to listen to your side of the story? Did they explain the reasons for their actions? Did they do so in a way that you believe was fair and free of bias? Were you treated with dignity and respect? When officers meet the first two requirements, they usually also meet the third and fourth, and community members usually perceive equitable and dignified treatment.

RECOMMENDATION 3.7
ELIMINATE DISCRIMINATORY AND BIAS-BASED STOPS, SEARCHES, AND ARRESTS.

As discussed above, the equal protection clause of the Fourteenth Amendment prohibits officers from enforcing the law in a manner that discriminates against people on the basis of protected categories, such as race and gender. Courts have interpreted this clause in a manner that often gives officers discretion to take personal characteristics into account. Nonetheless, the public expectation remains the same: Personal identifying characteristics are relevant only to the extent that they align with descriptions of suspects.

As such, departments must clearly forbid unlawful vehicle and pedestrian stops, searches, and arrests, and they should adopt policies and practices that minimize the costs and effects of ***lawful*** stops, searches, and arrests. To reduce bias-based and unnecessary stops, searches, and arrests, some communities have enacted laws and policies that go beyond federal requirements. For example, some cities and states prohibit using traffic law violations as a pretext for stopping vehicles to look for evidence of other crimes, in part because of the disproportionate impact these practices have on people of color.[92] (For more detail, see Recommendation 3.4.)

States are also increasingly enacting laws prohibiting racial and ethnic profiling and requiring the collection, publication, and analysis of traffic stop and demographic data. (For more detail, see Chapter 2.) Departments should consider best practices for addressing bias in police enforcement activities emerging out of states,[93] such as:

- Requiring annual racial and bias-based policing training (Kansas).
- Establishing community advisory boards that reflect the racial and ethnic community to assist in policy development (Kansas).
- Requiring data collection for vehicle stops and reporting to the state attorney general (Missouri).
- Requiring counseling for officers who engage in race-based stops (Missouri).
- Prohibiting investigatory police activities based on characteristics including language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability, or serious medical condition (New Mexico).

Importantly, these practices do not prohibit interactions between police officers and communities that are **voluntary** efforts to build **positive** relationships with communities. (For more detail, see Chapter 1.) Departments should take particular care to protect communities of color from discriminatory stops, searches, and arrests. Because communities of color experience higher rates of these activities, departments need policies that provide clear guidance about when race or ethnicity may play a role in an encounter. (For more detail, see Chapter 2.) As the Baltimore Police Department notes, only when a "personal characteristic is physically observable, and part of a reliable and trustworthy description of a specific suspect in an ongoing investigation, where that description also includes other appropriate non-demographic identifying factors[,]" may an officer consider that characteristic.[94]

Departments should also prohibit biased police enforcement based on personal characteristics including race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, disability, familial status, immigration status, veteran status, health status, housing status, economic status, occupation, or proficiency with the English language. Here, too, policies should provide clear guidance as to when it is permissible to consider such characteristics. The Seattle Police Department's Bias-Free Policing policy restricts the use of "personal characteristics" and permits the use of characteristics, such as mental health disabilities or housing status, only when referring people to appropriate social services.[95]

Departments should also prohibit officers from stopping people based on their sexual orientation or gender identity. Departments should adopt specific policies for interactions with LGBTQ people to ensure they are treated in a respectful and professional manner and, when possible, to ensure that searches honor preferences regarding the gender of the officer conducting the search. Many

departments are developing policies governing interactions with members of the LGBTQ community that address personal privacy during searches, safe transport and custody, and personal dignity, such as using people's preferred pronouns.[96] The Salt Lake City Police Department's policy includes many of these guidelines:[97]

The Salt Lake City Police Department's Guidelines for Interactions with Transgender Individuals

During interactions with transgender individuals, members will:

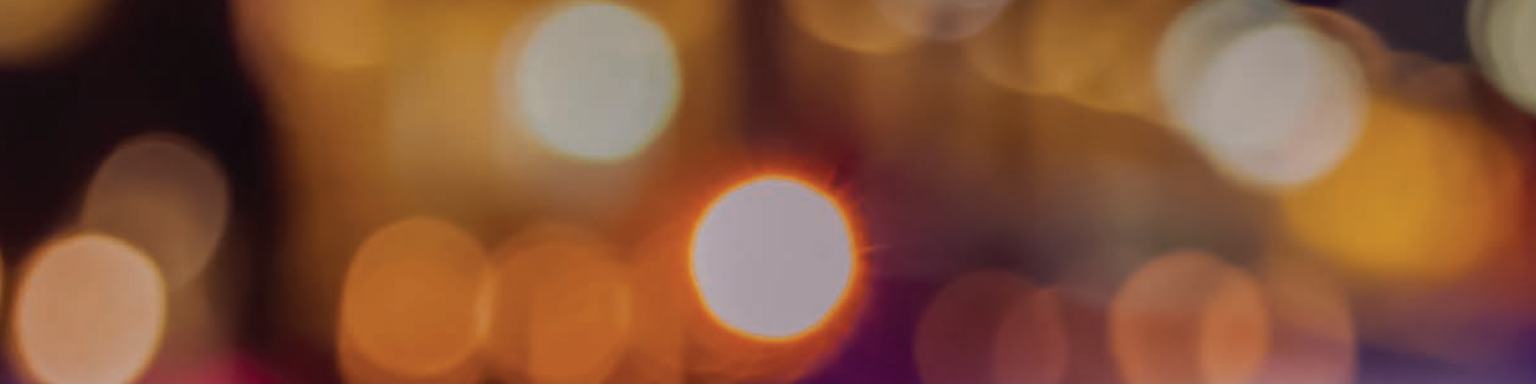
- Respectfully treat individuals in a manner appropriate to their gender, or gender identity/expression.
- Use pronouns requested by the individual (i.e., "she, her, hers" for those identifying as female, and "he, him, his" for those identifying as male). If one is uncertain about which gender the individual wishes to be addressed, one may respectfully ask the individual.
- If requested, refer to the individual by their preferred name rather than what is indicated on their government-issued identification.

Members will not:

- Stop, detain, or frisk an individual for the sole reason of determining gender or gender identity/expression.
- Require proof of gender or challenge a person's gender identity or expression unless legally necessary.
- Use language that a reasonable person would find demeaning or derogatory with regard to an individual's actual or perceived gender, gender identity/expression, or sexual orientation.
- Disclose an individual's gender identity or sexual orientation to other arrestees, members of the public, or other government personnel, absent a proper law enforcement purpose.
- Make assumptions about an individual's sexual orientation based upon their gender or gender identity/expression. ...

Source: Salt Lake City Police Dep't, Salt Lake City Police Department Policy Manual, Policy 344: Transgender Individuals 279-80 (rev. Mar. 8, 2018), http://www.slcdocs.com/police/ppm.pdf.

Importantly, communities can pass laws and ordinances that require police to implement fair and impartial policing. Vermont, for example, requires all law enforcement agencies to implement a fair and impartial policing policy that complies with standards set by the state council that is responsible for training and certifying all Vermont officers.[98]



RECOMMENDATION 3.8
SAFEGUARD AGAINST UNCONSTITUTIONAL SURVEILLANCE.

New surveillance technologies, such as GPS trackers, cell phones, video surveillance cameras, drones, body-worn cameras, and biometric identification software can capture large amounts data and information about people's movements and associations, which impacts community trust. As police increasingly use these technologies, the question of what constitutes a "search" is becoming more complicated (not that it has ever been a simple matter).

Over time, the Supreme Court's interpretation of what constitutes a search under the Fourth Amendment has evolved from a physical intrusion and the "seizure" of something tangible, to an invasion of a person's "reasonable expectation of privacy" (as opposed to a physical intrusion), to whether the place or thing "searched" was exposed to the public.[99]

These doctrines were developed at a time when justices could not imagine that government officials would someday be able to track people's movements in public for indefinite periods and at little cost. It was also beyond imagining that people would one day carry in their pockets small devices that contain (and provide access to) seemingly limitless information about themselves and everyone they know. As courts have considered government efforts to exploit this technology, they have become less willing to hold on to traditional doctrine and more willing to curb government intrusions into privacy.

One of the first signs of the tension between old doctrine and new technology came in ***United States v. Jones***, in which officers installed a GPS tracking unit underneath a suspect's car one day after the search warrant's deadline. Officers then tracked the suspect's movements for 28 days — generating more than 2,000 pages of surveillance data. The Court unanimously agreed that the officers' actions constituted an unlawful search but struggled to reach consensus about **why** it was unlawful. A slim majority ultimately agreed that the officers' actions could be viewed as a technical "trespass" to the undercarriage of the car.[100] Notably, the Court's conservative and liberal wings reached consensus in objecting broadly to the technology's "big brother" implications and looked for a new means of preserving privacy.

In ***Riley v. California***, the Court rejected traditional doctrine when it held warrantless searches of cell phones after lawful arrests unconstitutional. Writing for the Court, Chief Justice John Roberts noted that searching a smartphone upon arrest is a far cry from searching a wallet or a bank statement.[101] Text messages, photos, and even apps (such as those for coping with addiction), he noted, reveal intimate details about people in a way that other documents and items don't.

In both decisions, justices acknowledged that judges may be slow to understand and anticipate the rapid development of new technologies. However, police departments, unlike courts, are not reactive institutions. They can and should lead the way by working with stakeholders to develop and implement policies and practices that address privacy concerns and reduce community distrust. Leaders should resist the temptation to obtain every new bit of information that technology can provide. Drone technology, for example, carries the temptation to subject entire communities to aerial surveillance. Though intentions may be honorable, the availability and affordability of this technology has sparked widespread alarm, prompting some jurisdictions to enact laws to ban or sharply limit the use of drones.[102]

Departments should notify communities when considering the adoption of surveillance technologies and engage them at the outset. In an effort to give communities more control over the use of these technologies, some jurisdictions have passed laws that require departments to get approval from their city councils before acquiring surveillance technologies and requiring community input.[103] These laws are intended to give communities, through their elected officials, a voice in the decision-making process about how these technologies are used.[104]

Working with community stakeholders, departments should craft policies that place well-defined restrictions on surveillance that consider community interests and concerns, specific local needs, and national standards.[105] This process should address protections for marginalized people, who are most likely to live in surveilled, high-crime areas. Because these groups are often not represented in the decision-making process, departments need strategies to engage them in meaningful ways.

RECOMMENDATION 3.9
PROVIDE COMPREHENSIVE TRAINING ON STOPS, SEARCHES, AND ARRESTS.

Chapter 11 discusses academy and in-service training, and Chapter 2 discusses training officers to eliminate bias-based policing. This chapter addresses training related to bias in stops, searches, and arrests. Training should be led by qualified legal instructors with significant experience in issues related to the U.S. Constitution and related case law and should review restrictions on officers' rights relating to stops, searches, and arrests.

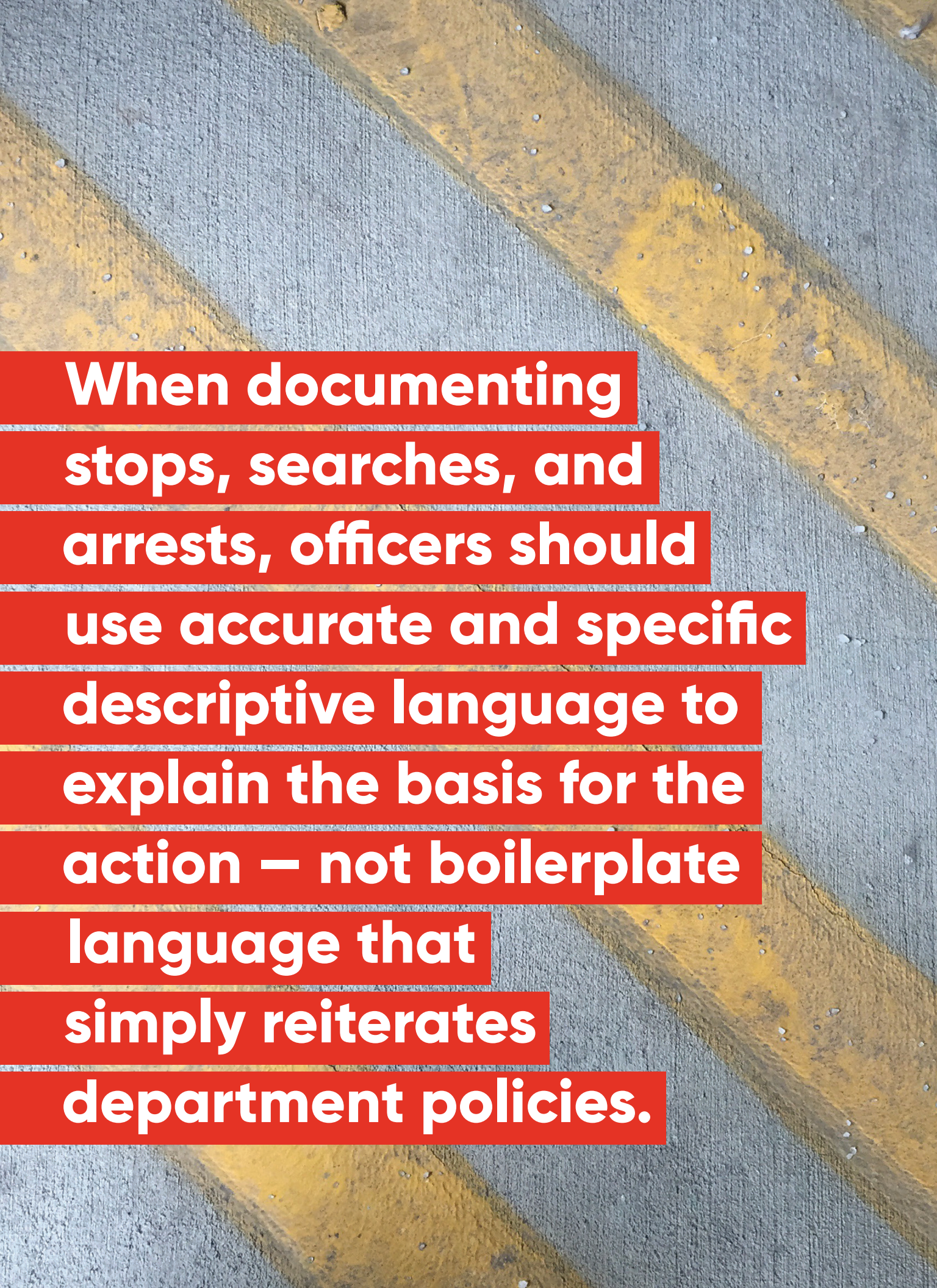
Many departments have found that the best training for this sort of police activity uses some version of the "Tell, Show, Do" model. In this model, instructors (1) lecture on legal requirements; (2) show students examples of correct and incorrect conduct (often through videos followed by group discussion); and (3) walk officers through various scenarios in which they apply knowledge and skills. This model gives officers the opportunity to work with peers and colleagues to practice skills and talk about the best ways of handling real-world situations.[106] It also gives instructors the opportunity to identify officers who demonstrate superior knowledge, skills, or leadership abilities and who might later serve as field training officers or mentors.

This training should also include a philosophical discussion about fundamental constitutional values and the need to strike the proper balance between liberty and security. Recruits at the WSCJTC are given a copy of the U.S. Constitution and the Declaration of Independence and reminded that countless men and women in the military have sacrificed their lives to uphold the values and rights contained in these foundational documents. This training conveys that disregarding a person's civil rights is tantamount to dishonoring the sacrifices of military heroes; it instills the belief that honoring people's civil rights is the ultimate expression of patriotism.

To prevent bias-based policing, training should go beyond court interpretations of the U.S. Constitution and should be developed with input from community members and professional educators. Departments should also discuss policies with impacted communities, such as the disability, immigrant, and LGBTQ communities, to ensure they promote tolerance and appropriate and respectful interactions.

For example, the San Francisco Sheriff's Department recently enacted a series of policies on searches and detentions to protect and respect the safety and rights of transgender people in its custody. These enactments arose out of lengthy discussions with stakeholders, including the Transgender Law Center and Just Detention International.[107]

Departments should select instructors carefully and include members from affected communities in trainings. Because addressing bias involves difficult and emotionally charged conversations, instructors should be comfortable engaging with other personnel on these issues. Finally, instructors should emphasize the importance of treating people with respect (in accordance with procedural justice principles) to improve interactions between officers and community members.


When documenting stops, searches, and arrests, officers should use accurate and specific descriptive language to explain the basis for the action — not boilerplate language that simply reiterates department policies.

RECOMMENDATION 3.10
REQUIRE DETAILED REPORTING OF STOPS, SEARCHES, AND ARRESTS.

Historically, police departments have not required officers to record information about stops, searches, and arrests. Documentation that has been required has tended to be cursory and has not always been carefully reviewed. To ensure that officers police in a way that complies with departmental policy and with the U.S. Constitution, departments should have adequate and accurate mechanisms for reporting stops, searches, and arrests. Supervisors should closely review collected information to ensure compliance with department policy and law. Ideally, this process is electronic so data can be easily and regularly analyzed to determine patterns and trends in policing behavior. (For more detail, see Chapter 8.)

Public reporting and review requirements are particularly important. Detailed reporting of enforcement activities enables departments to identify officers who engage in problematic practices and departmentwide trends that require attention. When documenting stops, searches, and arrests, officers should use accurate and specific descriptive language to explain the basis for the action — not boilerplate language that simply reiterates department policies.

Departments should collect specific and clear information about the facts creating reasonable suspicion or probable cause as well as information about perceived race, ethnicity, age, and gender; the reason for the enforcement action; search conducted (if any); evidence located (if any); and identification of officers involved.

Departments should ensure that data and information requirements are integrated into officer workflows and, ideally, are captured electronically for effective and efficient collection and analysis. Departments should strike a balance between documenting instances in which officers are depriving people of their personal liberties (even temporarily or with good cause) and giving officers enough time to patrol, respond to calls for service, and helping communities solve problems.

After collecting data, departments should require periodic analysis, develop interventions to address potential problems, and promote transparency by providing public access to the data (both raw and in aggregate form). This allows community members to analyze departments' activities, identify problems, and hold officers and departments accountable.

A growing number of states are passing bills requiring data collection and reporting. In 2012, Connecticut enacted legislation requiring state and local law enforcement agencies to standardize data collection of traffic stops, searches, and arrests.[108] And in 2015, Illinois and California expanded their data collection laws to include demographic information on pedestrian and traffic stops.[109]

Departments are also using simple, web-based tools to report data online in a format that allows for customized searches by researchers and members of the public. The Minneapolis Open Data Portal encourages public access to data managed by the city (which includes data relating to law enforcement). The portal makes information available in a variety of formats, such as spreadsheets, bar charts, and city maps. People can also subscribe to the portal via RSS feed to receive notices when data are updated.[110] Similar data portals with searchable police databases exist in Dallas, Texas, and Raleigh, North Carolina.[111] Some cities, such as Raleigh, make it easy for members of the public to submit additional requests for data collection and reporting.[112]

RECOMMENDATION 3.11
REDUCE RELIANCE ON ARRESTS AND INCARCERATION.

Stops, searches, and arrests contribute to our nation's high incarceration rates — which, despite recent downward trends, remain the highest in the world.[113] These activities have uncertain deterrent effects, carry enormous societal costs, and funnel people into the larger criminal justice system. People who are incarcerated once, even for a short time, are more likely to be incarcerated again, studies show.[114]

Communities use fines to generate revenue, but these fines impose a high cost on low-income people.[115] The Supreme Court has held that officers may arrest people on the basis of probable cause for misdemeanors, no matter how minor.[116] Thus, the legal analysis does not consider the social costs of these interactions, but departments and communities can — and should — when setting policies and priorities.

Departments can adopt policies that minimize the risk of incarceration and fines that disproportionately impact poor communities because of the inability to pay. To meaningfully implement these policies, leaders should develop and promote an affirmative values statement that acknowledges that stops, searches, and arrests harm people and their loved ones and should therefore be used only when necessary. Specifically, departments should:

Encourage officers to issue summonses rather than making warrantless arrests when possible. When officers issue a summons, they deliver a written notification, or ticket, to appear in court at a later date to answer charges. When they make an arrest, they lock people up, possibly for

extended periods. For this reason, department leaders should encourage officers to issue summonses rather than make warrantless arrests, unless they have reason to believe the person poses a danger to the public or a flight risk. Thus, officers identifying criminal violations in the field should exercise discretion and avoid making warrantless arrests unless people pose a threat to others or there's an identifiable risk that they will not show up for court.

The Minneapolis Police Department takes this approach to misdemeanors including nontraffic offenses; traffic offenses in connection with accidents; arrests; driving after license revocation, suspension, or cancellation; and charges of DWI (driving while intoxicated), careless or reckless driving, or violations of laws prohibiting open containers of alcohol in vehicles.[117] The Department's arrest policy calls for citations instead of arrests.

An Excerpt of the Minneapolis Police Department's Arrest Policy

Adult misdemeanor violators shall be issued citations in lieu of arrest unless the officer [reasonably] believes that one of the following circumstances exists:

- To prevent bodily harm to the accused or another.
- To prevent further criminal conduct.
- There is a substantial likelihood that the accused will fail to respond to a citation.
- The officer cannot verify the identity of the accused.
- The officer has found that the accused has an outstanding warrant.

Source: Minneapolis Police Dep't, Minneapolis Police Department Policy and Procedure Manual Section 9-103, Misdemeanor Arrests (Sept. 14, 2018), http://www.ci.minneapolis.mn.us/police/policy/mpdpolicy_9-100_9-100.

Some cities and towns are experimenting with alternative ways to ensure people appear in court, such as sending reminders.[118] Indeed, people often miss court dates not because they are avoiding charges but because they don't have child care, can't access transportation, or can't take time off from work. A 2004 examination found that 25 to 33 percent of county jail inmates in Jefferson County, Colorado, were "compliance violators," meaning they had been arrested for failing to appear in court, pay a fine, or perform some other task.[119]

The 2004 percentage was significantly higher than it was in 1995, when only 8 percent of inmates were compliance violators. To reverse the trend, county officials began exploring ways to reduce the negative impact of incarceration on local communities and to better use the resources spent on jailing people for missed court appearances. Ultimately, they opted for a telephone notification service that reminded residents of upcoming court obligations.[120] Technological advances now allow for text and e-mail notices.

In January 2018, New York City launched a pilot program that sends residents text messages to "nudge" them to appear in court.[121] The program is now testing the efficacy of different messages, such as describing the consequences for appearing in court (**e.g.**, avoiding an arrest warrant) and reinforcing social norms (**e.g.**, noting that most people appear in court to address citations).

Some departments don't ***require*** officers to issue summons but ***do*** clearly state expectations that officers consider ***alternatives*** to arrest when making decisions in the field. The Bedford Police Department in Massachusetts, for example, identifies instances when arrests may conflict with department or community interests.[122] The department's arrest policy encourages officers to exercise discretion and consider alternatives to arrest.

An Excerpt of the Bedford (Massachusetts) Police Department's Arrest Policy

Although police officers must always be guided by the intent and purpose of the law, there are limited circumstances in the discretion of the officer involved when the public interest would be better served by not making an arrest, even though there is legal justification for such action. Arrest alternatives include citations, summonses, informal resolutions, warnings, and referrals to other agencies to include Restorative Justice or Diversion Programs including the Jail Diversion Program for mental health issues.

Circumstances where alternatives to arrest may be appropriate include the following:

- When an arrest could aggravate community conflict or possibly precipitate a serious disorder.
- When there is a greater priority to respond to a more serious crime or to an urgent public emergency.
- In neighborhood quarrels, noisy parties, landlord-tenant problems and minor disturbances of the peace where no serious crime has been committed and the officer can successfully act as a mediator.
- In other minor offenses where a summons can effectively accomplish the intended purpose.

Source: Bedford Police Department, Policies and Procedures, Policy 1-1, Arrest Policy 6 (Aug. 11, 2015), https://www.bedfordma.gov/sites/bedfordma/files/file/file/arrest_policy_chapter_1-1_0.pdf.

Officers may not be able to consider alternatives if an arrest warrant has already been issued. In Arizona, the Tucson Police Department's arrest policy states: "An arrest warrant is a written order issued and signed by a neutral Magistrate directed to all peace officers, commanding them to arrest the person named in the warrant and to bring that person before the court to answer criminal charges."[123] Departments do, however, have substantial discretion in advising officers when and under what circumstances to seek arrest warrants.

Require officers to give verbal warnings rather than writing tickets or making arrests, when possible. Often, warnings sufficiently address problems, particularly those involving minor offenses and first-time offenders. Instead of writing tickets or making arrests, officers should give verbal warnings and counseling when responding to nonviolent offenses such as loitering, carrying open containers of alcohol, and littering.[124] Stricter enforcement policies have proven costly both to public confidence and community budgets — especially when they violate law. In 2012, New York City paid $15 million to settle a class action lawsuit over the NYPD's practice of enforcing loitering ordinances that had been declared unconstitutional.[125]

Work with community members to explore alternatives to enforcement, such as diversion programs. Communities benefit when programs provide people who commit lower-level offenses with social services instead of jail and prosecution. Seattle's Law Enforcement Assisted Diversion (LEAD) program steers people who have committed low-level offenses relating to drugs and sex work toward treatment and social services rather than to jail and the larger criminal justice system.[126] In Texas, the Hurst-Euless-Bedford Teen Court diverts adolescents from the criminal justice system and dismisses cases when teens successfully complete its diversion program.[127]

These programs don't give offenders a "get out of jail free" card but rather an opportunity to access support services that have the potential to change behavior and produce better individual and community outcomes. A 2015 evaluation found that LEAD participants were less likely to be arrested again than those whose cases were processed through the criminal justice system.[128] The Tucson Police Department has piloted a program to deflect people with opioid addictions from arrest and jail to treatment. (For more detail, see Chapter 5.) This innovative program offers several avenues to treatment: self-referral, deflection from arrest, and officer outreach to people with substance use disorders.[129]

4

THE USE OF FORCE

Police officers are vested with the authority and power to use force, including lethal force, within constitutional bounds. Misusing this power undermines police legitimacy. Indeed, the use — and misuse — of police force is and has long been the source of distrust and discord between police and communities, especially communities of color.

In most cases, officers use words and gestures to defuse conflict, and, sometimes, their mere presence achieves this goal. In rarer circumstances, they use force, ranging from physical maneuvers (**e.g.**, grabs, holds, punches, and kicks) to physical, chemical, and electrical instruments (**e.g.**, batons, pepper spray, Tasers, and firearms) to protect themselves and the public. Sometimes, however, officers misuse these tools and tactics, as evident in recent beatings, chokeholds, and shootings of unarmed people in the back.[1] The deaths of Eric Garner and Walter Scott, for example, were recorded by members of the public, reported in the news media, and shared widely on social media, continuing a long history of misuse and abuse of police force, particularly against the Black community.

The legal system provides a corrective, but only a modest one. Individuals can press prosecutors to bring criminal charges against officers who misuse force, but the reluctance to do so makes convictions rare. Victims and their families can sue for civil rights violations, but civil litigation is lengthy, expensive, stressful, and unpredictable. What's more, these cases typically pertain to past conduct; they don't address, much less guarantee, broad police reform.

Police departments, of course, take measures to ensure that use of force is minimal and effective (***i.e.***, that it is, at a minimum, a "reasonably objective" response to the threat posed to public and officer safety). But they can, and should, go further. Doing so will reduce misuse of force against members of the public, strengthen relationships between departments and communities, and restore trust and confidence in policing.

To ensure fair, safe, and effective policing now and in the future, community members and police leaders should work together to create clear and specific guidance and expectations on appropriate uses of force and equip officers to meet these expectations through training on implicit bias, procedural justice, de-escalation, harm-reduction tactics, and other areas. This may seem like a tall order, especially as departments grapple with limited resources and competing priorities, such as responding to the opioid epidemic and other crises. But improving practices and policies around the use of force will give officers tools and tactics they can apply across all policing work and will, ultimately, improve public and officer safety.

The good news is that communities, departments, and the field of law enforcement are working together to develop best practices in this area. At the same time, advances in technology have led to the development of less lethal types of force (**e.g.**, Tasers) and more robust accountability systems (**e.g.**, review of body-worn camera footage) — each of which has its own challenges. These practices, technologies, and tactics are summarized in the following recommendations.

RECOMMENDED BEST PRACTICES

To protect communities and officers, departments should:

4.1

Commit to respecting and protecting human life and ensuring safety for all.

4.2

Permit the use of force only when necessary to resolve conflict and protect public and officer safety.

4.3

Prohibit and regulate tools and tactics with a high risk of death or injury that are disproportionate to the threat.

4.4

Set clear policies applicable to ***all*** force instruments.

4.5

Set clear policies regarding ***specific*** force instruments.

4.6

Ensure officers consider personal characteristics before using force.

4.7

Require officers to intervene in improper uses of force.

4.8

Require officers to render aid until medical assistance arrives.

4.9

Provide continual, scenario-based training.

4.10

Establish robust processes for reporting and investigating uses of force.

THE LEGAL FRAMEWORK

Broadly defined, the phrase "use of force" refers to the effort officers make to ensure individuals comply with their commands.[2] Force exists on a spectrum, ranging from non-lethal (**e.g.**, compliance techniques such as wrist grips or takedowns) to less-lethal (**e.g.**, Tasers and pepper spray) to lethal (**e.g.**, firearms and impact strikes to the head). No law or court can prescribe specific rules that apply to every imaginable scenario in which force is or may be used.[3] Consequently, officers have little concrete direction to determine when and how to use force — and whether certain uses of force are legal, legitimate, and necessary.

The U.S. Supreme Court laid out the broad principles for use of force in ***Graham v. Connor***, a case in which officers mistakenly believed an innocent man had engaged in criminal activity.[4] Dethorne Graham was a diabetic who in 1984 asked his friend to drive him to a nearby convenience store so he could buy some orange juice. When he walked in the store, he saw a long line, so he turned around and got back into his friend's car.

Two officers saw Graham enter and exit the store quickly and suspected him of robbery. They stopped Graham, who ran around his friend's car twice, sat on the curb, and passed out. The officers handcuffed Graham and pushed him onto the hood of the car. When he regained consciousness, he asked officers to take his diabetic ID card out of his wallet, but they didn't. Graham struggled as the officers threw him headfirst into their patrol car, leading to additional uses of force that resulted in injuries including a broken foot, cuts, and bruises.[5] Only later did the officers learn that Graham was in insulin shock.

In assessing the case, the Court focused on what the officers knew or perceived at the time they used force. The relevant constitutional inquiry, the Court explained, was whether the officers' actions were "objectively reasonable" given the totality of the circumstances.[6] The "reasonableness" of any use of force, it concluded, must be judged "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."[7] The

Court offered several factors to define the "reasonableness" standard, including (1) whether the person poses an immediate threat of harm to officers or others; (2) how resistant the person is; and (3) whether he or she is associated with an underlying criminal offense.[8]

This formulation, known as the **Graham** test, focuses on what officers knew or reasonably perceived at the time force was used. It does not examine the steps leading up to incidents, such as (1) whether officers could have reduced the likelihood of using force with de-escalation or other reasonably available tactics; or (2) whether their actions unnecessarily contributed to or escalated the situation and thus ***provoked*** or ***triggered*** a physical confrontation.

The **Graham** Court did not question whether the officers could or should have kept a safe distance from Graham or explored opportunities to communicate with

him. Instead, it focused on whether the officers had sufficient justification to stop Graham and use force to keep him under control **after** they decided to make contact. The **Graham** test is, as a result, ambiguous and difficult to apply in the field. It provides scant guidance on acceptable uses of force or policies, training, and tactics to avoid or minimize the use force.

In short, the **Graham** test does not guide officers to use less force. Because it does not provide a "holistic, comprehensive approach" to protecting the public and preserving bodily safety, it does not incentivize departments to develop policies or practices to reduce the need to use force.[9]

Other rulings have, however, disincentivized the use of force. The U.S. Court of Appeals for the Ninth Circuit, for example, ruled that officers who unnecessarily create circumstances that lead to use of force may be civilly liable for negligence, even if the force used meets the **Graham** standard.[10] The state of California, meanwhile, instructs juries that "liability can arise if the [officer's] earlier tactical conduct and decisions show, as part of the totality of circumstances, that the ultimate use of force was unreasonable." In this respect, California provides people with greater protections than does the U.S. Constitution.[11]

Relying on the bare constitutional requirement for uses of force — much like relying on the minimum constitutional protections for stops and searches (as discussed in Chapter 3) — fosters "lawful but awful" practices that disserve police and the public. Many departments recognize this shortcoming and, even though not compelled to do so by courts, have adopted force policies and practices that go beyond **Graham's** minimum constitutional requirements.

RELYING ON THE BARE CONSTITUTIONAL REQUIREMENT FOR USES OF FORCE FOSTERS "LAWFUL BUT AWFUL" PRACTICES THAT DISSERVE POLICE AND THE PUBLIC.

POLICIES TRAINING AND OVERSIGHT

Departments should establish clear guidelines and expectations about the use of force and develop policies that aim to reduce it.[12] The Seattle Police Department,[13] for example, allows officers to "only use objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law enforcement objective."[14] It directs officers to recognize that their actions, such as displaying a firearm, could affect the need to use force[15] and to use de-escalation tactics to lessen or avoid force.[16] Under the department's force policy, moderate-to-high uses of force fell 60 percent between 2014 and 2016 — without increasing crime or officer injuries.[17]

Many other departments, however, rely on general, cursory policies that simply recite the ***Graham*** standard. And some departments have contracted with outside companies that sell cookie-cutter policies. This is problematic for several reasons: It makes communities vulnerable to potential constitutional violations, exposes jurisdictions to legal liability, and impedes community-police cooperation.

To reduce uses of force, departments should work with communities to develop force policies and should equip officers to adhere to them. If departments require officers to use de-escalation techniques before using force, for example, they should also train officers to do so. Without adequate training, force policies exist on paper but not in practice.

Furthermore, departments need proper review systems to ensure that all officers comply with departmental policies and provide mechanisms to intervene when they don't. All use-of-force incidents should be reported and reviewed as a matter of course, not because of presumed mismanagement but because the use of force is a serious and potentially harmful event for community members and officers alike. Every review of force should be seen as a learning opportunity that can inform practice and training and thereby enhance public and officer safety.

BEST PRACTICES IN THE USE OF FORCE

Policies that set clear expectations about the use of force, as well as training in how to reduce and mitigate it, improve public safety and strengthen community relationships. Communities that hold departments accountable for meeting expectations set forth in policy will change how departments understand and approach using force — without sacrificing public or officer safety. To protect communities and officers, departments should:

RECOMMENDATION 4.1
COMMIT TO RESPECTING AND PROTECTING HUMAN LIFE AND ENSURING SAFETY FOR ALL.

Officers should make respecting and protecting the public and ensuring safety for all their highest priority in all enforcement actions, and departments should affirm this commitment in their use-of-force policies.[18] The Las Vegas Metropolitan Police Department and the New Orleans Police Department, for example, have developed force policies that prioritize respect and value for all lives.[19] Departments should also craft policies that promote officers' roles as guardians of public safety. This principle lays a foundation for policies and practices that permit the use of force only when necessary and when reasonable attempts to de-escalate or resolve situations without force fail.

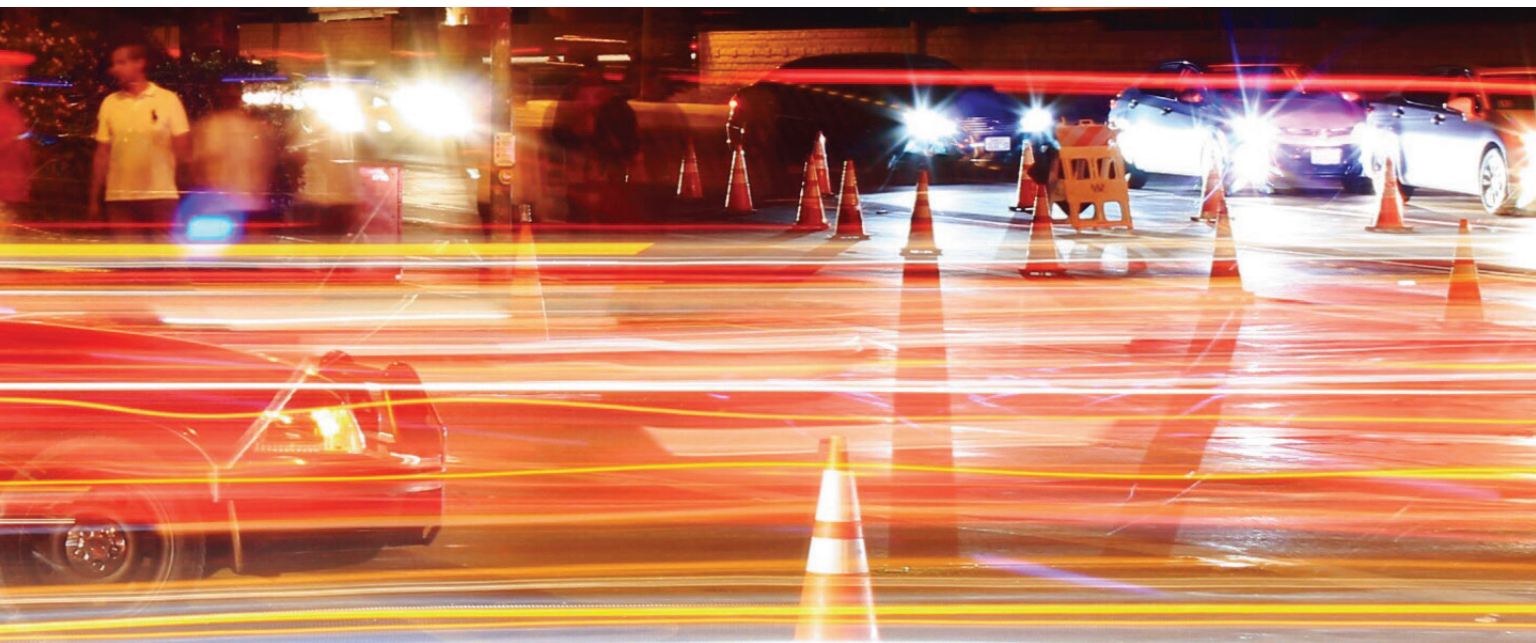
RECOMMENDATION 4.2
PERMIT THE USE OF FORCE ONLY WHEN NECESSARY TO RESOLVE CONFLICT AND PROTECT PUBLIC AND OFFICER SAFETY.

In 1829, Sir Robert Peel, a pioneer in police reform who established the London Metropolitan Police Department, reportedly articulated nine principles of policing. The sixth recommends that police "use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient."[20] This principle still holds true. To apply it today, departments should:

Provide protections beyond those afforded by the U.S. Constitution. To meet constitutional standards, officers are required to make "objectively reasonable" decisions when using force. But force policies should go beyond this requirement and require "objectively reasonable" decisions not only ***during*** uses of force but also in the moments ***leading up*** to them. The Los Angeles Police Department (LAPD), for example, considers an officer's tactical conduct and decisions leading to deadly use of force to determine whether it was reasonable.[21]

Specifically, and in keeping with international standards, force policies should require that officers use only as much force as necessary to address threats.[22] They should clearly state that the "objectively reasonable" standard may not compromise public or officer safety[23] and that using the least amount of force necessary builds trust and confidence in police.

Require force to be necessary and proportional. To provide protections that go beyond the "objectively reasonable" standard, departments should require that force be necessary ***and*** proportional. These concepts are inextricable; when deciding to use force, officers should consider



not only whether it is necessary under the circumstances but also whether it is proportional to the threat (***i.e.***, it is the ***minimal*** amount, level, and severity needed under the circumstances).[24] The question becomes not whether the force is reasonable but whether it is avoidable.[25] As the Seattle Police Department explains:

> Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.[26]

Proportionality does not prohibit officers from using lethal force when necessary. If someone threatens to shoot an officer or other people, then deadly force would be proportional.[27] To teach proportionality, instructors should train officers to assess the surrounding circumstances of encounters, including the severity and immediacy of the threat. Not all threats need to be met with equal levels of force. Officers should use only the force necessary to control the situation; they should not automatically ratchet up the level of force.

This recommendation departs from use-of-force continua that teach officers to use specific tactics or tools depending on the level of an individual's resistance.[28] This rigid approach can lead officers to believe that certain forceful responses are required when facing certain threats, even though lesser options may be equally or more effective. For this reason, departments have begun to train officers to evaluate "the totality of the situation" (***i.e.***, all the facts known to officers at the time) when deciding what type and level of force to use.[29]

Policies should recognize that the circumstances of each encounter vary, so officers' responses should vary, too. Force should not be used because it is more convenient or expedient, to punish or retaliate, or because it has traditionally been perceived as integral to maintaining public safety. It should only be used when community members or officers or are in danger and no reasonable alternatives exist. As the Seattle Police Department states, "[O]fficers will use physical force only when no reasonably effective alternative appears to exist" to achieve a legitimate and lawful objective.[30]

Ensure officers use de-escalation tactics and exhaust reasonable alternatives.

To reduce uses of force and lessen the risk of injury or death in force applications, departments should require officers to de-escalate encounters when safe and feasible. De-escalation is defined as "[t]aking action or communicating verbally or nonverbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary."[31]

De-escalation techniques — such as slowing down, maintaining a calm and composed demeanor, creating distance or physical barriers, and attempting verbal persuasion or warnings[32] — can reduce the need to use force. These techniques should be incorporated into all basic and in-service training curricula, as is the case in some states. Police officer certification commissions in Georgia and Massachusetts, for example, require annual de-escalation training,[33] and Washington state passed a measure in 2018 requiring de-escalation in basic academy and in-service training.[34]

Force policies should describe affirmative and proactive tactics, strategies, and approaches that can de-escalate incidents and resolve situations with minimal or no force. These policies should require officers to reasonably exhaust all available approaches to resolve situations, address threats, and achieve required law enforcement objectives (such as apprehending a suspect) without using force or, if force is necessary, with the least amount of force possible.[35]

Officers should also be required to justify why they didn't use alternative or less lethal uses of force[36] and should be prohibited from unnecessarily escalating situations. Many departments require officers to use de-escalation tactics. The Seattle Police Department, for example, requires officers to "take reasonable care that their actions do not precipitate an unnecessary, unreasonable, or disproportionate use of force, by placing themselves or others in jeopardy, or by not following policy or training."[37]

The duty to de-escalate should apply not only to officers' specific decision to use force but also to their decision-making process and performance leading up to and during an incident.[38] Officers should also be trained to recognize when an individual's resistance wanes and to reduce the level of force accordingly.[39] The New Orleans Police Department, for example, states:

> When feasible based on the circumstances, officers will use de-escalation techniques[;] disengagement; area containment; surveillance; waiting out a subject; summoning reinforcements; and/or calling in specialized units such as mental health and crisis resources, in order to reduce the need for force, and increase officer and civilian safety. Moreover, the officers shall de-escalate the amount of force used as the resistance decreases.[40]

Ensure officers are trained in communication skills. Critics of de-escalation claim that it promotes "soft" policing because it prioritizes communication skills, which they say risks officers' lives by encouraging them to hesitate during dangerous situations.[41] This approach is sometimes referred to as "hug-a-thug" policing (a term with racist overtones).[42] In fact, de-escalation protects public and officer safety because it teaches strategic communication skills that enable officers to affirmatively defuse crises and gain voluntary compliance. Basic training should cover de-escalation skills, such as:

+ Allowing people to vent feelings and frustrations.
+ Actively listening to people without attempting to dissuade or argue with them.
+ Showing interest in people through eye contact and attentive body posture.
+ Controlling voice, speech, and tone.
+ Reading body language.
+ Responding calmly and evenly to curses, insults, and nonviolent challenges to authority.[43]

Ensure officers are trained in repositioning tactics. Policies and training should instruct officers to enlarge the "safety zone" between themselves and people suspected of crime.[44] Officers who know how to create distance and take cover during potentially dangerous situations have more time to respond and more tactical options to consider if people are noncompliant or threaten officers or bystanders.[45]

The strategic use of distance and cover shows how use-of-force policies have evolved over time. In the 1980s and 1990s, many departments and officers formally embraced the "21-foot rule," which stated that "it was entirely possible for a suspect armed with an edged weapon to successfully and fatally engage an officer armed with a handgun within a distance of 21 feet."[46]

Officers trained in this rule often misapplied it; many mistakenly believed they had carte blanche to shoot anyone with a knife who approached within 21 feet, ***a.k.a.*** "the kill zone."[47] Law enforcement officials claim that fewer departments train officers to follow the rule, but it is still taught informally.[48] The Police Executive Research Forum, an independent research organization, recommends that departments remove any reference to this outdated guidance from policies and training.[49]

RECOMMENDATION 4.3
PROHIBIT AND REGULATE TOOLS AND TACTICS WITH A HIGH RISK OF DEATH OR INJURY THAT ARE DISPROPORTIONATE TO THE THREAT.

Many officers want specific guidance — or "rules of the road" — about acceptable uses and applications of force. Community members also want a clear sense of how officers should perform. Because courts have not provided much guidance, departments should step in. Policies and training should explicitly prohibit or limit uses of force that carry a high risk of death or injury when they are unwarranted because they are disproportionate to the threat. Clear rules, with clear exceptions, ensure that officers know in advance which force responses, tools, and techniques are prohibited under most or all circumstances. Specifically, departments should:

Prohibit maneuvers that restrict blood or oxygen flow to the brain. Chokeholds, strangleholds, neck restraints, neckholds, and carotid artery restraints are lethal hands-on maneuvers that cut off the supply of blood and oxygen to the brain. There is widespread support for banning these maneuvers, especially in the wake of the death of Eric Garner. In 2014, a New York City officer was recorded wrapping his arm around Garner's neck and wrestling him to the ground (in violation of department policy) while he pleaded that he could not breathe.[50]

Recognizing the inherent danger of chokeholds and the threat they pose to human life, departments such as New York, Atlanta, and Miami prohibit them. Other states and cities have outlawed them too. Washington, D.C., bans chokeholds (but allows "strangleholds" in some situations), and Illinois prohibits them unless deadly force is justified.[51]

Prohibit techniques and modes of transport that risk suffocation. Positional asphyxia (***i.e.***, suffocation) occurs when people are restrained behind their backs and placed on their stomachs. Restraints include the hobble restraint, or "hog-tie," by which officers tie people's ankles with a strap and connect it to handcuffs.[52] Positioning people on their stomachs while they are restrained can make it difficult to breathe and can result in death.[53] Officers should be trained to not restrain people who are face-down and lying flat and to get handcuffed or restrained people off of their stomachs as quickly as possible.[54] Instructors should train officers not to apply pressure to people's backs while restraining them in face-down positions and handcuffing them, because doing so compresses the airway and risks suffocation.[55]

Prohibit officers from shooting at or from moving vehicles. This policy should apply except when drivers or passengers use or threaten imminent lethal force with weapons other than their vehicles.[56] The Denver Police Department prohibits shooting at moving vehicles because doing so does not necessarily stop vehicles and can disable drivers, causing them to lose control and endanger the lives of passengers, bystanders, and officers.[57] The department also prohibits officers from creating circumstances that might make shooting at a vehicle necessary,[58] such as entering into or obstructing a vehicle's path. This practice can be expensive. Some people have sued cities for deaths caused by officers shooting at moving vehicles, and city officials have opted to settle for large sums of money to avoid long and expensive litigation.[59]

Bans on shooting at or from vehicles have been extremely effective. The New York Police Department banned shooting at moving vehicles more than 45 years ago, causing officer shootings to plummet. Within the first year, the number of officer-involved shootings declined by 33 percent.[60] Officer deaths in the line of duty also decreased during this time, indicating that the policy does not jeopardize officer safety.[61] In short, this policy saves lives and reduces liability for cities and departments.[62]

Set clear guidelines for vehicle pursuits. High-speed police car chases are inherently dangerous, especially in urban areas and on densely populated streets, where they pose serious risk of injury to other drivers, passengers, and bystanders.[63] Indeed, a 2015 analysis of police car chases found that more than 5,000 passengers and bystanders have been killed by them since 1979, and tens of thousands more have been injured.[64] What's more, most pursuits involve minor offenses: A report by the

"IN A DEMOCRATIC SOCIETY, POLICE MUST NEVER FORGET THAT OUR AUTHORITY IS DERIVED FROM THE CONSENT OF THE PEOPLE. WE HAVE SWORN A SOLEMN OATH TO SAFEGUARD THE CONSTITUTIONAL GUARANTEES AND PERSONAL SAFETY OF ALL PEOPLE. FOR THAT REASON, NO POLICING POLICY WARRANTS GREATER CARE AND ATTENTION THAN THE USE OF FORCE. WE SHOULD NOT BE MOTIVATED SOLELY BY PUBLIC PROTESTS; THIS ISSUE SHOULD RECEIVE OUR CONSTANT ATTENTION, TO ENSURE OFFICER AND PUBLIC SAFETY."

– CHIEF J. SCOTT THOMSON,
CAMDEN COUNTY POLICE DEPARTMENT
AND PRESIDENT OF THE POLICE
EXECUTIVE RESEARCH FORUM.

International Association of Chiefs of Police (IACP) and the National Institute of Justice found that 92 percent of pursuits were initiated for traffic violations, misdemeanors, or non-violent felonies.[65]

Departments should provide clear parameters dictating when officers may initiate a vehicle pursuit. For example, the Seattle Police Department prohibits pursuits solely in response to traffic violations, civic infractions, misdemeanor offenses, property crimes, or for the sole reason of eluding an officer (**e.g.**, by increasing speed or refusing to stop).[66] Officers should also end pursuits when the risk outweighs the need to stop the driver. Factors to consider include the original reason for the pursuit, location, direction of travel, weather conditions, speed (of the eluding driver), and traffic conditions, such as the presence of pedestrians and other vehicles.[67] Officers should also be required to notify their supervisors after vehicle pursuits, and departments should not discipline officers who refuse to initiate them.[68]

Set clear guidelines for foot pursuits.

People of color and people who live in high-crime areas may wish to avoid contact with an officer — even if they are not involved in criminal activity. Many factors may motivate an innocent person to flee, such as the fear of police use of force, a natural dislike of authority, past negative interactions with police officers, or fear of wrongful accusation, particularly among Black people because of their difficult history with police.[69]

Officers often respond on foot, which is inherently dangerous and often ends in officer-involved shootings.[70] Perception problems also occur during foot pursuits; officers may think someone who makes a quick or sudden movement is reaching for a weapon and shoot

them.[71] Officers also often experience fatigue and/or an adrenaline rush when pursuing people, which can compromise their tactical abilities and judgment.[72] Foot pursuits by solo officers without backup are especially dangerous and often result in injury because officers may have to resort to force.

Departments should provide clear guidance and training about how to safely engage in foot pursuits. Doing so will reduce the incidence of injury and death to the public and officers alike. Policies should specify when foot pursuits are warranted and limit them to when officers have probable cause that someone has committed crime; mere flight, in other words, is not enough.[73] In its model policy, the IACP makes a series of recommendations on foot pursuits, including that officers end foot pursuits when they are alone or lose the person; when the person enters a building or other structure; when they lose communication with dispatch; when they know they can apprehend the person at another time; or when they lose their sense of direction or location.[74]

Prohibit water cannons and acoustic weapons and restrict tear gas for crowd-control purposes. Water cannons, fire hoses, and tear gas (along with other uses of force, including dogs, whips, and batons) were used during the civil rights movement not only to control crowds but also to scare, intimidate, and injure demonstrators.[75] Despite their risk of injury and intimidation, these instruments and tactics, though rare, are still used today.

In 2016, police used water cannons, tear gas, and lead-filled beanbags against peaceful protestors from the Standing Rock Sioux Tribe in North Dakota, which resulted in mass injuries, including fractured bones and hypothermia.[76] Acoustic weapons are also used to control crowds, as was the case in Ferguson, Missouri, where officers used them against people who were protesting the fatal police shooting of Michael Brown, an unarmed Black teen, by delivering painful blasts of noise, which can cause permanent damage and potential hearing loss.[77] More recently, the U.S. Border Patrol fired tear gas at a group of migrants, including young children, who were attempting to cross the U.S.-Mexico border.[78]

While these weapons are rarely used by police officers in the United States, they fuel outrage when they are. They induce fear, turn police encounters into war-like scenarios, and carry a high risk of injury and, therefore, should not be used to control crowds, including against people engaging in lawful protests and other activities protected by the First Amendment. (For more detail, see Chapter 6.)

Water cannons shoot pressurized water (sometimes mixed with chemical agents or dyes) through hoses that are connected to in-ground water supplies or to "bladders" mounted on top of vehicles. They can cause internal injuries and hypothermia (when used in colder climates) and other injuries from slipping and falling or exposure to chemicals and dyes.[79] Departments should ban their use for crowd-control purposes, as they are ineffective and cause injury. Indeed, in 2015, England banned them because they haven't proven a safe or effective crowd control tool.[80]

Tear gas is a chemical that irritates eyes, causes skin pain, interferes with breathing, and disorients and agitates people.[81] It can be sprayed at people or thrown grenade-like into crowds, where it "explodes" with gas.[82] Like pepper spray, tear gas cannot be targeted when sprayed; as such, it carries a high risk of affecting unintended targets or bystanders.[83] When tear gas canisters explode, the gas disperses widely to surrounding areas.[84] For these reasons, departments should restrict the use of tear gas to situations in which crowds engage in violent acts, such as riots, that risk death or serious injury and all other options have been exhausted. The use of tear gas should require approval from the highest level of the department, (***i.e.***, from the chief or commissioner).

Like tear gas, acoustic weapons are indiscriminate; they can't be targeted at specific individuals and can harm bystanders and other officers.[85] They're primarily "pain compliance" tools that can cause lasting physical impairment. Departments should ban their use, as they have not been proven to be an effective method of crowd control.[86]

Limit acquisition of military equipment and militarized police responses. Since 1990, the U.S. Department of Defense has transferred some $6 billion worth of excess military equipment to law enforcement agencies through its 1033 Program, so named for a section of the National Defense Authorization Act.[87] Under the program, local police departments can acquire armored vehicles, including Humvees and Mine Resistant Ambush Protected (MRAP) vehicles, which were designed to withstand explosive ambushes in combat zones. They can also acquire military grade weapons, such as high-caliber assault weapons, grenade launchers, and other equipment.

This program has been in effect for decades but only recently attracted national scrutiny. In 2014, the Ferguson (Missouri) Police Department used this type of equipment in response to widespread protests following the fatal shooting of Michael Brown.[88] Images of officers in MRAPs, body armor, and gas masks confronting protesters and of snipers perched on top of tactical vehicles[89] spread around the world — and recalled images of excessive uses of force against protesters during the civil rights movement.

The U.S. Department of Justice (DOJ) launched an investigation into the Ferguson Department's response to the protests, and President Obama issued an executive order directing a working group to review programs that supply military equipment to police.[90] In 2015, the DOJ concluded that the heavily armed, militarized response was disproportionate to the threat posed by the protestors and deployed in a manner that intimidated the community.[91]

The working group subsequently recommended prohibiting acquisition of military equipment including tracked armored and weaponized vehicles, bayonets, grenade launchers, and high-caliber firearms and ammunition.[92] In 2017, the Trump administration revoked the order and disavowed the recommendations,[93] yet they nonetheless serve as a guide and confirm that the significant risk of misusing or overusing military weapons, which undermines community trust, warrants their prohibition.[94]

Indeed, evidence shows that militarization influences police behavior. One study found a correlation between military equipment and the number of police-involved killings.[95] Access to military equipment also increases officers' tendency to use military tactics (***i.e.***, force) to resolve conflicts.[96] The massive transfer of such equipment to local departments is tantamount to arming officers for war against communities.

That said, while military-grade equipment should not be used against members of the public, especially when engaging in lawful protests, it **may** be appropriate in limited, high-risk situations, such as hostage rescues, special operations, terrorist attacks, active shooters, and fugitive apprehension. These situations may require heavy riot gear and powerful weapons to protect public and officer safety.[97]

Limit the use of SWAT teams. Departments historically used Special Weapons and Tactics (SWAT) teams to handle hostage rescues, active shooters, and terrorist attacks. Today, SWAT teams are routinely used to execute search warrants, often for drug searches.[98] Officers on SWAT teams receive military-style training and use weapons, such as battering rams and flashbang grenades (which can blind or deafen people), to break into homes.[99]

Some search warrants for drugs are high-risk and may warrant the use of SWAT teams. Yet the shift from their original use calls for careful evaluation of SWAT programs to determine whether they are being used appropriately after careful threat assessments. SWAT teams should be used for warrant service only when officers can show the existence of an imminent threat of serious bodily injury or harm, such that officers would be unable to execute a warrant safely without SWAT assistance. Department leaders should provide guidance on the types of warrant searches that justify the SWAT deployment and reasonable tactics when serving high-risk warrants.[100] When executing a warrant each action taken (for example, using a battering ram to enter after a knock-and-announce fails), each action or use of force should be justified. SWAT teams, and officers in other units who also execute warrants, need ongoing specialized training to reduce use of force.[101]

No-knock warrants are an especially high-risk tactic and they should be the exception not the rule. Only when a threat exists that officers can specifically articulate, should they be used.

Prohibit retaliatory and punitive uses of force. Though typically used in response to a legitimate threat of serious injury or death, force is sometimes used as a punitive measure. Officers might use retaliatory force when someone appears confrontational or records an officer with a cell phone video camera (which is generally permissible under the First Amendment).[102] Departments should explicitly prohibit retaliatory and punitive force,[103] especially against people who are handcuffed or restrained and therefore pose no threat.

RECOMMENDATION 4.4
SET CLEAR POLICIES APPLICABLE TO ALL FORCE INSTRUMENTS.

The rules and trainings that departments put in place regarding the use of force should ensure it is reasonable, necessary, and proportional, regardless of the instrument or technique used. This recommendation explores basic parameters around use of force that apply to all instruments and that should be covered in policy and training.

Departments should ensure that officers:

- Use only department-issued or department-approved instruments.[104]
- Complete required training and certification in each instrument and are recertified on a regular basis.[105]
- Consider their surroundings before use to avoid unnecessary risk to bystanders, victims, and other officers.[106]
- Identify themselves as officers,[107] consider de-escalation tactics (including verbal de-escalation techniques),[108] and give verbal warnings before use.[109]
- Determine whether people are in mental health or substance use crisis and, if so, use crisis intervention techniques.
- Consider whether they can't effectively communicate with targeted people because of their limited English proficiency; mental health, developmental, or physical disabilities; or substance use disorders. (For more detail, see Recommendation 4.6.)
- Use instruments only when reasonable, necessary, and proportional to threat posed.[110]
- Render medical aid and request medical assistance if necessary.[111] (For more detail, see Recommendation 4.8.)
- File a report immediately after each use of force and justify each separate use of force (***i.e.***, each firearm discharge, Taser shock, baton strike, etc.).[112] Shooting someone once may be justified; shooting someone more than once may not.

RECOMMENDATION 4.5
SET CLEAR POLICIES REGARDING SPECIFIC FORCE INSTRUMENTS.

Different instruments introduce specific considerations and risks. Pepper spray requires different knowledge and precautions than tear gas, and handguns require different approaches than Tasers. Yet many departments lack specific policies regarding the use of each instrument.[113] Without such policies, and training to adhere to them, supervisors can't adequately hold officers accountable when officers misuse instruments. Specifically, departments should:

Set clear policies regarding firearms. Firearms, such as handguns, shotguns, and rifles, are among the most lethal weapons at officers' disposal, and their use impacts not only officers and individuals but entire departments and communities.[114] Some departments address the use of firearms in general policies, while others provide specific, stand-alone guidance. Either way, firearms merit special attention, and their proper use should be a major component of departments' policies regarding the use of force.[115] Force policies should clearly address all topics related to firearm use, including training and certification, holstering and discharge, and reports, investigations, and discipline.

Departments should ensure that officers follow the general guidelines relating to use of force l isted in Recommendation 4.4.

In addition, departments should ensure that officers:

+ Understand that "use of force" includes pointing a firearm at people, which is considered a "seizure" under the Fourth Amendment.[116]
+ Unholster, draw, and exhibit firearms only when they reasonably believe the situation may rise to a level where lethal force would be authorized.[117]
+ Understand that unsuccessful use of less-lethal weapons does not automatically authorize an officer to use a firearm.[118]
+ Determine whether the person is experiencing a mental health or substance use crisis and, if so, use crisis intervention techniques.[119]
+ File a force report whenever a firearm is unholstered and pointed at someone.[120]
+ File a report even after unintentional discharge and even if no injury or death results. All discharges should be immediately investigated.[121]

Departments should prohibit officers from:

x Firing warning shots (so as not to harm others in the area).[122]
x Shooting through doors, windows, or when targets are not clearly in view.[123]
x Firing at moving vehicles (except in limited situations).[124]

Set clear policies regarding Tasers. Tasers — also referred to as electronic control weapons (ECWs), conducted electrical weapon (CEWs), and conducted energy devices (CEDs) — are increasingly used by law enforcement agencies as a less-lethal alternative to firearms.[125] Tasers fire two barbed wires that pierce the skin and deliver high voltage electric shocks to stun and disable people.[126] Tasers can also be used in "drive-stun" mode, which does not affect motor functions but causes significant pain.[127]

Though most Taser shocks do not inflict serious injury, some do. The shock induces muscle contraction, which can cause people to fall and sometimes break bones, hit their heads, and even die.[128] On the other hand, Tasers are less injurious to members of the public and officers than other applications of force, such as punches, kicks, batons, and flashlights, research shows.[129]

Community and advocacy groups have questioned the safety of Tasers and raised concerns about their use (and abuse). Indeed, studies show that some officers use Tasers with impunity because supervisors don't scrutinize Taser use as closely as firearm use.[130] One study found that officers deployed Tasers without appropriate justification in nearly 60 percent of reported Taser incidents and sometimes shocked people who were "merely passively or verbally noncompliant" or were already handcuffed or restrained.[131] A study of the Chicago Police Department found that expanded use of Tasers did not reduce the use of firearms or the number of people injured by the department's officers.[132]

For these reasons, departments should develop and implement specific policies to maximize safety and restrict the unnecessary or improper use of Tasers and should train officers to comply with these policies. In general, departments should consider Tasers a "weapon of need, not a tool of convenience."[133] And supervisors should respond to the scene whenever one is used.[134]

Departments should ensure that officers follow the general guidelines relating to use of force listed in Recommendation 4.4.

In addition, departments should ensure that officers:

+ Carry Tasers in "weak-side holsters" (***i.e.***, on the side of their nondominant hand) to reduce accidental discharge.[135]
+ Consider the severity of the crime before determining what mode to use them in.[136]
+ Stop using them after one standard (five-second) cycle to determine whether more than one cycle is necessary.[137]

Departments should prohibit officers from:

x Using Tasers against high-risk groups, such as pregnant women, older people, young children, or people who are visibly frail, have known heart conditions, are in a medical or mental health crisis, are under the influence of drugs (prescription and illegal) or alcohol, or who have slight builds.[138]
x Using them on vulnerable body parts, such as the head, neck, chest, and groin.[139]
x Using more than one Taser against one person at one time.[140]
x Using a Taser on someone more than three standard (five-second) cycles.[141]
x Using "drive-stun" mode, which causes pain but not loss of muscle control[142] and can escalate encounters by causing rage in response to pain.[143]
x Using them for the sole reason of preventing flight.[144]

Set clear policies regarding batons. Batons, including straight batons, espantoons, and expandable batons, are impact weapons that can cause serious injury and sometimes death. Batons are inherently fraught with risk because they are less lethal if used properly but lethal if used improperly. For example, strikes to the head, neck, throat, spine, heart, and kidneys are lethal force; strikes to other body parts aren't.[145] Thus, force policies should clearly state that batons are a low-risk option but are capable of lethal force depending on how they are used.[146]

Departments should ensure that officers follow the general guidelines relating to use of force listed in Recommendation 4.4.

In addition, departments should ensure that officers:

+ Understand that strikes to vulnerable body parts are considered lethal force because of their high risk of serious injury and death.[147]

Departments should prohibit officers from:

x Using flashlights or other hard objects in place of batons (because flashlights are potentially more injurious).[148]

x Striking the head or other vulnerable body parts, such as the neck, chest, spine, groin, or kidneys.

x Using batons against people who are restrained, even if they are noncompliant, unless they pose an imminent threat to officers or others.[149]

Set clear policies regarding pepper spray. Oleoresin capsicum (OC) spray, commonly known as pepper spray, is an inflammatory agent that burns the skin, eyes, and throat and, in some cases, causes temporary blindness and restricts breathing. Officers often use pepper spray to disperse crowds and force people to comply with orders. While pepper spray is a valuable alternative to lethal force, it still risks serious harm. It is not very accurate, especially in windy conditions, and it can hit people other than intended targets, including other officers.[150] And, because it is flammable, it can't be used in combination with Tasers or other ECWs.[151]

Departments should ensure that officers follow the general guidelines relating to use of force listed in Recommendation 4.4.

In addition, departments should prohibit officers from:

- x Using pepper spray on passive resisters or to disperse crowds.[152]
- x Using spray on people who are handcuffed or otherwise restrained unless they pose a threat to public or officer safety.[153]

Set clear policies regarding canines. Police canine (K-9) teams serve many important purposes: they detect evidence, bombs, and narcotics; find people who are suspected of criminal activity; and search fields and wooded areas for missing people, with much more precision than officers.

Without proper policies and training, however, police dogs can be traumatizing and physically threatening. One study found that the use of canine force resulted in a higher proportion of hospital visitations than Tasers, batons, and "bean bag" projectiles (fabric bags with lead filled pellets that are fired from a shotgun). The study also concluded that injuries inflicted by canines are more likely to require medical attention than those caused by less lethal weapons.[154]

A 2011 DOJ investigation of the New Orleans Police Department found that police dogs were so uncontrollable that they bit people (including officers) more than twice as often as properly trained dogs in well-run canine units.[155] The department was ordered to suspend the program until it developed appropriate training.[156]

More recently, the St. Paul Police Department stiffened restrictions on canine use after two high-profile incidents involving the misuse of canine force (one man was bitten after he was mistaken for a suspect and a woman was bitten while taking out the trash).[157] The new policy limits the use of dogs to apprehend people suspected of felony crimes of violence (**e.g.**, murder, manslaughter, aggravated robbery, kidnapping, criminal sexual misconduct, and drive-by shootings) and prohibits them in other felonies (**e.g.**, theft, fleeing in a vehicle, drug sales, and burglary of vacant buildings).[158]

To some, the mere presence of dogs is threatening, in part due to misuse of canine force in the past, and particularly during the civil rights movement. To alleviate concerns about the use of canine force,

departments should implement policies and training to ensure that canine teams, police dog handlers, and police dogs operate safely and effectively. Some states require departments to do so. New Jersey, for example, enforces training standards and qualification requirements for all state and local law enforcement agencies with canine units.[159]

Departments should ensure that officers follow the general guidelines relating to use of force listed in Recommendation 4.4.

In addition, departments should ensure that dog handlers:

+ Complete a certification program with a qualified trainer in obedience, agility, scent work, criminal apprehension, handler protection, record-keeping and other areas.[160]
+ Train dogs to "find and bark" rather than "find and bite."[161]
+ Obtain supervisory approval before deploying dogs,[162] especially when off-leash.[163]
+ Use dogs on-leash primarily to locate people suspected of being armed or committing a violent felony or a person who is fleeing and presents a serious risk of injury to others.[164]
+ Keep dogs within visual or auditory range.[165]
+ Deploy dogs off-leash only when people are suspected of being armed or of committing a violent felony.[166]
+ Determine whether the person has limited proficiency in English. If so, determine whether they can understand the phrase "canine warning;" if not, obtain language assistance.[167]
+ Call off the dog immediately if it bites someone.[168]
+ Consider whether people may not be able to cooperate because of behavioral health problems or developmental or physical disabilities.[169]
+ Document the use of dogs, including training, incident reports, and canine health reports.[170]
+ Submit a force report when a dog apprehends someone (even if no bite occurs).[171]

Departments should prohibit dog handlers from:

x Using dogs for crowd control.[172]
x Using dogs for force or intimidation.[173]
x Using dogs when people don't pose an imminent danger or when a lower level of force can secure them.[174]
x Using dogs to apprehend children and adolescents or people suspected of being under the influence of drugs or alcohol, who are in mental health crisis, or have developmental disabilities.[175]
x Releasing dogs trained to "bite and hold" people without first issuing verbal warnings and offering an opportunity for peaceful resolution with the suspect.[176]

RECOMMENDATION 4.6
ENSURE OFFICERS CONSIDER PERSONAL CHARACTERISTICS BEFORE USING FORCE.

Officers should be trained to remember that individuals may have specific characteristics affecting how they respond to police. Mental health or developmental disabilities, substance use disorders, physical disabilities, deafness, blindness, primary language, cultural background, and age influence communication and how officers are able to effectively convey orders or instructions.

In California, the Santa Ana Police Department cites the "[s]ubject's mental state or capacity" as a factor to determine whether use of force is reasonable.[177] The Las Vegas Metropolitan Police Department similarly describes "[t]he influence of drugs/alcohol or the mental capacity of the subject" as a factor for consideration in the use of force 'reasonableness inquiry.'"[178]

Officers and individuals sometimes miscommunicate due to language barriers and cultural differences. Departments should therefore incorporate cultural competency training into their overall training programs. (For more detail, see Chapters 1, 2, and 11.) Cultural competency programs equip officers to respond effectively to different communities' public safety needs and reduce the use of unnecessary force.[179] They also help build trust and understanding between officers and the communities they serve.

The science of cognitive psychology increasingly recognizes differences in young people's decision-making capacities, so departments should require officers to "employ developmentally appropriate" responses to youth.[180]

RECOMMENDATION 4.7
REQUIRE OFFICERS TO INTERVENE IN IMPROPER USES OF FORCE.

Officers who don't intervene to prevent or stop improper uses of force may be liable for harm caused by their colleagues.[181] The vast majority of officers (84 percent) agree that officers should be required to intervene to prevent other officers from using excessive force, according to a survey by the Pew Research Center.[182] And for good reason: One study found that departments that implemented "duty to intervene" policies had 9 percent fewer officer-involved deaths.[183]

The Police Executive Research Forum recommends that departments train officers to safely intervene when a fellow officer is using unnecessary or excessive force or is engaging in other misconduct and to detect warning signs that an officer may be likely to use excessive force.[184] Witness officers should also report uses of excessive force to supervisors.[185]

MENTAL HEALTH OR DEVELOPMENTAL DISABILITIES, SUBSTANCE USE DISORDERS, PHYSICAL DISABILITIES, DEAFNESS, BLINDNESS, LANGUAGE ABILITIES, CULTURAL BACKGROUND, AND AGE **INFLUENCE HOW PEOPLE COMMUNICATE AND HOW THEY RESPOND TO POLICE.**

Intervention by fellow officers during applications of unreasonable force protects the public and officers alike.[186] The New Orleans Police Department's force policy trains officers on various intervention techniques, including verbal or physical intervention, notifying supervisors, and issuing direct orders to stop unreasonable uses of force.[187]

RECOMMENDATION 4.8
REQUIRE OFFICERS TO RENDER AID UNTIL MEDICAL ASSISTANCE ARRIVES.

To carry out their mission to preserve public safety, departments should require officers to render first aid to people who have been injured and to request medical assistance promptly.[188] The New Orleans Police Department requires officers to immediately check people for injuries following the use of force and to render aid consistent with their skills and training until medical assistance arrives.[189] Departments should train all officers to render first aid and provide them with the tools to do so, such as first-aid kits.[190] First-aid kits greatly reduce the risk of death from blood loss,[191] and first-aid training helps save the lives of community members and officers.

RECOMMENDATION 4.9
PROVIDE CONTINUAL, SCENARIO-BASED TRAINING.

Departments devote significant time to training in firearms (58 hours) and defensive tactics (49 hours), according to a 2015 survey of Police Executive Research Forum members.[192] But they spend much less time (about 8 hours) training officers in de-escalation and crisis intervention tactics and in uses of less-lethal force,[193] and few officers receive ongoing in-service training on these topics.

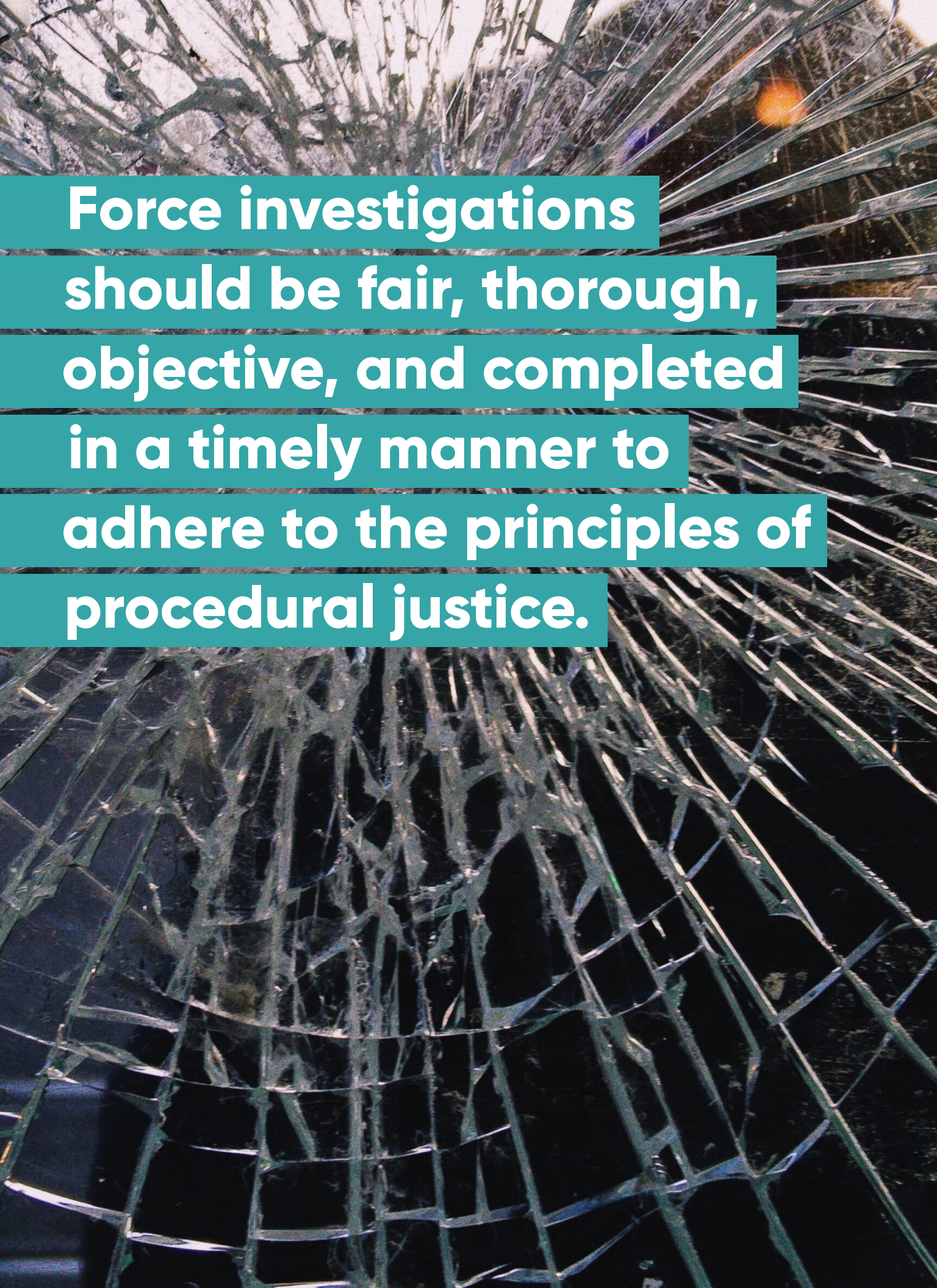
Departments should require officers to receive scenario-based training in uses of force at regular intervals.[194] Officers should practice, in interactive environments, de-escalation techniques and threat assessment strategies that account for implicit bias in decision-making.[195] (For more detail, see Chapter 2.) In addition to lecture-based review of written policies, training should be immersive, interactive, and reflect contemporary approaches to adult learning.

Departments should also develop training scenarios for officers that replicate real encounters and require supplemental training even for veteran officers with extensive field experience.[196] And supervisors should receive additional training on investigations into uses of force, strategies to direct officers to minimize uses of force, and managing force incidents.[197]

RECOMMENDATION 4.10
ESTABLISH ROBUST PROCESSES FOR REPORTING AND INVESTIGATING USES OF FORCE.

Developing a comprehensive force policy is the first step toward reducing excessive uses of force. Departmental policies should also provide clear guidance for officers to report uses of force and for supervisors to review and investigate them.[198] Uses of force that go beyond "hand controls" and "escort techniques," which are used to handcuff unresisting individuals and generally do not cause pain or injury, should be reported and investigated.[199] Specifically, departments should:

Provide clear guidance on reporting, reviewing, and investigating force. After using force, officers and witness officers should orally notify supervisors of the incident.[200] Instead of requiring officers to merely note uses of force on arrest reports, departments should maintain separate files for use-of-force reports so they can track each incident. Officers should file force reports before the end of the shift during which the incident occurred.


Force investigations
should be fair, thorough,
objective, and completed
in a timely manner to
adhere to the principles of
procedural justice.

All involved officers should provide detailed narratives of the facts leading to the use of force.[201] Without accurate and timely reporting, even the most comprehensive use-of-force policies will fail. Incomplete, vague, or boilerplate language in use-of-force reports allows violations to go unchecked and cripples misconduct investigations, so this type of language should be prohibited. Officers who fail to report uses of force, or who falsify reports, should be disciplined (up to and including termination).[202]

Departmental policies should require the review and investigation of all reported uses of force. Supervisors should respond to the scene of all incidents involving anything beyond lower-level uses of force, such as pressure point compliance and joint manipulation (which generally do not cause injury or significant pain).[203] While nonreportable and lower-level uses of force do not require a supervisor response, supervisors can, upon notification, opt to respond to the scene; they may conclude that the force used was excessive even if minimal.

If they do not respond to the scene, supervisors should review force reports for lower-level uses of force by the end of the shift during which the force occurred.[204] Additionally, supervisors should visit the scene and investigate nonreportable and lower-level uses of force upon complaint of pain or injury. Departments should require officers to file use-of-force reports for non-reportable uses of force when there has been an injury or complaint of injury.[205]

Force investigations should be fair, thorough, objective, and completed in a timely manner to adhere to the principles of procedural justice. Transparent policies that detail the investigation process give both the public and officers clear expectations. Specific factors for determining reasonable uses of force reduce the appearance and occurrence of bias and arbitrariness in decisions. And timely investigations build legitimacy, give community members a sense of closure, and allow officers who did not violate policy to return to work quickly.

In determining the reasonableness of force, department leaders should consider officers' tactical conduct and decision-making before and during the incident.[206] In the shooting death of Dontre Hamilton, for example, internal affairs investigators at the Milwaukee Police Department found that the involved officer was within his rights **at the time** he used deadly force.[207] However, they also found that his decisions and actions ***leading up*** to the incident created the need to use force. Because he did not apply his training and crisis intervention leading up to the use of force, and because he identified Hamilton as in a mental health crisis, he was fired.[208]

Some departments employ dedicated squads of specialized force investigators who conduct investigations of mid-level and serious force incidents.[209] The New Orleans Police Department's Force Investigation Team investigates all serious and potentially criminal uses of force, all uses of force by officers ranked higher than sergeant, and all in-custody deaths.[210]

Respond fairly and appropriately to policy violations. When force investigations find that officers have violated policy, supervisors should impose discipline and interventions that comport with policies and procedures. Departments should commit to fairly and impartially enforcing their use-of-force policies. Lax accountability, or cultures where written policies aren't respected or followed, render even the best-written policies powerless.[211]

Departments should integrate use-of-force expectations into disciplinary measures and establish clear, fair penalties for policy violations. They should also publish disciplinary rules in conjunction with use-of-force policies. When policy is violated, departments should publicly disclose final disciplinary actions. The LAPD releases abridged summaries of use-of-force incidents on its website, including summaries of the incident and administrative findings.[212]

Departments can strengthen accountability by maintaining publicly accessible electronic tracking systems for force data.[213] To reevaluate and continuously improve policies and training, departments should track and analyze incidents that identify systemic patterns of harmful or excessive force (**e.g.**, incidents where no force was necessary but an officer nonetheless used a Taser or other weapon).[214]

Departments should also aggregate use-of-force data and integrate it into nondisciplinary early intervention systems to identify problematic trends in other areas (**e.g.**, stop-and-search practices and wellness indicators) to provide professional and personal development and to prevent crises. (For more detail, see Chapters 7 and 8).

Publicly release information about serious and lethal uses of force as soon as possible. Departments should release basic or preliminary information soon after officer-involved shootings or other serious use-of-force incidents occur and should regularly update the public as new information becomes available (to the extent permitted by concurrent criminal investigations).[215] The Las Vegas Metropolitan Police Department, for example, releases the name, rank, tenure, and age of the involved officer to the public within 48 hours and conducts a media briefing within 72 hours.[216] These and other practices illustrate how to quickly give the public information about uses of force even during internal or criminal investigations. Such transparency enhances community trust in police and in its internal investigative processes.

Make use-of-force policies publicly available. Although not yet standard, many departments have begun to implement publicly accessible policies and systems.[217] Enabling the public to read police policies, especially those governing the use of force, increases people's ability to understand and offer input on departmental practices.[218] To promote transparency and accountability, departments should make them available upon request and publish policies online in standard as well as alternative and accessible formats.

Engage communities in developing and revising use-of-force policies. As with virtually every other aspect of democratic government, police policies should be formulated with public participation and deliberation. Communities should participate directly in developing the policies and practices that police departments use to preserve public safety, including, and especially, those regarding the use of force. As discussed elsewhere in this report, community participation in policing improves transparency, accountability, legitimacy, and trust — and protects communities and officers.[219]

5

RESPONDING TO CRISES

Health professionals — not police officers — should respond when people with mental health and developmental disabilities or with substance use disorders are in crisis. Yet officers increasingly respond to calls relating to people in crisis.[1] Indeed, about 10 percent of police encounters are with people experiencing mental health problems, and the percentage of encounters with people with substance use disorders is even higher.[2] In 2016, one-quarter of all fatal police shootings "involved people with behavioral health or substance use conditions," according to Mental Health America, a community-based nonprofit organization.[3]

Many factors contribute to crises relating to mental health and developmental disabilities and substance use disorders, such as inadequate social services and supports; high rates of poverty, income inequality, and housing insecurity; and an ongoing opioid epidemic.[4] Yet, in recent years, federal, state, and local governments have cut spending on mental health and social services, rendering police officers the nation's "first responders" not only to accident and attack but also to mental health and other crises.[5]


Crises should be handled
by professionals with
expertise in mental health,
developmental disability, and
substance use disorders —
not police officers.

This places a great burden on officers, who often respond repeatedly to the same people in crisis, and poses significant enforcement challenges. People in crisis may resist or fail to comply with orders or engage in behavior that officers may interpret as aggressive, threatening, or otherwise problematic.[6] Inadequate police training and insufficient expertise in crisis response can escalate interactions and result in dangerous, and sometimes deadly, encounters. Indeed, officers who see themselves as warriors against chaos are more likely to escalate crises, while officers who see their roles as guardians of public safety are better able to respond to crises without escalating them or using force.[7]

People with disabilities also experience crises. Under the Americans with Disabilities Act (ADA), a disability is a "physical or mental impairment that substantially limits one or more major life activities."[8] This includes substance addictions or a history of substance addiction.[9]

Police interactions with people with disabilities present a host of challenges if officers aren't properly trained. People with disabilities may be unable to interpret or respond to commands or communicate effectively with officers. Training in communication, de-escalation, cultural competency, and implicit bias helps officers recognize and respond to people with disabilities. (For more detail, see Chapters 1 and 2.)

In all cases, society should aim for the least "police-involved" responses to crises. By providing adequate prevention, support, and referral services, communities and departments can divert people with mental health and developmental disabilities from the criminal justice system. Indeed, these crises should be handled by professionals with expertise in mental health, developmental disability, and substance use disorders — not police officers. Officers are not the answer to public health matters.

That said, all departments should work in tandem with mental health and other professionals to develop crisis responses and a network of services to direct people in crisis to appropriate health services. All officers should be trained to identify and respond appropriately to people with mental health or developmental disabilities and to people experiencing substance use disorder crises. ***(Please note: While this chapter refers crisis responses, many police departments use "intervention" under the Memphis Crisis Intervention Team Model, discussed below.)***

This chapter considers ***community***-based responses to crisis and the appropriate ***police***-based responses to crisis within that structure.

RECOMMENDED BEST PRACTICES

To limit their role in and respond more accurately to crises, departments should work with and support communities, government officials, and service providers to:

5.1

Develop integrated community-based support services to prevent crises.

5.2

Develop integrated community-based services to respond to crises.

5.3

Establish protocols for interactions with people with mental health or developmental disabilities or who are experiencing substance use disorder crises.

5.4

Train emergency call operators.

5.5

Train all officers in basic techniques to identify and manage crises.

5.6

Pair crisis response teams with mental health and developmental disability co-responders.

5.7

Carefully select crisis response program coordinators and officers.

5.8

Partner with local service providers to coordinate crisis responses.

5.9

Adopt harm-reduction models for people with substance use disorders.

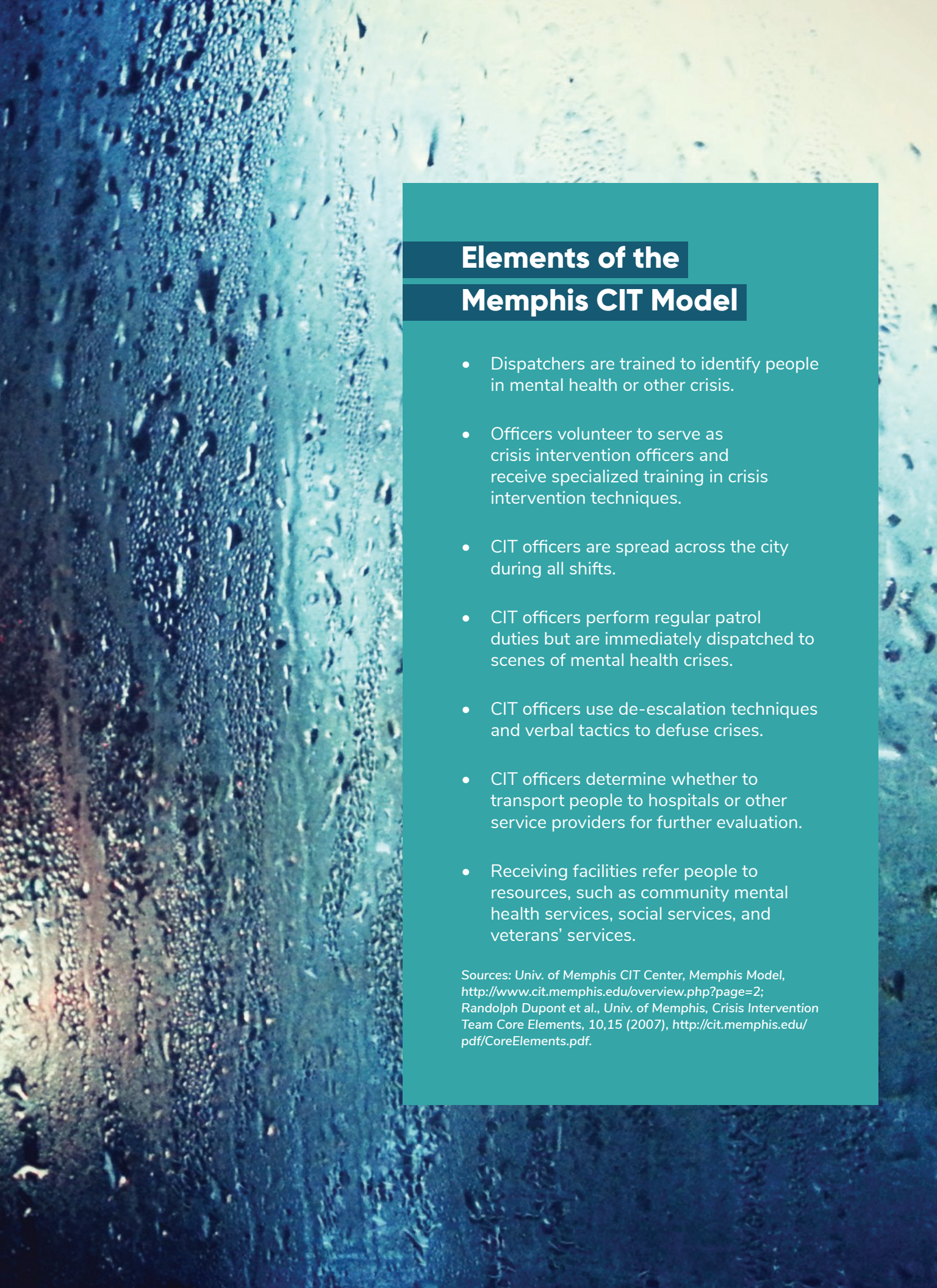
5.10

Track officer responses to crises and assess crisis response programs.

THE HISTORY OF POLICE CRISIS RESPONSES

In 1987, police officers arrived at a public housing project in Memphis, Tennessee, where Joseph DeWayne Robinson[10] was cutting and stabbing himself with a butcher knife.[11] Robinson, who had mental health problems, did not respond to police orders and allegedly charged the officers with a knife.

The officers shot and killed Robinson, which sparked community outrage. In response, elected and community leaders turned to the National Alliance on Mental Illness, community mental health professionals, police officers, and others to find a better way to respond to people with mental health or developmental disabilities.[12] They developed an approach known as the Memphis Crisis Intervention Team (CIT) model, which has since been adopted by over 2,700 police departments nationwide.[13]



Elements of the Memphis CIT Model

- Dispatchers are trained to identify people in mental health or other crisis.
- Officers volunteer to serve as crisis intervention officers and receive specialized training in crisis intervention techniques.
- CIT officers are spread across the city during all shifts.
- CIT officers perform regular patrol duties but are immediately dispatched to scenes of mental health crises.
- CIT officers use de-escalation techniques and verbal tactics to defuse crises.
- CIT officers determine whether to transport people to hospitals or other service providers for further evaluation.
- Receiving facilities refer people to resources, such as community mental health services, social services, and veterans' services.

Sources: Univ. of Memphis CIT Center, Memphis Model, http://www.cit.memphis.edu/overview.php?page=2; Randolph Dupont et al., Univ. of Memphis, Crisis Intervention Team Core Elements, 10,15 (2007), http://cit.memphis.edu/pdf/CoreElements.pdf.

Crisis response training programs vary by department but share several key elements, including: partnerships with mental health and other service providers; coordination between dispatch and police officers; referrals to and coordination with mental health providers; and continuous evaluation of outcomes.

Specialized CIT officers receive training beyond the basic crisis intervention training that ***all*** officers receive, which usually involves 40 hours of training over five days[14] on topics including implicit bias, cultural awareness and responsiveness, empathy, procedural justice, effective social interactions, tactical skills, verbal intervention and de-escalation, and negotiation. These skills apply not only to mental health crises but also to interactions with people with developmental disabilities, substance use disorders, or other issues that require a police response, such as homelessness, intimate partner violence, human trafficking, and child abuse.

Evaluations conclude that CIT programs are effective in: "developing positive perceptions and increased confidence among police officers; providing very efficient crisis response times; increasing jail diversion among those with a mental illness; improving the likelihood of treatment continuity with community-based providers; and impacting psychiatric symptomatology for those suffering from a serious mental illness, as well as substance [use] disorders[,]" while reducing officer injury rates.[15]

Studies also show that CIT programs reduce the use of force in encounters with people in mental health crises.[16] In addition, officers report feeling more comfortable interacting with people with mental health disabilities, and mental health service providers report more positive views of police.[17]

The Final Report of the President's Task Force on 21st Century Policing (the President's Task Force Report) underscores the need for police crisis intervention training and calls on the federal government to fund it.[18] Legislation that would do so was introduced in the U.S. House of Representatives in 2017 but has not yet been passed into law.[19]

While this type of legislation aims to ***improve*** police responses to crises, community-based support services can help ***prevent*** crises — and are ultimately more appropriate than police-based responses. Communities, departments, and elected officials should therefore prioritize strengthening social services so people in crisis can get the care and treatment they need and to reduce reliance on officers. This approach will channel people in crisis into the appropriate system (***i.e.***, the public health system) and allow officers to focus on law enforcement matters, such as investigating serious crime.

BEST PRACTICES IN RESPONDING TO CRISES

Police departments should work with community stakeholders, social service providers, mental health and developmental disabilities professionals, and others to develop holistic, nonpunitive responses to people in crisis. With their participation, collaboration, and input, departments can coordinate responses with community-based social service networks.

The scope and depth of community involvement in the crisis response process is regularly cited as a significant predictor of its success.[20] A strong commitment to addressing these challenges can reduce the use of force, increase community and officer safety, and improve outcomes for people in mental health and other crises.

Communities, police departments, service providers, and local and state governments should work together to provide a comprehensive continuum of crisis prevention and response services to people with mental health disabilities.[21] These services should be designed "to stabilize individuals in psychological distress and engage them in the most appropriate course of treatment."[22] Both service types (those focusing on prevention and treatment) offer alternatives to police-based responses and lessen involvement with the criminal justice system.

Ideally, communities should have adequate community-based services that people can access to prevent crises. To limit their role in and respond more accurately to crises, departments should work with and support communities, government officials, and service providers to:

COMMUNITIES SHOULD HAVE ADEQUATE **COMMUNITY-BASED SERVICES** THAT PEOPLE CAN ACCESS TO PREVENT CRISES.

RECOMMENDATION 5.1 DEVELOP INTEGRATED COMMUNITY-BASED SUPPORT SERVICES TO PREVENT CRISES.

When supporting people with mental health or developmental disabilities, government officials and department leaders should be mindful of their obligations under ***Olmstead v. L.C.***, which requires states to provide integrated community-based services for people with disabilities so they have the option to live in the community.[23] In other words, they should not fix one problem (inadequate services) if it creates or exacerbates another (services and supports, such as involuntary institutions, that segregate people with mental health and developmental disabilities from the larger community).

Community-based services provide individualized treatment ***in the community*** so people don't have to go to facilities to access care. The assertive community treatment (ACT) model, for example, sends teams of clinicians, psychiatrists, social workers, and employment and housing specialists **to** people to provide various support services.[24] Employment specialists help people search and apply for jobs, access training and transportation, and succeed on the job.[25] Case managers identify needs, coordinate services, and help people manage logistics, such as transportation to appointments for services.[26] And "peers" — people who draw on their own experiences with mental health crises who are certified to support others in crisis[27] — are also involved.

Department leaders should support community members and service providers to identify needed services. A stronger, more comprehensive network of community-based services will help people with mental health and developmental disabilities manage their health issues so that they do not result in crisis — or bring them in contact with police officers and the criminal justice system at large.

Communities are best situated to know what services they need. Departments also have valuable insights based on the calls they receive and respond to. For this reason, departments should work with communities to advocate for increased and improved community-based services to address the needs identified. Funding for community-based support programs is available from the U.S. Centers for Medicare & Medicaid Services and other federal agencies, state and local governments, and philanthropic foundations.[28]

RECOMMENDATION 5.2 DEVELOP INTEGRATED COMMUNITY-BASED SERVICES TO RESPOND TO CRISES.

Department leaders should support community members, government officials, and service providers in working together to create a range of services to support people in crisis.[29] There are a variety of community-based crisis response services, including:[30]

Crisis hotlines. These hotlines help people cope with crises and access medical and community support services.[31] They provide immediate, around-the-clock support and should be toll-free and staffed by licensed clinical professionals.[32]

Walk-in centers. These centers offer community-based psychiatric and counseling services, reducing arrest as a response to crisis. They should be open 24 hours a day, seven days a week, and staffed by licensed clinical professionals.[33]

Mobile crisis teams. MCTs provide services and treatment to de-escalate crises for people at home or in community settings.[34] They are staffed by mental health professionals, community health workers, and peers,[35] who are able to empathize with and gain the trust of people in crisis. They are also cost-effective; one study compared the effectiveness and efficiency of an MCT program to regular police intervention and found, on average, a 23 percent lower cost per case.[36]

Peer crisis support services. Community-based services should include peers who have lived experiences with crisis. In Tennessee, certified peer specialists work on MCTs, and Maine staffs central crisis lines at designated mental health centers with peers as well as mental health professionals.[37] Other states operate "warm lines" staffed by peers who respond to situations that threaten to become emergencies.[38]

Crisis stabilization units. These in-patient facilities provide direct care to de-escalate crises, stabilize people, and reduce reliance on hospitals.[39] The Tennessee Department of Mental Health & Substance Abuse Service operates seven such units across the state, in addition to walk-in sites and detoxification units.[40]

RECOMMENDATION 5.3
ESTABLISH PROTOCOLS FOR INTERACTIONS WITH PEOPLE WITH MENTAL HEALTH OR DEVELOPMENTAL DISABILITIES OR WHO ARE EXPERIENCING SUBSTANCE USE DISORDER CRISES.

Crisis response plans should include policies that address interactions with people in crises.[41] Ideally, they should provide specific examples and necessary skills for handling encounters without force or arrest.[42] Community members, especially those with mental health and developmental disabilities, should participate in the development of these policies and procedures and in the development and delivery of training.[43]

Departments should provide specialized training that addresses sensitivity, awareness, and effective communication. Officers should have the skills to interact with people with disabilities so that encounters do not escalate or result in the use or misuse of force. People with developmental disabilities, for example, may not make eye contact or communicate verbally, and they may make sudden movements. Officers who mistake this behavior for noncompliance might escalate the encounter.[44] And unexpected or sudden actions by people with disabilities could be misconstrued as suspicious activity.

The ADA requires police officers to be able to communicate effectively with people with disabilities.[45] American Sign Language (ASL) is the primary language for people who are Deaf and hard of hearing, but it may also be the preferred and most effective way to communicate with people who are nonverbal. By working with disability experts and people with developmental disabilities, departments can create protocols for interactions with people with disabilities. This should involve hiring people who speak ASL who can serve as interpreters.

The Importance of Training Emergency Call Operators

In 2015, a Chicago police officer shot and killed Quintonio LeGrier and his neighbor, Bettie Jones, when responding to a call about a domestic disturbance. The officers who arrived on the scene did not know that LeGrier was experiencing a mental health crisis and therefore did not use crisis response techniques.

Jones answered the door as LeGrier was coming down the stairs with a baseball bat; officers shot both of them. LeGrier had called the police three times to complain about being threatened before his father called 911 to report a domestic disturbance with his son. The dispatcher did not identify any of the calls as a crisis, hung up on LeGrier the first time he called, and did not dispatch CIT officers to the scene.

Source: Jeremy Gorner & Annie Sweeney, Quintonio LeGrier Called 911 Three times Before a Chicago Cop Shot Him, Chi. Tribune (Jan. 26, 2016), https://www.chicagotribune.com/news/local/breaking/ct-met-quintonio-legrier-police-shooting-trial-20180621-story.html.

RECOMMENDATION 5.4
TRAIN EMERGENCY CALL OPERATORS.

Training should cover how to identify when people are in crisis so that officers are prepared to use crisis response tactics upon arrival. In departments with CITs, operators should be trained to dispatch and CIT officers [46] and should prepare officers to use crisis response tactics. Call operators should have a script with specific questions so they can get needed information, including whether callers have weapons and whether they have mental health or developmental disabilities or substance use disorders.

RECOMMENDATION 5.5
TRAIN ALL OFFICERS IN BASIC TECHNIQUES TO IDENTIFY AND MANAGE CRISES.

All officers (even those in departments that have CITs) should receive basic crisis response training, including sensitivity training to recognize people with disabilities and understand their unique needs.[47] Basic crisis response training should be 40 hours, and departments should require additional (and continual) in-service training. The Houston Police Department, for example, requires all officers to take eight-hour refresher courses every two years after they have received 40 hours of basic training.[48]

As noted above, training should be mandatory, and it should cover topics including implicit bias, cultural awareness and responsiveness, empathy, procedural justice, effective social interactions, tactical skills, verbal intervention and de-escalation, and negotiation.[49] These skills strengthen officers' ability to recognize when people are in crisis, defuse crises, and refer people to needed services. The President's Task Force Report recommends that state Peace Officer and Standards Training boards (which set training requirements for law enforcement in regions across the country) include CIT training in basic recruit and in-service training requirements.[50]

RECOMMENDATION 5.6
PAIR CRISIS RESPONSE TEAMS WITH MENTAL HEALTH AND DEVELOPMENTAL DISABILITY CO-RESPONDERS.

Under the Memphis CIT (crisis intervention team) model, officers volunteer to receive advanced training and are available for rapid response to mental health crises.[51] They lead de-escalation efforts at the scene and assess the need to connect people with mental health services.[52] The Chicago Police Department, for example, offers two 40-hour advanced trainings to help officers safely and effectively respond to youth and veterans in crisis.[53]

While these officers are better equipped to respond to people in crisis, they do not have the advanced skills and expertise that mental health professionals and/or community-based service providers do. Thus, CIT officers should be dispatched with qualified professionals from community-based services to respond to and manage crisis situations.[54] These "co-responders" can be located within departments or be called to crises.[55]

By involving professionals, departments can avoid defaulting to arrest and jail, even when people have apparently violated the law (so long as they pose no immediate threat to public safety).[56] Often, people who are acting erratically or causing a public disturbance but not committing an act of violence are placed under custodial arrest and/or issued a summons. If the summons turns into a warrant for failure to appear or pay fines, they can end up in jail for a minor initial offense and become ensnared in the criminal justice system.

RECOMMENDATION 5.7
CAREFULLY SELECT CRISIS RESPONSE PROGRAM COORDINATORS AND OFFICERS.

When creating crisis response programs, department leaders should carefully select officers to serve as program coordinators and responders from a pool of volunteers.[57] Not all officers are well suited for this specialized task. Leaders should select those who are skilled at interacting with people and who are committed to and genuinely interested in helping people in crisis.[58] Being a crisis response program coordinator or officer can be a source of esteem if it is promoted as such.

RECOMMENDATION 5.8
PARTNER WITH LOCAL SERVICE PROVIDERS TO COORDINATE CRISIS RESPONSES.

Central to proper crisis responses is the ability to connect people with the community-based services that can help address and treat the underlying circumstances and conditions that lead to crisis. Departments should create a network of mental health and social service providers to work with in order to help connect people to services and to help develop departmental crisis response policies and training.[59] This includes hiring experts in mental health and developmental disabilities and substance abuse disorders, and especially people who have lived experiences, to coordinate crisis responses.[60]

RECOMMENDATION 5.9
ADOPT HARM-REDUCTION MODELS FOR PEOPLE WITH SUBSTANCE USE DISORDERS.

Police officers frequently interact with people with substance use disorders (whether alcohol or drugs) and often express frustration with the "revolving door" that some individuals (many of whom also have mental health problems) find themselves in. Indeed, some people are "arrested, detained, and released — only to be arrested again."[61] To reduce their involvement with the criminal justice system, these individuals need social supports and mental health services — not involvement with the police.[62]

For this reason, departments are turning to deflection programs and other models of harm-reduction policing. Deflection programs refer people to treatment (when possible) instead of arresting them. In 2018, the Tucson Police Department in Arizona partnered with a local service provider to create a program that gives people with substance use disorders the option to enter treatment.[63] The program trains officers to explain what treatment involves (because not everyone opts for it). Officers then call service providers and either drive people to providers or wait until they are picked up.

In other programs, officers become "partners" in treatment; in the Tucson program, officers' involvement is over when the call ends. As a result, this program moves people with substance use disorders into the public health system, allowing officers to spend more time addressing serious crime and protecting and preserving public safety.

As the rate of opioid addiction climbs, officers are increasingly responding to drug overdoses. In 2016, the U.S. Department of Justice issued a memorandum recognizing the power of naloxone (popularly known as Narcan) to reverse overdoses and save lives. The memorandum encourages departments to administer naloxone[64] and offers guidance to departments seeking to create naloxone programs. Nearly 2,500 law enforcement agencies are known to carry naloxone.[65] Departments should implement these types of programs according to guidelines put forth by the White House Office of National Drug Control Policy to ensure safe implementation and administration.[66]

RECOMMENDATION 5.10
TRACK OFFICER RESPONSES TO CRISES AND ASSESS CRISIS RESPONSE PROGRAMS.

To assess the incidence of crises and the efficacy of crisis response practices, departments should track data,[67] including the number of encounters with people in crisis and the nature of the encounter (**e.g.**, mental health crisis, suicide attempt, drug overdose, disability, etc.). Departments should also track officers' responses and the outcomes of their responses, which supports internal analysis and promotes transparency. These data help all involved — officers, clinicians, and service providers — create and refine a systemwide approach to mental health crises.

Department leaders and officers should use data and draw on the experiences of community members with mental health problems who have interacted with police to assess the efficacy of crisis response programs, and they should work with community members and service providers to do so. As the President's Task Force Report recommends, community members should hold officers accountable and work with them to continually improve and adapt programs to changing needs and problems.[68]

Departments should also conduct post-training assessments of officers who respond to crises, as well as the outcomes of those responses, to ensure that programs are effective and that training addresses community challenges (**e.g.**, an opioid crisis). To identify shortcomings and improve trainings, assessments should be done in partnership with community members, and especially people from affected communities, and with mental health and other professional service providers.[69]

I NEED A HOME
THEN A
JOB

6

THE FIRST AMENDMENT AND FREE SPEECH

The First Amendment to the U.S. Constitution protects some of our most cherished rights: our right to speak and publish freely, to gather publicly in large groups, to petition and lobby our government, and to practice religion. These rights lie at the heart of our democracy, yet they are often a source of tension between police departments and the communities they serve. Police are charged to protect the peace, but public assemblies sometimes turn violent, especially when massive amounts of people gather. Some officers, meanwhile, are uncomfortable being photographed or recorded while doing their jobs because they fear recordings will be used against them.

Police leaders should implement policies and practices that respect and protect the public's constitutional rights while maintaing public safety. To strike this balance, departments should train officers to serve in a wide range of unpredictable situations.

Most importantly, they should create and sustain a culture that understands and respects two deeply held values that sometimes come into conflict: keeping peace and exercising freedom. Achieving these goals is necessary during events such as celebrations of local sports teams, community parades, political protests, and presidential funerals. Police, in other words, have to manage crowds in a variety of contexts — but they are always bound to protect constitutional rights.

RECOMMENDED BEST PRACTICES

To respect and protect the public's First Amendment rights while ensuring safe public assemblies, departments should:

6.1

Clearly instruct officers about the public's right to record law enforcement activities.

6.2

Limit and closely supervise information-gathering techniques that target activities protected by the First Amendment.

6.3

Engage in cooperative and strategic advance planning.

6.4

Demilitarize officers and require them to interact with assemblers in a respectful and positive manner.

6.5

Promote crowd control tactics that are less likely to cause injury and set clear limits on the use of force.

6.6

Hold officers accountable for their responses to public assmeblies.

FIRST AMENDMENT RIGHTS

Public speech and assembly. Under the First Amendment, public streets and sidewalks generally may be used for public assembly and debate.[1] Assemblies include gatherings where the purpose of those assembled is to express their political, social, or religious views. They can range from a parade to a picket line, from a rally to a mass demonstration — and even to demonstrations about the police themselves.

The First Amendment's protections, however, are not absolute. The U.S. Supreme Court has found that it does not protect speech that "is directed to inciting or producing ***imminent*** lawless action and is ***likely*** to incite or produce such action."[2] In addition, the Court has found that the First Amendment permits narrow regulation of the time, place, and manner of speech provided that the regulation does not relate to the content of the speech involved.[3] Local governments, for example, may regulate the circumstances in which protests spill over into public roadways out of concern for motorist and pedestrian safety — but not in response to their political messages.

Regulations, however, cannot be too onerous.[4] Whether the government grants permits for public assemblies can't depend on the message of the participants, no matter how controversial, offensive, or hateful it may be.[5] Permits must also be available on short notice to allow the public to respond to breaking events.[6]

Assemblies typically require the presence of police officers to protect participants, bystanders, and property. Demonstrations regarding politically charged issues sometimes draw counterdemonstrators, in which case officers may be needed to prevent conflict.

Recording police activity. The First Amendment protects an individual's right to record people — including police officers — and activities in public places, ranging from everyday interactions to mass demonstrations.[7] This right extends to photography, audio recordings, and live-stream video and audio feeds, as well as to written documentation that journalists, for example, may have. As noted above, this right is not limitless; it may be subject to time, place, and manner restrictions that don't relate to the purpose of photographing or recording. For example, a photographer may be legally barred from entering a cordoned-off crime scene or standing between officers and the people they are trying to arrest.

Police surveillance. Public safety concerns, such as the threat of terrorism, may warrant police surveillance and recording of public events (as long as it's done within the confines of constitutional protections). But surveilling or collecting information on people for activities that are protected by the First Amendment, such as attending a protest, recording police conduct in public, or practicing a certain religion, is not warranted. Activities that ***chill*** the free exercise of speech, assembly, and religious observance are just as unconstitutional as those that ***prohibit*** it.[8]

THE HISTORICAL CONTEXT

Public assemblies and police violence. Law enforcement has had a long, and sometimes troubled, history with public speech and assemblies. The past century has seen unlawful mass arrests and excessive uses of force in connection with anti-war and civil rights movements, and other causes.[9] These clashes (whether in response to peaceful assemblies or not) have deeply affected the popular and political culture in this country.

SMARTPHONE TECHNOLOGY HAS MADE RECORDING OF POLICE OFFICERS BY PRIVATE CITIZENS AN EVERYDAY OCCURRENCE.

Although police officers in other countries still use police dogs and water cannons to quell public disturbances,[10] these methods are rarely used in the United States today due to abuses during the civil rights movement.[11] Broad abuses of police power also took place during Vietnam War protests — from the beating of protesters at the 1968 Democratic National Convention in Chicago to the shooting of student protesters at Kent State University in Ohio in 1970.

Abuses such as these led to widespread public examination of police conduct — and national conversations about the use of force and social order. In 1970, President Nixon created a presidential commission to examine the student protest movement — ostensibly to identify means to increase public order. The commission studied different ways to reduce disruption on college and university campuses and found that police behavior during group demonstrations "is often the most critical determinant of the course the disorder may take."[12]

Its report noted that officers who engage in "conduct that can be interpreted as excessive, harassing or discriminatory" not only violate law and policy but are also "apt to make moderate members of the campus community join with the disrupters against the police."[13] In other words, police power that is not lawfully and judiciously applied may spur and spread lawless behavior — not contain it.

Recording police activity. From newspaper images of peaceful protestors attacked by police dogs to private videos of police brutality, recorded activity of police misconduct sometimes seizes the public's imagination and undermines confidence in police. More than a quarter century ago, four White police officers were recorded beating a Black man, Rodney King, sparking massive demonstrations and a public debate about police misconduct, race, and criminal justice.

Since then, smartphone technology has made recording of police officers by private citizens an everyday occurrence. The impact of this technology is not yet fully understood, but it has, at a minimum, led to the prosecution of unlawful police action that would likely not have otherwise occurred.[14]

Police Surveillance. Historically, U.S. law enforcement agencies, from the Federal Bureau of Investigation to local police departments, have spied on, infiltrated, and obstructed legal political activist groups, from those affiliated with the civil rights movements in the last century to Black Lives Matter today.[15] First Amendment rights are also implicated by police surveillance of religious activities. In 2018, New York City settled a series of class action lawsuits alleging police surveillance of Muslims for more than $1 million. The case led to mandated reforms, including policies barring religious profiling and strengthening accountability for the department's terrorism investigations.[16]

When unlawful police surveillance comes to light, it chills free expression and destroys trust between communities and police. Distrust, in turn, discourages cooperation with police officers, which compromises their ability serve the public safely and effectively.

BEST PRACTICES IN SAFEGUARDING THE FIRST AMENDMENT

To respect and protect the public's First Amendment rights while ensuring safe public assemblies, departments should:

RECOMMENDATION 6.1
CLEARLY INSTRUCT OFFICERS ABOUT THE PUBLIC'S RIGHT TO RECORD LAW ENFORCEMENT ACTIVITIES.

Documenting police activities fosters public confidence and trust, increases police accountability, and safeguards public and officer safety. Some officers may not like being photographed or recorded on the job, but departmental policies should nonetheless recognize and respect the public's right to record police activity.

At the same time, these policies should reflect the fact that the public does not have the right to observe or record officers in a way that impedes their ability to do their jobs. Individuals who record police activity are subject to laws that prohibit physically obstructing an officer, putting public and and officer safety at risk,[17] trespassing, surreptitious recording, and other activities.[18]

Departments should implement policies that detail how officers should respond when recorded, and officers should be trained accordingly.

Departments should implement policies that detail how officers should respond when recorded, and officers should be trained accordingly.

Departments should ensure that officers:

+ Treat all people with courtesy and respect.
+ Verbally acknowledge the public's right to film or photograph police activity.
+ Give individuals a reasonable opportunity to comply with orders or requests before taking action.
+ Recognize that those who record police activity are under no obligation to share their photos, footage, or other forms of documentation.

Departments should prohibit officers from:

x Presuming recording devices are a threat to their safety.
x Intentionally obstructing, threatening, or otherwise discouraging an individual from recording.
x Telling individuals to back away, unless they are interfering with their job or are at risk of injury (**e.g.**, advising someone to back away from a subject wielding a knife).
x Telling individuals to stop recording or to leave the area. (If people are interfering with an officer's job, the officer should ask them to back away.)
x Detaining individuals who are (or were) recording unless they have an independent legal basis for doing so. (Officers may ask individuals to share recorded material, but they can't detain them without reasonable suspicion they engaged in criminal activity.)
x Seizing recording devices without a warrant or exigent circumstances.
x Coercing individuals to consent to the search or seizure of their recording devices or recorded material. (For more detail, see Chapter 3.)
x Destroying footage or other recorded material or threatening to do so.

Policies that prohibit officers from retaliating against people who lawfully record police activity are also important. When recording police activities, community members also bear a responsibility to avoid unnecessarily escalating the situation.[19]

The Minneapolis Police Department's policy on public recordings of police:

- Prohibits officers from asking people who are recording to identify themselves or explain why they are recording.
- Prohibits officers from trying to prevent people from recording or discouraging them from recording if they are not interfering with their duties.
- Requires officers to ask supervisors to come to the scene before trying to review a recording or asking for consent to do so.

Source: Public Recording of Police Activities, Minneapolis Police Dep't Policy and Procedure Manual, Section 9-202, (2016), http://www.ci.minneapolis.mn.us/police/policy/mpdpolicy_9-200_9-200.

Participants in public assemblies should:

+ Treat all people (officers included) with courtesy and respect.
+ Step back if directed.
+ Show they are not a threat by refraining from sudden or aggressive movements.
+ Calmly ask officers to explain why they are detaining or questioning them.

Participants in public assemblies should not:

x Interfere with officers on duty or otherwise get in their way.
x Enter marked and restricted crime scenes or restricted areas that are not otherwise accessible to the public (conduct that is prohibited by law).
x Insult or threaten officers.
x Secretly record police activity.
x Resist arrest or run if officers try to detain them.

Finally, the public should understand that recording people against their will, especially those in a state of crisis, may escalate an encounter and endanger the person, officers, and themselves.

Louisville KY Metro Police Department's Social Media Policies

Members will only utilize social media to seek and/or retain the following:

- Information that is based upon reasonable suspicion that an identifiable individual, regardless of citizenship or U.S. residency status, or organization has committed an identifiable criminal offense or is involved in, or is planning, criminal or terrorist conduct or activity that presents a threat to any individual, the community, or the nation and the information is relevant to the criminal conduct or activity (criminal intelligence information); or

- Information that is relevant to the investigation and prosecution of suspected criminal incidents; the resulting justice system response; the enforcement of sanctions, orders, or sentences or the prevention of crime; or

- Information that is useful in crime analysis or situation assessment reports for the administration of criminal justice and public safety.

Members will not utilize social media to seek and/or retain the following:

- Information regarding an individual or an organization based solely on religious, political, or social views/activities; or

- Information regarding an individual's participation in a particular non-criminal organization or lawful event, unless the member can articulate how the individual or group activities pose a bona fide public safety concern or criminal nexus; or

- Information regarding an individual's actual or perceived race, ethnicity/national origin, immigration status, language fluency, gender, gender identity/expression, sexual orientation, religion, socio-economic status, housing status, occupation, disability, age, politics, or other similar personal characteristics attributed to an individual as a member of such a group, unless such information is relevant to the individual's criminal conduct or activity, or if such information is required to identify the individual.

Source: Louisville Metro Police Department Standard Operating Procedures Manual, SOP Number 11.8, Social Media Evidence (Rev. June 2017).

RECOMMENDATION 6.2
LIMIT AND CLOSELY SUPERVISE INFORMATION-GATHERING TECHNIQUES THAT TARGET ACTIVITIES PROTECTED BY THE FIRST AMENDMENT.

Gathering intelligence to prevent and solve crimes is an integral part of police work. But intelligence-gathering that targets activities protected by the First Amendment runs the risk of threatening or chilling the public's exercise of their constitutional rights. Every situation is different, but some general principles apply to information-gathering.

First, all information officers collect must relate to an authorized police function, such as a criminal investigation; it cannot be used for political or general surveillance purposes.

Second, police should not collect information about individuals who are lawfully exercising their constitutional rights, such as attending a protest or filming an officer on duty. Officers shouldn't collect information about people who are socially or politically active unless they have an independent and legitimate reason to do so. For example, while officers may wear body cameras while policing large public events or demonstrations, they shouldn't use them to identify or record people who are engaged in lawful conduct.

Third, departments should develop specific policies that define when and how officers may gather information through social media, including when they are required to obtain warrants or approvals from supervisors. Social media merits special attention because it holds vast amounts of data and is often used as a tool to organize lawful activities.

When setting social media monitoring policies, department leaders should place strict limits on the use of online aliases and third-party social media accounts and take steps to prevent unnecessary scrutiny of constitutionally protected activity. In Kentucky, the Louisville Metro Police Department enacted social media policies protecting individuals' privacy interests.

INTELLIGENCE-GATHERING THAT TARGETS ACTIVITIES PROTECTED BY THE FIRST AMENDMENT RUNS THE RISK OF THREATENING OR CHILLING THE PUBLIC'S EXERCISE OF THEIR CONSTITUTIONAL RIGHTS.

RECOMMENDATION 6.3
ENGAGE IN COOPERATIVE AND STRATEGIC ADVANCE PLANNING.

Although it is impossible to create standard operating procedures for every possible type of assembly, departments' overall philosophy should, as the Metropolitan Police Department in Washington, D.C., states, "be one of moderation, flexibility and controlled response."[20]

As noted above, the First Amendment allows some regulation of public assemblies. Most jurisdictions require permits for parades, marches, demonstrations, public speeches, and the like. Permits for these types of events are usually approved by municipal officials, though sometimes this responsibility falls to police.

In either case, and to the extent possible, police departments should hold formal meetings with event organizers and/or protesters as early as possible to determine where the event will occur and what is permitted. This process is often more difficult when demonstrations are organized on social media, which are rarely led by a single, identifiable leader (and which often identify all participants as leaders).

In these situations, officers should not expect organizers to present a single leader; rather, they should remain flexible and consider using social media to communicate. Department leaders should keep community leaders informed about and included in the planning process. Officers' relationships with community members are valuable and should be leveraged when preparing for "leaderless" or spontaneous demonstrations.

Communication ***during*** a demonstration is equally important. Officers should establish a media strategy that includes social and news media so they can maintain contact with event organizers, disseminate accurate information to the public, and correct false information during and after events.

In 2016, the Atlanta Police Department successfully managed a major protest organized by the National Association for the Advancement of Colored People (NAACP) and Black Lives Matter over police shootings of Black men in Minnesota and Louisiana. Although the event drew thousands of protestors and took place the day after a sniper ambushed police officers in Dallas, it resulted in only three arrests and no reports of violence. Notably, all officers stationed at the protests were in regular uniforms, not riot gear.

The NAACP described police presence during the event as "exemplary," and a department police major emphasized the value of advance planning and "to know and be in dialog with community groups when there are not times of tension."[21]

RECOMMENDATION 6.4
DEMILITARIZE OFFICERS AND REQUIRE THEM TO INTERACT WITH ASSEMBLERS IN A RESPECTFUL AND POSITIVE MANNER.

Department leaders should require all officers to interact with assemblers in a respectful and positive manner before, during, and after assemblies, and they should avoid militarized responses unless responding to high-risk threats. (For more detail, see Chapter 4.)

State and local departments often acquire army equipment (ranging from uniforms to armored vehicles) that is then used in response to mass demonstrations, and officers have used military vehicles, tear gas, rubber bullets, and military-grade weapons during protests.[22] Evidence suggests that this type of militarized policing heightens the risk of violent conflict.[23] Officers may be more willing to engage in a confrontation when armed with military grade weaponry.

This is also true of officers wearing body armor (**a.k.a.** "battle rattle").[24] Full riot gear covers officers' faces, anonymizing and dehumanizing them and often positioning them as part of the problem that demonstrators are protesting against. Militarized responses that are disproportionate to the threat have often been the subject of after-the-fact criticism.[25] Instead, police departments should take a community policing approach to crowd control.[26] In this "meet and greet" approach, also called the Vancouver model, officers in regular uniform interact with people in a friendly, respectful, and positive manner before, during, and after an assembly. This humanizes officers, which decreases the likelihood that assemblers will feel threatened by or fear them and turn violent. During the Atlanta protest mentioned above, officers did not wear riot gear or use intimidation, an approach that is safer and more effective in nonviolent demonstrations.[27]

RECOMMENDATION 6.5
PROMOTE CROWD CONTROL TACTICS THAT ARE LESS LIKELY TO CAUSE INJURY AND SET CLEAR LIMITS ON THE USE OF FORCE.

Not all demonstrations are peaceful, and sometimes the best crowd management practices fail to pacify demonstrators who threaten public or officer safety. Even in violent situations, officers have techniques at their disposal to prevent isolated incidents from spiraling out of control. Specifically, departments should:

Ensure that all officers policing mass assemblies understand the rules of engagement and policies about the use of force. As discussed above, leaders should prioritize dialogue, de-escalation, and the use of less aggressive, preventive forms of crowd management over weapons. Officers should use police formations (though they should **not** encircle or "kettle" demonstrators); traditional barricades (such as fences and concrete barriers); and nontraditional barricades (like riding bicycles), to create buffer zones and separate opposing groups of protestors.[28] Doing so will decrease the likelihood of physical confrontation. (For more detail, see Chapter 4.)

Address the use of force in the context of assemblies. When developing policies and training, department leaders should address the use of force in the context of public demonstrations as well as concerns with specific types of force, such as chemical deterrents, which cause pain and injury. Department leaders should prohibit the use of certain weapons (such as batons against non-aggressive participants and water cannons, canines, firearms, or shotguns) to disperse crowds during public gatherings. They should also require officers to warn people before they use force and limit the circumstances in which officers deploy force without prior authorization from commanders.[29]

Leaders should also understand that nonlethal uses of force can escalate tensions, cause injury, and endanger members of the public as well as officers. Water cannons, which shoot pressurized water that is sometimes mixed with chemical agents or dye, can cause injuries and hypothermia (particularly in cold climates).[30] (For more detail, see Chapter 4.) These tools should not be used for crowd control purposes. In the past, officers used dogs to control crowds, which risks injury and induces fear and intimidation. Leaders should prohibit the use of dogs for this purpose in accordance with the model policy adopted by the International Association of Chiefs of Police.[31]

Develop clear policies to manage disorderly members of large, peaceful protests. The First Amendment precludes police officers from stopping legal protests in the absence of clear and imminent danger of a riot; substantial traffic interference on public roads; or an immediate threat to public safety and order.[32] But officers can remove people who engage in violence, vandalism, or dangerous or illegal behavior. When doing so, they should not "kettle" disruptive individuals[33] or conduct mass arrests of nonviolent, nondestructive assemblers who commit minor offenses (**e.g.**, jaywalking or littering). Focusing only on people who pose a threat allows the peaceful assembly to continue and decreases the likelihood of escalation.

To minimize harm, police should escort people away from the protest rather than restrain or confront them. The goal is to maintain a visible, nonthreatening police presence to deter unlawful action and to keep the crowd moving steadily toward its destination. The Miami Police Department has used a specialized bike patrol to achieve this goal — earning praise from the Police Executive Research Forum.[34]

RECOMMENDATION 6.6
HOLD OFFICERS ACCOUNTABLE FOR THEIR RESPONSES TO PUBLIC ASSEMBLIES.

Chapter 7 discusses accountability in greater detail, but some measures are particularly important during public assemblies. Specifically, departments should:

Regulate the use of body-worn cameras. Departments that use body-worn cameras (BWCs) should restrict their use during mass demonstrations. Department leaders should remember that video recording devices can chill lawful speech and thus should not be used to target or record individuals engaged in lawful activity. (For more detail, see Chapter 8.) Yet, with proper policies strictly regulating their use, BWCs may document interactions, providing video evidence that departments can use to hold officers accountable for misconduct and to confirm or disprove accusations against them.

Ensure accountability and self-examination. Department leaders should create formal protocols to (1) investigate violations of policy; (2) address complaints arising from mass demonstrations; and (3) evaluate the effectiveness of pertinent policies, resources, tactics, and training. This formal process should include not only the investigation of complaints from members of the public but also evaluation of uses of force, stops, searches, and arrests, and officer injury reports (along with relevant video footage) to assess how well officers followed policies, obeyed the rules of engagement, and carried out their overall mission. Both successes and failures should be analyzed and used to inform future training and deployment plans.

To ensure the free flow of information and to strengthen existing relationships, department leaders should seek feedback from event organizers on the above processes, which will improve practices and tactics for future assemblies.

7

ACCOUNTABILITY

Police officers have extraordinary power — and enormous discretion over how and when to wield it. When justified, they have the authority to surveil members of the public, to use force against them, and to deprive people of their liberty. To riff on the old adage, with power comes the responsibility to exercise it appropriately — as well as the expectation that abuse of power (through misconduct or inappropriate or deficient performance) will be identified and addressed with appropriate discipline.

If officers — or their supervisors — fail to meet this responsibility, they should be held accountable. Accountability is central to fair, safe, and effective policing; it deters misconduct and heals communities if officers violate law or policy. Officers, and departments, should be held accountable for performing in a way that complies with federal, state, and local laws, departmental policies, and community values. Doing so sends a message to communities that unjust and unconstitutional conduct is not tolerated and will receive swift discipline. It builds public trust and, in turn, strengthens the legitimacy of police departments and the criminal justice system at large. A lack of accountability, in contrast, weakens

the relationship between police and the people they serve, undermining departments' efforts — and the ability of the entire justice system — to protect and preserve public safety.

Strong accountability systems also strengthen departments from within. Police departments, like all professional organizations, flourish when employees know what is expected of them and understand the consequences if they fail to meet expectations. Officers are also more likely — and more motivated — to consistently make good decisions if they know that leaders and colleagues are also accountable for their actions.

This chapter takes a comprehensive look at how to create robust internal and external accountability systems. Internal accountability mechanisms include rules, policies, and practices that ensure that department members are held responsible for their conduct. External mechanisms exist outside of departments, such as community/civilian review boards[1] and independent prosecutors who hold officers accountable for misconduct.


POLICE

RECOMMENDED BEST PRACTICES

To create robust internal and external accountability systems, departments should work with communities to:

7.1

Create transparent, effective processes to receive and respond to ***external*** misconduct complaints.

7.2

Create transparent, effective processes to receive and respond to ***internal*** misconduct complaints.

7.3

Delineate policies about how and by whom misconduct complaints are investigated.

7.4

Develop policies for investigating and addressing sexual misconduct and intimate partner violence.

7.5

Create transparent, effective processes for conducting misconduct investigations.

7.6

Ensure supervisors address and discipline officer misconduct.

7.7

Integrate the principles of procedural justice into disciplinary processes.

7.8

Use early intervention systems to track officer behavior and address officer needs and deficiencies at the earliest opportunity.

7.9

Investigate misconduct to the extent possible after statutory or contractual time limitations for discipline have passed.

7.10

Identify, maintain, and share material evidence relating to officer misconduct or credibility with prosecutors in criminal cases.

7.11

Inform officers of their right to file complaints with outside agencies.

7.12

Expand the role of community/civilian review boards and independent monitors in discipline.

7.13

Establish clear protocols for determining who investigates and prosecutes officer-involved crimes and shootings.

7.14

Oppose provisions that weaken accountability systems when negotiating collective bargaining agreements.

HOLDING POLICE ACCOUNTABLE

Fair, safe, and effective, policing requires the highest standards of professionalism, a commitment to justice, and strong, trusting relationships with communities. Most officers are skilled, principled, and compassionate; those who aren't — whether by intention or not — damage relationships with communities, tarnish fellow officers' reputations, jeopardize departments' ability to deliver community policing, and weaken the nation's criminal justice system.

To demonstrate a commitment to fair, safe, and effective policing at the highest professional standards, department leaders should adopt fact-finding and disciplinary processes that are just, thorough, transparent, and timely. In jurisdictions where officers have a vested right to employment through civil service or union contracts, departments are required to accord officers due process by giving them the opportunity to respond to charges of misconduct and offer evidence that may mitigate the gravity of violations. In cases where misconduct is criminal, it is even more important to hold officers accountable and to discipline or terminate them as appropriate, while ensuring the accused their constitutional protections.

Essential elements of accountability systems include:

Intake systems. Departments need multiple, easily accessible means for community members to lodge complaints about misconduct and/or inadequate police services. Casting the broadest net possible enables departments to identify potential problems at the earliest opportunity and to affirm their commitment to community and internal feedback. Intake requires careful tracking, training for those who receive complaints, and safeguards to ensure that community members are not dissuaded from voicing concerns about police operations or individual officers. For example, departments should implement policies forbidding officers from retaliating against people who file complaints.

Classification and assignment. Departments need systems for prompt, neutral assessment of the type of conduct or performance implicated in a complaint, followed by swift assignment to appropriate units for investigation. In some instances, complaints may allege criminal conduct, which requires additional attention to safeguards and constitutional protections. In other cases, complaints may allege misconduct punishable by discipline, which should be referred to an administrative investigation unit, such as an internal affairs (IA) unit, or to an outside civilian agency, such as a community/civilian review board (CRB) tasked with investigation. Minor infractions, such as tardiness or uniform and equipment violations, should be referred to supervisors for prompt corrective action.

Timely, full, impartial investigations. Investigations of all types of misconduct should be swiftly pursued to follow the facts where they lead. Detailed investigative procedures are necessary to ensure integrity, transparency, and confidence in the investigation process.

Fair resolution and decision-making. Complaints of misconduct or poor police service may require remediation beyond personnel investigations and discipline. Community members may have suffered economic or personal injury that can be addressed via mediation or restorative justice practices. Fair, prompt resolution enhances community trust, especially when community members tell friends and family members about officers' willingness to accept responsibility, take appropriate steps to address the misconduct, and pledge to do better.

In cases where early mediation or resolution is not practical, personnel investigations should be adjudicated in a manner that is consistent, fair, and compliant with legal and policy requirements. If evidence supports a finding of misconduct, decision-makers should say so and proceed with fair, predictable discipline, even if they expect the officer to appeal the decision. By the same token, if evidence exonerates the officer, decision-makers should not hesitate to say so, even if it disappoints or angers some in the community.

There will always be concerns about whether professional organizations — including police departments — meaningfully hold employees accountable. To alleviate these concerns and strengthen community trust in police, departments should include community members in the investigation and adjudication processes. Outside participation addresses concerns about the so-called "code of silence" — a practice in which officers conceal wrongdoing to protect or support colleagues. It may also broaden the perspective of department leaders who seek to meet community needs. Community voices may, for example, prompt leaders to address legal and policy violations as well as "lawful but awful" behaviors through training, changes in tactics, and additional support.

Early intervention systems. Along with disciplinary systems, departments need nonpunitive systems to identify and rectify problematic performance. Such systems, which vary widely in sophistication, are known as early intervention systems (EISs). At a minimum, an EIS should provide supervisors and leaders with data to help them identify and assist officers who may be at risk of injury, career burnout, or violation of legal or policy standards. Interventions, such as counseling, training, or referral to an employee assistance program (EAP), are designed to fit officers' performance and professional needs. EISs are not a substitute for accountability; rather, they provide an extra means for supervisors and managers to make nuanced, fact-based decisions about how to create and grow a workforce of productive, fair, and principled professionals.

BEST PRACTICES IN ACCOUNTABILITY

Like other professional organizations, police departments should have robust accountability systems to ensure that officers are operating properly and serving the community safely and effectively. Because of the vast powers and discretion afforded police, departments should hold officers responsible when they do not. To do so, they should implement systems to identify, address, correct, discipline, and prevent misconduct.

How a department receives and responds to misconduct complaints is a critical part of police accountability systems, whether complaints come externally from community members or internally from department personnel. The guidance below identifies the issues that should be addressed when tackling accountability in law enforcement. To create robust internal and external accountability systems, departments should work with communities to:

RECOMMENDATION 7.1
CREATE TRANSPARENT, EFFECTIVE PROCESSES TO RECEIVE AND RESPOND TO EXTERNAL MISCONDUCT COMPLAINTS.

External complaints come directly from community members. To address misconduct, department processes should not discourage people from filing complaints. Specifically, departments should:

Implement transparent processes for filing complaints. Complaint processes should be simple, and information should be easily available, including in alternative and accessible formats. People should be able to file complaints in person, by phone, or online.[2] Information about how to file complaints should be available in many forms and places (**e.g.**, at police stations, court houses, schools, online, and on officer contact cards) and in multiple languages, and it should be accessible to people with disabilities (**e.g.**, in locations that are physically and technologically accessible and compliant with the Americans with Disabilities Act [ADA]).[3] A clear and simple complaint process helps ensure that departments don't miss out on valuable community input.[4]

Accept anonymous complaints. Departments should accept anonymous complaints, though they should let complainants know in a noncoercive manner that the anonymity of the complaints may hinder a full and complete investigation; this is because investigators may not be able to follow up with complainants or others with firsthand knowledge of the facts.[5] Departments should eliminate deadlines for filing complaints and should not require a complainant's signature, oath, certification, or affidavit for reviews and investigations, as these requirements discourage people who fear retaliation from coming forward.[6] All officers should be required to accept, document, and report any allegation of police misconduct.[7]

Continue investigations involving uncooperative witnesses. Departments should continue investigations when complainants are anonymous or stop cooperating with the investigation or otherwise become unavailable (**e.g.**, a woman who accuses an officer of intimate partner violence may stop cooperating with police because of her relationship with the accused officer).[8]

Assuage fear. Departments' training and internal guidance materials should take into account the fear people may experience when filing complaints against officers and their possible reluctance to do so. They should take steps to assuage fear and encourage community members to report misconduct, and they should provide personnel with specific strategies to ensure cooperation throughout investigations by building personal and community trust.

Develop anti-retaliation policies. Departments should protect complainants by implementing anti-retaliation policies. Community members and departments may have different views about what constitutes "retaliation."[9] Accordingly, department policies, training materials, and public outreach materials should contain clear definitions and provide examples of conduct that may constitute retaliation. Department leaders should seek community input to ensure that policies reflect community views and don't disincentivize or punish people for filing complaints. Discretionary police action that might otherwise be lawful or permissible (**e.g.**, issuing a ticket for a civil infraction) may become unlawful or impermissible if done in response to a complaint.

Disclose investigation outcomes. Once a complaint is filed, departments should have robust and independent internal mechanisms to investigate swiftly, thoroughly, and fairly. Upon conclusion, departments should make public information about complaints from members of the public and officer misconduct (not including minor violations such as tardiness or uniform violations), and they should do so in aggregate form as well as in relation to individual cases.[10] Public disclosure is required in certain cases (**e.g.**, officer-involved crimes), but disclosure policies that go beyond minimum requirements foster public trust.

The extent of disclosure may be restricted by state or federal law, such as a state law enforcement officer bill of rights (LEOBOR)[11] or restrictions regarding the disclosure of physical or mental disabilities pursuant to the ADA.[12] Community members and officers should educate themselves about these constraints to ensure shared understanding of and expectations about disclosure practices.

Regularly assess the complaint process. Departments should ensure that intake mechanisms are effective and working as intended by regularly examining the number, sources, and types of complaints they receive and regularly communicating with community leaders and stakeholders who may be better attuned to complaint barriers or disincentives.

RECOMMENDATION 7.2
CREATE TRANSPARENT, EFFECTIVE PROCESSES TO RECEIVE AND RESPOND TO INTERNAL MISCONDUCT COMPLAINTS.

While facilitating complaints from community members is critical to accountability, departments also need processes that allow department employees, including officers, to easily report misconduct and file complaints.

Create a "duty to report" for officers. Officers should have an affirmative duty to report possible misconduct to supervisors or to a centralized internal affairs bureau or its equivalent. (Internal affairs units investigate allegations of officer misconduct and criminal conduct.) This duty should be emphasized in recruiting, academy training, and continuing education to make clear that the department does not condone officer silence, or broader codes of silence, and that failure to report may jeopardize employment. For example, the Los Angeles Police Department's (LAPD) Policy Manual states:

> The reporting of misconduct and prevention of the escalation of misconduct are areas that demand an employee to exercise courage, integrity, and decisiveness. … An employee's obligation to report and prevent misconduct ***begins the moment the employee becomes a member*** of the Los Angeles Police Department. Police officers, because of their status as peace officers, have an even greater responsibility to report and prevent misconduct.[13]

Crucially, departments should not place artificial limitations on when officers can come forward with complaints. If laws and collective bargaining agreements (CBAs) impose time limitations on disciplinary action, department leaders should nonetheless accept and investigate complaints. While supervisors may not impose ***discipline***, investigations may shed light on problematic

POLICE OFFICERS, BECAUSE OF THEIR STATUS AS PEACE OFFICERS, HAVE AN EVEN GREATER RESPONSIBILITY TO REPORT AND PREVENT MISCONDUCT

L.A. Police Dep't, Employee's Duty to Report Misconduct, 1 LAPD Policy Manual Section 210.46, http://www.lapdonline.org/lapd_manual/volume_1.htm#210._EMPLOYEE_CONDUCT (emphasis added).

behaviors that might be addressed outside of the disciplinary process; this also communicates to officers that department leaders care about their concerns and stand by them when they make the difficult decision to step forward and file a complaint against a supervisor or fellow officer.

Ensure supervisors' have a "duty to respond." Just as officers have a duty to report, supervisors and managers have a duty to respond. That response may include referring the complainant or witness members to EAPs to help them address stress or personal difficulties associated with the complaint or its investigation.

Develop anti-retaliation policies. Officers are sometimes the best source of information about misconduct by fellow officers because they bear witness to it. Policies should ensure that officers reporting misconduct face no retaliation, either in the short term (**e.g.**, via harassment, ostracism, or adverse assignment) or long term (**e.g.**, via denial of employment opportunities). Such retaliation may violate not only personnel policies and CBAs[14] but also state or federal law.[15]

Encourage intervention. Efforts to engender a culture in which officers intervene in problematic behavior are already underway. In 2016, the New Orleans Police Department launched Ethical Policing Is Courageous (EPIC), a training initiative to support officers seeking to mitigate misconduct.[16] The program trains officers to identify problematic behavior and to intervene safely and effectively.[17] Such programs build upon long-standing policies in other departments that require affirmative reporting of fellow officer misconduct, such as the LAPD's aforementioned policy.

Create avenues to file misconduct complaints with external organizations. Because department members may have misconduct complaints against supervisors or others in positions of power ***within*** organizations, they should know how to file complaints with ***external*** organizations. All officers should know how to contact external agencies such as the Equal Employment Opportunity Commission or its state or local equivalent to report sexual harassment or other types of misconduct; local prosecutors' offices to report potential criminal conduct; or labor representatives to report concerns about workplace safety or other adverse working conditions. (For more detail, see Recommendation 7.11.)

RECOMMENDATION 7.3
DELINEATE POLICIES ABOUT HOW AND BY WHOM MISCONDUCT COMPLAINTS ARE INVESTIGATED.

Because not all misconduct is equal, departments should have protocols in place for addressing varying degrees of it. Misconduct ranges from minor infractions, such as tardiness, to serious crimes, such as assault and theft. Departments should develop internal protocols to respond to various types of misconduct based on their size, organizational structure, and available resources, such as whether they have dedicated internal affairs investigators.

Upon reviewing complaints, department leaders should authorize certain types of infractions to be investigated at the precinct-level (referred to in some departments as "districts"), while more serious allegations should be investigated by internal affairs units.[18] Relatedly, departments should implement internal quality control systems, such as authorizing internal affairs investigators to review and audit investigations at the precinct or division level and tapping external entities, such as oversight bodies, to review the work of internal affairs specialists.[19] Departments can also implement other mechanisms to enhance integrity, such as "intake stings," to test whether officers comply with policy when taking complaints.

To initiate an investigation, supervisors should identify, document, and report potential misconduct. After their investigation is complete, they should send a report up the chain of command for executive review. Department leaders should prepare a response and, when appropriate, take disciplinary action (preferably after consulting labor relations counsel) to ensure it aligns with prior discipline for similar conduct (and to ensure disciplinary actions are, in fact, meted out).

The officer's immediate supervisor should provide information pertinent to the disciplinary process, such as officers' performance history; the impact the offense has on their ability to meet performance expectations; the impact on supervisors' confidence in their ability to perform assigned duties and work with others; and mitigating factors (**e.g.**, unusual job or personal stressors, mental or physical impairments, etc.) or aggravating factors (**e.g.**, resistance to prior rehabilitation efforts, malice toward the public or colleagues, etc.).[20] The ultimate decision, however, should come from the chief — to reinforce the organization's core values and to avoid the appearance that supervisors are "soft" on members of their own teams.

When violations don't concern interactions between officers and community members and are investigated at the precinct level, immediate supervisors typically take disciplinary or corrective actions, including counseling, coaching, and managing the behavior at issue. If supervisors have a demonstrated history of failing to hold subordinate officers accountable, then responsibility for corrective action should be delegated until the underlying leadership problem is resolved.

RECOMMENDATION 7.4
DEVELOP POLICIES FOR INVESTIGATING AND ADDRESSING SEXUAL MISCONDUCT AND INTIMATE PARTNER VIOLENCE.

Sexual misconduct (**e.g.**, harassment or violence) is, sadly, a common complaint against police officers, especially among LGBTQ and gender-nonconforming people.[21] LGBTQ youth, one study found, were twice as likely as their peers to have had negative sexual contact with police in the preceding six months.[22] Survivors, especially those from marginalized groups, may be reluctant to come forward because of uneven power dynamics or fear of retaliation. Sex workers, for example, are often targets of sexual violence and harassment but may not come forward for fear of further targeting by police.[23]

Nonetheless, some of the nation's largest departments lack policies addressing sexual harassment, extortion, misconduct, abuse, and violence.[24] All departments should partner with community members to develop and implement policy in the areas of prevention, detection, and accountability. Indeed, the International Association of Chiefs of Police states:

> The problem of sexual misconduct by officers warrants the full attention of law enforcement leadership. It represents a grave abuse of authority and a violation of the civil rights of those victimized. Law enforcement agencies and executives have a duty to prevent sexual victimization, to ensure it is not perpetrated by their officers, and to take every step possible to ensure the safety and dignity of everyone in the community. … Sexual misconduct within an agency may be indicative of a need for systemic and cultural changes. Creating and implementing a policy are key steps to ensure an agency is prepared to respond to allegations, reinforce officer accountability, and ultimately prevent abuses of power.[25]

Intimate partner violence is also prevalent in the police force, and survivors are often scared to call police departments if their abusers work there.[26] To address this problem, departments should implement intervention programs to detect and respond to allegations of officer-involved intimate partner violence.[27] They should also staff specially trained investigators and trauma informed specialists to interview survivors of sexual assault and intimate partner violence. Departments should have processes in place to protect survivors, whether they are community members or department members who report coworkers, to avoid retaliation.

Regulating Officer Discipline

Officer discipline is regulated by laws constraining what departments can and can't do. The standards or processes for investigating or disciplining police officers arise out of state civil service rules or state/local labor relations laws that permit employees to form or join unions and negotiate collective bargaining agreements (CBAs) with their employers. These rules and laws typically provide that non-probationary employees have a continued right to employment absent good cause for discharge or discipline.

The Supreme Court has viewed this general right as a protectable property interest subject to due process protections, such as notice of an employer's intent to impose discipline and a fair opportunity to dispute the charges of misconduct or present mitigating evidence in support of lighter discipline. More specifically, the employee must be accorded an ***informal*** opportunity to respond prior to the imposition of discipline and a ***formal*** opportunity to appeal the discipline once imposed. ***See generally Loudermill v. Cleveland Bd. of Educ.***, 470 U.S. 532 (1985).

Beyond these due process rights, state/local law or union contracts may govern other aspects of the disciplinary process, such as:

- Who may conduct police misconduct investigations.
- Time limitations for initiating or completing a misconduct investigation.
- Whether or when accused officers may view the complaints against them.
- Time, place, and manner restrictions on the conduct of investigations.
- The process for challenging discipline through civil service appeal, labor arbitration, or other administrative processes.

Such standards may arise out of standards for police discipline processes. At least 14 states have enacted so-called LEOBOR (law enforcement officer bill of rights) laws. Thus, local communities seeking to improve their local agencies' accountability processes should begin with an understanding of already existing legal constraints, such as LEOBOR laws, civil service rules, and union contracts. Some states, such as Maryland and Illinois, are considering amending their LEOBOR laws to increase officer accountability.

Source: Hager, Blue Shield: Did You Know Police Have Their Own Bill of Rights? The Marshall Project (April 27, 2015), https://www.themarshallproject.org/2015/04/27/blue-shield.

RECOMMENDATION 7.5
CREATE TRANSPARENT, EFFECTIVE PROCESSES FOR CONDUCTING MISCONDUCT INVESTIGATIONS.

When officers are accused of violating a department rule or policy, departments should investigate fairly, thoroughly, and in a timely manner. All departments are required to follow the employment laws in their own jurisdictions, but they should also incorporate the following components into their own accountability and disciplinary systems. Specifically, departments should:

Conduct timely investigations. Ideally, investigations should be completed within six months.[28] The New Orleans Police Department requires officers to initiate investigations no later than 14 days after they receive a complaint and to complete investigations no later than 60 days after the date of initiation.[29] The Albuquerque Police Department requires administrative investigations to be completed within 90 days[30] and all critical incident investigations to be completed within two months.[31] If an investigation is not completed within the specified period, investigators must get approval for an extension from the internal affairs commander and department chief.[32]

Timeliness — and clear timelines — enhance justice and trust. They allow community members to see complaints resolved and, when appropriate, discipline applied on anticipated timeframes. Officers who are falsely accused, meanwhile, can take some comfort in the fact that their cases will be resolved by a certain date. Moreover, swift adjudication reduces the loss or destruction of evidence, as witnesses disappear or forget details, as physical items deteriorate, or as complainants change their minds or reverse course (**e.g.**, when a sexual assault survivor decides to stop cooperating). Timely investigations can have a deterrent effect, too, as swift remedial measures improve behavior and deter future misconduct.

Departments with backlogged investigations should make plans to clear them, which can be done via outside counsel or mediation programs if permitted by law or union contract.[33] At the same time, new investigations should be completed within stated timeframes; indeed, placing new cases at the bottom of the list only perpetuates the problem. Department leaders should also set clear expectations (if not requirements) regarding the length of time that each investigatory phase should take.

Notify complainants. Department leaders should periodically notify complainants about the progress of investigations. They should send a letter when initiating investigations informing the complainant about the investigation process, its various phases and timelines, and the investigator's name and contact information.[34] They should also send a letter upon completion of the investigation explaining the outcome or, if the case is extended, explaining why.

Document evidence and information. To ward off claims of coaching or coercion, investigators should document all available evidence and information about alleged misconduct, including interviews with complainants, witnesses, and other affected individuals. They should also photograph scenes of the incident from witnesses' points of view and document adjudication and disciplinary outcomes.

Develop transparent policies. Investigation and review processes should be clearly defined in departmental policy so community members and officers know what to expect and to ensure that investigations of the same type of misconduct are handled similarly, creating procedural justice. (For more detail, see Chapters 9 and 10.) Minor violations, like tardiness, may be appropriately handled at the precinct level. More serious violations, such as allegations of sexual harassment or theft, may require referral to an internal affairs bureau, adjudication by a full disciplinary board, or notification to the local prosecutor's office.

Train investigators. Investigators should be trained to conduct thorough and impartial investigations; otherwise, departments run the risk of letting misconduct go unexamined and unaddressed. They should also be trained in implicit bias, which can result in the dismissal of a complainant's account of the facts based on race, gender, sexual orientation, or other characteristic.[35] (For more detail, see Chapter 2.) Cultural sensitivity training, meanwhile, enables investigators to interview people from marginalized communities, such as undocumented immigrants. (For more detail, see Chapter 11.)

RECOMMENDATION 7.6
ENSURE SUPERVISORS ADDRESS AND DISCIPLINE OFFICER MISCONDUCT.

Disciplinary rules and processes should apply to all department members, regardless of status or title. Leaders and supervisors should be held accountable for their actions and for failing to hold subordinates accountable for their actions.

Indeed, accountability should start with supervisors. Supervisors should set the standard for exemplary behavior. They are also in the best position to identify problems with performance and signs of misconduct. They might witness an officer coping poorly with stress, ignoring policy or training, or unfaithfully reporting actions. In response, they might offer simple feedback or referral to counseling, or they might initiate disciplinary processes. Departments should have clear policies and training to guide supervisors through problem management, particularly when confronted with potential misconduct.[36]

The most effective policies (1) grant supervisors discretion to handle minor infractions (**e.g.**, those relating to tardiness, uniform violations, personal appearance, and equipment, such as failing to carry a less-lethal weapon) and (2) require them to refer more serious violations (**e.g.**, offenses relating to the use of force, biased policing, and integrity) to internal affairs bureaus, where specialists outside the chain of command adopt formal, rigorous investigatory processes. Because lax approaches to misconduct foster cultures of sloppy, unsafe, and lawless policing, departments should hold supervisors accountable for failing to monitor performance. (For more detail, see Chapter 9.)

RECOMMENDATION 7.7
INTEGRATE THE PRINCIPLES OF PROCEDURAL JUSTICE INTO DISCIPLINARY PROCESSES.

Procedural justice involves four principles: (1) fair processes (***i.e.***, treating people with dignity and respect), (2) transparency (***i.e.***, conveying trustworthy motives), (3) providing opportunity for "voice", and (4) impartial decision-making.[37] Departments should adhere to these principles by establishing fair systems with clear disciplinary processes. Specifically, departments should:

Promote internal fairness. If officers believe their supervisors' actions and disciplinary decisions are fair and understandable, they're more likely to accept, support, and comply with those decisions.[38] The lack of clear, definitive, and advance knowledge about disciplinary systems leaves officers and supervisors uncertain about what to expect when infractions or misconduct occurs. This creates a culture of unfairness, results in processes that appear arbitrary and unjustified, and erodes officers' trust in supervisors. Officers who work in such systems are more likely to mirror corrosive institutional cultures when they interact with community members. On the contrary, internal procedural justice leads to externally just behavior toward communities because it promotes fairness and respect.[39] (For more detail, see Chapter 9.)

Make processes transparent. Communities are often in the dark about departmental processes for holding officers accountable. The lack of transparency heightens tensions, especially when departments aren't forthcoming with information in the aftermath of police shootings or don't fire involved officers. It is no surprise that terms like "code of silence" and "blue wall," which suggest that departments protect officers and cover up their wrongdoing, have persisted for decades.[40] Departments must contend with this perception to establish and maintain legitimacy with the community. Indeed, disciplinary processes that lack transparency foster public mistrust; clear policies, in contrast, provide the foundation for accountability and earning community trust.

Establish clear disciplinary policies. Procedural justice also requires that officers understand the consequences for law and policy violations. Department leaders should spell out the penalties or remedial measures for violations by type and degree. Many departments have a matrix listing different types of policy violations along with their disciplinary consequences. The Austin (Texas) Police Department's matrix indicates that an officer who fails to report a violation, for example, will receive an oral reprimand or up to three days' suspension on the first occurrence.[41] Such flexibility allows decision-makers to consider mitigating factors (**e.g.**, superior work history, acceptance of responsibility, and exhibited potential for rehabilitation) and aggravating factors (**e.g.**, prior discipline history, malicious conduct, and expressed unwillingness to change behavior) when making disciplinary decisions.

Internal procedural justice leads to externally just behavior toward communities because it promotes fairness and respect.

Engage officers and community members. As with all policies, departments should engage communities when developing investigatory and disciplinary policies so they meet community needs and reflect community values. Community members deserve a seat at the table during these discussions because they are often on the receiving end of misconduct. Although labor laws may prohibit community members from participating in the collective bargaining process with unions, they do not prevent them from presenting departments with a firm set of expectations or goals to achieve through bargaining processes. When communities provide input into how departments investigate misconduct and impose discipline, they assume greater responsibility for government services.

To adhere to the principles of internal procedural justice, department leaders should seek input from officers for investigatory and disciplinary processes. By taking their concerns into account, and creating a dialogue in which officers understand the reasoning and purpose of the policies, departments will generate more buy-in from officers and create legitimacy for the departmental processes.

RECOMMENDATION 7.8
USE EARLY INTERVENTION SYSTEMS TO TRACK OFFICER BEHAVIOR AND ADDRESS NEEDS AND DEFICIENCIES AT THE EARLIEST OPPORTUNITY.

To hold officers accountable, departments should thoroughly and impartially investigate misconduct allegations; identify problem behaviors and poor performance; and mete out consequences. As at any workplace, departments also need nondisciplinary systems to track officer performance objectively over time and to identify potentially problematic behaviors as early as possible.

Officers may fail to meet performance expectations for a variety of reasons, such as insufficient knowledge of the issue at hand (**e.g.**, the nuances of a newly revised policy), deterioration of skills (**e.g.**, insufficient tactical or de-escalation training), or personal stressors (**e.g.**, substance dependency, family conflicts, or insufficient sleep). Supervisors should therefore identify and respond to possible problems at the earliest opportunity to help officers meet professional expectations, develop professionally, and avoid more serious misconduct. Such approaches (which are sometimes multi-tiered) may include referral to an employee assistance program, training, mentoring, and/or other professional growth programs. Specifically, departments should:

Implement early intervention systems. Implementing and maintaining early intervention systems improves supervision, especially at mid-sized (those with 50-999 officers) and larger (those with 1,000+ officers) departments.[42] Indeed, the Commission on Accreditation for Law Enforcement Agencies, the primary law enforcement credentialing authority in the country, has incorporated comprehensive EISs into their standards.[43] New Jersey's attorney general, meanwhile, has mandated that all law enforcement agencies implement an "early warning system."[44]

EISs identify and respond proactively to behaviors and performance trends that — while not rising to the level of legal or policy violations — nonetheless indicate that officers are not performing at optimal levels. These systems analyze a variety of indicators to identify misconduct and performance problems, such as officer-community relations (**e.g.**, the number of complaints officers receive in a given period) and racial profiling (**e.g.**, demographic data for traffic stops).[45] (For more detail, see Chapter 2.) Departments that carefully and consistently implement EISs have reduced the incidence of misconduct.[46]

That said, EISs are **not** a substitute for disciplinary systems. Officers should still be held accountable for complying with legal, policy, and performance standards. EISs strive to correct behavior before it leads to misconduct, but they don't immunize officers from consequences for misconduct that has already occurred. Departments should ensure all officers understand and accept the goals of EISs, even in the face of uncertainty and suspicion.

Because EISs allow for some flexibility in implementation, community and officer input is vital. To inform the development of an EIS, some departments, such as the Austin Police Department, have formed a committee of community members and other stakeholders to identify factors that indicate problematic behavior and to discuss productive interventions.[47] This is because EISs developed with community and officer input will likely be met with less resistance.

Ensure supervision. EISs are a supplement to, not a replacement for, close day-to-day supervision. Even effective, well-intentioned supervisors inadvertently overlook warning signs about employee performance or miss patterns that only become apparent over time or with the help of data collection.

EISs address this problem. First, they are a repository for information about conduct of interest to officers, departments, and communities (**e.g.**, uses of force, disciplinary actions, complaints by community members, stops, arrests, lawsuits, vehicle and foot pursuits, workplace injuries, etc.) and other data departments are willing and able to track. Second, most EISs have a mechanism that identifies officers who reach predefined thresholds for potentially problematic behavior, such as a certain number of uses of force or public complaints over a defined period. Often, departments develop thresholds based on models that identify officers who

are statistical outliers in ***given*** areas.[48] More sophisticated systems compare officer conduct to that of colleagues with similar assignments and hours.

Develop effective review processes. EISs that identify officers as statistical outliers (as compared to other officers) or who have had a set number of infractions in a given period, trigger formal review processes. In some departments, the first-level review is conducted by a unit of specialists who administer the EIS. In others, this review is conducted by a supervisor in the officer's chain of command.

Under both models, the first-level review takes a fresh, retrospective view of officer performance. This includes examining the incident reports that prompted the EIS review as well as recent performance evaluations, supervisory feedback, and, often, relevant body-worn camera or other video footage. The goal is to review materials to identify patterns of potentially problematic behavior, indicators of stress, training needs, and the like. This review should include at least one meeting with the officers in question to discuss the review, address frustration with and/or misconceptions about the EIS, and listen to what officers have to say about underlying incidents or other issues they wish to discuss.

This first-level review typically leads to a proposed remedial, nondisciplinary intervention, which may include a referral to an employee assistance program, increased supervision (**e.g.**, supervisor ride-alongs), counseling, training, and coaching. Typically, an EIS panel, committee, or other officials experienced in EISs conduct the first-level review and propose interventions to ensure they are consistent with prior interventions for the same type of misconduct and are relevant, fair, and adequate.

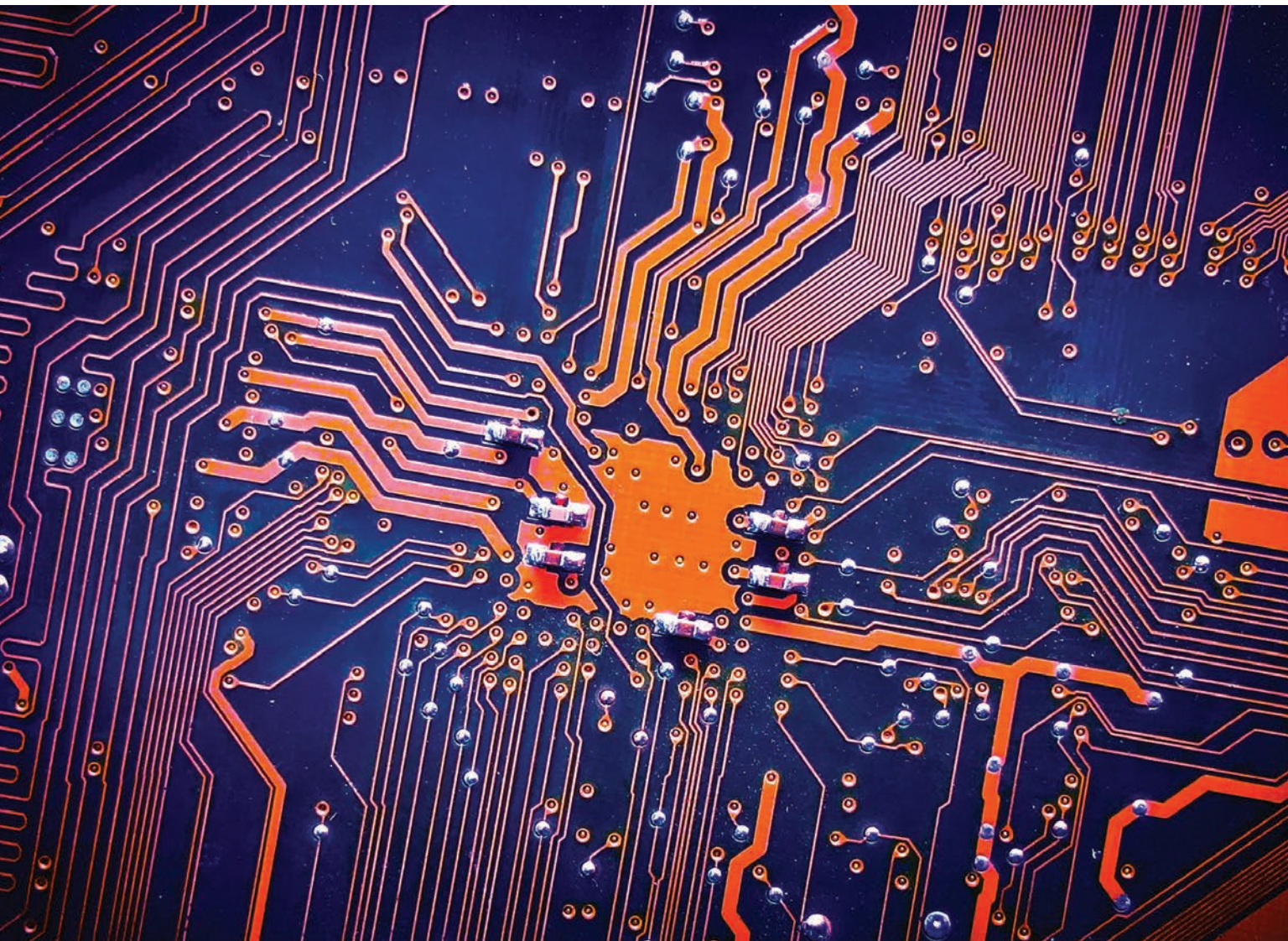
In some instances, only minor interventions are proposed, such as increasing coaching and counseling. Review of video footage may, for example, identify officers who take unnecessary risks when stopping motorists. Even when they don't lead to interventions, EISs benefit officers, departments, and communities because they foster communication between officers and supervisors and provide valuable information about officer conduct. These interventions should be viewed as learning opportunities.

Create sufficient data storage. Because EISs are driven by data, special efforts are needed to protect data integrity and ensure that data warehouse(s) are capable of responding to sophisticated queries whenever necessary. Several EIS software programs are commercially available, but software is no substitute for procedures and business rules that ensure that data are entered correctly and on a timely basis. Officers seeking to implement EISs should look to — and learn from — the many other departments that use and benefit from them.

Train supervisors to use early intervention systems. Supervisors should be trained to use EIS software, to examine past performance impartially, and to provide corrective supports in a manner that encourages officers to correct problematic behavior. EISs often prove to be valuable training tools for instructors as well. Well-built systems have officials who are trained to mine the data to find out, for example, how many foot pursuits result in the use of force, whether certain tools, tactics, or techniques are ineffective, and so on. Data-rich EISs also make it easier to identify how successfully — or unsuccessfully — training instructors prepare officers for duty.

Supervisors should track interventions, along with remedial steps or recommendations regarding officer conduct, in an electronic database system. Many systems also enable supervisors to track officer progress and hold supervisors accountable if they fail to follow through.

Implement simplified EISs in small departments. Smaller departments may not have the resources to implement an electronic EIS, but they can still institute processes to track officer performance and spot red flags. Because smaller departments have fewer officers and are often in less densely populated areas, leaders likely have fewer interactions to track and thus may be able to develop data systems with Excel or other widely available software.[49]



RECOMMENDATION 7.9
INVESTIGATE MISCONDUCT TO THE EXTENT PERMISSIBLE AFTER STATUTORY OR CONTRACTUAL TIME LIMITATIONS FOR DISCIPLINE HAVE PASSED.

Law enforcement officers' bills of rights and collective bargaining agreements often place time limits on investigations and discipline for misconduct, but departments should still determine whether the misconduct occurred. Time limits on ***investigations*** generally place restrictions on requiring an officer to respond to the charges. Even if questioning an officer is time-barred, supervisors or investigators should still interview other witnesses and review relevant information, if not prohibited by the CBA.

Other CBAs or statutory regulations prohibit imposing ***discipline*** after a certain time has passed. Generally, such provisions are not an impediment to investigation of misconduct or even to interviewing involved officers; these provisions bar supervisors from ***disciplining*** officers if misconduct occurred. Departments may still have an interest in finding out whether allegations are true, addressing misconduct through nonpunitive, corrective action, such as feedback or coaching, and revising department policies and training to prevent similar misconduct. The key is that corrective action is ***nonpunitive***.

Investigations of older complaints might be limited in scope depending on available evidence, but they are often worth pursuing because they make for a procedurally just system in which complainants' allegations are taken seriously. Thorough investigation of complaints also allows department leaders to ensure accountability at the department level by identifying potential failures in policies, training, and practices, which can be corrected based on the findings.

RECOMMENDATION 7.10
IDENTIFY, MAINTAIN, AND SHARE MATERIAL EVIDENCE RELATING TO OFFICER MISCONDUCT OR CREDIBILITY WITH PROSECUTORS IN CRIMINAL CASES.

The U.S. Supreme Court has long held that constitutional due process requires prosecutors to turn over to the defense — whether or not they are requested to — all evidence in their possession that is exculpatory to the defendant, including evidence that may be used to impeach an officer's credibility.[50] Such evidence, known as "Brady" or "Giglio" material (and named after respective Supreme Court cases), includes records in the prosecutor's office and the police department involved in the case.[51] Those accused of crimes have the right to know that one or more involved officers' credibility is on the line — and may be undermined by disciplinary or performance records.[52]

In addition, police departments and individual officers can be held personally liable for damages arising out of their failure to provide Brady/Giglio materials to prosecutors.[53] One federal appeals court explained that "because the police are just as much an arm of the state as the prosecutor, the police inflict the same constitutional injury when they hide, conceal, destroy, withhold, or even fail to disclose material exculpatory information."[54]

Given these constitutional stakes, departments should develop polices and processes to alert prosecutors when officers may be subject to impeachment and to provide Brady/Giglio-pertinent materials for disclosure to the defense when going to trial. For example, the Austin Police Department set forth procedures to designate a department official who is responsible for reviewing officer records

"COMMUNITIES WHO HAVE CARRIED THE BURDEN OF BAD POLICING NEED TO BE AT THE CENTER OF CREATING SYSTEMS THAT PROMOTE ACCOUNTABILITY, TRANSPARENCY, AND OVERSIGHT."

- CHANGA HIGGINS,
FOUNDER OF DALLAS COMMUNITIES ORGANIZING FOR CHANGE.

for disciplinary or other Brady/Giglio materials, notifying prosecutors of results, and ensuring officers' right to privacy is preserved to the extent possible.[55] Other departments, such as the Louisville (Kentucky) Police Department, maintain a confidential "Brady list" of officers whose disciplinary or personnel records may be subject to disclosure and affirmatively require officers involved in a potential prosecution to alert prosecutors about the existence of potential Brady/Giglio material.[56]

RECOMMENDATION 7.11
INFORM OFFICERS OF THEIR RIGHT TO FILE COMPLAINTS WITH OUTSIDE AGENCIES.

Like all government agencies, police departments are subject to state and federal laws governing the terms and conditions of employment, such as workplace safety, wages and benefits, and equal employment opportunity. Suspected violations of fair employment practice laws may be investigated by the U.S. Department of Labor, the U.S. Equal Employment Opportunity Commission, or other federal agencies. They may also be subject to enforcement by state or local enforcement authorities, such as the state attorney general or state or local fair employment practice agencies, such as the New York Division of Human Rights or the Atlanta Human Relations Commission.[57]

Such agencies present an avenue for internal accountability when officers or department members file complaints against fellow officers or supervisors. Federal and state laws provide officers with a means of filing confidential complaints of unsafe or unfair working conditions and legal protections against retaliation by their employer. However, officers can't exercise these rights unless they know about them and receive assurances from their departments that they can seek legal redress or cooperate in an external investigation without fear of reprisal. Thus, departments have a responsibility to inform officers, starting in the academy, about these rights and protections. Communities have a vested interest in this training, too. If officers are subject to work conditions that are discriminatory, unsafe, or otherwise unlawful, they will be less likely to interact with community members in a fair and impartial manner.

RECOMMENDATION 7.12 EXPAND THE ROLE OF COMMUNITY/CIVILIAN REVIEW BOARDS AND INDEPENDENT MONITORS IN DISCIPLINE.

When departments receive a complaint from an officer or community member, they should apply efficient and just mechanisms for conducting investigations and handing down discipline. To build community trust and amplify community voices, jurisdictions should involve nondepartment personnel such as independent investigators, community/civilian review boards, and independent monitors or auditors in the disciplinary process.

Oversight bodies such as community/civilian review boards signal to members of the community that they have the power to affect outcomes in instances of serious misconduct. But to conduct a meaningful investigation, these individuals and entities require appropriate expertise, adequate staff and funding, and clearly defined roles. This requires a serious commitment of resources, as at the Office of Police Complaints (OPC) in Washington, D.C. Since 2001, the OPC has been staffed with personnel who receive and investigate public complaints regarding key areas of misconduct, including harassment, inappropriate language or conduct, retaliation, unnecessary or excessive force, discrimination, and officers' failure to identify themselves during interactions.[58]

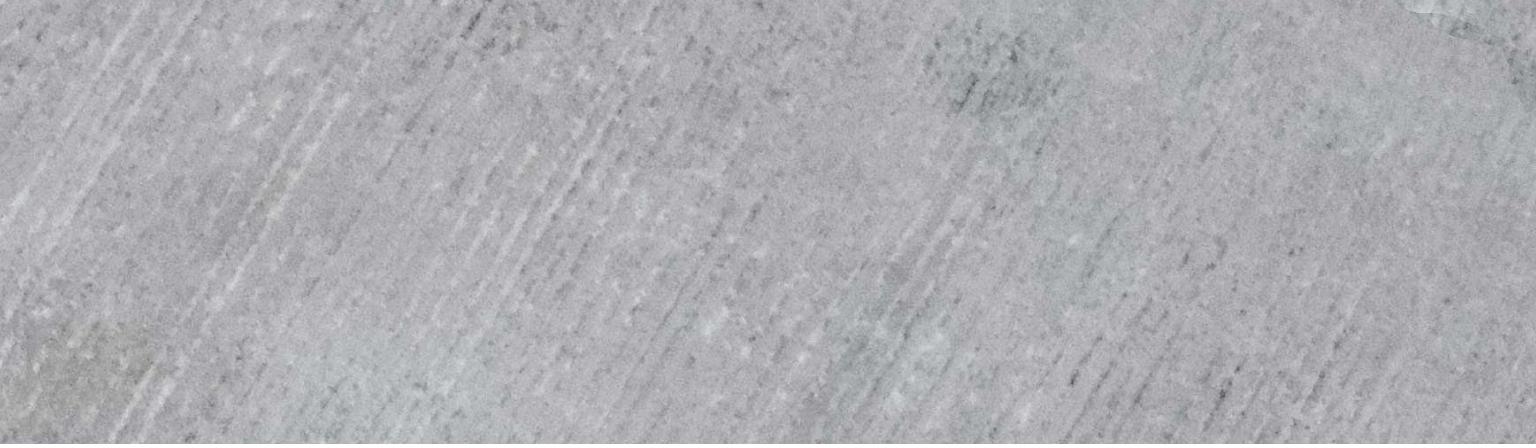
In a similar vein, the City of Las Vegas maintains an independent CRB tasked with investigating public allegations of police misconduct and deaths in police custody. The Las Vegas CRB not only has the authority to recommend whether allegations should be sustained but also to recommend, in light of an officer's prior record, the appropriate level of discipline.[59] By contrast, entities that focus on structural or big-picture review, such as independent auditors or monitors, may not play a role in the investigation and outcome of a particular event but may have the potential to have a broader impact on the police department as a whole.

Regardless of the entity, departments should work with communities to ensure that individuals involved have the requisite expertise to review complicated matters involving proper police conduct. Jurisdictions that implement community review mechanisms may require their oversight practitioners to attend trainings and obtain certification from organizations such as the National Association for Civilian Oversight of Law Enforcement or the Association of Local Government Auditors.[60] Participation in these associations also allows oversight practitioners to tap resources and build networks through which to develop best practices. And because expertise only goes as far as the resources provided, jurisdictions should compensate investigators rather than rely on volunteers. Independent review entities include:

Independent investigatory agencies. Independent investigatory agencies are not part of a department but are authorized to oversee or participate in the investigations of individual officers. They differ from community/civilian review boards in that they participate in actual investigations and can have subpoena power or other investigatory tools to support thorough investigations. The advantage of independent agencies is that investigators who conduct the investigations and fact-gathering aren't affiliated with departments. One such agency is the Chicago Office of Police Accountability (COPA), which is staffed entirely by civilian personnel who investigate complaints and make disciplinary recommendations to the chief of police.[61] The Seattle Office of Police Accountability is also an independent agency that conducts investigations, though it employs a hybrid of sworn and civilian personnel.[62]

But the mere existence of an adequately funded independent investigative agency will not necessarily result in impartial investigations. Politics in most cities and towns run deep and, without institutional firewalls, can influence purportedly independent investigations.

For example, a 2017 U.S. Department of Justice (DOJ) investigation of the Chicago Police Department found that COPA's predecessor, the Independent Review Authority, had substantial, persistent integrity weaknesses in its investigations.[63] The city now works to ensure COPA operates in an environment free of political pressures and undergirded by additional checks and balances to ensure thorough, impartial investigations.

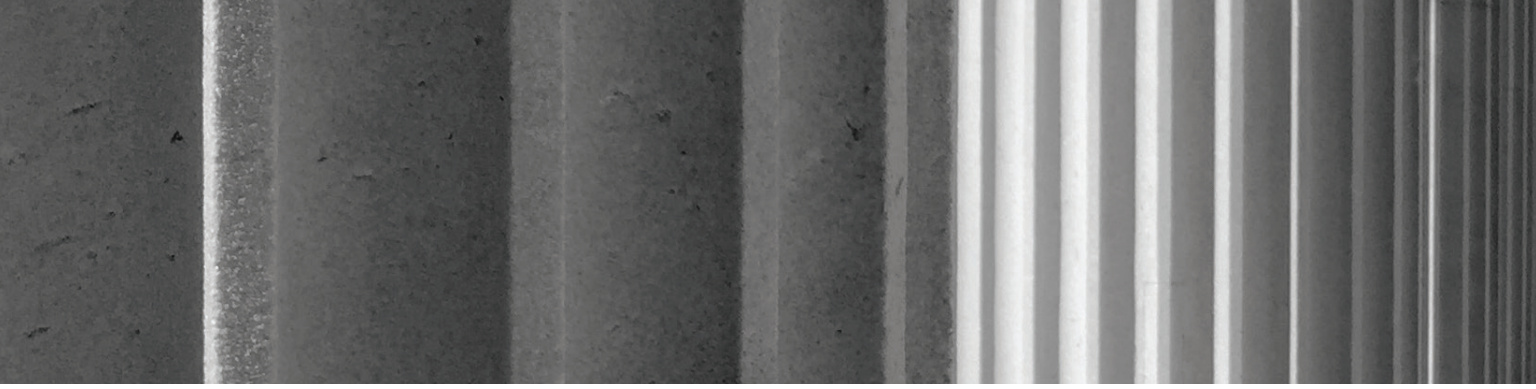


Community/civilian review boards. A community/civilian review board is an external entity that plays a role in the police disciplinary process. There are two types of review boards: (1) boards that review misconduct investigations and then adjudicate and/or make disciplinary recommendations (**e.g.**, Cleveland's Civilian Police Review Board); and (2) boards, such as Seattle's Community Police Commission, that address broader police issues, such as whether departments' internal disciplinary review processes achieve fair results, but do not review investigations.[64]

There is a great deal of variation within these categories. Some review boards are funded to employ dozens of investigators, such as the above-described OPC in Washington, D.C. and the Las Vegas Civilian Review Board. Others, such as the Citizens' Police Review Board in Albany, New York, are staffed entirely by volunteers.[65] Another key difference among boards is how much weight departments accord the board's recommendation. Most, including D.C.'s OPC and the Las Vegas CRB, are authorized to make recommendations rather than final determinations of officer discipline.[66]

Independent monitors/auditors. Some jurisdictions appoint an independent monitor or auditor to review departments' overall performance across any of several areas, such as use of force, stops, misconduct investigations, and discipline. Independent monitors or auditors do not conduct investigations. Rather, they typically compile and examine data and then produce reports that include recommendations for improving existing policies or procedures.

Independent monitors or auditors should be assisted by a staff capable of conducting in-depth reviews and assessments.[67] Several jurisdictions have had successful monitors, such as the LAPD's Inspector General and the Independent Police Review in Portland, Oregon.[68] Such entities can also address individual cases requiring special attention. For example, the LAPD Inspector General's Office includes a force investigations division that scrutinizes serious use-of-force incidents and that reports findings to the Board of Police Commissioners.[69]



RECOMMENDATION 7.13
ESTABLISH CLEAR PROTOCOLS FOR DETERMINING WHO INVESTIGATES AND PROSECUTES OFFICER-INVOLVED CRIMES AND SHOOTINGS.

In practice, police misconduct can be prosecuted by local, state, or federal officials, each of which has its own advantages and disadvantages.

Local authorities. These authorities are often best positioned to quickly respond and investigate, but there is an inherent possibility of conflict — or at least the appearance of conflict — given the close relationships that can exist between local prosecutors and police officers.[70]

State authorities. Depending on the state, these authorities may not have the legal authority, experience, or ability to intervene in an investigation of officer misconduct in a timely fashion.

Federal authorities. These entities, such as the Civil Rights Division of the DOJ or local U.S. attorneys' offices, often have expertise, resources, and greater independence, but their jurisdiction is sharply limited to willful civil rights violations.

Evidence shows that prosecutions of officers, particularly for killing unarmed people, rarely result in officer convictions.[71] There are many reasons for this, from the legal complexities of finding excessive use of force when the law sets a low bar to juries' reluctance to convict officers for decisions made under potentially dangerous circumstances.[72] (For more detail, see Chapter 4.) The prosecution and conviction of Jason Van Dyke, the officer who killed Laquan McDonald in 2014, is one of the few instances where an officer was held accountable for murder by jury verdict.[73] To investigate officer-involved crimes or shootings, departments should:

Clarify who should investigate and prosecute. Departments and prosecutors should establish clear policies and protocols for investigating officer-involved criminal misconduct, such as excessive force, theft, planting of evidence, and sexual assault. Particularly in the case of officer-involved fatalities, protocols should include mechanisms to ensure that independent investigators are not employed by the same law enforcement agency as the officer under investigation.

Jurisdictions should consider whether decisions to prosecute will be made by the local prosecutor or a special prosecutor, such as an official in a neighboring jurisdiction or a state-level official.[74] Indeed, the Final Report of the President's Task Force on 21st Century Policing recommends that communities use external and independent prosecutors to investigate "cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths" in order to "demonstrate the transparency to the public that can lead to mutual trust between community and law enforcement."[75]

Conduct administrative investigations during criminal investigations. Finally, departments and community members should decide how to handle administrative investigations of officers when criminal investigations are also underway. Historically, departments have suspended administrative investigations until local prosecutors decide whether to charge officers under investigation because departments don't want to implicate officers' constitutional right against self-incrimination. The U.S. Supreme Court ruled in ***Garrity v. New Jersey*** that officers compelled to speak to investigators in order to avoid discipline may not have their statements — or other evidence obtained by means of those compelled statements — used against them in a criminal prosecution.[76] In light of this ruling, departments have sought to delay administrative investigations to avoid even the slightest possibility of tainting subsequent criminal prosecutions.

However, under this approach, the administrative investigation takes so long — sometimes more than a year — that the ability to obtain reliable statements from involved officers can be seriously compromised. Another disadvantage is that accused officers (or officers involved in a lethal force incident who are not accused of misconduct) might remain paid members of the department longer than appropriate. Even if officers are placed on paid leave or reassigned to an administrative duty to avoid potential negative performance, delaying the disciplinary process nonetheless exacts a substantial drain on typically scarce government resources.

Put simply, tax dollars should not support officers who violate people's civil rights or who commit crimes. In addition, officers may have engaged in discharge-worthy misconduct prior to the alleged criminal offenses. Keeping such officers on department payrolls corrodes community confidence in police. Finally, delayed investigations may present safety risks to others: Departments may remain unaware of, and thus unable to address, critical weaknesses in equipment, communications, tactics, or training that can contribute to dangerous incidents, thereby compromising public and officer safety.

A more recent trend is to conduct administrative investigations of lethal force incidents or alleged misconduct in a bifurcated or parallel administrative review in which compelled statements from officers (and evidence derived from those statements) are walled off from criminal enforcement authorities to avoid tainting potential criminal prosecutions.[77] Departments in major cities, such as Los Angeles and Denver, have long followed this approach.

RECOMMENDATION 7.14
OPPOSE PROVISIONS THAT WEAKEN ACCOUNTABILITY SYSTEMS WHEN NEGOTIATING COLLECTIVE BARGAINING AGREEMENTS.

Union contracts are entered into after negotiations between police unions and government officials. Following negotiations, those agreements typically must be approved by a governing body of the jurisdiction (***i.e.***, city, county, etc.). Police unions and fraternal organizations, and elected officials that seek their endorsements, may try to negotiate provisions in their collective bargaining agreements or through a law enforcement officers' bill of rights that can conflict with, compromise, or undermine some of the accountability mechanisms discussed above. To ensure strong accountability systems, departments should:

Avoid provisions allowing for "recovery" and "cooling-off" periods. Certain provisions place special requirements on interviewing or interrogating police officers, such as allowing "recovery" or "cooling-off" periods after a violent incident before questioning commences.[78] These provisions may hinder investigations — officers interviewed may have a sharper recollection immediately after an incident than they would a few days afterward.[79]

Cities like Phoenix and Seattle have long demonstrated that officers interviewed prior to being relieved from their shifts are able to provide substantial detail about critical incidents.[80] Investigators who are free to conduct follow-up interviews as necessary are able to memorialize as much of the officer's untainted recollection as soon as practicable. Notably, neither law enforcement officers' bills of rights nor collective bargaining agreements provide similar "recovery" periods before police interview community members who are survivors of, suspected of, or witnesses to violent crimes or other traumatic events.

Avoid provisions that place time limits for discipline. Some provisions severely limit the time for imposing discipline — potentially compromising departments' ability to base discipline on a full, fair, and thorough iinvestigation, especially in a complex case.[81]

Regulate investigation procedures. Other provisions may regulate the finer details of a personnel investigation, such as whether or when officers accused of misconduct may view their own or fellow officers' body-worn camera footage and their previous statements prior to submitting to a recorded interview.[82] A best practice is to allow officers to view the footage only after providing an initial statement and then to allow officers to correct the original statement with explanation for the discrepancy. (For more detail, see Chapter 8.)

While officers should be given due process in disciplinary processes, collective bargaining agreements should not compromise departments' ability to determine precisely how officers have performed and to take prompt, meaningful remedial measures where warranted.


POLICE
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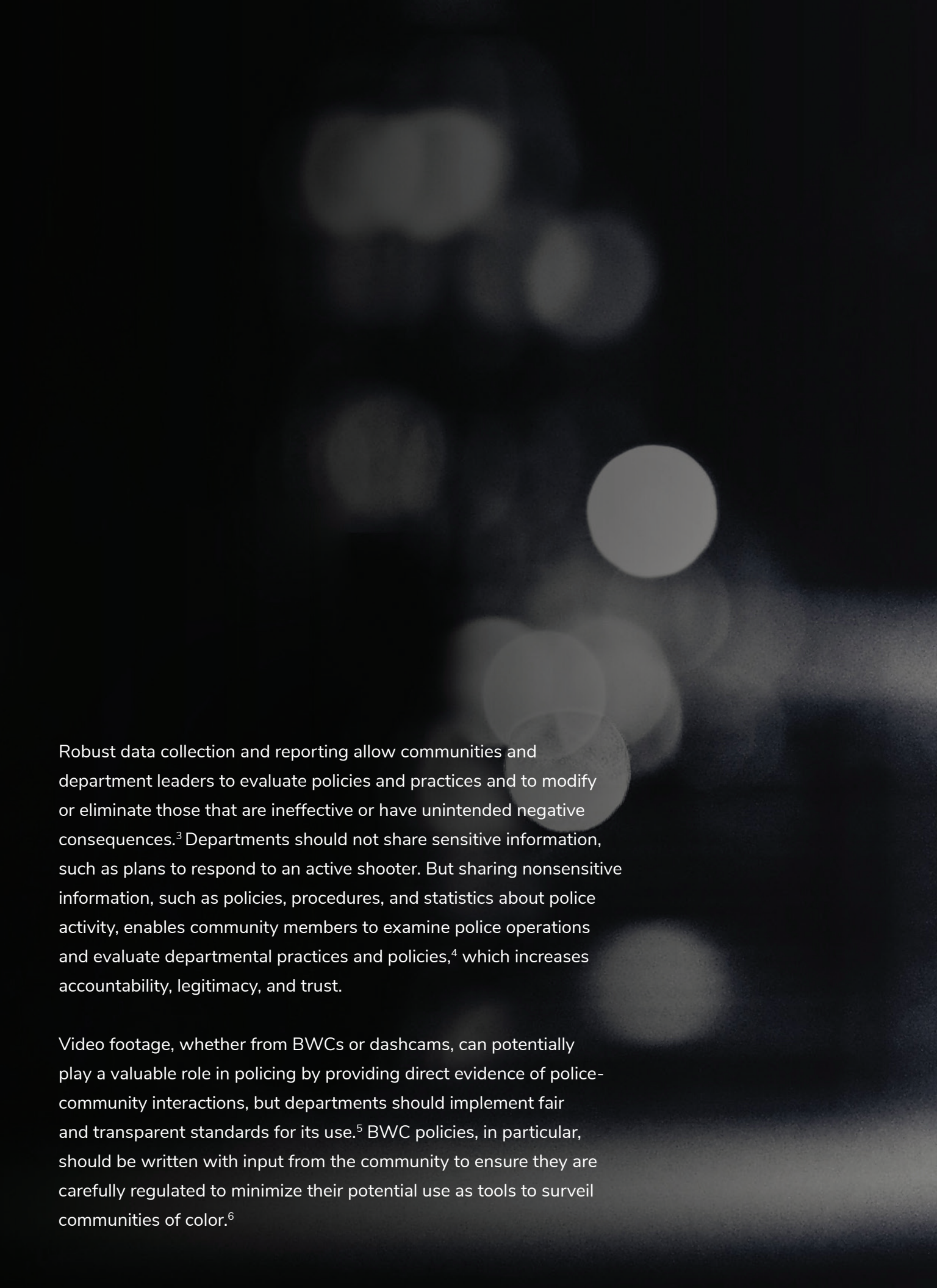
8

DATA INFORMATION AND VIDEO FOOTAGE

Transparency — like procedural justice and collaborative change — is a value that departments should accept and embrace. This chapter focuses on two primary topics related to transparency: data collection and body-worn cameras (BWCs). Both allow people in and outside of police departments to evaluate police activity and hold officers and departments accountable for their actions. Data collection allows communities and departments to analyze the effects of policies and practices, and to change them if they are ineffective or disproportionately affect particular communities. Video footage can increase transparency by providing first-hand evidence of interactions with members of the public.[1]

Indeed, without video footage, communities would never have known that, contrary to police reports, Laquan McDonald was walking **away** from officers when he was shot 16 times.[2] But accountability is not automatic without policies to ensure officers follow the proper protocols for data collection and BWC use; without safeguards in place, BWCs threaten constitutional rights and could intensify surveillance of communities of color, certain religious communities, or immigrants groups. (***Please note: While this chapter refers mostly to BWCs, the recommendations below also apply to "dashcams" and other recording devices.***)



Robust data collection and reporting allow communities and department leaders to evaluate policies and practices and to modify or eliminate those that are ineffective or have unintended negative consequences.[3] Departments should not share sensitive information, such as plans to respond to an active shooter. But sharing nonsensitive information, such as policies, procedures, and statistics about police activity, enables community members to examine police operations and evaluate departmental practices and policies,[4] which increases accountability, legitimacy, and trust.

Video footage, whether from BWCs or dashcams, can potentially play a valuable role in policing by providing direct evidence of police-community interactions, but departments should implement fair and transparent standards for its use.[5] BWC policies, in particular, should be written with input from the community to ensure they are carefully regulated to minimize their potential use as tools to surveil communities of color.[6]


BIG DATA IS
ATCHING YOU

RECOMMENDED BEST PRACTICES

With community input, departments can develop robust policies and practices around data, information, and video footage.[7] To foster transparency and accountability and protect privacy, departments should work with communities to:

8.1

Collect and publish demographic and enforcement data.

8.2

Make data and information publicly available in accessible and alternative formats.

8.3

Procure adequate systems to collect and store data.

8.4

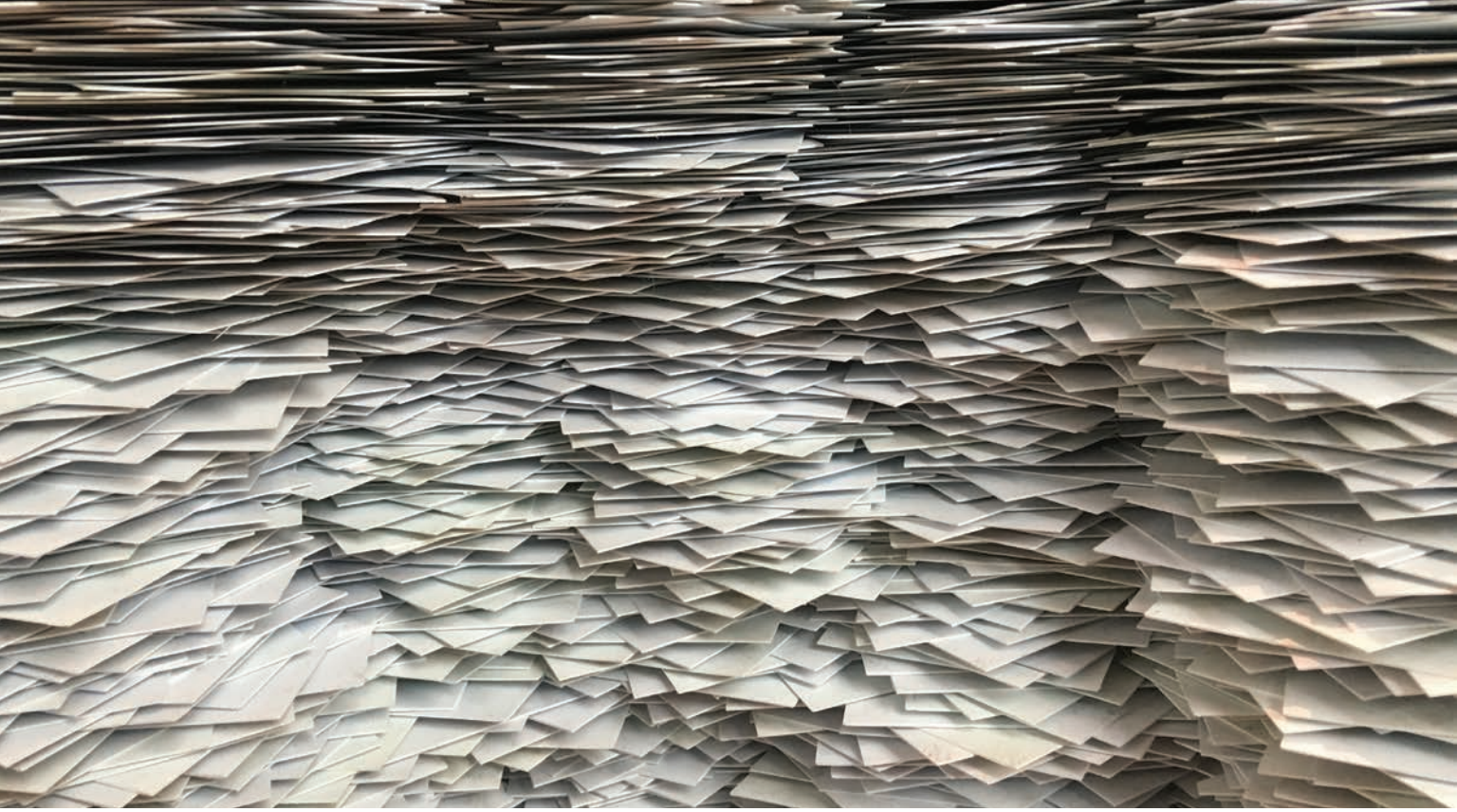
Release information about critical events in a timely manner.

8.5

Develop clear BWC policies with community input.

8.6

Implement storage practices and systems to preserve the integrity of video footage.



COLLECTING AND SHARING DATA AND INFORMATION

New technology allows police departments to easily retrieve, analyze, report, share, and store data and information about enforcement activity, such as stops, searches, citations (***i.e.***, tickets), and arrests. Yet many police departments still rely on paper-driven methods to document and store data and information. This leaves departments (and the communities they serve) in the dark about operations and needs. For example, if leaders of a paper-driven department need to know how often officers used pepper spray against juvenile suspects, they have to search for this information manually — a task so burdensome they may not attempt it.

Electronic methods vastly simplify these tasks — but can nonetheless be improved. Some departments use separate database programs that don't capture information consistently or integrate it with other data. They may, for example, use one database to record arrests and searches and another to record uses of force or misconduct complaints. Separate databases can make it difficult for officers to gather information, such as how often arrests or stops involve the use of force. If database systems aren't or can't be integrated, officers may have to collect this type of basic — and often essential — information by hand.

Several states mandate the release of data and information upon request.[8] Public disclosure laws are evolving to require police to release increasing amounts of information to the public (but usually only upon request). To obtain information, members of the public and news media must often go through a cumbersome and time-consuming process that can also be cost prohibitive (if departments charge for staff time to search for, review, and redact information).

Inefficient and burdensome processes can breed distrust among those who question police activity and have difficulty accessing information. New and emerging technologies allow for the collection and storage of vast amounts of information. Police should ***not*** use these technologies to collect and store large amounts of data about members of the public. Gathering "big data" about "criminal" intelligence raises questions about lawful police and government surveillance, especially of communities of color and religious communities. Gang databases are especially concerning because police officers can enter people's names into them (without notification) based on "gang identifiers" such as wearing a particular baseball hat, having a certain tattoo, or being seen with a known gang member.[9]

In essence, there is a significant risk that people will wrongly end up in these databases, based on innocuous signifiers or conduct, and face negative consequences (**e.g.**, wrongful arrest or deportation). Indeed, a 2016 audit of California's gang database found the names of more than 40 infants who had been designated as gang members.[10] Communities should advocate for legislation that mandates notification when people are included in a gang database so they can challenge it. California has such a law, and it provides processes for challenging inclusion.[11]

Predictive policing technologies purport to allow departments to "forecast crime" before it occurs and identify "future criminals"[12] via algorithms that analyze data. However, the very data used to "predict crime" is often biased because officers themselves may have biases that manifest in the data they collect.[13] (For more detail, see Chapter 2.) What's more, departments sometimes obtain these technologies without notifying the public or developing policies to regulate their use, which is in contravention with the best practice of seeking community input before adopting new technologies.[14]

Police departments can strengthen relationships with communities and with the broader public by making information about police activity easily accessible.[15] Data paint a full picture of department practices and challenges, which enables officers and community members to better understand police activity and to have collaborative, informed conversations about it.

BEST PRACTICES IN DATA INFORMATION AND VIDEO FOOTAGE POLICING

Transparency is a critical component of trust. Collecting and sharing data improves transparency by allowing communities to see what officers and departments are doing, which enables community members to hold them accountable. When collecting and sharing data, departments should not collect private information (such as personal characteristics, associations, or activities)[16] or use technologies that risk infringing on civil and human rights.

To play a valuable role in policing, as dashcams do, BWCs should have strict policies in place regulating their use.[17] As more departments adopt BWCs to increase accountability and transparency, they should implement policies to ensure they achieve those goals.[18] Doing so may enable departments to use BWCs in a manner that respects and protects civil and human rights by increasing transparency. Indeed, some departments report that BWCs "have made their operations more transparent to the public and have helped resolve questions following an encounter between officers and members of the public."[19] They also have the potential to increase officer professionalism, allow departments to evaluate officer performance, and reduce the number of civilian complaints.[20]

That said, BWCs increase accountability only when properly used. If policies regulating how and when to use them aren't in place, BWCs can result in disproportionate surveillance and enforcement of heavily policed communities of color, or religious or immigrant groups, raising significant privacy concerns.

Communities and departments should also consider the costs involved in the purchase and maintenance of BWCs. In assessing the

COLLECTING AND SHARING DATA IMPROVES TRANSPARENCY BY ALLOWING COMMUNITIES **TO SEE WHAT OFFICERS AND DEPARTMENTS ARE DOING,** WHICH ENABLES COMMUNITY MEMBERS TO HOLD THEM ACCOUNTABLE.

overall cost of a BWC program, communities should take into account not only the cost of the hardware but also the cost of maintaining the footage and data, such as by cloud-based storage services. Thus, even if a department receives the hardware by grant or other means (**e.g.**, some equipment manufacturers provide the equipment free if departments "rent" their cloud storage space), additional costs remain.[21] To foster transparency and accountability and protect privacy, departments should work with communities to:

RECOMMENDATION 8.1 COLLECT AND PUBLISH DEMOGRAPHIC AND ENFORCEMENT DATA.

The Final Report of the President's Task Force on 21st Century Policing (the President's Task Force Report) recommends that departments collect demographic and enforcement information about all law enforcement activities.[22] This includes data about stops, searches, summonses, arrests, and uses of force.[23]

Each officer should be assigned a unique identifier so departments can link officer-involved incidents to other data, such as misconduct complaints, while concealing officers' identities (for privacy and due process concerns). Departments should also analyze and maintain demographic and enforcement data to identify possible patterns of biased policing, misallocation of resources, or inadequate training.

Notably, departments should accurately capture demographic data, especially for Latinxs. The lack of law enforcement about Latinxs is alarming; a survey found that 40 states report data on race (**e.g.**, Black, White, Asian) but that only 15 collect data on ethnicity (**e.g.**, Latinx).[24] This is problematic not only because Latinx people are disproportionately impacted by police practices but also because the lack of Latinx data skews racial disparities between Black and White people.[25]

Specifically, classifying Latinx as "White" artificially inflates enforcement data about White people, which reduces actual disparities between Black people and White

Demographic and enforcement data should include:

- Date, time, and location of the incident.
- Actual or perceived race, ethnicity, age, and gender of people involved.
- Reason for enforcement action.
- Search conducted (if any) and whether it was consensual.
- Evidence located (if any).
- Name of officer(s) involved.

people.[26] State agencies that collect law enforcement data should set guidelines for collecting Latinx ethnicity data to report the full nature of disparities and to ensure consistency across departments.[27] Departments, too, should record information related to ethnicity when collecting demographic data, and should analyze and report data through the lens of race and ethnicity.

Some jurisdictions have passed laws mandating data collection, and communities can advocate for similar legislation at the state or local levels. Several states (**e.g.**, California, Connecticut, Maryland, Missouri, Nebraska, North Carolina, Rhode Island, Vermont, and the District of Columbia) require officers to record race and other demographic data regarding enforcement activities including traffic stops, citations, and arrests.[28]

Data analysis and "feedback loops" enable communities and departments to develop evidence-based policies to address problems with existing practices. Some departments have taken on projects to collect and analyze data. In California, the Sacramento Police Department undertook a study to examine racial profiling in its enforcement practices in an effort to increase accountability and transparency.[29] The department released several reports and continues to collect and publish vehicle stop data.[30] The city of Philadelphia, meanwhile, requires its department to collect demographic data as part of a settlement agreement in a case challenging its stop-and-frisk practices.[31]

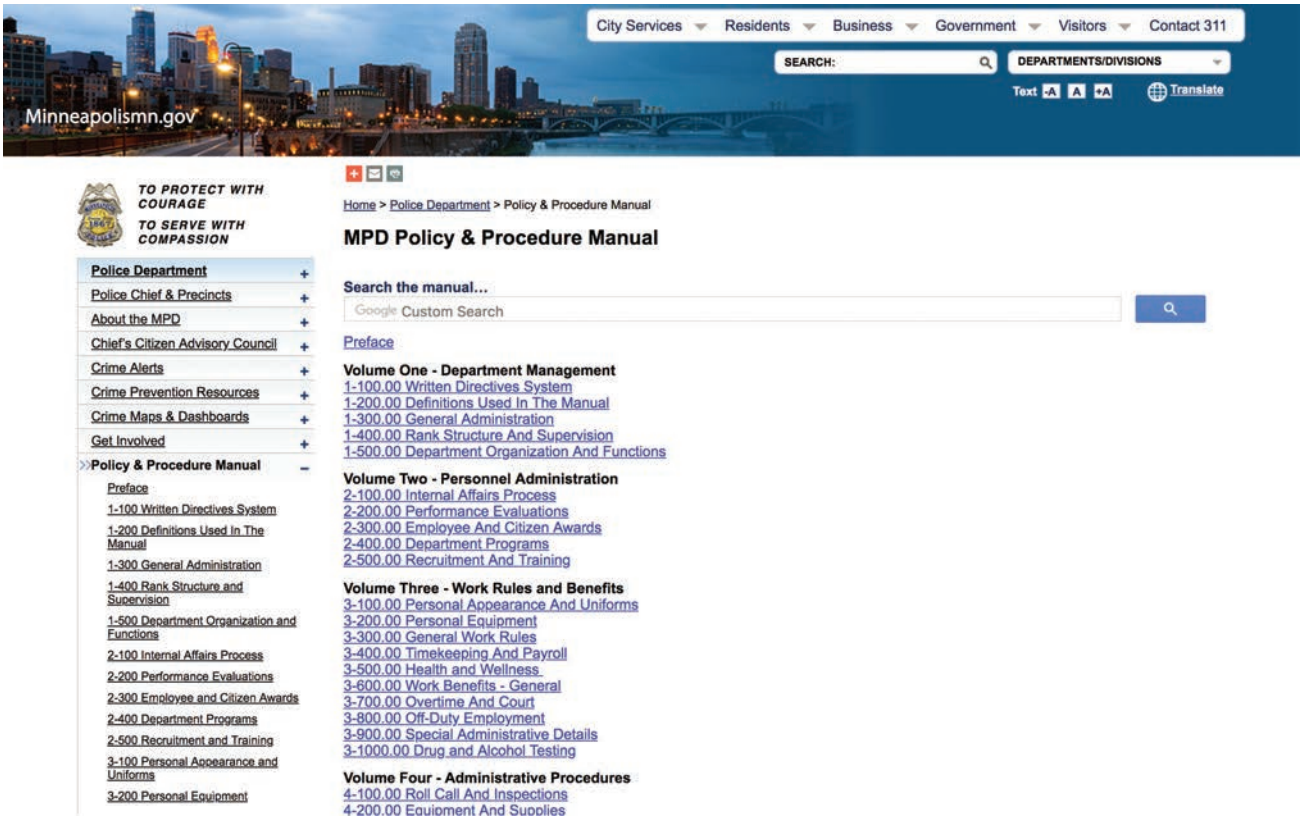
Departments should also provide data about the volume and nature of complaints. This information helps departments and communities identify patterns of misconduct, hold officers and departments accountable for their actions, and ascertain possible problems with training. The Citizens Police Data Project in Chicago makes public records requests to collect and share complaint data, but this process is costly and time-intensive.[32]

RECOMMENDATION 8.2
MAKE DATA AND INFORMATION PUBLICLY AVAILABLE IN ACCESSIBLE AND ALTERNATIVE FORMATS.

Collecting quality data is the first step toward transparency. Making data publicly available in accessible and alternative formats improves transparency. Communities and departments alike benefit from sharing data and information. Communities are able to scrutinize and understand what their local departments are doing and identify potential problems. Departments, meanwhile, foster discussion and community trust by making data public and easily accessible to all. Specifically, departments should:

Publish policies online in alternative and accessible formats. As the President's Task Force Report notes, making information about how officers do their jobs electronically available improves transparency and demonstrates a commitment to community collaboration.[33] It also allows community members to scrutinize policies and recommend changes, and it enables departments to reach people who otherwise would not know — or have an opportunity to know — how departments operate. All ***public*** information should also be available in alternative and accessible formats.

Because policy manuals are sometimes hundreds of pages long, online versions should contain searchable tables of contents. See, for example, the Minneapolis Police Department's online Policy & Procedure Manual:



Publish aggregate enforcement data online. Aggregate data let the public know what officers do on the job and what departments prioritize. Data should be aggregated by location, actual or perceived race, gender, and other factors so communities and departments can better understand whether enforcement decisions and strategies disproportionately affect specific groups.[34] This allows communities to analyze the data and recommend evidence-based policy changes.

No uniform standards currently exist for collecting or reporting basic information or data about police activity, such as officer-involved shootings.[35] Crime statistics are not always reliable sources of data, nor do they address what officers **do** in the office and in the field. Reliable enforcement data is even harder to come by; aggregate information about uses of force, stops, searches, summonses, and arrests is not typically readily available. Few departments, meanwhile, publish comprehensive information about complaints, officer misconduct, and discipline.[36]

Still, some departments and communities have made strides toward providing up-to-date data on areas of community interest and concern. In early 2018, departments in San Jose and Minneapolis began posting use-of-force data online.[37] The Seattle Police Department, meanwhile, publishes online a substantial amount of enforcement data, including contacts with people in mental health crisis, uses of force, hate/bias crimes, and "Terry stops" (***i.e.***, when officers stop people and "frisk" their outer clothing).[38]

Importantly, the public should be able to interpret and use data and information. Communities and police departments should explore how to present aggregate data in a way that promotes **true** transparency through information dashboards, maps, graphical interfaces that use icons, menus, and other visual graphics, and the like. They should also make raw data available for download so researchers, academics, and other interested parties can access and analyze it.

Collect and publish data on hate crimes and incidents. To protect marginalized groups, departments should collect, track, map, and publish data about hate crimes and incidents, especially in light of the increases in hate crimes since 2016.[39] Without these data, it is difficult — if not impossible — to track patterns of bias against people based on race, ethnicity, national origin, gender, gender identity, sexual orientation, religion, or other characteristics.

If departments don't track patterns of bias, they will be less able to identify and address them. In 2008, for example, four teens murdered Lucero Marcelo, an Ecuadorian immigrant in New York. A federal investigation found that the Suffolk County (New York) Police Department had done little to address or investigate a pattern of similar attacks that had taken place against Latinxs in the previous year.[40] In a settlement, the department agreed to collect and analyze hate crime data.[41]

Share data with allied organizations and maintain public databases. The Police Data Initiative — a partnership of the National Police Foundation, the U.S. Department of Justice Office on Community Oriented Policing Services (COPS), and other nonprofit organizations — illustrates how data collection sheds light on police operations.[42] Launched in 2015, the initiative collects a variety of data and provides it to communities and researchers in user-friendly formats. Currently, 130 police departments voluntarily participate because "they have committed to working closely with their communities to leverage open data for purposes of enhancing trust, understanding, innovation, and the co-production of public safety."[43]

RECOMMENDATION 8.3
PROCURE ADEQUATE SYSTEMS TO COLLECT AND STORE DATA.

To make data useful, departments need adequate data collection systems and technologies. When deciding which databases and systems to use, police leaders should assess data collection and information technology (IT) needs to ensure information can be synthesized. Unfortunately, many departments use different databases for different types of data, which makes it difficult — if not impossible — to aggregate and analyze. Some store data about arrests in one database and data about force incidents in another, and often, these databases can't "speak" to each other. If a report about an arrest is not linked to a report about a complaint about the arrest, then department leaders may miss critical information.

"Siloed" databases make it difficult to identify patterns of behavior by officers and departments, which undermines accountability and increases the likelihood that opportunities to improve training, policies, and practice will be missed. If databases aren't linked, departments may not be able to discern that a high percentage of on-the-job injuries arise from foot pursuits or that particular units or officers generate a disproportionate number of public complaints or lawsuits.

Departments should also track information about officer performance through computer-aided dispatch (CAD) systems, record management systems (RMS), or other performance databases. These systems can be used to track uses of force, stop reports, complaints from community members, and internal misconduct investigations, as well as compliments, diversions, positive community interactions, commendations, and awards. In addition, these systems help manage officer performance, misconduct, and exemplary conduct.

RECOMMENDATION 8.4
RELEASE INFORMATION ABOUT CRITICAL EVENTS IN A TIMELY MANNER.

In the wake of officer-involved shootings or other critical incidents, a lack of transparency compounds trauma and heightens distrust. Withholding information obscures facts and breeds anger and resentment. As such, department leaders should work with community members, elected officials, local prosecutors, officer organizations, crime victims' representatives, and others to develop policies around the release of information about critical incidents.

After an officer-involved shooting, the Las Vegas Metropolitan Police Department (LVMPD) worked with community partners, representatives of police unions, and a local prosecutor to establish a protocol for the release of information.[44] Under the arrangement, the LVMPD releases information within 48 hours of an officer-involved shooting. This information includes the involved officer's name, rank, tenure, and age. Within 72 hours, after department leaders have been briefed, the LVMPD arranges and holds a press conference to release key facts about the incident to the news media and the public.[45] During the conference, leaders explain what transpired and provide detailed information, such as aerial maps, surveillance video, evidentiary pictures, identification of officers and individuals involved, and information about weapons used.[46]

When possible, leaders should also release existing BWC and dashboard camera (**a.k.a.** "dashcam") footage. In July 2018, the Chicago Police Department released BWC footage the day after a fatal shooting, in part to calm community tensions.[47] This marked a dramatic departure from 2014, when the department waited more than a year to release dashcam footage of the shooting of Laquan McDonald, which deepened distrust and sparked protests about his killing and the city's delay in releasing it.[48]

Increasingly, departments are establishing clear guidelines for the release of critical incident information. In April 2018, the Los Angeles Police Commission shared its criteria for publicly disclosing and releasing information about police activity and providing department leaders with clear guidance on how to improve transparency and accountability during criminal investigations.[49]

RECOMMENDATION 8.5
DEVELOP CLEAR BWC POLICIES WITH COMMUNITY INPUT.

BWCs bring about accountability only if departments have policies to ensure officers use the technology when required, as required, and without infringing on privacy interests. Community members should help develop BWC policies and training, and departments that haven't yet adopted BWCs should engage the public when first considering using them in order to understand and address concerns about their use — and possible misuse. Communities can also urge city officials to pass legislation that requires public notice and gives community members the opportunity to provide input before the adoption of BWCs (or other technologies).[50]

The Los Angeles Police Department's Video Release Policy for Critical Incidents

Critical Incidents: This policy applies to video imagery concerning the following types of incidents:

- Officer-involved shootings, regardless of whether a person was hit by gunfire (this does not include unintentional discharges or officer-involved animal shootings);
- A use of force resulting in death or serious bodily injury requiring hospitalization;
- All deaths while an arrestee/detainee is in the custodial care of the Department unless there is no preliminary evidence of any of the following: misconduct, a use of force, or an act committed by an arrestee/detainee that appears intended to cause injury or death; or,
- Any other police encounter where the Commission or the COP determines release of video is in the public's interest.

Video Sources: The sources of video that may be released pursuant to this policy include, but are not limited to, body-worn camera video, digital in-car video, police facility surveillance video, captured by the Department's use of a small Unmanned Aerial System, and video captured by third parties that is the Department's possession.

Privacy Protections. Video shall not be released where prohibited by law and court order. Further, consistent with the protections afforded juveniles and the victims of certain crimes, video imagery shall be redacted or edited to the extent necessary to ensure that the identity of such individual(s) is protected. Where the video cannot be sufficiently redacted or edited to protect the person's identity, It shall be withheld. In addition, video may also be redacted or edited to protect the privacy interests of other individuals who appear in the video. In each instance, such redaction may include removing sound or blurring of faces and other images that would specifically identify involved individuals, sensitive locations, or reveal legally protected information. Further, where possible, such redaction or editing shall not compromise the depiction of what occurred during the incident.

Source: Office of the Chief of Police, L.A. Police Dep't, Administrative Order No. 6: Critical Incident Video Release Policy - Established (Apr. 13, 2018), http://assets.lapdonline.org/assets/pdf/Administrative%20Order%20No.%206.pdf.

Clearly state when officers are required to activate BWCs. BWCs can potentially resolve conflicts about police encounters and shed light on decisions leading up to critical incidents. For this reason, departments should work with communities to develop clear policies about when officers are required to activate them.[51] Some departments require officers to activate BWCs when they leave the station and deactivate them when they return at the end of their shifts. Others require officers to record law enforcement activities and encounters with the public, including informal conversations with community members.

Critics argue that these approaches are too broad because they "undermine community members' privacy rights and damage important police-community relationships."[52] A narrower approach requires officers to activate cameras when responding to service calls and during law enforcement-related activities, such as stops, arrests, searches, and pursuits — but not during informal encounters.[53] Some argue that this approach is not broad enough because it gives officers too much discretion over which situations to record, which may result in the failure to record important encounters. An interaction intended as a welfare check, for example, could escalate quickly, and officers may not have enough time to turn on their cameras.

This report recommends a balanced approach: Departments should require officers to record all encounters ***with safeguards*** to protect privacy and preserve community relationships.[54] This approach

requires officers to inform individuals that they are being recorded if possible[55] (unless, for example, they are pursuing someone). This way, officers notify people that they are being recorded and protect youth, victims of sex crimes, and other vulnerable people from being recorded without consent.[56]

BWC policies should also define what is meant by "encounters," provide examples of them, and clearly state exceptions, such as recording lawful behavior (**e.g.**, political or religious activity and conversations with confidential informants or child victims). This will help officers understand the policy and reduce ad hoc, discretionary approaches to recording.

Some states require departments to develop written policies regarding BWCs. Washington state requires departments to articulate when officers should activate and deactivate cameras, how they should respond when someone does not want to communicate on camera, and when to inform the public that they are being recorded.[57] Maryland, meanwhile, created a commission to issue recommendations regarding best practices for BWCs.[58]

To increase accountability and adherence to BWC policies, department leaders should detail consequences for noncompliance and require officers to provide written justifications when they violate BWC policies. As discussed below, department leaders should also prohibit editing, erasing, copying, sharing, altering, or distributing BWC recordings.

Train officers to use and maintain BWCs. To ensure that BWC policies are properly implemented, officers should be properly trained to use and maintain them. Officers should, for example, be trained to immediately activate BWCs at the beginning of encounters unless otherwise directed (**e.g.**, when in contact with a child victim). BWCs should record 30 seconds of video (though typically not audio) prior to activation.[59] Timely activation ensures that entire events are recorded, including the moments leading up to them. Training should also cover the responsibilities for and restrictions on using BWCs, such as informing people that they are being recorded (again, when possible).

Officers should also be taught how to maintain BWC equipment to ensure that it functions properly. They should be trained to check BWCs at the beginning of every shift and to notify supervisors immediately if they are not working properly or are damaged. Training should also include practices to ensure (1) the integrity of recordings; (2) that the footage "chain of custody" is documented (***i.e.***, who has possessed the footage and whom they have passed it along to and when); and (3) disciplinary action for improperly editing, erasing, copying, sharing, altering, or distributing camera footage.

Develop policies around the release of video footage. In general, departments should release video footage to those seeking to file a complaint[60] and to next of kin in police-caused fatalities.[61] Privacy concerns should be addressed before footage is released to broad, public audiences. To

protect privacy, departments can blur bystanders, mute audio containing personal information, and ensure that public statements do not reveal private personal information such as gender identity, sexual orientation, immigration status, or place of birth.

Community and department leaders should mandate the public release of BWC, dashcam, or other footage of critical force incidents within a reasonable time (so long as policies don't violate state or local law). And department leaders should work with community members to determine reasonable periods for release that consider both departmental concerns about investigations and community interests in information and transparency. In general, though, departments should release footage as soon as possible, especially after officer-involved shootings, to ease community tensions, address community concerns, and improve transparency.

Some state and local "open records" laws restrict whether and when departments can release BWC footage. For this reason, community members should research laws and policies and advocate for change if necessary. Some argue that releasing footage prejudices witnesses and/or potential jurors and interferes with investigations.[62] The criminal justice system has mechanisms in place that address these concerns, including voir dire (the process through which attorneys identify bias among potential jurors) and witness cross-examination.

Prohibit officers from watching video footage before filing reports for incidents under investigation. Department policy should prohibit officers from viewing footage before filing a report, providing a statement, or being interviewed about an officer-involved shooting, death in custody, criminal matter, or incident in which they have been accused of misconduct.[63] In such cases, officers should be allowed to view footage ***after*** writing reports and/or providing accounts and to edit to initial reports ***after*** viewing them and explaining discrepancies.[64] In 2015, the attorney general of New Jersey implemented a strong policy regarding potential criminal conduct (as opposed to administrative investigations); it prohibits officers from viewing video footage in all officer-involved shootings or use-of-force investigations under review by a prosecutor without express permission from the prosecutor.[65]

Require supervisory review of BWC footage. BWCs provide documentary evidence of police encounters and thus serve as an important tool for accountability and transparency. To this end, departments should implement policies for supervisory review and periodic audits of BWC footage. Specifically, supervisors should routinely — and, ideally, monthly — review footage of stops, searches, arrests, and force incidents to ensure that they comport with officer accounts and that actions taken align with department policy and local, state, and federal laws.

Supervisors should also conduct periodic audits of officers' video footage to ensure that officers are performing according to department standards, and misconduct should be addressed by intervention and/or disciplinary processes. (For more detail, see Chapter 7.) For example, the Maplewood (Minnesota) Police Department spells out its review requirements accordingly:

> At least two times per month, supervisors will randomly review BWC recordings made by each officer they supervise to ensure the equipment is operating properly and officers are using the devices appropriately in accordance with policy, and to identify any performance areas in which additional training or guidance is required.[66]

The Greensboro (North Carolina) Police Department underscores the need to review video for training and accountability purposes:

> All supervisors are expected to routinely review BWC recordings created by their direct subordinates. … [D]uring this review supervisors shall be viewing multiple videos from each officer under their supervision, looking at the content of the video. While viewing these videos supervisors should be looking for any videos that would be beneficial to other officers in terms of training videos.
>
> Monthly, the Body Worn Camera Administrator will audit randomly selected squads. The number of squads selected for auditing, and the frequency of the selection process, will be determined by the Professional Standards Division to ensure that the number of employees audited each month represents a minimum of ten (10) percent of the total number of employees eligible for auditing.[67]

To ensure accountability, department policies should include discipline and other interventions (**e.g.**, additional training) for BWC violations. (For more detail, see Chapter 7.)

Prohibit the use of facial recognition software with BWC footage. In 2016, a Georgetown Law report found that nearly half of U.S. adults' photos (48 percent) had been entered into some type of facial recognition network.[68] These networks use facial recognition software to analyze high-resolution images. Specifically, they use biometrics from BWC footage (or other footage or photos) to map out people's facial features.[69] They then compare that information with other images in a database to find matches.

Leading civil rights organizations oppose the use of facial recognition technology because they fear it will turn BWCs into a pervasive surveillance tool that will disproportionately impact communities of color.[70] The software, in fact, generates a higher rate of false matches for people of color, and especially women of color.[71] The technology can also disproportionately impact people of color

because of discriminatory policing practices: Black people tend to be arrested at disproportionate rates and thus are overrepresented in database systems that rely on mug shot databases.[72] Because of the potential for misuse and false positives, departments should not use facial recognition software to scan video footage.[73]

Another concern (yet to be resolved in law) is whether facial recognition scanning constitutes a "search" under the Fourth Amendment (which protects people from unlawful searches and seizures). Recent court decisions reflect judicial wariness about warrantless use of technologies that enable surveillance of individuals — even if they are on public property. As the U.S. Supreme Court has recently observed, "A person does not surrender all Fourth Amendment protection by venturing into the public sphere."[74]

RECOMMENDATION 8.6
IMPLEMENT STORAGE PRACTICES AND SYSTEMS TO PRESERVE THE INTEGRITY OF VIDEO FOOTAGE.

Departments should develop video retention policies with community input. These policies should address the format and location of video storage (**e.g.**, cloud storage) and storage length. Storage can be expensive, especially for large amounts of data. And archiving footage for long periods undermines privacy rights of people who may not want video of themselves in police databases. Policies that require storage for only a few months, in contrast, risk erasing information that could be used as evidence — a potential problem in cases where complainants do not come forward for long periods.

In general, departments should delete footage that hasn't been flagged (**e.g.**, footage that's related to an investigation) after six months.[75] Policies should also include provisions to preserve data related to criminal investigations until cases are closed. Once footage is stored, departments should have a cybersecurity plan in place to protect it.

Some states regulate camera footage retention policies. Oregon, for example, requires police departments to retain data that do not relate to criminal investigations for at least six months but not more than 30 months.[76] California requires police departments to develop best practices for downloading and storing BWC data, including storage requirements and measures to prevent tampering with data.[77]

Because BWC and other camera footage is critical evidence in some criminal and civil cases, "chain of custody" policies regarding the handling of footage are essential. Departments should develop policies to ensure footage is not altered or tampered with during this process so it is admissible as evidence in court, and they should lay out specific storage procedures to ensure the evidentiary chain of custody is preserved.[78]

9

LEADERSHIP AND CULTURE

Organizational culture and leadership are central to policing in America. Leadership plays a critical role in establishing, influencing, and maintaining police culture, and culture plays a critical role in the effective operation of police departments.[1] Exactly ***how*** leadership influences departments has been the subject of some study.

Organizational science posits that police organizational culture — with its ***hierarchies***, ***incentive systems***, and ***social values*** — influences the reasoning and behavior of officers in systemic ways that have important implications for police reform.[2] Indeed, police misconduct doesn't occur in a vacuum, with individual officers deciding to ignore norms, rules, and expectations on their own.[3] It arises out of organizational culture, which influences officers' judgment, biases, decision, and conduct.[4]

Healthy departmental cultures are inclusive, position officers as “guardians” of public safety, and hold officers accountable for their actions. Toxic departmental cultures, on the other hand, create and perpetuate an “us-versus-them” mentality that pits officers against communities; position officers as “warriors” against anarchy and chaos; and do not mete out swift and appropriate discipline when necessary, which allows misconduct to fester.[5]

Department leaders shape departmental culture. Strong leaders committed to the values of fairness, equity, procedural justice, legitimacy, transparency, and accountability will put in place the systems to promote these values and address behaviors in contravention with them. Indeed, to improve public safety and create stronger human connections with the communities they and their departments serve, leaders must set the foundation to instill these values in their officers.[6] Without strong leadership, what’s taught through policies and training, and broader police reform, won’t take hold.

RECOMMENDED BEST PRACTICES

This chapter takes a step back from the relationship between communities and policing structures to discuss best practices for fostering strong leadership and creating a culture that advances values consistent with communities. To create a culture that promotes and supports community policing, departments should:

9.1

Ensure that core departmental values reflect community values and communicate them to all department members.

9.2

Develop specific and actionable strategic plans.

9.3

Create opportunities to actively develop leadership skills for all personnel.

9.4

Develop performance-based requirements for promotion.

9.5

Prioritize diversity and create a culture of equity and inclusion by working to eliminate racial, ethnic, and gender bias in the workplace.

9.6

Ensure that field training incorporates core values and communicates them to new officers.

OBSERVATIONS ON LEADERSHIP AND CULTURE

While substantial research has been conducted on leadership in the private sector, research on leadership in law enforcement remains comparatively underdeveloped.[7] When discussions of police leadership do occur — whether in institutional reports, in conversations among chiefs, or in op-eds in the news media — the consensus is that police executives are the key actors in shaping departments' effectiveness and culture and ensuring that departmental values reflect community values of fairness and justice.[8]

There is no single leadership approach to running a successful police department. Indeed, the approach taken must be tailored to the individual leader, the organization, and the community. There are, however, some common practices that police leaders pursue to meet the needs of both their employees and the communities they serve.

Within departments, chiefs have unique powers and responsibilities, including serving as the public face of the organization. But chiefs, command staff, and senior leaders cannot do everything alone, and officers play important leadership roles as well. "It is an established principle in policing that firstline supervisors — sergeants — play a critical role in directing and controlling the behavior of officers in police-citizen interactions."[9]

In most medium and large departments, patrol officers rarely interact with senior leaders. For these officers, the "boss" who is most influential and important — that is, the one who approves vacation requests, supports their work, and holds them accountable — is their immediate supervisor, the sergeant. Sergeants are on the front line of delivering quality service, implementing departments' strategies and programs, and ensuring accountability among the rank and file. They also directly supervise approximately 85 percent of agency personnel, serve as the "eyes and ears" of the officers on the ground, train and mentor officers, and help reinforce department policies.[10]

Generally, police culture refers to departmental beliefs and processes that

influence how officers do their jobs. Culture manifests formally, in policies, procedures, and training programs, and informally, in the decisions and actions of those who are recruited and hired by the department.[11]

Leaders seeking to advance community policing must attend to culture because, ultimately, policy is only as good in practice as it is on paper if it is embraced and implemented throughout departments. In other words, "[o]rganizational culture eats policy for lunch."[12] Training and formal rules, of course, can't cover every situation that officers face. In the absence of rules or procedures, officers will fall back on behavior that conforms to their department's cultural norms,[13] many of which are set and shaped by leaders.

Officers face new and unique situations daily, often on their own and without supervision. With so much discretion over their actions, officers' beliefs, attitudes, and biases affect how they interact with the public. "Patrol officers most directly impact the community's perception of the agency[,]"[14] which is why values and ethics matter. Police departments must practice the values of fairness, equity, and justice, both internally and externally, with the communities they serve.

Police departments, like other organizations, can be resistant to change. Indeed, the culture of "the thin blue line" — the idea that police protect society from anarchy and chaos — is deeply embedded in many police departments. This mindset heightens tension and widens the separation between departments and communities by propagating an "us-versus-them" mentality.

Generally speaking, however, law enforcement and the public share the same goal: to live and work in safe communities. Reframing the narrative of police-community interaction away from opposition and around a shared set of goals will promote a healthier policing culture and a stronger society.[15]

BEST PRACTICES IN LEADERSHIP AND CULTURE

Chiefs and other department leaders are uniquely empowered to shape departmental culture and ensure it reflects community values. But they cannot create culture change on their own. To adopt the values of 21st-century policing in their departments, they must work closely with colleagues and community members.

Chiefs and other department leaders can create buy-in for culture change via procedural justice — that is, through transparency, communication, and opportunities for input — during the decision-making process. This will guide how department members view their roles and behaviors and enable them to communicate to community members that their voices are heard. Ideally, leadership, organizational culture, and communities work together toward the common goal of public safety. To create a culture that promotes and supports community policing, departments should:

RECOMMENDATION 9.1
ENSURE THAT CORE DEPARTMENTAL VALUES REFLECT COMMUNITY VALUES AND COMMUNICATE THEM TO ALL DEPARTMENT MEMBERS.

Chiefs and other department leaders are responsible for establishing a set of departmental values and communicating them throughout their departments. The most credible and enduring way to do this is to consistently behave in a manner that reflects the department's stated values; that is, leaders must "walk the talk."

Additionally, they ensure that officers at all levels have ample opportunity to provide meaningful input and to participate in conversations about organizational culture. Internal legitimacy hinges on two factors: leadership behavior and opportunities for meaningful input. External legitimacy is achieved when leaders work with community members to develop values that reflect the community's priorities, ideals, and concerns.

Effective leaders also ensure that administrative and operational functions reflect departmental and community values. In the administrative arena, this means they make sure that departmental values are reflected externally in official policies, procedures, and rules, and internally in regulations, audits, performance reviews, and disciplinary processes. Values provide the framework for evaluating the performance of both individual officers and entire departments.

Chiefs and other department leaders also ensure that day-to-day operations, training, and promotions align with departmental and community values. Instructional materials and training instructors socialize new hires and existing employees to the department's ethos. The selection of training academy instructors and field training officers (FTOs) embodies departmental and community values. Leaders' decisions regarding promotion depend in part on whether officers have demonstrated commitment to the department's core values. This shows others in the organization that embracing these values is necessary for professional advancement.

While a department's priorities may vary depending on a community's concerns, priorities, and unique challenges, leaders in community-centered departments emphasize the following principles to build trust and legitimacy both within the department and with the public. Specifically, leaders should:

Adopt and implement a "guardian" mindset. To build a shared purpose with the community — one where the police and the public work together to coproduce public safety — leaders establish that their agencies are guardians of the community and that their primary role is to protect and serve. To distinguish between perceptions of officers as warriors and officers as guardians, leaders

communicate that officers must ***master*** the skills of a warrior to protect the public, themselves, and their fellow officers (as did the four officers who were shot when responding to the mass shooting at a Pittsburgh synagogue in October 2018). But they stress that officers must **serve** in the role of a guardian. The warrior mindset, which reinforces "us-versus-them" thinking, is often ingrained before new recruits spend a single day on the job, thanks to training modeled on military boot camps.[16]

To move toward a guardian culture, leaders should review all elements of department messaging and training curricula to ensure they reflect the ethos of protecting and serving all members of the community. They should also develop policies and training with communities that are rooted in the principles of guardianship and that reinforce a dedication to protecting communities and preserving public safety.

In New Jersey, for example, the Camden County Police Department has instituted a policy requiring officers to drive gunshot victims to a hospital if doing so is faster than waiting for an ambulance.[17] On the other coast, the Washington State Criminal Justice Training Commission (WSCJTC) reevaluated its training program and eliminated militaristic protocols that promote a warrior culture, such as imposing fear and humiliation by screaming and berating recruits and displaying posters of skulls and crossbones in classrooms.[18]

Instead, training officers now coach and encourage recruits to push through physical limits, and they replaced posters with themes of deadly threats with a mural of the U.S. Constitution that reads: "In These Halls … Training the Guardians of Democracy."[19] In short, the WSCJTC decided to treat ***recruits*** with dignity and respect because it wanted recruits to treat the **community** with dignity and respect. Training officers now act as role models to respect and admire — rather than as commanders to fear.

Operate in a procedurally just manner — both externally and internally. External procedural justice refers to the way that police officers and departments treat the people with whom they interact.

FOUR CORE PRINCIPLES OF PROCEDURALLY BEHAVIOR:

1. **Treat people with dignity and respect.**
2. **Give individuals 'voice' during encounters.**
3. **Be neutral and transparent in decision-making.**
4. **Convey trustworthy motives.**

Source: President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 10 (citing Lorraine Mazerolle, et al., Legitimacy in Policing: A Systematic Review, The Campbell Collection Library of Systematic Reviews 9 (2013)), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

Internal procedural justice applies to practices and relationships within police departments. Research shows that officers who feel more respected by their leaders and coworkers are more inclined to accept and comply with departmental policies.[20] Department leaders can foster a culture of internal procedural justice by seeking input on their department's core values, setting and making clear behavioral expectations, and consistently applying policies, procedures, and decision-making processes.

Importantly, internal procedural justice leads to external procedural justice.[21] When officers are treated fairly and with respect, they are more likely to mirror that treatment when they interact with members of the community.

Ensure and improve transparency and accountability. Even the most perfect set of values means nothing if it is not supported by robust accountability systems that impose real consequences for violations. To that end, chiefs and other leaders at community-centered departments develop and clearly communicate accountability structures that impose consequences for violations of departmental norms and mete out consequences consistently.[22]

Similarly, departmental values are reflected in the way leaders evaluate officer performance. Leaders who promote community policing know that "we measure what we value." As such, they evaluate officers based on metrics that emphasize values like de-escalation and procedurally just policing. And they ensure that their departments collect and analyze robust performance data that paint a full picture of how officers conduct themselves in the community. This data include not only officers' use of force, stops, arrests, and other law enforcement activity but also positive community interactions, use of de-escalation tactics, and other community-based metrics.

As the Final Report of the President's Task Force on 21st Century Policing emphasizes, leaders should promote transparency by posting departmental policies for public review and by making data on stops, summonses, arrests, reported crimes, and other law enforcement activity readily available to the community.[23] (For more detail, see Chapter 8.) In addition, when a major incident occurs, including instances of misconduct, the chief and other department leaders should communicate with the community and media quickly and honestly, sharing as much information as possible. Taking responsibility for the actions of the department and its members creates ***real*** accountability.

Effective leaders develop internal mechanisms to assess their own performance as well. They seek input from officers on policies, procedures, and tactics to assess how they affect their ability to do their jobs safely and effectively. Without regular input, leaders risk losing touch with the rank and file, who are directly affected by department policy and have daily contact with the community. This input helps leaders take the pulse of their departments and creates work environments in which officers believe their voice matters.[24]

Commit to engaging and promoting input from the community. As the public face of their departments, community-centered chiefs engage regularly with members of the community to both maintain departmental legitimacy and demonstrate the importance of community input to the rest of the department. Chiefs who fail to show respect for the people their departments serve can hardly expect their officers to do the same.

As discussed in Chapter 1, chiefs and other department leaders can gather community input in departmental policy and practice in a variety of ways. They can work with the community when developing new policies; involve the community, local nonprofit organizations, and experts when recruiting and training new and existing officers; regularly interface with the public through neighborhood meetings and listening sessions; and maintain open lines of communication with community representatives.

RECOMMENDATION 9.2 DEVELOP SPECIFIC AND ACTIONABLE STRATEGIC PLANS.

Strategic plans help departments establish long-term goals and develop action plans to ensure success. Effective strategic plans state the department's commitment to addressing community concerns and goals or priorities, such as preventing crime, strengthening community partnerships, and increasing transparency. When developing strategic plans, effective leaders first survey the community to understand community members' values, needs, and views of the department's performance. Because there is rarely one monolithic community perspective, effective leaders engage with all segments of the community — especially those who don't have a strong voice or are disenfranchised due to race, poverty, or lack of opportunity.

Effective leaders also survey officers to ensure that strategic plans incorporate their on-the-ground experiences and desires. Once community and officer views are collected, leaders can host community planning sessions, where community leaders and members can learn about and offer input into the department's goals.

To ensure that all members of the community have the opportunity to participate, leaders can hold sessions in a variety of locations and provide opportunities for the public to access information and offer feedback in person, by mail, and online. Departments can begin to execute their strategic plans by implementing three to five priorities each year and regularly assessing progress.[25]

"OFFICERS WHO OPERATE IN A PROCEDURALLY JUST CULTURE ARE MORE LIKELY TO REFLECT THAT CULTURE IN THE FIELD. LEADERS MUST BE INTENTIONAL IN BUILDING AN INTERNAL CULTURE BASED IN TRUST SO THEIR OFFICERS CAN DO THE SAME IN THE COMMUNITY. BUILDING TRUST REQUIRES BOTH COURAGE AND SKILL."

– SUE RAHR,
EXECUTIVE DIRECTOR, WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION; FORMER SHERIFF KING COUNTY, WASHINGTON.

RECOMMENDATION 9.3
CREATE OPPORTUNITIES TO ACTIVELY DEVELOP LEADERSHIP SKILLS FOR ALL PERSONNEL.

The skills that make for a good patrol officer differ from those that make a good police executive. In the field, officers react to the world they encounter and must respond quickly to service calls or community problems. Running a police department, meanwhile, requires forward-thinking, strategic, and deliberate action; it requires actively steering the organization and its personnel toward a vision of success, rather than reacting to a situation, stabilizing it, and moving on. Strategic leadership manifests in a number of ways, from implementing a strategic plan that emphasizes both building community relationships ***and*** addressing crime to developing programs to improve interactions with vulnerable populations.

As direct supervisors, sergeants occupy critical leadership roles in police departments because they are responsible for ensuring "that the vision and goals of a police chief or sheriff are put into effect at the street level."[26] As they transition from officer to sergeant, leaders must develop new skills in management and development.[27] These skills are especially needed if they are managing officers who were formerly their peers.[28] Yet, officers promoted to sergeant rarely receive much, if any, specific training in their substantial, new responsibilities — even though they have the most direct involvement with officers and are responsible for ensuring accountability, evaluating performance, and promoting the agency's culture.[29]

Police departments that cultivate effective leaders develop initial and ongoing training for new sergeants that provide general skills in leadership and supervision as well as department-specific skills. Training might address how to properly handle a force incident, reinforce desired officer performance, or identify officers who may be struggling with personal or professional problems.

Although there is no national standard-bearer for law enforcement leadership training, effective leaders often look to local academic partners, nonprofit

organizations, and other community partners to develop a set of standards that reflect evidence and research-based practices as well as community values.[30]

Police departments usually offer training upon promotion, but these trainings do not typically focus on leadership skills, which teach officers how to influence groups and systems to address complex problems and needs.[31] For this reason, effective leaders develop standards and training not only for sergeants but also for members at all departmental levels, from recruits to executives.[32] Ideally, these standards are easily accessible to all department personnel, as well as to the public, so that expectations for leadership are set by both law enforcement officials and members of the community.

One program that focuses on training police leaders to intentionally establish a procedurally just culture is the WSCJTC's 21st Century Police Leadership Program (21CPL).[33] 21CPL is built around three foundational leadership capabilities: emotional intelligence, effective communication, and agency culture. It focuses first on understanding and managing one's own motivations and behavior to influence the behavior of others.

With use of personal assessments, e-learning modules, customizable self-study, innovative classroom design, and virtual peer learning groups, the program gives officers the skills they need to create just relationships with the communities they serve. Emotional intelligence, for example, is a skill that officers draw on when they interact with members of the community. The program is being pilot-tested as of this writing and will be offered as an open source course in the summer of 2019.

Leadership training also promotes diversity at the command and executive levels. Ideally, leaders reflect the diversity of the communities they serve, but, unfortunately, this is rarely the case. One reason is that departments frequently use systems that promote officers based on seniority, which disadvantages people of color and women, who are relative newcomers to policing and who have historically been excluded from senior positions.[34] (For more detail, see Chapter 10.)

RECOMMENDATION 9.4
DEVELOP PERFORMANCE-BASED REQUIREMENTS FOR PROMOTION.

In many jurisdictions, becoming a sergeant is simply a matter of applying for the position, meeting minimum standards, and passing a civil service examination, which typically tests knowledge of jurisdictional policies, rules, and regulations. Promotion — at least to the lower leadership positions — usually hinges on these criteria rather than on past performance.

Promotional decisions should, of course, be based in merit. But department leaders should also consider the performance, qualities, and characteristics that officers exhibit throughout their careers. They should ask themselves:

- Do candidates for promotion have positive work histories?
- Have they engaged the community and participated in positive outreach to build relationships? Have they engaged in misconduct and received discipline?
- Do they have a particularly significant history of commendations or complaints from the public about their performance?
- Do their former supervisors regard them highly? How do officers and subordinates who have served with or under them regard their performance?

Ultimately, even if an officer scores well on a test or proceeds with high marks through a civil service process, promotion in a police organization should depend on additional factors. It should be based on the type of holistic decision-making that informs promotional decisions in the private sector, which consider performance history, productivity and results, and alignment with organizational culture.

RECOMMENDATION 9.5
PRIORITIZE DIVERSITY AND CREATE A CULTURE OF EQUITY AND INCLUSION BY WORKING TO ELIMINATE RACIAL, ETHNIC, AND GENDER BIAS IN THE WORKPLACE.

People of color and women have long been — and still remain — underrepresented in policing. As discussed in Chapter 10, increasing diversity should be a priority in every police department, and efforts to do so must be coupled with policies and procedures that ensure fair and just treatment toward candidates from groups traditionally underrepresented in policing. Effective leaders recognize that racial, ethnic, and gender bias in police-community relations can manifest within departments, so they work to eliminate workplace biases, promote diversity, and create a culture of equity and inclusion.

This is an important goal, as the U.S. police force remains predominantly White. In 2013, roughly 73 percent of police officers were White, 12 percent were Black, 12 percent were Hispanic or Latinx, and 3 percent were Asian, Native Hawaiian, Pacific Islander, American Indian, or Alaska Native.[35] More than half of all officers (56 percent) believe that officers are treated the same — regardless of race or ethnicity — when it comes to promotions and assignments in departments, according to a poll conducted by the Pew Research Center.

But officers respond differently to this question depending on their racial background. Sixty-one percent of White officers believe that officers of color and White officers are treated similarly.[36] But more than half (53 percent) of Black officers believe White officers are treated **better** than officers of color.[37] Racial and ethnic diversity matters. It increases trust between police officers and the communities they serve, helping to defuse tension and increase the perception of fairness and justice.[38]

There are also gender disparities in policing.[39] In 2013, women comprised only 12 percent of full-time sworn officers in local agencies.[40] This yawning gender gap is the result of discrimination in the hiring process and is compounded by the fact that "women [officers] often face discrimination, harassment, intimidation, and are maliciously thwarted, especially as they move up the ranks."[41] The male-driven culture of policing, coupled with the lack of internal support systems for women, causes female officers to feel unsupported.[42]

Studies show that women have a positive influence on how departments interact with communities and the tactics that officers use. Female officers, for example, generally use less force (lethal and nonlethal) than their male counterparts.[43] The reason for this is unclear, but experts suggest it may be because women are more likely to use communication skills to de-escalate confrontations, which encourages alternatives to force and improves community relations.[44]

To recruit more women and people of color and ensure fair and nondiscriminatory treatment on the force, leaders should strive to eliminate racial, ethnic, and gender bias in the workplace. Chiefs and other department leaders are responsible for setting a tone of inclusion and respect within departments and creating a culture in which racism, sexual harassment, and discrimination are not tolerated. This can be achieved through policies that prohibit discrimination in the workplace and training that addresses bias in the workplace.

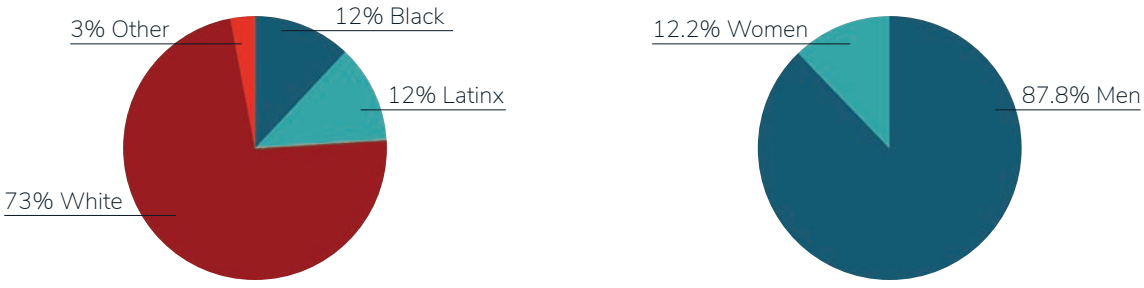
RECOMMENDATION 9.6
ENSURE THAT FIELD TRAINING INCORPORATES CORE VALUES AND COMMUNICATES THEM TO NEW OFFICERS.

As the U.S. Department of Justice noted, "[P]olice officers tend to **become** the type of officers they are ***socialized*** to be."[45] Just as academy training needs to emphasize and reflect departmental and community values, new recruits' next step — field training — must do the same.

Perhaps no other role is as vital in setting the tone for new officers as the field training officer (FTO). Academy curricula and instructors who adhere to and promote departmental values are important, but academy training cannot match real-world experience. New officers first interact with the public during the field training program. As such, FTOs model the behavior that officers will learn and replicate, for better or worse.

To effectively promote a culture that reflects their departments' and communities' core values, effective leaders carefully screen and select FTOs who exemplify these values. They understand that FTOs who share departmental values will instill them in their trainees. Furthermore, they select FTOs in part on the basis of positive relationships and interactions with community members so that trainees can watch and learn how to engage constructively with community members. In sum, FTOs are an avenue by which departments can infuse their culture in new trainees.

RACIAL, ETHNIC, AND GENDER DIVERSITY IN LOCAL POLICE DEPARTMENTS (2013)



Source: Brian A. Reaves, Local Police Departments, 2013: Personnel, Policies, and Practices, U.S. Dep't of Justice, Bureau of Justice Statistics 9 (May 2015), https://www.bjs.gov/content/pub/pdf/lpd13ppp.pdf.

10

RECRUITMENT HIRING PROMOTION AND RETENTION

Police departments are, in many communities, the "public face of local government."[1] As such, they should reflect the communities they serve and take a community-centered approach to their work — one that embeds the values and voices of all community members into department policy and practice.[2] Doing so builds community trust and confidence in the vital work of law enforcement. Indeed, a diverse workforce can increase departments' cultural competency and help foster positive police-community relationships.

Despite some progress, these goals have yet to be met. The nation's police force remains predominantly White, male, and heteronormative.[3] Community-centered approaches, meanwhile, are gaining traction but have yet to be fully integrated into all departments across the nation — and sometimes, they face resistance from officers and departments.[4]

To make progress toward these goals, departments should employ and promote officers with community-centered mindsets toward policing; create and maintain transparent processes for recruitment, hiring, promotion, and retention; and assess — and remove — barriers to advancement facing underrepresented groups (e.g., people of color, certain religious groups, women, LGBTQ and gender nonconforming people, and others).[5]

RECOMMENDED BEST PRACTICES

To attract and retain officers who reflect the communities they serve and embody the values of equity, fairness, and procedural justice, departments should:

10.1

Promote policing as a legitimate, honorable profession, especially to young people from underrepresented groups.

10.2

Seek community input when making decisions about hiring and resource allocation.

10.3

Develop recruitment plans that reflect departmental missions and community priorities.

10.4

Reevaluate hiring qualifications and testing.

10.5

Provide mentoring opportunities and test preparation support to candidates from underrepresented backgrounds in policing.

10.6

Implement transparent policies and practices that are centered on internal procedural justice.

ATTRACTING AND RETAINING OFFICERS

Officers who reflect the values of the department and the community at large are more likely to practice fair and effective policing practices.[6] Residents of communities with high levels of serious crime expect police to respond and investigate. But many communities, especially those of color, are overpoliced and subject to hyper-enforcement of low-level offenses, a phenomenon borne out by law enforcement statistics.[7] (For more detail, see Chapters 2 and 3.)

To alleviate these concerns, officers should build and maintain strong and positive relationships with communities; that way, residents will feel comfortable calling the police when a crime occurs. To cultivate strong police-community ties, departments should invest in high-quality officers who can meaningfully engage with community members and build relationships based on trust.

Over the past decade, departments have found it increasingly difficult to recruit high-quality candidates because of higher competition with the private sector and increasingly negative views of policing.[8] Departments also have difficulty retaining young and new officers. This is particularly true of women and officers of color, who leave the profession in disproportionate numbers (and often in fewer than five years).[9] Low retention rates strain staffing levels, which lowers morale.[10]

To retain a diverse staff of committed, high-performing officers, departments should foster employee engagement (***i.e.***, ensuring employees feel absorbed in and positive and enthusiastic about their work and work environment).

Departments can do so by promoting procedural justice. Officers are more likely to stay when they believe that (1) they do work that matters to their department and the community they serve; (2) they have ample opportunities to provide meaningful input about their work; and (3) they are treated fairly by their peers, supervisors, and the department as a whole. Officers who feel this way "have a deeper connection to the agency's mission and vision" and are "more willing to go the extra mile for the agency."[11] Moreover, when departments model fair and just treatment, officers replicate these principles in their relationships with communities.[12]

BEST PRACTICES IN RECRUITMENT HIRING PROMOTION AND RETENTION

Police departments should prioritize the recruitment, hiring, and retention of community service-minded officers. While departments should continue to use the regular mechanisms for recruiting and hiring, such as outreach and referrals, they should consider innovative ways to appeal to diverse communities that have traditionally been underrepresented in policing.

Improving police departments' image and reputation through community policing and cultural awareness will help mend broken ties to communities of color and other marginalized groups. Departments should also create inclusive workplaces to retain high-quality employees. To attract and retain officers who reflect the communities they serve and embody the values of equity, fairness, and procedural justice, departments should:

COMMUNITIES, DEPARTMENT LEADERS, AND ELECTED OFFICIALS SHOULD TAKE A HOLISTIC APPROACH TO STAFFING THAT CONSIDERS PROPOSED SPENDING ON NEW HIRES AND OTHER DEPARTMENT EXPENSES ALONGSIDE COMMUNITY NEEDS AND COMPETING INTERESTS.

RECOMMENDATION 10.1
PROMOTE POLICING AS A LEGITIMATE, HONORABLE PROFESSION, ESPECIALLY TO YOUNG PEOPLE FROM UNDERREPRESENTED GROUPS.

Many department leaders are working to increase staff diversity. But they often face difficulty attracting candidates from low-income communities or communities of color because of tense relationships between police officers and community members.[13] People in low-income communities and communities of color — and particularly young people — are more likely than those in predominantly White and affluent communities to have experienced negative, and unwarranted, interactions with police.

As the Final Report of the President's Task Force on 21st Century Policing (the President's Task Force Report) notes, many young people of color have been stopped and frisked many times — often for no apparent reason other than the color of their skin — and, over time, have come to view police officers and the law enforcement community as an enemy.[14] This, of course, delegitimizes the profession in these and other communities.

To counter this phenomenon, departments should build community relationships that are rooted in trust and mutual respect. To do so, leaders should position officers as guardians of public safety.[15]

(For more detail, see Chapter 9.) Building community trust is the single most important activity that officers can engage in, according to a 2018 survey of law enforcement officials and community members.[16] If officers build relationships centered on trust and accountability, communities will be more likely to view policing as an honorable profession.[17] Departments that embrace the "guardian mindset" and advance a community-centered culture are better positioned to repair broken relationships and attract applicants from underrepresented backgrounds.[18]

RECOMMENDATION 10.2
SEEK COMMUNITY INPUT WHEN MAKING DECISIONS ABOUT HIRING AND RESOURCE ALLOCATION.

Departments need adequate staff to meet their many obligations: answering service calls, investigating serious crimes, responding to emergencies, and more. Officers in understaffed departments cannot carry out their missions or serve their communities well. They are often stretched thin and worked to the point of exhaustion, which is dangerous for officers and the public alike.

Uses of force are correlated with overtime. If an officer worked one additional hour of overtime in the prior week, the odds of a use-of-force incident in the following week increase by 2.7 percent.[19] Officers who work back-to-back shifts, meanwhile, receive more public complaints.[20] And, some people argue that officers are slow to respond to calls for service or investigate violent crime in some communities, suggesting that some departments should hire more officers to meet needs in these communities. Data indicate that adding more officers reduces crime, not because additional officers conduct more stops or arrests but because fewer people commit crime when officers are around.[21]

Yet many communities don't want more police, especially communities of color that are overpoliced and subject to the aggressive enforcement of low-level offenses. The sentiment among many people of color is that they're better off with no police than living in fear of police violence, and that they should instead be empowered to solve their own problems.[22]

Some communities that have a lack adequate funding in other areas, such as education, housing, health care, and public transportation, don't want to see increased spending on police, and support an invest/divest approach.[23] Under this framework, elected officials are called to invest in holistic health services and treatment, education, housing, and living wages, which more effectively reduce crime than policing or incarceration.[24]

Investing in adequate police staffing levels, however, does not have to come at the expense of other community investments. Communities, department leaders, and elected officials should take a holistic approach to staffing that considers proposed spending on new hires and other department expenses alongside community needs and competing interests.

To do so, leaders should work with communities and elected officials to analyze underlying societal problems that contribute to crime. When determining whether to hire more officers in locations with high volumes of service calls, leaders might consider hiring mental health professionals and social workers to handle incidents involving people with mental health and developmental disabilities or substance use disorders, or investing in "diversion programs" to prevent people from entering the

criminal justice system and reduce police involvement in public health issues. (For more detail, see Chapter 5.) Department leaders should also engage with communities when making budgetary decisions.

Specifically, departments should:

+ Collaborate with community officials to identify services that don't require police-based responses.
+ Seek community and officer input when assessing staffing needs, identifying unfilled vacancies, and adjusting staff numbers based on projected population changes in their communities.
+ Summarize key findings and recommendations about staffing and resources and share them with elected officials who make budget decisions (**e.g.**, mayors, city managers, and members of the city council).

Provide opportunities for communities to debate department recommendations and how — and whether — to implement them.

RECOMMENDATION 10.3 DEVELOP RECRUITMENT PLANS THAT REFLECT DEPARTMENTAL MISSIONS AND COMMUNITY PRIORITIES.

To attract officers with skills, experiences, and attitudes that align with their department's mission, leaders should develop recruitment plans that include specific goals and milestones. If recruitment plans reflect community input, departments will build community trust and make the profession more appealing. Leaders should use employee referral systems, because community-minded officers are likely to recruit like-minded candidates whom they know closely; engage in face-to-face outreach, because it personalizes and demystifies what can be an intimidating process; and prioritize recruiting people of color, women, and individuals from other backgrounds underrepresented in policing. Specifically, departments should:

Prioritize recruiting applicants from historically underrepresented groups in the policing profession. Public perceptions of the police as an oppressive force, which have been reinforced by recent episodes of police violence in cities like Baltimore and Ferguson, Missouri, weaken departments' ability to recruit officers of color.[25]

Almost 75 percent of law enforcement officers are White, and almost 90 percent are male.[26] Because "White males have historically dominated the ranks of local law enforcement … their children are more likely to view the profession, which often runs in the family, as a viable career."[27] Children from historically underrepresented groups, then, are less likely to view policing as a viable and honorable career path.

The underrepresentation of Black people, Latinxs, and other people of color weakens police-community relations. Department leaders should recruit and hire candidates who are service-minded and committed

to working with residents to promote public safety and who come from and live in the communities they serve. Officers should represent their communities and be familiar with the cultures and traditions of the neighborhoods they patrol. Diversifying the force by race, ethnicity, gender, gender identity, experience, and background will create departments that reflect communities — and will improve policing.[28]

Departments can diversify applicant pools in many ways. They can collaborate with leaders in communities of color and reach out to institutions, such as historically Black colleges, universities, and churches, to recruit applicants of color. The Detroit Police Department, for example, reaches out to and mentors Black high school students to change negative perceptions about the police and to encourage them to consider careers in law enforcement.[29]

In Washington, D.C., an ethnically and racially diverse city, the Metropolitan Police Department created a program that encourages young adults between the ages of 17 and 25 to consider careers in law enforcement while earning college credit.[30] The department also reaches out to young adults between the ages of 11 and 20 through its Junior Cadet and Cadet Explorers programs, which provide law enforcement-related educational and vocational experiences.[31]

Departments should collaborate with affinity groups, such as associations of Black and Latinx officers, female officers, LGBTQ officers, Deaf and hard-of-hearing officers, and others to identify the challenges they face as police officers and to address challenges to attract more applicants from these groups.[32] Departments can also hold focus groups with people from underrepresented groups to learn about their concerns, apprehensions, and challenges and better understand barriers to joining the force.

Focus recruitment messaging on community service. Messaging matters. It is vital to frame advertisements for careers in law enforcement in a way that attracts candidates who embrace community policing principles. Messages should emphasize that careers in law enforcement offer people a way to give back to their communities; they should not be framed around aggressive uses of force, such as SWAT (Special Weapons and Tactics) team deployments, arrests, and canine searches. As the President's Task Force Report notes, emphasizing public service and policing from a guardian approach will attract service-minded candidates.[33] This can be done through campaigns that feature images and themes of officers who reflect a diverse array of backgrounds and are engaged in acts of public service instead of crime and police tactics.[34]

Seek communities' input into the hiring process. Leaders should seek public input on hiring to ensure that it reflects community values. Some departments engage community advisory boards when hiring new officers; others work with community stakeholders to list the characteristics that describe ideal candidates (such as those who are service-minded, have sound judgment, and are respectful and compassionate).[35] After recruiting a pool of applicants, leaders should identify qualified and competent candidates who align with their departments' core values. Without community input, a department's perception of the ideal candidate may not align with community values.

RECOMMENDATION 10.4
REEVALUATE HIRING QUALIFICATIONS AND TESTING.

Title VII of the Civil Rights Act prohibits employment practices that have a disparate impact on people based on their race, color, religion, gender (including gender identity, sexual orientation, and pregnancy),[36] or national origin. Enacted in 1964, this law applies even to "facially neutral" practices, which are not discriminatory as written (***i.e.***, on their face) but can be in practice.[37] For hiring or promotions, departments should ensure their testing practices don't exclude qualified applicants from underrepresented groups.

Even when department leaders can justify a certain hiring practice, they should explore alternatives if the practice disproportionately disqualifies applicants of color, women, or other underrepresented groups. In other words, just because a practice is technically valid doesn't mean it's the only (or best) way to screen applicants. And they should explore other criteria to measure other job qualifications, such as interpersonal skills and cultural sensitivity, to balance its adverse effect. Specifically, departments should:

Reevaluate hiring and promotional tests to remove barriers to applicants from marginalized communities. The use of cognitive, written, and physical performance tests in hiring and promotion decisions may also pose barriers to applicants from underrepresented populations. While officers should have certain cognitive and physical abilities to perform their jobs well, department leaders should identify the minimum level of ability necessary.

Police departments can't use tests for hiring and promotion that disparately impact certain groups — unless the tests measures skills that predict job performance.[38] Requiring officer applicants to pass a math test, for example, may measure skills that are not needed to carry out the duties of the job.[39] Many facially neutral criteria, such as evaluations that measure cognitive skills or physical strength, disproportionately disqualify women, people of color, and applicants from other underrepresented groups.[40]

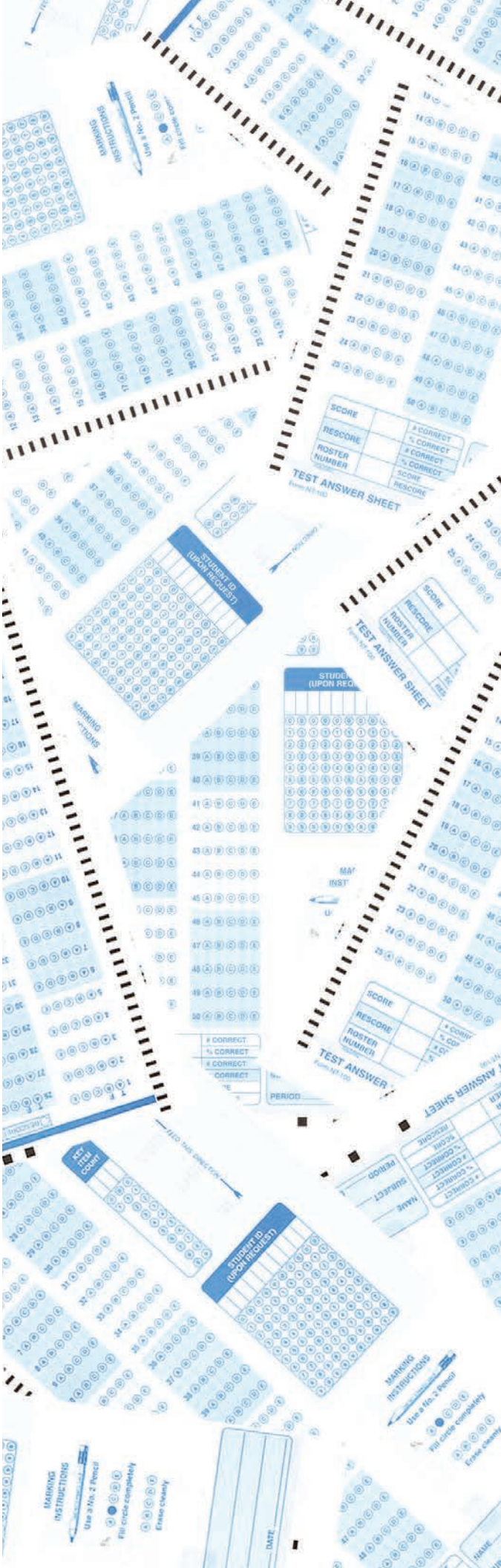
Departments should study their tests to ensure they don't have a disparate impact. If tests have a statistically significant disparate impact on underrepresented groups, departments must show that they're job-related and a legitimate business necessity.[41] Even if a test is valid, however, the department must consider whether an alternative test exists that's equally valid but has less of an impact on underrepresented groups.[42]

In general, written tests adversely impact applicants of color.[43] These tests, however, may not accurately measure the skills needed for the job, and other measures might be better.[44] Leaders at the St. Paul Police Department in Minnesota realized that applicants of color tended to score

lower than White applicants on written and situational tests but tended to score higher than White applicants in interviews.[45] In response, the department changed its written test to assess the most important qualities for the job, such as personal history and community engagement. This allowed leaders to create a more diverse staff; the officers of color who were subsequently hired were equally qualified and had a genuine interest in engaging in community policing.

Departments should also scrutinize whether the way they're using test scores has a disparate impact,[46] especially because Black and Latinx applicants are often at a disadvantage because they tend to score lower than Whites.[47] Thus, they should study whether their cut-off scores meaningfully distinguish between qualified applicants and adjust them to reduce any disparate impact while meeting their organizational needs.[48]

Physical performance tests, meanwhile, disproportionately impact women, and also must be job-related and consistent with a business necessity.[49] For this reason, departments have begun to modify or exclude these tests from the hiring process. In Wisconsin, the Madison Police Department noticed that many women were failing the application process — and sometimes not applying — because of a physical performance test that included a bench-press.[50] The department reassessed its test to measure upper-body strength and gave applicants the option to do push-ups instead — and eventually eliminated the bench-press requirement altogether, recognizing that success at a bench-press did not predict employee performance.



Departments may be limited in how much they can modify their hiring criteria. In some states, Peace Officer Standards and Training boards (POSTs) or similar entities set qualification requirements or minimum standards for tests.[51] (And smaller agencies that don't have the resources to support hiring processes might have to rely on hiring officers who've been POST certified, narrowing their pool of candidates.)[52] In those instances, departments should ensure their hiring criteria meet the minimum standards required by their POST, while carefully assessing whether the criteria can be adjusted without triggering litigation. They can also advocate for changes to state standards and certification processes.

At the same time, department leaders **can** apply criteria to ***increase*** the number of candidates from underrepresented backgrounds. Language skills beyond English may be a relevant preference in communities with large Latinx populations,[53] for example, or with significant populations of people with limited English proficiency.

Reviewing hiring and promotion criteria ensures that they meaningfully predict job success and don't create barriers for people from marginalized communities who can contribute to departments' success and effectiveness. In short, there is no inherent conflict between a robust hiring process and an inclusive one.

Evaluate pre-employment background qualifications to ensure they don't adversely impact applicants from marginalized communities. Most departments have qualification criteria that determine an applicant's eligibility to become an officer. Some of these criteria have adverse or disparate impacts on applicants of color. So-called "morality" tests, such as background checks, drug tests, and polygraph examinations, claim to "measure" moral character.

But many candidates fail these tests because of minor infractions, such as driving violations, drug charges, or poor credit.[54] Driving violations, of course, are not always given for reckless driving; sometimes they are given for faulty equipment (***i.e.***, a vehicle was not properly equipped or functioning). These "violations" adversely impact people in low-income communities, who are disproportionately people of color, and often stem from racial profiling in the first place.[55]

Bad credit adversely affects low-income applicants, and especially those of color, who tend to have lower credit scores than White applicants.[56] Low credit scores among people of color often result from "existing racial inequities in our credit system and economy[,]"[57] such as "redlining" (when lenders refuse to provide conventional loans in predominantly Black and Latinx neighborhoods).

During the housing boom in the 2000s, people of color were disproportionately targeted for subprime mortgages, which led to higher rates of default and foreclosure and destroyed credit scores in many Black and Latinx communities.[58] The use of credit scores as screening criteria also has a chilling effect on applicants from low-income communities; if they know their credit score is low, they may not apply because they expect to be disqualified.[59]

Hiring officials should, of course, screen applicants to ensure they are of good moral character and well suited to interact with the public — and to screen **out** applicants who have histories of violence or biases toward particular communities. To balance against unnecessarily disqualifying applicants who would otherwise make good officers, departments should modify the criteria causing the adverse impact or exclude them from their vetting process, and use alternative procedures to vet candidates that do not have the same adverse impact.[60]

When using criminal background checks, departments should consider the nature of the crime and how much time has elapsed.[61] For example, for drug offenses, some departments consider the type of drug used and how long ago it was consumed[62] when screening applicants. Candidates who experimented with drug use during high school or college often fail these tests.[63] To reduce the drop-out rate, the Chicago Police Department removed past marijuana use as a disqualifying factor in part because it has been legalized in many states.[64]

RECOMMENDATION 10.5
PROVIDE MENTORING OPPORTUNITIES AND TEST PREPARATION SUPPORT TO CANDIDATES FROM UNDERREPRESENTED BACKGROUNDS IN POLICING.

As discussed earlier, policing has been — and remains — a predominantly White and male profession.[65] Because applicants of color do not have the same historical connection to policing, they face more difficulty navigating the testing and application processes. Mentoring programs support candidates of color through these processes and prevent applicants from falling out of the hiring process.[66] In Tennessee, the Chattanooga Police Department has a paid internship program for candidates from underrepresented groups that provides mentoring to help candidates find their way through the hiring process and prepare for written and physical tests.[67]

Additionally, department leaders should provide cultural awareness training to officers who interview job candidates and/or serve on interview panels, and they should ensure that panel participants include people from different backgrounds.[68]

RECOMMENDATION 10.6
IMPLEMENT TRANSPARENT POLICIES AND PRACTICES THAT ARE CENTERED ON INTERNAL PROCEDURAL JUSTICE.

Internal procedural justice gives employees a sense of agency and value within departments because their input and feedback are considered in departmental decisions. This, in turn, creates a positive work environment with good morale, which is central to attracting high-quality candidates and grooming them to be the next generation of leaders. To promote internal procedural justice, departments should:

Make promotions systems transparent. Opaque promotions systems instill a sense of unfairness and inequity in police departments.[69] When officers don't know how or why promotional decisions are made, they often end up resenting fellow officers and supervisors.[70]

At the Chicago Police Department, the lack of transparency around promotional systems and decisions created a narrative among officers that the department "does not value good leadership" and that "leaders [were] unqualified to lead."[71] To increase confidence in the system, leaders should create transparent promotion processes, establish them in policy, and evaluate candidates based on consistent metrics to ensure fairness and equity.

Department leaders should also ensure that performance reviews and appraisals reflect and reinforce community policing values and skills such as dispute resolution, de-escalation, problem-solving, and community engagement.[72] Likewise, departments should weigh factors that indicate how officers engage on the job. Reviewing sustained complaints against officers will help leaders gauge whether they warrant promotion.[73]

The Civil Rights Act bars promotional exams that disproportionately impact women and applicants of color. As such, all promotional exams should be evaluated on a regular basis to make sure they are fair and lawful.[74] Departments should also offer them regularly so that qualified candidates are promoted.[75] This will increase officers' sense of internal procedural justice and their faith in their departments' decision-making processes, which will increase retention, especially among officers from underrepresented backgrounds. As with the hiring process, departments can provide test preparation services to improve candidates' performance on promotional exams.

Invest in professional and career development. Police departments, like other organizations, should invest in professional development. Department leaders should consider how to promote high-performing employees and provide all officers with professional development so they have opportunities to advance in their careers. Departments should also provide training so officers can develop the skills they need to rise up the ranks. (For more detail, see Chapter 11.)

Mentoring is an important component of professional development, particularly for people of color, women, and those from other underrepresented groups, who may need specialized support.[76] A sustained mentoring initiative for new ***and*** experienced officers throughout their careers communicates that departments value and are invested in officers' long-term professional growth, which makes them more likely to stay with the department.

Seek community and officer input to promote internal procedural justice. As discussed earlier, departments should cultivate processes and systems that comport with internal procedural justice — including the sense that community members and officers know and understand what is expected of them, their colleagues, and the department. (For more detail, see Chapter 9.) When departments operate and treat officers in a procedurally just manner, officers will apply those principles to their interactions with community members. Research shows that "if departments wish to implement a procedural justice-based approach to policing in their communities, it is essential for those departments to ensure that their internal policies treat officers with fairness and respect."[77]

Department leaders should also allow officers to provide input. Evidence suggests that the biggest predictor of engaged, productive teams is the presence of "psychological safety" — people's belief that they can speak up and take risks without being punished by others in the organization.[78] Psychological safety is related to a positive view of the workplace and an understanding of what is expected of employees.[79]

Accordingly, department leaders should encourage dialogue between rank-and-file officers and senior managers. Supervisors should be trained on the importance of listening to officers, positively reinforcing strong performance, and mentoring personnel under their command. (For more detail, see Chapter 11.) Modeling these behaviors gives officers space to voice opinions and ask questions,[80] which, in turn, makes officers more invested in the job, increasing retention.

11

ACADEMY AND IN-SERVICE TRAINING

Training is the foundation by which police departments ensure that officers engage in safe, fair, and effective policing. This point is emphasized in the Final Report of the President's Task Force on 21st Century Policing (the President's Task Force Report), which observes: "As our nation becomes more pluralistic and the scope of law enforcement's responsibilities expands, the need for expanded and more effective [police] training has become critical."[1]

To serve communities well, officers should stay up to date on best practices and continually develop their skills. Yet no universal standards for police training exist; each state and jurisdiction has different requirements. Departments that want to practice community policing, however, should emphasize the values of fairness, equity, procedural justice, legitimacy, transparency, and accountability in all trainings. These values, as well as training in tactics such as de-escalation and crisis response, will help develop officers with a guardian mindset oriented toward serving communities.

RECOMMENDED BEST PRACTICES

To ensure officers understand and carry out departmental requirements and are trained to adhere to community-centered values, departments should:

11.1

Ensure that basic recruit and in-service training covers a wide variety of skills, including crisis response, de-escalation, cultural competency, and leadership.

11.2

Prioritize the development and implementation of rigorous in-service training.

11.3

Directly involve community members in the development of training initiatives and curricula.

11.4

Use contemporary adult education techniques in training programs.

11.5

Carefully select field training officers (FTOs) and training staff.

11.6

Develop robust programs to train officers to serve as FTOs.

11.7

Treat service as an FTO as an important career step that factors into decisions about promotion.

11.8

Keep complete, accurate, and up-to-date records of training curricula, materials, and attendance.

11.9

Periodically review, audit, and assess training programs.

STANDARD TRAINING PRACTICES

All police officers are required to successfully complete extensive academy and field training programs. Nationally, more than 600 law enforcement academies train new recruits at more than 18,000 law enforcement agencies.[2] Nearly half of these academies are housed at educational institutions, such as colleges, universities, and technical and vocational schools.[3]

Many police departments send recruits to these academies, and some (in larger jurisdictions) operate their own academies. Both types are effective if they meet departmental needs and provide high-quality training. State and regional academies, however, are only able to provide baseline instruction, covering the minimum requirements of departments served. Unlike in-house academies, state and regional academies don't tailor trainings to the departments where recruits will eventually work or to the communities that they will eventually serve.

After graduating, new officers continue training with a higher-ranking officer — often called a field training officer. FTOs provide intensive on-the-job training and daily performance evaluations; the goal is to teach new officers how to navigate the job, including how to interact with community members, adhere to department policies and procedures, and generally carry out the department's mission.

New officers benefit when FTOs are selected based on their performance histories and mentorship abilities. Unfortunately, training doesn't always give new officers the skills they need to succeed. Some must learn department-specific policies on their own, especially when field training focuses on writing reports and other administrative skills (which are important but do not significantly influence community policing).

After completing field training, officers must meet requirements for ongoing, in-service, and continuing professional education. All states have Peace Officer Standards and Training (POST) commissions, which set minimum training requirements for officers and certify them as "peace officers."

To maintain certification, most commissions require officers to complete at least some continuing education courses. These requirements vary widely by state and department. Some states, like Illinois, require training in procedural justice and cultural competency every three years, while others leave this type of training to individual departments.[4] Similarly, some states require officers to regularly certify competency in nonlethal tools, like pepper spray, while others require regular certification only in lethal tools, like firearms.

BEST PRACTICES IN ACADEMY AND IN-SERVICE TRAINING

Training serves as the foundation by which departments teach members practices and tactics to police in a fair, safe, and effective manner that reflects and affirms a commitment to community values. When focused on best practices to reduce harm, both physical and psychological, and keep community relations intact, training is the most effective and direct means of shaping officers who protect the public and preserve public safety. To ensure officers understand and carry out departmental requirements and are trained to adhere to community-centered values, departments should:

RECOMMENDATION 11.1
ENSURE THAT BASIC RECRUIT AND IN-SERVICE TRAINING COVERS A WIDE VARIETY OF SKILLS, INCLUDING CRISIS RESPONSE, DE-ESCALATION, CULTURAL COMPETENCY, AND LEADERSHIP.

As departments move toward community-centered approaches to policing, all department members should receive training in problem-solving principles, trauma and victim services, analytical research and technology, and linguistic and cultural competency.[5] Like other professions, policing is affected by external change, whether it be the development of new technologies, changes in law and policy, improved policing tactics and practices, shifting cultural norms, or emerging social problems.

The United States is experiencing a health crisis, and the rates of deaths by suicide and drug overdose continue to climb. For these reasons, all officers need crisis response training. Approximately 25 percent of people with mental health disabilities have a history of police arrest.[6] And people with untreated mental health disabilities are 16 times more likely than those in the general population to be killed during an encounter with the police.[7] (For more detail, see Chapter 5.)

The President's Task Force Report recommends that POST commissions include crisis intervention techniques in basic recruit and in-service officer training.[8] It also recommends including de-escalation training, which teaches officers how to defuse crises, in the basic curriculum of all academy training.[9]

To interact effectively with all community members, officers must also demonstrate cultural competency — the ability to engage with all people, regardless of background, in a way that respects and responds to their beliefs, practices, and cultural and linguistic needs. All people have unique backgrounds and experiences that shape who they are and how they relate to the world around them. Officers should therefore be trained to understand community members' social customs and modes of communication. Community members should work with their departments to develop and deliver cultural competency training that represents all community groups, as discussed in greater depth below.

Leadership training is also essential. Ongoing leadership training for all personnel throughout their careers will nurture leadership skills, teach positive behaviors, and increase commitment to community standards.[10] Promoting a culture of community and public service depends on department leaders' commitment to these values. For this reason, departments should provide executive-level leadership training for all supervisors, from sergeants to chiefs. (For more detail, see Chapter 9.)

RECOMMENDATION 11.2
PRIORITIZE THE DEVELOPMENT AND IMPLEMENTATION OF RIGOROUS IN-SERVICE TRAINING.

Skills are perishable. And many officers lack opportunities to revisit subjects they studied as cadets and new recruits. With this in mind, community-centered departments prioritize the development and implementation of high-quality in-service training to ensure that officers are serving communities according to current best practices. Just as doctors, lawyers, teachers, and other professionals must engage in continuing education, police officers need and deserve opportunities to refresh old skills, build new ones, and acquire instruction on emerging topics.

Accordingly, savvy department leaders identify specific training goals and objectives and develop them with input from inside and outside the department. This allows officers at all levels — from patrol to detective to supervisor — to share challenges they face and community members to explain what they need and expect from the police.

The critical self-analysis that departments engage in when reviewing uses of force, searches and seizures, crisis response encounters, misconduct investigations, complaints from community members, and other significant incidents should also inform the development of training priorities and goals. If a department has recently experienced officer injuries or higher rates of use-of-force incidents associated with foot pursuits, then training may seek to emphasize sound decision-making, safe pursuit tactics, and de-escalation.

RECOMMENDATION 11.3
DIRECTLY INVOLVE COMMUNITY MEMBERS IN THE DEVELOPMENT OF TRAINING INITIATIVES AND CURRICULA.

The President's Task Force Report calls on departments to work directly with communities to ensure that training programs are effective and align with community values, and many departments have acted accordingly.[11] In 2014, the Seattle Police Department developed a training on bias-free policing in collaboration with the city's Community Police Commission, an organization representing diverse communities that works toward just and equitable policing. During the training, a commission representative explained what bias-free policing looks like to the community and how perceptions of biased policing affected relationships in the community in the past.[12]

Departments in Atlanta, Los Angeles, Washington, D.C., and New York, meanwhile, have established working groups with community representatives to ensure that policies, training, and practices meet community needs and align with community values.[13]

TRAINING PROGRAMS SHOULD ALSO DRAW ON THE WIDER COMMUNITY AND INCORPORATE LOCAL GUEST SPEAKERS, SUCH AS VICTIMS OF CRIMES, MENTAL HEALTH SERVICE PROVIDERS, ADVOCATES FOR SOCIAL CHANGE, AND OTHER COMMUNITY MEMBERS.

Training programs should also draw on the wider community and incorporate local guest speakers, such as victims of crimes, mental health service providers, advocates for social change, and other community members. Other educational institutions, like law and medical schools, are also well equipped to help develop and deliver training on specific topics.

RECOMMENDATION 11.4 USE CONTEMPORARY ADULT EDUCATION TECHNIQUES IN TRAINING PROGRAMS.

Education experts have shown that adults learn more from engaging in real-world experiences than from passively consuming information.[14] Appropriately, a consensus is emerging on behalf of law enforcement training that (1) is geared toward experiential training, reflection, and discussion; (2) prepares officers for the application of skills in the real world (***i.e.***, when interacting with members of communities); and (3) accounts for different learning styles.[15]

The field of law enforcement is uniquely suited to provide realistic, scenario-based training. Instructors can teach officers how to respond to real-life encounters through role-play or body camera or other video footage. They can also ask officers to analyze realistic scenarios and determine whether an officer's performance aligned with department policies and applicable law. Experts recommend that training in the use of force include discrete scenarios woven throughout the training period so that officers can apply the skills they learn to real-world problems.[16]

RECOMMENDATION 11.5 CAREFULLY SELECT FTOs AND TRAINING STAFF.

Departments that provide in-house training should establish specific, performance-based criteria for selecting instructors. FTOs should be veteran officers who are up to date with in-service training (**e.g.**, impartial policing and de-escalation) and have shown a commitment to community policing in their performance. Such FTOs are best suited to provide new officers guidance on best practices and insights into the communities they work with.

Departments should select trainers based on similar criteria, with an eye toward who may be the best conduits for specific subjects. As discussed in Chapter 2, departments should carefully select trainers who develop and deliver material in especially sensitive subjects, such as implicit bias and cultural competency, and who will work with members from marginalized or diverse communities to develop and deliver training.

Officers with histories of misconduct, who have received multiple complaints from community members, or who have been the subject of misconduct lawsuits are not suitable instructors or FTOs.

RECOMMENDATION 11.6 DEVELOP ROBUST PROGRAMS TO TRAIN OFFICERS TO SERVE AS FTOs.

Experienced officers who have demonstrated success in the field may not know how to be effective FTOs or mentors. Effective FTO programs include rigorous, detailed instruction on how to conduct FTO training so that it aligns with department and community needs and values. For example, the San Jose Police Department in California, a pioneer of effective field training, requires FTO candidates to undergo 40 hours of training prior to deployment in a teaching role.[17] This instruction covers 30 different areas of proficiency, including communication, mentoring, and evaluation.

RECOMMENDATION 11.7 TREAT SERVICE AS AN FTO AS AN IMPORTANT CAREER STEP THAT FACTORS INTO DECISIONS ABOUT PROMOTION.

In some departments, the only benefits of serving as an FTO are modest pay raises and access to overtime work and pay — benefits that may not attract candidates who reflect the values of the department. Consequently, experienced officers may view an FTO assignment as a "road to nowhere," which may result in a low-quality FTO applicant pool.[18] Because FTO programs are department leaders' first opportunity to inculcate core values in new officers — and to weed out those who are unsuited for employment — FTOs should be of the highest quality and deeply committed to community values. Opportunities for career advancement are reliable ways to attract a competitive candidate pool.

RECOMMENDATION 11.8
KEEP COMPLETE, ACCURATE, AND UP-TO-DATE RECORDS OF TRAINING CURRICULA, MATERIALS, AND ATTENDANCE.

Many police departments don't keep accurate or complete records of training curricula, courses, or attendance.[19] To ensure that all department members have received required training, departments should keep and maintain attendance records.

Failure to do so increases the likelihood that officers or their partners will lack needed skills and knowledge; that supervisors will make ill-informed staffing choices; and that departments won't be able to hold accountable officers who fail to meet performance standards or follow department policies. Moreover, complete, current, and accurate records enable communities to hold departments accountable for insufficient or outdated training.

RECOMMENDATION 11.9
PERIODICALLY REVIEW, AUDIT, AND ASSESS TRAINING PROGRAMS.

Training ensures that officers have the knowledge, skills, and attitudes they need to police fairly and safely, but it can be expensive — and should be carried out in a cost-effective manner. Department leaders should establish detailed training schedules and logistical plans to maximize cost-effectiveness. In-person training can be expensive because departments need officers to serve as instructors as well as substitutes to temporarily fill officers' shifts in the field.

Because policing best practices are always advancing and evolving, departments should periodically review training curricula to ensure they teach new developments in the profession and account for shifting community needs — and to ensure they don't teach outmoded practices or reflect outdated community needs.

TRAINING ENSURES THAT OFFICERS HAVE THE KNOWLEDGE, SKILLS, AND ATTITUDES THEY NEED TO POLICE FAIRLY AND SAFELY, BUT IT CAN BE EXPENSIVE — AND SHOULD BE CARRIED OUT IN A COST-EFFECTIVE MANNER.

Yet relatively few departments formally evaluate their training programs. All training initiatives should be assessed via written evaluations from participants; scores of tests given during training; post-training officer performance (and whether it reflects the target skills and principles); and aggregate departmentwide performance trends across time. Furthermore, department leaders should consider community feedback about policing services.

Training does not need to be held exclusively at training centers or firing ranges; instructors can train officers at patrol stations, too. The Los Angeles County Sheriff's Department (LASD), for example, designed a mobile program that provides officers with refresher tactical training at their local stations.[20] The LASD's then-serving monitor praised the program's debut, noting:

> On each [training] occasion, large numbers of deputies participated. During a several day [training team] visit to Century [Station], for example, 86 deputies received training, and none were away from their patrol duties for more than an hour. Because the officers come directly to the training from patrol duty, the station environment is particularly conducive to serious training.[21]

Lessons learned at the stations were carried back to the training center. The program also revealed gaps in training in areas ranging from implicit gender bias to safety during encounters with active shooters. These observations helped LASD evaluate — and improve — its training procedures and practices.


CITY HALL
POLICE HEADQUARTERS

12

OFFICER HEALTH WELLBEING AND SAFETY

Police officers often respond to violent situations and crises, and many work in communities with high levels of gun violence and regularly bear witness to human tragedy. This puts them under great physical and mental stress, which can undermine their health and wellbeing and affect other parts of their lives. The toll on officers is reflected in the high rates of suicide, which is the leading cause of officer deaths in the line-of-duty.[1]

These effects go beyond officers themselves; they also affect loved ones and family members — and entire communities. The Final Report of the President's Task Force on 21st Century Policing notes that officer wellness has a direct impact on communities.[2] Officers who are equipped to handle stress at work and at home, it notes, are more likely to make better decisions on the job and have positive interactions with community members.[3] As task force member Tracey Meares noted on the importance of officer wellbeing, "Hurt people can hurt people."[4] Officer health, wellbeing, and safety is, in short, an important officer and public safety issue.

RECOMMENDED BEST PRACTICES

This chapter outlines best practices in promoting and enhancing officer health, wellbeing, and safety. To take a holistic approach to health, wellbeing, and safety and support officers' spouses, partners, and families, departments should:

12.1

Create a culture that supports and promotes wellbeing.

12.2

Implement robust employee assistance programs.

12.3

Create peer support and mentoring programs.

12.4

Attend to and promote officer health and wellbeing.

12.5

Incorporate officer health, wellbeing, and safety into operations.

12.6

Establish post-crisis evaluation and treatment protocols.

12.7

Provide officers with appropriate equipment.

PHYSICAL AND MENTAL HEALTH

Police officers risk injury[5] and regularly face a range of stressors, such as evaluating risk in dangerous situations, making quick decisions to stay safe and protect the public, and interacting with people in challenging and sometimes tragic circumstances. These stressors can have long-term, cumulative effects and put officers at higher risk for various physical and mental health problems.

The nature of police work affects officers' physical and mental health.[6] Policing typically involves long sedentary periods interspersed with short bursts of physical activity and shift work (which often occurs outside traditional work hours and disrupts normal sleep cycles).[7] These conditions contribute to job-related stress and anxiety, which are associated with obesity, insomnia, heart disease, stroke, and diabetes.[8] Officers also experience higher rates of alcoholism — also often associated with job-related stress — which exacerbates other health problems.[9]

Because officers respond to confrontation, conflict, and violence, they are exposed to trauma and death. These traumatic experiences carry significant mental health risks, including suicide, which disproportionately affects police officers. An estimated 159 officers took their lives in 2018, making death by suicide more likely than death from firearms and traffic-related accidents combined.[10] Officers are also more likely than the general population

to exhibit symptoms of post-traumatic stress disorder (PTSD),[11] which increases the risk of substance use disorders.[12]

These negative effects go beyond individual officers and departments. The physical and emotional stress of police work takes a toll on officers' family and home lives, contributing to divorce and intimate partner violence, which is associated with unresolved (***i.e.***, untreated) trauma, substance use, and burnout.[13] Family members may also develop anxiety about officers' safety and wellbeing. For these reasons, department leaders should take a holistic approach to health and wellbeing and include support systems for spouses, partners, and family members.

Communities also suffer when officers aren't healthy and well. Fatigue impairs decision-making, and tired officers are more likely to escalate encounters with the public.[14]

Officers who are mentally and physically fit are more productive and receive fewer complaints regarding use of force.[15] Improved mental health and emotional wellbeing, meanwhile, is associated with better outcomes in police encounters[16] and supports other recommendations in this report, such as attracting and retaining a talented and diverse workforce. (For more detail, see Chapter 10.)

BEST PRACTICES IN OFFICER HEALTH WELLBEING AND SAFETY

Because officers face different risks and stressors depending on where they work, health and wellbeing initiatives vary by department. These programs sometimes incur costs relating to equipment, health care, data collection, and more. For this reason, leaders should incorporate officer health, wellbeing, and safety into departmental budgets, and they should take the specific needs of their staff into account when assessing how to best to promote it.

To take a holistic approach to health, wellbeing, and safety and support officers and their spouses, partners, and families, departments should:

RECOMMENDATION 12.1
CREATE A CULTURE THAT SUPPORTS AND PROMOTES WELLBEING.

To promote health and wellbeing and lessen stigma around treatment and care, leaders should integrate wellbeing principles into training, counseling, and intervention programs. Specifically, departments should strive to instill the value and importance of selfcare in all aspects of operations. To understand officers' needs, department leaders should seek out their input, conduct surveys, and visit roll calls both to promote department assistance programs and resources, and to destigmatize their use. In listening to officers' needs directly, departments will increase procedural justice, too.

RECOMMENDATION 12.2
IMPLEMENT ROBUST EMPLOYEE ASSISTANCE PROGRAMS.

Police departments need adequately staffed employee assistance programs (EAPs) to provide officers with the mental health services and support they need to ensure they can positively interact with communities and deliver fair, safe, and effective services.[17] EAPs should offer low- or no-cost services, such as confidential counseling, crisis counseling, stress management counseling, and mental health evaluations,[18] and they should provide access to mental health hotlines.[19]

To encourage use of these services, supervisors should promote them and trainers should publicize them in trainings.[20] Professional counselors should be trained in treating substance use disorders, PTSD, intimate partner violence, depression, and issues of particular concern to female officers.[21] These services should also be available to officers' partners and families.[22]

RECOMMENDATION 12.3
CREATE PEER SUPPORT AND MENTORING PROGRAMS.

Departments should provide peer counseling programs so officers can talk with other officers (***i.e.***, peers) who have experienced similar job stressors. Sometimes, officers are reluctant to seek help coping with stress and trauma because they perceive it as a sign of weakness. Peer support programs help officers who feel this way find validation from people they trust and respect.[23] These programs should complement other departmental supports, and peer counselors should help officers connect with other services.[24] Volunteer peer counselors should receive training in effective approaches to assist officers who show signs of stress.

Mentoring programs support the kind of long-term relationships that help officers navigate challenges in their personal and professional lives, such as PTSD and trauma, and help applicants during the hiring process and through the transition from community member to officer.[25] Volunteer mentors should be selected based on healthy personal and professional habits and/or because they have overcome challenges of their own. Officers should be able to request a mentor at any stage in their career and should be matched based on a confidential profile completed by both mentor and mentee.

The Indianapolis Metropolitan Police Department's mentoring program is cited by the U.S. Department of Justice as a model program. It provides peer support and facilitates officer wellness.[26] Supported by the department's Office of Professional Development and Wellness, the program conducts eight-hour wellness training on managing stress and trauma[27] for mentors.[28] In the program's first six years, officer disciplinary referrals dropped 40 percent.[29]

RECOMMENDATION 12.4
ATTEND TO AND PROMOTE OFFICER HEALTH AND WELLBEING.

Mental and physical health are critical for all officers to meet the needs and demands of the job. When departments have the processes and resources in place, and promote wellbeing as a departmental value, they signal to officers that they are invested in their mental and physical health, as well as their safety. Specifically, departments should:

Address mental health. Officers frequently experience violence and the risk of violence, witness traumatic events, and come under heavy criticism, all of which can lead to isolation and job-related stress.[30] Thus, all new hires should be required to undergo a thorough psychological screening as part of the hiring process. Psychological screenings are designed to identify the kind of mental health problems and personality disorders that interfere with officer performance.[31]

Once on active duty, officers should receive periodic psychological screenings[32] to monitor stress levels, biases, coping skills, and overall attitudes.[33] Supervisors should receive training on how to identify officers with particularly high stress levels or who are experiencing mental health crises and who may benefit from counseling or stress management training.[34]

Officers who are involved in or witness traumatic events, such as an officer-involved shooting, a mass shooting, the death of a child, or a terror-based attack, should be required to speak with a counselor and should have the option of additional counseling. Additionally, department leaders should actively encourage members to use these services and clarify that they carry no adverse consequences.

Encourage good physical health. Numerous studies have found that investing in physical health programs reduces costs associated with heart disease and other related medical problems.[35] Thus, department leaders should promote and incentivize physical health by providing low- or no-cost gym access and rewards for performing well on annual physical exams.

Promote health and wellbeing in training. Health and wellbeing should be woven into all academy and in-service training, and mental health and other wellbeing experts should lead discussions on topics that apply to officers' professional ***and*** personal lives. Training in the use of force, for example, should address the stress of using and witnessing serious and lethal force; coping with public criticism (warranted or not); and support services available to officers.[36]

Crisis response training teaches officers how to identify people in crisis or who are exhibiting dangerous behaviors. Officers can use these skills to recognize alarming behavior in coworkers, family members, and friends.[37]

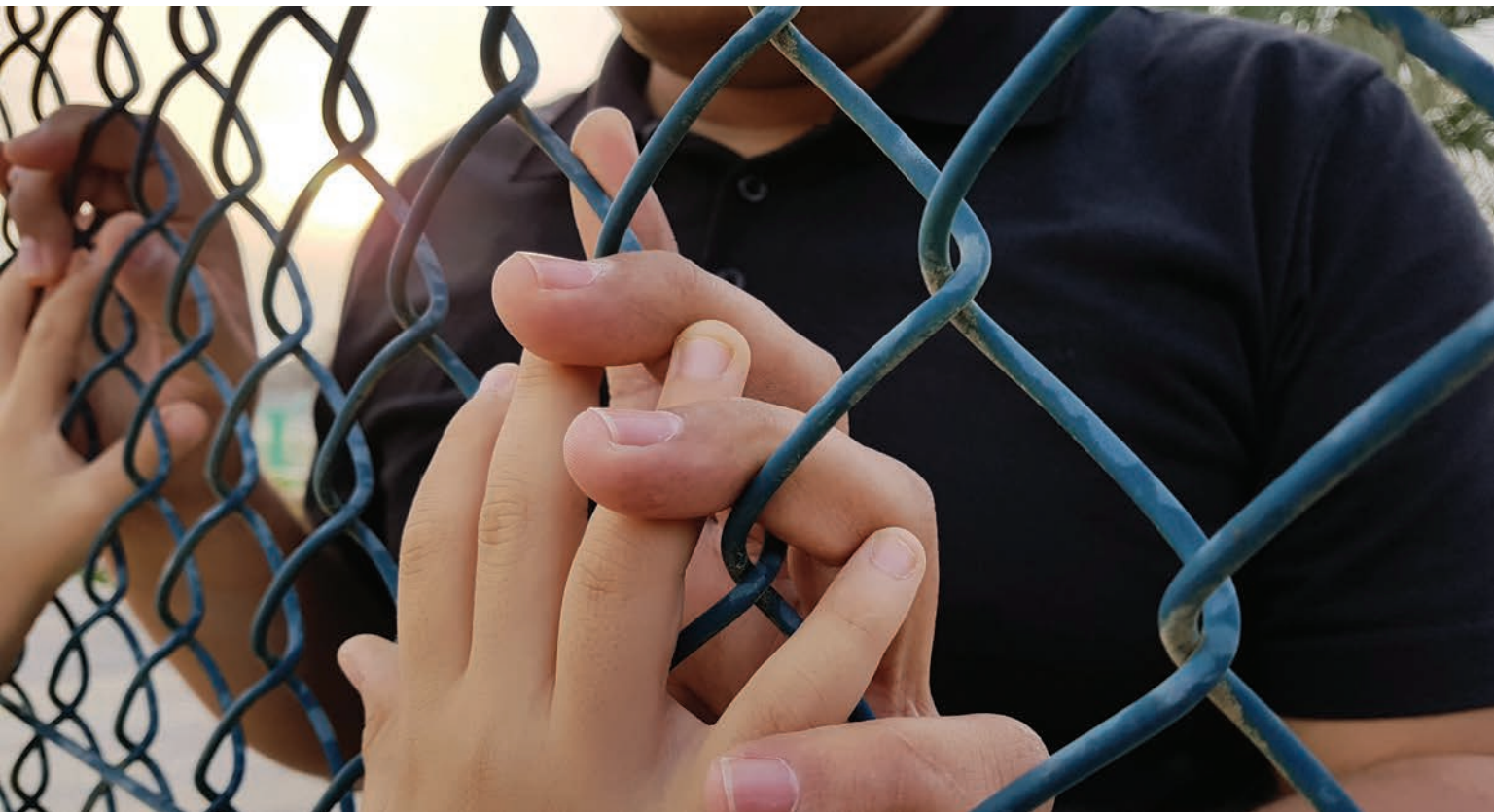
RECOMMENDATION 12.5
INCORPORATE OFFICER HEALTH, WELLBEING, AND SAFETY INTO OPERATIONS.

Officer health, wellbeing, and safety should be integrated into all facets of operations. Specifically, departments should:

Limit shift lengths. Establishing maximum shift lengths for officers enhances wellbeing.[38] Research shows that long shifts undermine mental and physical wellbeing, especially when they occur in high-risk or high-stress environments.[39]

Maximum shift lengths should be set in tandem with daily limits on work hours. For example, an officer who works an eight-hour night shift and then spends the day in court should not return for a subsequent shift. Department leaders should meet their staffing needs while limiting the number of hours officers are required, or allowed, to work within a set period. One option is to fill positions that do not need to be staffed by sworn officers with civilian personnel.

Ensure vehicle safety. Traffic accidents are the second leading cause of officer fatalities in the line of duty (after the use of firearms).[40] To prevent vehicular death and injury, all officers should be required to wear seat belts and participate in vehicle safety training.[41] This training should cover policies regarding vehicle pursuits,[42] such as how to weigh the risks of pursuits and how to manage and/or terminate them to protect public and officer safety.[43]



RECOMMENDATION 12.6
ESTABLISH POST-CRISIS EVALUATION AND TREATMENT PROTOCOLS.

Departments should have clear policies and protocols for treating officers during and after crises. All officers who are involved in or witness a crisis or traumatic event should undergo a mandatory screening with a health professional, such as an EAP counselor.[44] This policy should apply not only to officer-involved shootings but to all crises and traumatic events. Officers should also have the option to access crisis counseling.

Supervisors should monitor changes in officers' demeanor and behavior after traumatic events. Departments should have formal and informal intervention processes, as well as comprehensive nondisciplinary early intervention systems, to identify officers who may be in crisis or experiencing personal or professional difficulties. (For more detail, see Chapter 7.)

RECOMMENDATION 12.7
PROVIDE OFFICERS WITH APPROPRIATE EQUIPMENT.

All departments, large and small, need equipment so officers can police safely and effectively. Inadequate and outdated equipment endangers public and officer safety and increases stress. Department leaders should establish processes to evaluate equipment needs (**e.g.**, protective gear, body-worn cameras, vehicle safety, first-aid kits, and computer terminals) on an ongoing basis. Budget officials should meet various community needs, but they should ensure that all officers have certain equipment so they can serve the community safely and effectively and protect their own safety. Specifically, departments should:

Equip officers with on-duty aid kits. All officers need their own first aid kits, which should include items to stem blood loss. All officers should also receive in-service training throughout their careers on proper techniques for rendering aid in the field.[45]

Provide protective gear. Policing is dangerous and complex work. Officers should be required to wear bulletproof vests in appropriate circumstances.[46] While officers may find protective gear cumbersome, it saves lives and alleviates stress because officers know they will be protected in emergencies.[47]

Supply adequate computers. Departments should collect and report data on enforcement activities accurately and efficiently. (For more detail, see Chapter 8.) To carry out this task, officers need properly functioning computers. Otherwise, department leaders send the message that they do not support officers in their job duties, which increases job-related stress and lowers morale.

CONCLUSION

To realize a vision of public safety that respects and protects human life and ensures safety for all, communities and police departments should work together to advance 21st-century best practices. By coproducing public safety, communities and police departments can develop policies and practices that reflect community values and interests.

As noted at the outset, the American public and its law enforcement system share the same general goal: to live in safe communities. Determining the role of police and in achieving that goal must be done collaboratively.

Bear in mind that many of the issues that give rise to problematic policing practices are societal problems that must be dealt with collectively and by imagining solutions beyond policing and the criminal justice system. Policing reform, in other words, is not the only answer to improving public safety.

But it is one piece of the puzzle toward realizing a fairer and safer society. And change happens one community and one department at a time. By integrating community voices into police policies and practices, developing a shared language to restore trust between communities and departments, and bringing people with diverse perspectives to the decision-making table, communities, law enforcement, and elected officials can coproduce public safety in a way that best services communities' interests.

The recommendations in this report can achieve this goal. Not all are appropriate for every department and community. Indeed, public safety needs vary across communities large and small; urban, rural, and suburban; homogenous and diverse. Nevertheless, the principles of fairness, equity, procedural justice, legitimacy, transparency, and accountability apply to every department.

By working together, communities and police departments can articulate a vision for a new era of policing that respects the dignity and humanity of all people — and can ultimately ensure that all people, of all backgrounds, are truly safe in America.

Executive Summary

[1] See, e.g., Jeffrey A. Fagan et al., Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City, in Race, Ethnicity, and Policing: New and Essential Readings 309-10 (Stephen K. Rice & Michael D. White eds., N.Y. Univ. Press 2010) (describing the origins of the NYPD's stop-and-frisk program and its disproportionate effects on people of color); U.S. Dep't of Justice, Civil Rights Div., Investigation of the Ferguson Police Department 63 (2015), https://www.courts.mo.gov/file.jsp?id=95274 ("Despite making up 67% of the population, African Americans accounted for 85% of FPD's traffic stops, 90% of FPD's citations, and 93% of FPD's arrests from 2012 to 2014.").

Chapter 1

[1] See Maya Harris West, Principal Author, Community Centered Policing: A Force for Change, Policy Link 1, 93 (2001), http://www.policylink.org/resources-tools/community-centered-policing-a-force-for-change (click "download pdf" link) (community policing opens departments to traditionally underrepresented communities, engages them as partners in problem-solving, and holds departments accountable to the communities they protect and serve). Dr. Tracie Keesee, Deputy Commissioner of Training for the New York City Police Department, describes the "co-production of public safety" as community-police partnerships that balance power to give both sides a voice in defining what their policing will look like. Natalie Aflalo, What Does Co-Production Of Public Safety Look Like?, Everyday Democracy (Mar. 9, 2017) https://www.everyday-democracy.org/news/what-does-co-production-public-safety-look; see also, Tracie Keesee, How police and the public can create safer neighborhoods together, TED (June 2018) https://www.ted.com/talks/tracie_keesee_how_police_and_the_public_can_create_safer_neighborhoods_together/transcript?language=en ("You bring people into the space that come with separate expertise, and you also come with new ideas and lived experience, and you produce a new knowledge. And when you produce that new knowledge, and you apply this theory to public safety, you produce a new type of public safety. … It is called building relationships, literally one block at a time.").

[2] See The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 1, 5 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [hereinafter President's Task Force Report], ("Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. It is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services.").

[3] President's Task Force Report, *supra* note 2, at 1, 3.

[4] Dr. Gary Potter, The History of Policing In the United States, Part I (June 25, 2013), https://plsonline.eku.edu/insidelook/history-policing-united-states-part-1.

[5] *Id.*

[6] Olivia B. Waxman, How the U.S. Got Its Police Force, TIME (May 18, 2017), http://time.com/4779112/police-history-origins/.

[7] *Id.*

[8] George L. Kelling & Mark A. Moore, The Evolving Strategy of Policing, Perspectives on Policing, Nov. 1998 5, https://pdfs.semanticscholar.org/a614/21a27a6c4fa0e25962ef30e95a22371c1b9c.pdf.

[9] The President's Comm'n on Law Enf't and Admin. of Justice, The Challenge of Crime in a Free Society 100 (1967), https://www.ncjrs.gov/pdffiles1/nij/42.pdf.

[10] See *generally* Kerner Comm'n, The Kerner Report, The 1968 Report of the National Advisory Commission on Civil Disorders (1989), https://www.ncjrs.gov/pdffiles1/Digitization/8073NCJRS.pdf; Nicole Lewis, How a landmark report on the 1960s race riots fell short on police reform, The Kerner Omission (Mar. 1, 2018), https://www.themarshallproject.org/2018/03/01/the-kerner-omission.

[11] Lewis, *supra* note 10.

[12] Lee P. Brown, Nat'l Inst. of Justice, U.S. Dep't of Justice, Community Policing: A Practical Guide for Police Officials 5 (Sept. 1989), https://www.ncjrs.gov/pdffiles1/nij/118001.pdf.

[13] *Id.*

[14] See Edward R. Maguire & Stephen D. Mastrofski, Patterns of Community Policing in the United States, 3 Police Q. 4, 5 (2000).

[15] See, e.g., Michael D. Reisig & Roger B. Parks, Can Community Policing Help the Truly Disadvantaged?, 50 Crim. & Delinq. 139 (Apr. 2004); see also L.A. Police Dep't, Report of the L.A. Police Dep't on the Prevention and Elimination of Biased Policing 138 (Nov. 15, 2016), http://www.lapdpolicecom.lacity.org/111516/BPC_16-0391.pdf (recommending various tactics to reduce fear of crime and noting that "[m]aking people feel safe is a primary function of any police agency"); VERA Inst. of Justice, U.S. Dep't of Justice, Cmty. Oriented Policing Servs., Police Perspectives: How to Support Trust Building in Your Agency 41 (2016), https://storage.googleapis.com/vera-web-assets/downloads/Publications/police-perspectives-guidebook-series-building-trust-in-a-diverse-nation/legacy_downloads/police-perspectives-guide-series-building-trust-diverse-nation-diverse-communities-building-trust_1.pdf [hereinafter Police Perspectives: How to Support Trust Building in Your Agency] (recommending the development of community partnership programs in part to "provide community perspective" and make communities safer).

[16] Kelling & Moore, *supra* note 8, at 10.

[17] Kelling & Moore, *supra* note 8, at 10.

[18] President's Task Force Report, *supra* note 2, at 9-18.

[19] President's Task Force Report, *supra* note 2, at 5, 9. (noting that "non-Whites have always had less confidence in law enforcement than Whites, likely because the poor and people of color have felt the greatest impact of mass incarceration, such that for too many poor citizens and people of color, arrest and imprisonment have become an inevitable and seemingly unavoidable part of the American experience") (internal quotations omitted)).

[20] See Jennifer Fratello, Andrés F. Renigfo & Jennifer Trone, VERA Inst. for Justice, Coming of Age with Stop and Frisk: Experiences, Perceptions, and Public Safety Implications 2 (2013), https://storage.googleapis.com/vera-web-assets/downloads/Publications/coming-of-age-with-stop-and-frisk-experiences-self-perceptions-and-public-safety-implications/legacy_downloads/stop-and-frisk-summary-report-v2.pdf (noting that New York City's use of stop-and-frisk had significant public safety implications, "as young people who ha[d] been stopped more often [were] less willing to report crimes, even when they themselves [were] the victims.").

[21] See Wash. State Joint Legis. Task Force on the Use of Deadly Force in Cmty. Policing, Final Report to the Legislature and Governor, at 15 (Dec. 1, 2016), https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Final%20Report_Jt.%20Leg.%20TF%20Deadly%20Force%20Community%20Policing_d704e027-1f1e-40a9-9388-f570930f2cbe.pdf (stating that a common issue in policing is the "stranger effect," where officers do not understand cultural differences and may "interpret something quite normal to be abnormal" when working with diverse communities); Mo. Advisory Comm. to the U.S. Comm'n on Civil Rights, The Impact of Community/Police Interactions on Individual Civil Rights in Missouri 28-32 (June 2016), https://www.usccr.gov/pubs/MOPoliceRelationsReport_Publish.pdf ("Testimony from several community leaders suggests that police do not have a good understanding of the communities they work in, straining relationships between [police and the community]."); Police Exec. Research Forum, Advice from Police Chiefs and Community Leaders on Building Trust: Ask for Help, Work Together, and Show Respect" 71-74 (Mar. 2016), http://www.policeforum.org/assets/policecommunitytrust.pdf; Kelling & Moore, *supra* note 8, at 5-32.

[22] Elements of this discussion are adapted or condensed from other sources. See, e.g., Cleveland Police Monitoring Team, First Semiannual Report 14-23 (June 2016), https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/57505d172eeb81e389277c4d/1464884505703/First+Semiannual+Report--2016-06-02--FOR+RELEASE.pdf; Seattle Police Monitor, Third System Assessment: Community Confidence 19-35 (Jan. 2016), https://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/5761303f746fb95af2702bd0/1465987136528/Third+Systemic+Assessment--Public+Confidence--FINAL.pdf.

[23] Columbia City, Mo. Resolution R 23-18 Declaring Support for Community-Oriented Policing [on file with Leadership Conference] (2018), https://www.como.gov/CMS/granicus/downloadfile.php?id=17736&type=attachment; See also Margaret Austin, Community policing resolution sees City Council support, Missourian (Jan. 17, 2018), https://www.columbiamissourian.com/news/local/community-policing-resolution-sees-city-council-support/article_72966ec4-fa08-11e7-b968-c31f7bd5aaa3.html.

[24] Gayle Fisher-Stewart, Community Policing Explained: A Guide for Local Governments, Office of Community Oriented Policing Services, U.S. Department of Justice 7, https://cops.usdoj.gov/pdf/vets-to-cops/cp_explained.pdf.

[25] E.J. Williams, Structuring in Community Policing: Institutionalizing Innovative Change, 4 Police Practice & Research 119, 124 (2003).

[26] Dover (New Jersey) Police Dep't Community Policing Mission Statement, http://doverpolicenj.org/newpage3.htm.

[27] Lt. Chris Donahue, Community Policing Mission Statement of the Belmont Police Department, Belmont Massachusetts, http://www.belmontpd.org/pages/BelmontPD_CommunityService/mission (last visited Jan. 21, 2019).

[28] Charles R. Montoya, Chief of Police, 2005 ANNUAL REPORT, Glendora Police Department, http://www.cityofglendora.org/home/showdocument?id=73. The DOJ Community Oriented Policing Services Office highlighted this mission statement as a good model related to community policing. Fisher-Stewart, *supra* note 24, at 16.

[29] Chief David L. Kurz, Best Practices Guide, Int'l Ass'n of Chiefs of Police, Strategic Planning: Building Strong Police Community Partnerships in Small Towns, at 2, https://www.theiacp.org/sites/default/files/2018-08/BP-StrategicPlanning.pdf (last visited Jan. 21, 2019).

[30] *Id.*

[31] *Id.* at 1-2.

[32] Fisher-Stewart, *supra* note 24, at 15.

[33] Cameron Luttrell, Georgetown Law Launches Police Fellowship Program, Patch Georgetown (Jun. 6, 2017), https://patch.com/district-columbia/georgetown/georgetown-law-launches-police-fellowship-program.

[34] *Id.*

[35] *Id.*

[36] See A. Gerasimos Glanakis, et al., Reinventing or Repackaging Public Services? The Case of Community-Oriented Policing, 58 Pub. Admin Rev. 485, 493 (1998) (finding that funding was the highest-ranked operational problem associated with the adoption of community-oriented policing); Allison T. Chappell, The Philosophical Versus Actual Adoption of Community Policing: A Case Study, 34 Crim. Justice Rev. 5, 17 (2009), http://ww2.odu.edu/~achappel/CJR_Chappell.pdf (noting that the most important measure may not be the overall monetary commitment of an organization so much as the effective use of resources).

[37] Tom R. Tyler, Procedural Justice, Legitimacy, and the Effective Rule of Law, 30 Crim. & Just. 283, 350 (2003) ("When people judge that legal authorities and institutions are making their decisions fairly, they view those authorities as more legitimate and more willingly defer to and cooperate with them in personal encounters and in their everyday law-related behaviors.").

[38] See Tracey Meares, Policing and Procedural Justice: Shaping Citizens' Identities to Increase Democratic Participation, 111 Nw. U. L. Rev. 1525, 1531 (2017).

[39] Megan Quattlebaum, Tracey Meares & Tom Tyler, The Justice Collaboratory at Yale Law School, Principles of Procedurally Just Policing 7, 23 (Jan. 2018), https://law.yale.edu/system/files/documents/pdf/policing_report.3.20.18.pdf; Rick Trickner, Tom Tyler & Phillip Goff, Justice from within: The relations between a procedurally just organizational climate and police organizational efficiency, endorsement of democratic policing, and officer well-being, 22, 2 Psychology, Public Policy, and Law 158 (2016), https://law.yale.edu/system/files/area/center/justice/document/cpdpaper_revision2_d1.pdf.

[40] Trickner, Tyler & Goff *supra* note 39.

[41] National Network For Safe Communities at John Jay College, Reconciliation, Innovations, https://nnscommunities.org/our-work/innovation/racial-reconciliation (last visited Jan. 21, 2019).

[42] Highlights from the National Initiative's Third Advisory Board Meeting, The National Initiative for Building Community Trust and Justice, (Feb. 2018), https://trustandjustice.org/.

[43] Reconciliation PROCESS OVERVIEW, The National Initiative for Building Community Trust and Justice (Oct. 2016), https://s3.trustandjustice.org/misc/National_Initiative_-_Reconciliation_Process_Overview.pdf.

[44] *Id.*

[45] *See* Gary, 2017 INTERIM STATUS REPORT, The National Initiative for Building Community Trust and Justice (Oct. 2017), https://nnscommunities.org/uploads/National_Initiative_2017_Interim_Status_Report_Gary.pdf.

[46] *See Id.*

[47] Edward R. Maguire & Stephen D. Mastrofski, Patterns of Community Policing in the United States, 3 Police Q. 4, 13-14 (2000) (noting that many "police agencies implement tangential and symbolic elements of community policing at the fringes of the organization, without actually producing changes in the technical core (where the primary work is accomplished")).

[48] *See, e.g.,* President's Task Force Report, *supra* note 2, at 45-46.

[49] *Id.* at 45. *See also* Kelling & Moore, *supra* note 8, at 9, 34, 40; U.S. Dep't of Justice, Cmty. Oriented Policing Servs., Strengthening the Relationship between Law Enforcement and Communities of Color: Developing an Agenda for Action 19 (2014) https://ric-zai-inc.com/Publications/cops-p307-pub.pdf.

[50] *See* Consent Decree, United States v. City of Newark, No. 2:16-cv-01731-MCA-MAH, ECF No. 4-1 at 11 (D. N.J. Apr. 29, 2016), https://www.justice.gov/crt/file/868131/download.

[51] *See* U.S. Dep't of Justice, Cmty. Oriented Policing Servs., Community Policing Self-Assessment Tool Results Report 2nd Administration: Example Report 7-8 (2013) https://cops.usdoj.gov/pdf/CP-SAT/CPSAT_Example_2nd_Admin.pdf.

[52] *See* U.S. Dep't of Justice, Civil Rights Div., Investigation of the New Orleans Police Department, App'x at 14 (2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf; *see generally* VERA Inst. of Justice, Police Perspectives: How to Serve Diverse Communities (2016), https://www.vera.org/publications/police-perspectives-guidebook-series-building-trust-in-a-diverse-nation.

[53] *See* George L. Kelling & James Q. Wilson, Broken Windows, the Police and Neighborhood Safety, The Atlantic (Mar. 1982 Issue), https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465 (stating "[i]f the neighborhood cannot keep a bothersome panhandler from annoying passersby, [a] thief may reason it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place"); *see also* Bernard E. Harcourt, Illusion of Order: The False Promise of Broken Windows Policing 18-19 (Harvard University Press 2001).

[54] "Order-maintenance policing" focuses on the proactive and aggressive enforcement of low-level, quality of life offenses. Bernard E. Harcourt, Illusion of Disorder 1 (2001).

[55] *See* Kyle Smith, We Were Wrong About Stop-and-Frisk, National Review (Jan. 1, 2018), https://www.nationalreview.com/2018/01/new-york-city-stop-and-frisk-crime-decline-conservatives-wrong/ ("Crime in New York City fell even as the policing tactic was abandoned."); Joe Sexton, In New York, Crime Falls Along with Police Stops, ProPublica (Jan. 16, 2018), https://www.propublica.org/article/in-new-york-crime-falls-along-with-police-stops ("Police have radically cut back their use of stop-and-frisk policies. To the surprise of some, crime didn't spike, but tumbled yet again.").

[56] *See, e.g.,* Roslyn Anderson and Morgan Howard, Jackson City Council Amends Ordinance to Decriminalize Marijuana, MS News Now (Feb. 13, 2018), http://www.wlbt.com/story/37496057/jackson-city-council-amends-ordinance-to-decriminalize-marijuana/.

[57] *See* Jacqueline B. Helfgott, et al., Seattle Police Department's Micro-Community Policing Plans Implementation Evaluation (Jan. 31, 2017), https://www.seattle.gov/Documents/Departments/Police/Reports/SPD-MCPP-Implementation-Evauation-Final-Report.pdf; Elena Iwata, City of Philadelphia, Police Service Areas: Your Neighborhood Connection to the PPD, https://beta.phila.gov/posts/mayor/2017-01-26-police-service-areas-your-neighborhoods-connection-to-the-ppd/.

[58] Helfgott et al., *supra* note 57.

[59] Helfgott et al., *supra* note 57, at 4.

[60] City of New Orleans, Neighborhood Engagement: Police Community Advisory Board, NOLA.gov, https://www.nola.gov/neighborhood-engagement/projects/new-orleans-police-community-advisory-board-(pcab)/ (last updated July 3, 2018); *see also* Drew Diamond & Deirdre Mead Weiss, U.S. Dep't of Justice, Community Oriented Policing Servs., Advancing Community Policing Through Community Governance: A Framework Document 1, 5 (2009), https://www.masc.sc/SiteCollectionDocuments/Public%20Safety/advancing%20community%20policing.pdf.

[61] Diamond & Weiss, *supra* note 60, at 33.

[62] Diamond & Weiss, *supra* note 60, at 33.

[63] President's Task Force Report, *supra* note 2, at 46.

[64] See President's Task Force Report, *supra* note 2, at 15, 20, 46; Int'l Ass'n of Chiefs of Police, IACP National Policy Summit on Community-Police Relations: Advancing a Culture of Cohesion and Community Trust 16 (2015), https://www.theiacp.org/sites/default/files/2018-09/CommunityPoliceRelationsSummitReport_web.pdf [hereinafter IACP Nat'l Policy Summit on Community-Police Relations]; Robert Wasserman, Inst. for Intergovernmental Research, Building Relationships of Trust: Recommended Steps for Chief Executives 5 (2014), https://ric-zai-inc.com/Publications/cops-w0734-pub.pdf.

[65] Limiting Police Use of Force: Promising Community Strategies, Policy Link 1316 (2014), http://www.policylink.org/sites/default/files/pl_police_use%20of%20force_111914_a.pdf; *see also* City of Tulsa, Findings and Recommendations of the Tulsa Commission on Community Policing: Executive Summary (2017), https://www.cityoftulsa.org/media/3298/community-policing-commission-executive-summary.pdf; Seattle Cmty. Police Comm'n, An Assessment of the Seattle Police Department's Community Engagement: Through Recruitment, Hiring, and Training 5, 26 (2016), https://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/CPC_Report_on_SPD_Community_Engagement.pdf (noting improved training for new recruits, but recommending further training "components for developing cultural competency and community engagement skills, both of which are invaluable for policing in communities with different social customs and modes of communication").

[66] See Robert Wasserman & Zachary Ginsburg, Inst. for Intergovernmental Research, Building Relationships of Trust: Moving to Implementation 37-38 (2014), https://ric-zai-inc.com/Publications/cops-w0729-pub.pdf; U.S. Dep't of Justice, Civil Rights Div & U.S. Attorney's Office N.D. Ill., Investigation of the Chicago Police Department 160 (2017), https://www.justice.gov/opa/file/925846/download; Police Perspectives: How to Support Trust Building in Your Agency, *supra* note 15, at 37-42; IACP Nat'l Policy Summit on Community-Police Relations *supra* note 64, at 26, 32; Police Accountability Task Force, Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities They Serve 49-50 (2016), https://www.issuelab.org/resource/recommendations-for-reform-restoring-trust-between-the-chicago-police-and-the-communities-they-serve.html; Ferguson Commission, Forward Through Ferguson: A Path Toward Racial Equality 98–99 (2015), https://forwardthroughferguson.org/report/executive-summary/; San Diego Police Department, Use of Force Task Force Recommendations 51-53 (2001), https://www.sandiego.gov/sites/default/files/legacy/police/pdf/taskreport.pdf.

[67] See Wasserman *supra* note 64, at 18. *See also* U.S. Dep't of Justice, Civil Rights Div. & U.S. Attorney's Office N.D. Ill., *supra* note 66, at 156, 160 (2017).

[68] Sutham Cheurprakobkit, Community Policing: Training, Definitions and Policy Implications, 25 Policing 709, 720 (2002), http://observatoriodeseguranca.org/files/Community%20policing.pdf.

[69] N.J. Office of the Attorney Gen., CLEAR Institute (Oct. 23, 2017), http://nj.gov/oag/safestopnj/pdf/Clear-Powerpoint.pdf; N.J. Office of the Attorney General, Safe Stop: Law Enforcement Training, http://nj.gov/oag/safestopnj/le.html (last visited Jan. 21, 2019).

[70] N.J. Office of the Attorney Gen., Attorney General Porrino Announces New Police Training Institute and Continuing Education Policy to Help New Jersey Officers Enhance Police-Community Relations and Avoid Deadly Encounters (Oct. 5, 2016), http://www.nj.gov/oag/newsreleases16/pr20161005a.html.

[71] Tracie L. Keese, Three Ways to Reduce Implicit Bias in Policing, Greater Good Magazine (July 2, 2105), https://greatergood.berkeley.edu/article/item/three_ways_to_reduce_implicit_bias_in_policing.

[72] Lorie Fridell, et al., Police Exec. Research Forum, Cmty. Oriented Policing Servs., Racially Biased Policing: A Principled Response 95-96 (2001), http://www.policeforum.org/assets/docs/Free_Online_Documents/Racially-Biased_Policing/racially%20biased%20policing%20-%20a%20principled%20response%202001.pdf.

[73] Fisher-Stewart, *supra* note 24, at 2,3,7.

[74] IACP Nat'l Policy Summit on Community-Police Relations, *supra* note 64, at 26-27; *see also* President's Task Force Report, *supra* note 2, at 15 (recommending implementation of "resident officer programs" to house officers in public housing neighborhoods with agreement of the law enforcement agency and housing authority); San Diego Police Dep't, Use of Force Task Force Recommendations 66 (2001), https://www.sandiego.gov/sites/default/files/legacy/police/pdf/taskreport.pdf.

[75] IACP Nat'l Policy Summit on Community-Police Relations, *supra* note 64, at 27.

[76] Wasserman & Ginsburg *supra* note 66, at 26; *accord* U.S. Dep't of Justice, Civil Rights Div. & U.S. Attorney's Office N.D. Ill., Investigation of the Chicago Police Department 136-39 (2017), https://www.justice.gov/opa/file/925846/download; U.S. Dep't of Justice, Civil Rights Div., Investigation of the Baltimore City Police Department 156-57 (2016), https://www.justice.gov/crt/file/883296/download; IACP Nat'l Policy Summit on Community-Police Relations, *supra* note 64, at 25-27.

[77] N.Y.C Police Dep't, Neighborhood Policing, NYC.gov, https://www1.nyc.gov/site/nypd/bureaus/patrol/neighborhood-coordination-officers.page.

[78] Caitlin Schmidt, New Tucson Police Program Will Refer Opioid Addicts to Treatment, Not Jail, Arizona Daily Star (Jun. 30, 2018), https://tucson.com/news/local/new-tucson-police-program-will-refer-opoid-addicts-to-treatment/article_01b5576b-b401-5a2f-9c1a-8d8efd8a9a0d.html.

[79] Effective Communication, ADA Requirements, U.S. Dep't of Justice, Civil Right Div., Disability Rights Section (Jan. 31, 2014), https://www.ada.gov/effective-comm.htm [hereinafter Effective Communication, ADA]; Limited English Proficiency (LEP) Federal Agency, Frequently Asked Questions, https://www.lep.gov/faqs/faqs.html#OneQ1 (last visited Feb. 8, 2019).

[80] Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50121 (August 16, 2000), https://www.gpo.gov/fdsys/pkg/FR-2000-08-16/pdf/00-20938.pdf; U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41458 (June 18, 2002), https://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15207.pdf.

[81] Commonly Asked Questions About The Americans With Disabilities Act And Law Enforcement, U.S. Dep't of Justice, Civil Right Div., Disability Rights Section, https://www.ada.gov/qanda_law.pdf at 1 (last visited Feb. 8 2019).

[82] See Effective Communication, ADA, *supra* note 79.

[83] Americans with Disabilities Act of 1990 Title II, 42 U.S.C. § 12132; Barbara Arnwine et. al, Civil Rights Coalition On Police Reform 1 (Aug. 18, 2014), https://lawyerscommittee.org/wp-content/uploads/2015/08/Civil-Rights-Coalition-on-Police-Reform-Resource-Packet.pdf.

[84] See 45 Fed. Reg. 37630 (June 3, 1980), Analysis of Department of Justice Regulations 214, https://cdn.loc.gov/service/ll/fedreg/fr045/fr045108/fr045108.pdf ("Law enforcement agencies should provide for the availability of qualified interpreters (certified where possible, by a recognized certification agency) to assist the agencies when dealing with hearing-impaired persons. ... It is the responsibility of the law enforcement agency to determine whether the hearing-impaired person uses American Sign Language or Signed English to communicate.").

[85] Americans with Disabilities Act of 1990 Title II, 42 U.S.C. § 12132; *see also* U.S. Dep't of Justice, Civil Rights Div., Disability Rights Section, Communicating with People Who are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers (2006), https://www.ada.gov/lawenfcomm.htm.

[86] Sample For Discussion Purposes Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan for Addressing Limited English Proficiency in a Law Enforcement Agency, U.S. Dep't of Justice, Civil Right Div., https://www.lep.gov/resources/Law_Enforcement_Planning_Tool.htm (last visited Feb. 8, 2019).

[87] *Id.*

[88] Barbara Arnwine et. al, Civil Rights Coalition On Police Reform 23 (Aug. 18, 2014), https://lawyerscommittee.org/wp-content/uploads/2015/08/Civil-Rights-Coalition-on-Police-Reform-Resource-Packet.pdf.

[89] *Id.*

[90] Advancement Project, We Came to Learn: A Call to Action for Police-Free Schools 22, http://advancementproject.org/wp-content/uploads/WCTLweb/index.html#page=38 [hereinafter Advancement Project].

[91] Johns Hopkins Univ. School Safety Net, High School Based Community Policing (2004), http://cte.jhu.edu/courses/ssn/sro/ses1_act2_pag1.shtml#.

[92] See Advancement Project *supra* note 90, at 12, 38.

[93] See *id.* at 77-78; Megan French-Marcelin & Sarah Hinger, Bullies in Blue: The Origins and Consequences of School Policing 33 (2017), https://www.aclu.org/report/bullies-blue-origins-and-consequences-school-policing.

[94] See French-Marcelin & Hinger, *supra* note 93, at 2.

[95] *Id.* at 33; Dignity in Schools Campaign, Counselors not Cops: Ending the Regular Presence of Law Enforcement in Schools 2 (2016), http://dignityinschools.org/wp-content/uploads/2017/10/DSC_Counselors_Not_Cops_Recommendations-1.pdf.; Advancement Project, *supra* note 90, at 61.

[96] French-Marcelin & Hinger, *supra* note 93, at 33.

[97] Advancement Project, The School-to-Deportation Pipeline, https://advancementproject.org/wp-content/uploads/2017/11/School-to-Deportation-Pipeline-Action-Kit-FINAL-compressed.pdf. In *Plyler v. Doe*, the Supreme Court held that school districts can't enforce measure that would discourage undocumented children from registering in school, prohibiting them from asking about immigration status. 457 U.S. 202, 220 (1982). School districts, therefore, are barred from sharing immigration information with federal immigration officials. Moriah Balingit, 'Astounding ignorance of the law': Civil rights groups slam DeVos for saying schools can report undocumented students, Wash. Post (May 23, 2018), https://www.washingtonpost.com/news/education/wp/2018/05/23/astounding-ignorance-of-the-law-civil-rights-groups-slam-devos-for-saying-schools-can-report-undocumented-students/?utm_term=.a2ad330d2307.

[98] French-Marcelin & Hinger, *supra* note 93, at 33; John B. King, Jr. Policy Letter, U.S. Dep't of Educ. (Sept. 8, 2016), https://www2.ed.gov/policy/elsec/guid/secletter/160907.html ("In order to eliminate overreliance on SROs in schools, school staff and administrators should be well trained to address behavioral issues through a variety of corrective, non-punitive interventions, including restorative justice programs and mental health supports."); *see also* Bayliss Fiddiman, Ashley Jeffrey & Scott Sargrad, Smart Investments for Safer Schools, Center For American Progress (Dec. 19, 2018, 9:02 am), https://www.americanprogress.org/issues/education-k-12/reports/2018/12/19/464445/smart-investments-safer-schools/.

[99] Advancement Project, *supra* note 90, at 78; see Fiddiman, Jeffrey & Sargrad, *supra* note 98.

[100] Baltimore Police Dep't, Fair Impartial Policing, Draft Policy 317 (Aug. 24, 2018), https://www.powerdms.com/public/BALTIMOREMD/documents/349731.

[101] Michael Fix & Wendy Zimmerman, All Under One Roof: Mixed-Status Families in an Era of Reform (Oct. 6, 1999), http://webarchive.urban.org/UploadedPDF/409100.pdf.

[102] Paul Murphy & Deanna Hackney, Police Answered Immigrant's Call for Help, then Gave Him to ICE, CNN Online (Feb. 26, 2018), https://www.cnn.com/2018/02/13/us/tukwila-police-ice-detain-trnd/index.html.

[103] Dale Russakoff & Deborah Sontag, For Cops Who Want to Help ICE Crack Down on Illegal Immigration, Pennsylvania Is a Free-for-All, ProPublica (Apr. 12, 2018), https://www.propublica.org/article/pennsylvania-immigration-ice-crackdown-cops-free-for-all.

[104] See, e.g., New Orleans Police Dep't, Operations Manual: Immigrations Status 41.6.1 (2016), http://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-41-6-1-Immigration-Status-approval.pdf/; see also, Taylor Dobbs, Not Sanctuary City, But New Policy Means Burlington Cops Won't Ask About Immigration, Vermont Public Radio (Jun. 13, 2017), http://digital.vpr.net/post/not-sanctuary-city-new-policy-means-burlington-cops-wont-ask-about-immigration#stream/0.

[105] See, e.g., Operations Manual: Immigrations Status, *supra* note 104 ("[New Orleans Police Department] members shall not make inquiries into an individual's immigration status. … This policy is to be construed in accordance with 8 U.S.C. §1373(a).").

[106] Governor Cuomo Signs Executive Order Prohibiting State Agencies from Inquiring About Immigration Status (Sep. 15, 2017), https://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-prohibiting-state-agencies-inquiring-about-immigration.

[107] Ryan Gillespie, Orlando Approves Trust Act Policy to Cheers of Immigration Activists, Orlando Sentinel (Jul. 23, 2018), https://www.orlandosentinel.com/news/orange/os-orlando-trust-vote-20180723-story.html.

[108] Jeff Gammage & Anya van Wagtendonk, Judge Rules for Philadelphia in 'Sanctuary City' Case, Philadelphia Inquirer (Jun. 6, 2018), http://www2.philly.com/philly/news/sanctuary-city-judge-rules-for-philadelphia-trump-undocumented-immigrants-20180606.html.

Chapter 2

[1] See Ezekial Edwards, Will Bunting & Lynda Garcia, Am. Civ. Liberties Union, The War on Marijuana in Black and White 4 (June 2013), https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf (finding, ". . .a Black person is 3.73 times more likely to be arrested for marijuana possession than a white person, even though Blacks and whites use marijuana at similar rates."); Lynn Langton & Matthew Durose, U.S. Dep't of Justice, Bureau of Justice Statistics, Police Behavior During Traffic and Street Stops (2011 rev. Oct. 27, 2016), https://www.bjs.gov/content/pub/pdf/pbtss11.pdf; NAACP, Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America 9 (2014), https://www.naacp.org/wp-content/uploads/2018/07/Born_Suspect_Report_final_web.pdf (discussing national data on racial profiling that shows "racial profiling happened to men, women, and children of all ages and socio-economic backgrounds, and in virtually every context of people's lives: on the streets, inside cars, at home, at airports, at shopping centers, and at places of worship"); N.Y. Civ. Liberties Union, Stop-and-Frisk Data, https://www.nyclu.org/en/stop-and-frisk-data (last accessed Dec. 17, 2018) (noting that "[n] early nine out of 10 stopped-and-frisked New Yorkers have been completely innocent and "black and Latino communities continue to be the overwhelming target of these tactics"); Wesley Lowery, New Study: Only 24% of Population, Blacks in Boston Make Up 63% of Stop and Frisk Encounters, Wash. Post, Oct. 8, 2014, https://www.washingtonpost.com/news/post-nation/wp/2014/10/08/new-study-only-24-of-population-blacks-in-boston-make-up-63-of-stop-and-frisk-encounters/?utm_term=.352c97f03c03.

[2] U.S. Dep't of Justice, Nat'l Inst. of Justice, Race, Trust and Police Legitimacy, https://www.nij.gov/topics/law-enforcement/legitimacy/Pages/welcome.aspx (last visited Jan. 23, 2019).

[3] See, e.g., Jeffrey A. Fagan et al., Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City, in Race, Ethnicity, and Policing: New and Essential Readings 309-10 (Stephen K. Rice & Michael D. White eds., N.Y. Univ. Press 2010) (describing the origins of the NYPD's stop-and-frisk program and its disproportionate effects on people of color); U.S. Dep't of Justice, Civil Rights Div., Investigation of the Ferguson Police Department 62 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf ("Despite making up 67% of the population, African Americans accounted for 85% of FPD's traffic stops, 90% of FPD's citations, and 93% of FPD's arrests from 2012 to 2014."); Kara Dansky, Am. Civ. Liberties Union, War Comes Home: The Excessive Militarization of American Policing 35-37 (2014), https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police (explaining that Special Weapons and Tactics (SWAT) deployments primarily and disproportionately target communities of color).

[4] See, e.g., Christy Mallory, Amira Hasenbush & Brad Sears, Williams Inst., UCLA, Discrimination and Harassment by Law Enforcement Officers in the LGBT Community 8 (Mar. 2015), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf (describing the impact LGBTQ community).

[5] Sue Rahr & Stephen K. Rice, New Perspectives in Policing: From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals (Apr. 2015), https://www.ncjrs.gov/pdffiles1/nij/248654.pdf.

[6] Lorie Fridell et. al., Police Exec. Res. Forum, Racially Biased Policing: A Principled Response, at x (2001), https://ric-zai-inc.com/Publications/cops-w0172-pub.pdf.

[7] See Jody Feder, Cong. Res. Serv., Racial Profiling: Legal and Constitutional Issues 1 (Apr. 16, 2012), https://fas.org/sgp/crs/misc/RL31130.pdf ("Racial profiling is the practice of targeting individuals for police or security detention based on their race or ethnicity in the belief that certain minority groups are more likely to engage in unlawful behavior.").

[8] See Sarah E. Burke et. al., Informal Training Experiences and Explicit Bias against African Americans among Medical Students, 80(1) Soc. Psychol. Q. 65 (2017), https://journals.sagepub.com/doi/full/10.1177/0190272516668166 (finding that explicit racial biases predict discriminatory behavior in a wide range of contexts).

[9] Village of Arlington Heights v. Metro. Housing Dev. Corp., 429 U.S. 252, 265-66 (1977).

[10] See Bertram Gawronski & Galen V. Bodenhausen, Associative and Propositional Processes in Evaluation: An Integrative Review of Implicit and Explicit Attitude Change, 132 Psychol. Bull. no. 5 692, 693 (2006), http://www.bertramgawronski.com/documents/GB2006PB.pdf, ("[E]valuative tendencies resides in associative processes, which build the basis for … implicit attitudes. Associative evaluations are best characterized as automatic affective reactions resulting from the particular associations that are activated automatically when one encounters a relevant stimulus. Such activation processes do not require much cognitive capacity or an intention to evaluate an object[.]").

[11] See Newark Police Div., General Order 17-06 Re: Biased-Free Policing 2 (Sept. 19, 2017), https://npd.newarkpublicsafety.org/assets/docs/consent_decree/approved_policies/bias-free-policing-1706.pdf.

[12] See generally Daniel Kahneman, Thinking, Fast and Slow (2011).

[13] Pamela M. Casey et al., Helping Courts Address Implicit Bias: Resources for Education 1-2 (2012), https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/246/.

[14] Gawronski, *supra* note 11.

[15] See Jenessa R. Shapiro et. al., Look Black in Anger: The Role of Implicit Prejudice in the Categorization and Perceived Emotional Intensity of Racially Ambiguous Faces, 35 Personality and So. Psychol. Bull. 1356 (Oct. 2009), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2798889/; Paul B. Hutching & Geoffrey Haddock, Look Black in Anger: The Role of Implicit Prejudice in the Categorization and Perceived Emotional Intensity of Racially Ambiguous Faces, 44 J. Exp. Soc. Psychol. 1418, 1420 (2008), https://www.researchgate.net/publication/222413010_Look_Black_in_Anger_The_Role_of_Implicit_Prejudice_in_the_Categorization_and_Perceived_Emotional_Intensity_of_Racially_Ambiguous_Faces (finding that "White participants high in implicit prejudice were significantly more likely to classify an angry ambiguous face as being Black compared to participants low in implicit prejudice.").

[16] See Joshua Correll & Tracie Keesee, Racial Bias in the Decision to Shoot?, 76 Police Chief (May 2009) ("The study found that … Denver police officers … showed significant bias in their reaction times" in a study where participants were given the computer task of deciding whether to shoot a series of white or black male targets.); Brian Keith Payne, Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon, 81 J. Pers. & Soc. Psychol. 181, 190 (2001) (noting that "research strongly support[s] the hypothesis that the race of faces paired with objects does influence the perceptual identification of weapons"), https://www.researchgate.net/publication/11825666_Prejudice_and_Perception_The_Role_of_Automatic_and_Controlled_Processes_in_Misperceiving_a_Weapon. Recent studies indicate that training is having a positive effect, however, as officers exhibit less racial bias in shoot/don't shoot decisions. See Tom Jackman, This Study Found Race Matters in Police Shootings, but the Results May Surprise You, Wash. Post (Apr. 27, 2016), https://www.washingtonpost.com/news/true-crime/wp/2016/04/27/this-study-found-race-matters-in-police-shootings-but-the-results-may-surprise-you/?noredirect=on&utm_term=.851d3a6b68be.

[17] See Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317, 355 (Jan. 1987) ("[R]ecognizing unconscious racism provides a mechanism for effectively responding to continuing race-based inequalities[.]").

[18] David Edmonds, Implicit Bias: Is Everyone Racist?, BBC Magazine (June 5, 2017), https://www.bbc.com/news/magazine-40124781.

[19] See Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (concluding that the Fourteenth Amendment guarantees equal protection of the laws "without regard to any differences of race, of color, or of nationality"); see also Whren v. United States, 517 U.S. 806, 813 (1996) (affirming that the Fourteenth Amendment prohibits selective or discriminatory enforcement of the law); 42 U.S.C. § 2000a et seq. (prohibiting discrimination based on race, religion, or national origin).

[20] See U.S. Dep't of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence 23 (2015), https://www.justice.gov/crt/file/799316/download; Whren v. United States, 517 U.S. 806, 813 (1996).

[21] See Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265-66 (1977) (requiring strict judicial review of any government action upon finding "proof that a discriminatory purpose has been a motivating factor" in government decision-making); Melendres v. Arpaio, 989 F. Supp. 2d 822, 910 (D. Ariz. 2013), aff'd, 784 F.3d 1254 (9th Cir. 2015) (directing the Maricopa County Sheriff's Office to remedy its Fourteenth Amendment violations and to cease "using race or Latino ancestry as a factor" in stopping vehicles and making law enforcement decisions).

[22] Griggs v. Duke Power Co., 401 U.S. 424, 429–30 (1971) (noting that facially neutral practices and procedures are not immune from judicial scrutiny if they operate in a racially discriminatory manner).

[23] Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, 135 S. Ct. 2507, 2513 (2015).

[24] Floyd v. City of New York, 959 F. Supp. 2d 540, 558 (S.D.N.Y. 2013) ("Because there is rarely direct proof of discriminatory intent, circumstantial evidence of such intent is permitted.").

[25] Village of Arlington Heights, supra note 10, at 266 ("Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.").

[26] See Village of Arlington Heights, *supra* note 10, at 265-66; *see also* Inclusive Communities Project, 135 S. Ct. at 2513 (quoting Ricci v. DeStefano, 557 U.S. 557, 577 (2009)). Note that under the disparate impact analysis, plaintiffs must also prove that any legitimate, nondiscriminatory interest served by the practice could be served by a less discriminatory alternative policy. Inclusive Communities Project, 135 S. Ct. at 2514-15.

[27] Floyd v. City of New York, 959 F. Supp. 2d 540, 662 (S.D.N.Y. 2013).

[28] *Id.* at 560, 573-74, 589.

[29] *Id.* at 606, 660-61, 664.

[30] *Id.* at 667, 676-77, 686-88.

[31] Melendres v. Arpaio, 989 F. Supp. 2d 822, 827, 848-9, 910 (D. Ariz. 2013), aff'd, 784 F.3d 1254 (9th Cir. 2015).

[32] *Id.* at 859, 903-04.

[33] *Id.* at 899-902.

[34] Richard Perez-Peña, Former Arizona Sheriff Joe Arpaio Is Convicted of Criminal Contempt, N.Y. Times (July 31, 2017), https://www.nytimes.com/2017/07/31/us/sheriff-joe-arpaio-convicted-arizona.html; Devilin Barrett & Abby Phillip, Trump pardons former Arizona sheriff Joe Arpaio, Wash. Post (Aug. 25, 2017), https://www.washingtonpost.com/world/national-security/trump-pardons-former-arizona-sheriff-joe-arpaio/2017/08/25/afbff4b6-86b1-11e7-961d-2f373b3977ee_story.html?utm_term=.8e5f3034f5cf.

[35] Civil Rights Div., Dep't of Justice, Title VI Legal Manual Section VII Proving Discrimination – Disparate Impact 2, https://www.justice.gov/crt/case-document/file/934826/download (last visited Feb. 11, 2019) (citing Griggs v. Duke Power Co., 401 U.S. 424, 430–31 (1971); City of Rome v. United States, 446 U.S. 156, 176–77 (1980); Gaston Cty. v. United States, 395 U.S. 285, 297 (1969)).

[36] Brown v. Board of Education, 347 U.S. 483 (1954).

[37] Civil Rights Act of 1964, Pub. L. No. 88-352; Voting Rights Act of 1965, Pub. L. 89-110; Fair Housing Act (Civil Rights Act of 1968 Tit. VIII), Pub. L. 90-284.

[38] Tracy Jan, Redlining Was Banned 50 Years Ago. It's Still Hurting Minorities Today, Wash. Post (Mar. 28, 2018), https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/?utm_term=.3b93fa5e56d0; U.S. Dep't of Hous. and Urb. Dev., Unequal Burden: Income and Racial Disparities in Subprime Lending in America (2000), https://www.huduser.gov/Publications/pdf/unequal_full.pdf; See also U.S. Dep't of Justice, Civil Rights Div., Investigation of the Baltimore City Police Department 12 (2016), https://www.justice.gov/crt/file/883296/download (discussing Baltimore's history of redlining and segregation and its effect on communities of color); see also Ta-Nahisi Coates, The Case for Reparations, The Atlantic (June 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/ (discussing the collective and multiplying effects of racial segregation, race-based policies, and subprime lending on African-American communities).

[39] See, Coates, The Case for Reparations, *supra* note 38.

[40] U.S. Dep't of Justice, Civil Rights Div., Investigation of the Baltimore City Police Department 70-72 (2016), https://www.justice.gov/crt/file/883296/download.

[41] *Id.* at 24-27.

[42] Phillip Atiba Goff, On Stop-and-Frisk, We Can't Celebrate Just Yet, N.Y. Times (Jan. 7, 2018), https://www.nytimes.com/2018/01/07/opinion/stop-and-frisk-celebrate.html; Amanda Geller et al., Police Contact and Mental Health, Colum. Pub. L. Res. Paper No. 14-571 2 (2017), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3079&context=faculty_scholarship (reporting that "the broader implications of police activity beyond crime control" had largely evaded academic review); Nat'l Acad. of Sci., Eng'g, and Med., Proactive Policing: Effects on Crime and Communities 315 (2018), https://www.nap.edu/read/24928/chapter/10#315 (more aggressive policing tactics that are focused on individuals may have negative outcomes on those who have contact with the police.).

[43] Amanda Geller et al., Police Contact and Mental Health, Colum. Pub. L. Res. Paper No. 14-571 25-26, 30 (2017), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3079&context=faculty_scholarship.

[44] Amy E. Lerman & Vesla M. Weaver, Arresting Citizenship: The Democratic Consequences of American Crime Control 10 (2014), https://books.google.com/books?hl=en&lr=&id=CWyXAwAAQBAJ&oi=fnd&pg=PR7&dq=weaver+lerman&ots=lD-f8MeB27R&sig=pK21Y7FAE9ZOHduDK-pc0s9Cx0_Y#v=onepage&q=weaver%20lerman&f=false.

[45] Phillip Atiba Goff, On Stop-and-Frisk, We Can't Celebrate Just Yet, N.Y. Times (Jan. 7, 2018), https://www.nytimes.com/2018/01/07/opinion/stop-and-frisk-celebrate.html (lamenting the lack of research on the collective consequences of negative contact with the police); Geller, *supra* note 44, at 2 (reporting that "the broader implications of police activity beyond crime control" had largely evaded academic review).

[46] Victoria McKenzie, The Dirty Data Feeding Predictive Police Algorithms, The Crime Report (Aug. 18, 2017), https://thecrimereport.org/2017/08/18/does-predictive-policing-mathwash-bias/.

[47] *Id.*

[48] Danielle Ensign et al., Runaway Feedback Loops in Predictive Policing, 81 Proc. of Mach. Learning Res. 1 (2018), https://arxiv.org/pdf/1706.09847.pdf.

[49] Greg Ridgeway et. al., U.S. Dep't of Justice, Community Oriented Policing Services, An Examination of Racial Disparities in Bicycle Stops and Citations Made by the Tampa Bay Police 3 (2016), https://ric-zai-inc.com/Publications/cops-w0801-pub.pdf.

[50] *Id.* at 3.

[51] See Policing Project, N.Y.U. School of Law, An Assessment of Traffic Stops and Policing Strategies in Nashville 11 (2018), https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5bf2d18d562fa747a554f6b0/1542640014294/Policing+Project+Nashville+Report.pdf.

[52] See, e.g., Baltimore Police Dep't, About Us: Mission Statement (last visited Feb. 11, 2019), https://www.baltimorepolice.org/about-department.

[53] As a practical matter, state laws may prohibit discrimination against broader protected classes. See, e.g., Virginia Human Rights Act, Va. Code §§ 2.2-3900-3 (2019), https://law.lis.virginia.gov/vacodepopularnames/virginia-human-rights-act/ (including childbirth or related medical conditions, age, marital status, or disability as protected classes). Police department policies, however, can provide even broader protections.

[54] See e.g., Seattle Police Department Manual Section 5.140 (eff. July 15, 2018) https://www.seattle.gov/police-manual/title-5---employee-conduct/5140---bias-free-policing [hereafter SPD 5.140].

[55] Newark Police Div., *supra* note 11, at 5.

[56] Newark Police Div., *supra* note 12, at 5.

[57] See New Orleans Police Dep't, Operations Manual Chapter 41.13: Bias Free Policing 5 (eff. July 10, 2016), https://www.nola.gov/getattachment/NOPD/Policies/Bias-Free.pdf/ [hereinafter New Orleans 41.13].

[58] See e.g., SPD 5.140, *supra* note 54.

[59] See Baltimore Police Dep't, Draft Policy 317: Fair and Impartial Policing 4-5 (Aug 24, 2018), https://www.baltimorepolice.org/317-draft-fair-and-impartial-policing; Maricopa County Sheriff's Office, Policy EB-1 Traffic Enforcement, Violator Contacts, and Citation Issuance 2 (eff. Jan. 11, 2018), https://www.mcso.org/documents/Policy/Patrol/EB-1.pdf (prohibiting bias-based profiling and requiring deputies have articulable, reasonable suspicion of a traffic violation or criminal involvement before stopping a vehicle).

[60] Baltimore Police Dep't, Draft Policy 317: Fair and Impartial Policing 7 (Aug 24, 2018), https://www.baltimorepolice.org/317-draft-fair-and-impartial-policing [hereinafter Baltimore Draft Policy 317].

[61] Maricopa County Sheriff's Office, Policy EB-1 Traffic Enforcement, Violator Contacts, and Citation Issuance 2, 5 (eff. Jan. 11, 2018), https://www.mcso.org/documents/Policy/Patrol/EB-1.pdf.

[62] See Bell v, Maryland, 378 U.S, 226, 309 (1964) (Goldberg, J. concurring) ("[D]enying the equal protection of the laws includes the omission to protect.") (internal quotation marks omitted).

[63] See, e.g., Baltimore Draft Policy 317, *supra* note 60, at 2; Newark Police Div., *supra* note 11, at 4.

[64] New Orleans 41.13, *supra* note 57, at 3 (The prohibition against collecting information about sexual orientation or gender identity is to avoid the risk of retaliation or unauthorized disclosure of the information); see James Copple & Patricia Dunn, U.S. Dep't of Justice, Community Oriented Policing Services, Gender, Sexuality, and 21st Century Policing, Protecting the Rights of LGBTQ+ Community 8 (2017), https://ric-zai-inc.com/Publications/cops-w0837-pub.pdf; *see also* New Orleans Police Dep't, Operations Manual Chapter 41.6.1: Immigration Status (eff. Feb. 28, 2016), http://nowcrj.org/wp-content/uploads/2016/02/NOPD-anti-bias-policing-policy-Feb-2016.pdf.

[65] Baltimore Draft Policy 317, *supra* note 60, at 6 (Aug 24, 2018).

[66] See, e.g., Letter from Jocelyn Samuels & Michael Cotter to Fred Van Valkenburg, Missoula County Attorney, Re: The United States' Investigation of the Missoula County Attorney's Office 2 (Feb. 14, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/02/19/missoula_ltr_2-14-14.pdf (finding the Missoula County Attorney's Office failure to respond to and investigate rape and sexual assault cases to be fueled in part by gender bias).

[67] U.S. Dep't of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence 11, 14 (2015), https://www.justice.gov/crt/file/799316/download [hereinafter Preventing Gender Bias] (noting that a woman's involvement in sex work should not bear on the officer's determination of her credibility or that she can't be assaulted).

[68] For a full list, see Int'l Ass'n of Chiefs of Police, Addressing Sexual Offenses and Misconduct by Law Enforcement 3-4 (June 2011), https://www.theiacp.org/sites/default/files/all/a/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf [hereinafter IACP Addressing Sexual Offenses].

[69] See Int'; Ass'n of Chiefs of Police, Sexual Assault Response Policy and Training Content Guidelines 10, 21, https://www.theiacp.org/sites/default/files/all/i-j/IACP%20Sexual%20Assault%20Response%20Policy%20and%20Training%20Content%20Guidelines.2017.3.23.pdf. The International Association of Chiefs of Police lists intimate partner violence as a form of sexual assault. *Id.*

[70] See Bell v, Maryland, 378 U.S, 226, 309 (1964) (Goldberg, J. concurring) ("[D]enying the equal protection of the laws includes the omission to protect.") (internal quotation marks omitted); see also https://www.justice.gov/crt/file/799316/download at 7 ("Acting on stereotypes about why women or LGBT individuals are sexually assaulted, or about how a victim of domestic violence or sexual assault should look or behave, can constitute unlawful discrimination and profoundly undermine an effective response to these crimes."); Letter from Thomas Perez & Michael Cotter to Missoula Mayor John Engen, Re: The United States' Investigation of the Missoula Police Department (May 15, 2013), https://www.justice.gov/sites/default/files/crt/legacy/2013/05/22/missoulapdfind_5-15-13.pdf (finding equal protection violation where department failed to provide adequate services to sexual assault victims).

[71] Deborah Tuerkheimer, Underenforcement as Unequal Protection, 57 Boston Coll. L. Rev.1287 (2016), https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3526&context=bclr; Estate of Macias v, Ihde, 219 F.3d 1018 (9th Cir. 2000) ("There is a constitutional right, however, to have police services administered in a nondiscriminatory manner — a right that is violated when a state actor denies such protection to disfavored persons."); Julie Goldscheid et al., Responses from the Field: Sexual Assault, Domestic Violence, and Policing 8-9 (Oct. 2015), https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1075&context=cl_pubs.

[72] Letter from Thomas Perez & Michael Cotter to Missoula Mayor John Engen, Re: The United States' Investigation of the Missoula Police Department 12, 14 (May 15, 2013), https://www.justice.gov/sites/default/files/crt/legacy/2013/05/22/missoulapdfind_5-15-13.pdf.

[73] See Preventing Gender Bias, *supra* note 67, at 21.

[74] IACP Addressing Sexual Offenses, *supra* note 68, at 2.

[75] Preventing Gender Bias, *supra* note 67, at 10.

[76] Preventing Gender Bias, *supra* note 67, at 11-12.

[77] Phillip Stinson et. al., Police Integrity Lost: A Study of Law Enforcement Officers Arrested 22 (Jan. 2016), https://www.ncjrs.gov/pdffiles1/nij/grants/249850.pdf.

[78] Andrea J. Ritchie & Delores Jones-Brown, Policing Race, Gender, and Sex: A Review of Law, 27 Women and Crim. Just. 21, 33 (2017), http://andreajritchie.com/wp-content/uploads/2017/05/Policing-Race-Gender-and-Sex-A-Review-of-Law-Enforcement-Policies.pdf.

[79] IACP Addressing Sexual Offenses, *supra* note 68, at 5-6.

[80] The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 28, 58 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) [hereinafter President's Task Force Report]; IACP Addressing Sexual Offenses, *supra* note 68, at 5.

[81] IACP Addressing Sexual Offenses, *supra* note 68, at 4-6.

[82] President's Task Force Report, *supra* note 80, at 28, 58.

[83] President's Task Force Report, *supra* note 80, at 58.

[84] New Orleans Police Dep't, Operations Manual Chapter 41.6.1: Immigration Status (eff. Feb. 28, 2016), http://nowcrj.org/wp-content/uploads/2016/02/NOPD-anti-bias-policing-policy-Feb-2016.pdf.

[85] Metro. Police Dep't, General Order PCA 501-02 Handling Interactions with Transgendered Individuals (eff. Jan. 5, 2015), https://go.mpdconline.com/GO/GO_501_02.pdf.

[86] President's Task Force Report, *supra* note 80, at 58.

[87] See e.g., SPD 5.140, *supra* note 54.

[88] New Orleans 41.13, *supra* note 57, at 4; see also Baltimore Draft Policy 317, *supra* note 59, at 7.

[89] Newark Police Div., *supra* note 11, at 5; Baltimore Draft Policy 317, *supra* note 59, at 7.

[90] Newark Police Div., *supra* note 11, at 7; Baltimore Draft Policy 317, *supra* note 59, at 6.

[91] Newark Police Div., *supra* note 11, at 7.

[92] See Baltimore Draft Policy 317, *supra* note 59, at 3-8; New Orleans 41.13, *supra* note 57, at 1-5.

[93] Newark Police Div., *supra* note 11, at 5.

[94] Tom James, Can Cops Unlearn Their Unconscious Bias?, The Atlantic (Dec. 23, 2017), https://www.theatlantic.com/politics/archive/2017/12/implicit-bias-training-salt-lake/548996/.

[95] *Id.*

[96] Baltimore Draft Policy 317, *supra* note 59, at 6.

[97] New Orleans 41.13, *supra* note 57, at 5.

[98] Baltimore Draft Policy 317, *supra* note 59, at 6.

[99] Baltimore Draft Policy 317, *supra* note 59, at 7-8.

[100] Baltimore Draft Policy 317, *supra* note 59, at 7.

[101] Newark Police Div., *supra* note 11, at 7.

[102] Baltimore Draft Policy 317, *supra* note 59, at 6 ("Each supervisor has an individual obligation to ensure the timely and complete review and documentation of all allegations of violations of this policy that are referred to them or of which they should reasonably be aware. Commanders and supervisors shall ensure that all allegations of violations of this policy will be entered into BlueTeam and forwarded to OPR by the end of their tour of duty.").

[103] Baltimore Draft Policy 317, *supra* note 59, at 7.

[104] SPD 5.140, *supra* note 54.

[105] Civil Rights Div., Dep't of Justice, Title VI Legal Manual Section VII Proving Discrimination – Disparate Impact 14, https://www.justice.gov/crt/case-document/file/934826/download (last visited Feb. 11, 2019); *see, e.g.*, U.S. v. Maricopa Cty., 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) (finding disparate impact where the agency's lack of language access policies and training resulted in a denial of access of services).

[106] SPD 5.140, *supra* note 55; Consent Decree, United States v. City of Newark, No. 2:1 6-cv-0 1731 -MCA-MAH, ¶ 19-20 (D. NJ Apr. 29, 2016), https://www.justice.gov/opa/file/836901/download [hereinafter Newark Consent Decree].

[107] SPD 5.140, *supra* note 54.

[108] U.S. Dep't of Just., Civil Rights Div., Investigation of the Baltimore City Police Department 56 (Aug. 10, 2016), https://www.justice.gov/crt/file/883296/download.

[109] Consent Decree, United States v. Police Dep't of Baltimore City, No. 1:17-CV-00099-JKB, ¶ 61 (D. Md. Jan. 12, 2017), http://www.mdd.uscourts.gov/sites/mdd/files/ConsentDecree_1.pdf.

[110] Newark Consent Decree, *supra* note 106, at ¶ 37-38.

[111] Elizabeth Dias et. al., Philadelphia Starbucks Arrests, Outrageous to Some, Are Everyday Life for Others, N.Y. Times (Apr. 17, 2018), https://www.nytimes.com/2018/04/17/us/starbucks-arrest-philadelphia.html; Benjamin Fearnow, White Woman Calls Police on Black Family's BBQ for 'Trespassing' in Oakland Park, Newsweek (May 10, 2018), https://www.newsweek.com/lake-merritt-bbq-barbecue-video-oakland-racist-charcoal-east-bay-black-family-919355; Christina Caron, A Black Yale Student Was Napping, and a White Student Called the Police, N.Y. Times (May 9, 2018), https://www.nytimes.com/2018/05/09/nyregion/yale-black-student-nap.html.

[112] Baltimore Draft Policy 317, *supra* note 59, at 6.

[113] FBI: Spike in US Hate Crimes for Third Year in a Row, BBC (Nov. 13, 2018), https://www.bbc.com/news/world-us-canada-46189391. Compare FBI, 2016 Hate Crime Statistics (last visited Feb. 12, 2019), https://ucr.fbi.gov/hate-crime/2016/topic-pages/incidentsandoffenses (reporting 6,121 hate crime incidents) with FBI, 2017 Hate Crime Statistics (last visited Feb. 12, 2019), https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses (reporting 7,175 hate crime incidents).

[114] New Orleans Police Dep't, Operations Manual Chapter 42.12 Hate Crimes 4 (eff. May 7, 2017), https://www.nola.gov/getattachment/NOPD/Policies/Chapter-42-12-Hate-Crimes-EFFECTIVE-5-7-17-(1).pdf.

[115] *See e.g., id.* ("Mak[e] an affirmative effort to establish contact with persons and groups within the community who are likely targets of hate crimes in order to form, and cooperate with, prevention and response networks ...provid[e] victim assistance and follow-up, including community-based follow-up[.]").

[116] *See id.*

[117] Three states currently have laws requiring demographic data collection for all stops: California (Cal. Gov't Code § 12525.5), Illinois (625 Ill. Comp. Stat. Ann. 5/11-212), and Oregon (2017 OR H.B. 2355 (NS)). At least 15 states have statutes requiring data collection for certain vehicle stops: Alabama (Ala. Code § 32-5-222(i)), Connecticut (Conn. Gen. Stat. Ann. § 54-1m), Florida (Fla. Stat. Ann. § 316.614), Louisiana (La. Stat. Ann. § 32:398.10), Maryland (Md. Code Ann., Transp. § 25-113), Missouri (Mo. Ann. Stat. § 590.650), Montana (Mont. Code Ann. § 44-2-117), Nebraska (Neb. Rev. Stat. Ann. § 20-504), North Carolina (N.C. Gen. Stat. Ann. § 143B-903), Rhode Island (R.I. Gen. Laws Ann. § 31–21.1), South Carolina (S.C. Code Ann. § 56-5-6560), Texas (Tex. Code Crim. Proc. Ann. art. 2.133), Vermont (Vt. Stat. Ann. tit. 20, §2366), Washington (Wash. Rev. Code Ann. §§ 43.101.410), West Virginia (W. Va. Code Ann. §§ 17G-1-2).

[118] *See* Newark Consent Decree, *supra* note 106, at ¶ 52.

[119] Baltimore Draft Policy 317, *supra* note 59, at 5.

[120] *See* Newark Consent Decree, *supra* note 106, at ¶ 52.

[121] New Orleans 41.13, *supra* note 57, at 5-6.

[122] New Orleans 41.13, *supra* note 59, at 5-6.

[123] *See, e.g.*, Baltimore Draft Policy 317, *supra* note 59, at 8.

[124] President's Task Force Report *supra* note 80, at 10 (citing Lorraine Mazerolle, et al., Legitimacy in Policing: A Systematic Review, The Campbell Collection Library of Systematic Reviews 9 (Oslo, Norway: The Campbell Collaboration, 2013); Maarten Van Craen & Wesley G. Skogan, Achieving Fairness in Policing: The Link Between Internal and External Procedural Justice, 20(1) Police Quarterly 3, 6 (2017), available at http://journals.sagepub.com/doi/pdf/10.1177/1098611116657818 ("[T]he extent to which police officers' behavior toward citizens is guided by the principles of neutrality, respect, voice, and accountability depends on the extent to which supervisors' behavior toward their officers is characterized by these principles.").

[125] Malcolm D. Holmes & Brad W. Smith, Race and Police Brutality: Roots of an Urban Dilemma 140-41 (2008) (arguing that without broader social change, changing police culture may be impossible).

[126] *See* Michael R. Smith & Geoffrey P. Alpert, Explaining Police Bias: A Theory of Social Conditioning and Illusory Correlation 34 Crim. Just. & Behavior 1262, 1264-66 (2007), https://www.researchgate.net/publication/242202149_Explaining_Police_Bias.

Chapter 3

[1] See generally Lynn Langton & Matthew Durose, U.S. Dep't of Justice, Bureau of Justice Statistics, Police Behavior During Traffic and Street Stops (2011), https://www.bjs.gov/content/pub/pdf/pbtss11.pdf; see also, e.g., Department of Justice, Civil Rights Division, Investigation of the Baltimore City Police Department 47–73 (2016), https://www.justice.gov/opa/file/883366/download; New York Civil Liberties Union, Stop-and-Frisk Data, https://www.nyclu.org/en/stop-and-frisk-data (last accessed Dec. 17, 2018) ("Innocent New Yorkers have been subjected to police stops and street interrogations more than 5 million times since 2002, and that black and Latino communities continue to be the overwhelming target of these tactics"); Wesley Lowery, New Study: Only 24% of Population, Blacks in Boston Make Up 63% of Stop and Frisk Encounters, Wash. Post, Oct. 8, 2014, https://www.washingtonpost.com/news/post-nation/wp/2014/10/08/new-study-only-24-of-population-blacks-in-boston-make-up-63-of-stop-and-frisk-encounters/?utm_term=.352c97f03c03 ("even after controlling for crime, stope-and-frisk encounters were more likely to occur in the city's traditionally black neighborhoods"); Thomas Fuller, U.S. Cites Bias by San Francisco Police Against Blacks, N.Y. Times, Oct. 12, 2016, https://www.nytimes.com/2016/10/13/us/us-cites-bias-by-san-francisco-police-against-blacks.html (". . .24 percent higher chance that African-Americans were pulled over by the police given the estimated number of black drivers in the city"); David Hurst, Durham Police Deny Claims of Racial Profiling During Traffic Stops, WNCN (June 4, 2015), http://wncn.com/2015/06/04/durham-police-deny-claims-of-racial-profiling-during-traffic-stops (demonstrating that traffic stop and search incidents are disparately biased against black drivers); Rebecca Neusteter & Megan O'Toole, Vera Institute of Justice, Every Three Seconds: Emerging Findings (Jan. 2019), https://www.vera.org/publications/arrest-trends-every-three-seconds-landing/arrest-trends-every-three-seconds/findings ("[B]lack people now make up 12 percent of the U.S. population, but an estimated 28 percent of all arrests.").

[2] Maarten Van Craen & Wesley G. Skogan, Achieving Fairness in Policing: The Link Between Internal and External Procedural Justice, 20(1) Police Q. 3, 14 (2017), https://journals.sagepub.com/doi/pdf/10.1177/1098611116657818.

[3] National Research Council, Fairness and Effectiveness in Policing: The Evidence 6 (Wesley Skogan & Kathleen Frydl, 2004).

[4] Compare Whren v. U.S., 517 U.S. 806, 818-19 (1996) (holding that pretextual traffic stops are constitutional where officers have probable cause to believe that a traffic violation occurred) with State v. Ladson, 979 P.2d 833, 837-40 (Wash. 1999) (holding that the state constitution forbids officers from using traffic violations as pretext to stop vehicles for unrelated criminal investigations); Law enforcement agencies in Washington have adopted stop policies that reflect the prohibition of pretextual stops; see also Seattle Police Dep't, 6.220 Voluntary Contacts, Terry Stops & Detentions, Seattle Police Department Manual (effective date Aug. 1, 2015), https://www.seattle.gov/police-manual/title-6---arrests-search-and-seizure/6220---voluntary-contacts-terry-stops-and-detentions ("This policy prohibits Terry stops when an officer lacks reasonable suspicion[.]").

[5] See Carroll v. United States, 267 U.S. 132, 149 (1925).

[6] See United States v. Dunn, 480 U.S. 294, 302-05 (1987) (holding that a barn located 60 yards from the owner's home did not fall within the property's curtilage and thus was not subject to Fourth Amendment protection).

[7] Vt. Const. art. XI; N.Y. Const. art. I § 12; compare Hester v. United States, 265 U.S. 57, 59 (1924) (reasoning that the Fourth Amendment's protection against unreasonable search and seizure does not extend to the "open fields" outside of the homeowner's property) and Oliver v United States, 466 U.S. 170, 180, 184 (1984) (asserting that the Fourth Amendment protects the curtilage, or "the land immediately surrounding and associated with the home," from unreasonable search and seizure but does not protect the "open fields" beyond it) with State v. Kirchoff, 587 A.2d 988, 994 (Vt. 1991) (concluding that warrantless search of property beyond the owner's home "where indicia would lead a reasonable person to conclude that the area is private" violated the state constitution) and People v. Scott, 79 N.Y.2d 474, 491 (1992) (holding that warrantless search of property where owners "indicate unmistakably that entry is not permitted" violated the state constitution).

[8] Ark. Code Ann. §§ 12-12-1801-1808 (2018); Cal. Civ. Code §§ 1798.90.5–.55 (2018); Me. Rev. Stat. § 2117-A(2) (2018); Utah Code Ann. §§ 41-6a-2001–2005 (2018); see also National Conference of State Legislatures, Automated License Plate Readers: State Statutes (Nov. 6, 2018), http://www.ncsl.org/research/telecommunications-and-information-technology/state-statutes-regulating-the-use-of-automated-license-plate-readers-alpr-or-alpr-data.aspx (providing a list of state statutes limiting the use of automated license plate readers).

[9] Fla. Stat. § 934.50 (2018) (searches and seizure using a drone); Vt. Stat. Acts. Ann. tit. 20, § 4622 (2018) (law enforcement use of drones).

[10] Orin S. Kerr, The Effect of Legislation on Fourth Amendment Protection, 115 Mich. L. Rev. 1117, 1147-49 (2017), https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1661&context=mlr.

[11] Brinegar v. United States, 338 U.S. 160, 175 (1949) ("'The substance of all the definitions' of probable cause 'is a reasonable ground for belief of guilt.'") (internal citations omitted).

[12] Terry v. Ohio, 392 U.S. 1, 27 (explaining that the officer "need not be absolutely certain that the individual is armed" but may draw "specific reasonable inferences" based on "the facts in light of his experience" to make the arrest).

[13] Brigham City v. Stuart, 547 U.S. 398, 403 (2006) (citing Mincey v. Arizona, 437 U. S. 385, 393–94 (1978)) ("[W]arrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.").

[14] See, e.g., *id.* (holding exigent circumstances exist when an officer reasonably believes a person in a home is injured); Maryland v. Dyson, 527 U.S. 465 (1999) (holding that probable cause is sufficient and no exigency is required to search a vehicle without a warrant); Chimel v. California, 395 U.S. 752 (1969) (authorizing searches of the area around a person under arrest for the safety of the arresting officer); United States v. Robinson, 414 U.S. 218 (1973) (holding searches of people under arrest are an exception to the warrant requirement and reasonable).

[15] *Compare* Carroll v. United States, 267 U.S. 132, 153 (1925) (explaining that risk of a vehicle moving out of jurisdiction justifies a warrantless search of the vehicle) *with* Maryland v. Dyson, 527 U.S. 465, 467 (1999) (finding that if probable cause exists to search a vehicle, no exigent circumstances are required to conduct a warrantless search). The rationale has long shifted from mobility and potential loss of evidence to a diminished expectation of privacy regarding the interior of vehicles.

[16] See Chimel v. California, 395 U.S. 752, 762–63 (1969) ("When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.").

[17] United States v. Robinson, 414 U.S. 218, 235 (1973) ("It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment.").

[18] Terry v. Ohio, 392 U.S. 1, 30 (1968) (holding that where an officer has reasonable suspicion that a suspect may engage in criminal activity and may be armed, the officer may perform a limited search of the outer clothing of the suspect to verify there are no weapons that may jeopardize the safety of the officer or those around him).

[19] *Id.* at 24.

[20] Schneckloth v. Bustamonte, 412 U.S. 218, 248 (1973) (holding that police may conduct a warrantless search of an individual who has consented to the search, when the consent is "voluntarily given, and not the result of duress or coercion, express or implied.").

[21] Gov't of the District of Columbia Police Complaints Board Office of Police Complaints, PCB Policy Report #17-5 Consent Search Procedures 3-4 (2017), https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Consent%20Search%20Report%20FINAL.pdf.

[22] Schneckloth, 412 U.S. at 247-49.

[23] *Id.* (consent must be voluntarily given, but law enforcement need not demonstrate the individual's knowledge of a right to refuse); see also Ohio v. Robinette, 519 U.S. 33, 35 (1996) (holding that the Fourth Amendment does not require police to inform a lawfully stopped person that he is free to go before that person's consent is recognized).

[24] Whren v. U.S., 517 U.S. 806, 813 (1996) (holding that the reasonableness of a traffic stop is not determined by the motivations or pretext of the officers involved).

[25] *Id.* at 812-13.

[26] See e.g., Floyd v. City of New York, 959 F. Supp. 2d 540, 557, 661 (S.D.N.Y. 2013) https://ccrjustice.org/sites/default/files/assets/Floyd-Liability-Opinion-8-12-13.pdf (acknowledging that although "one stop is a limited intrusion in duration and deprivation of liberty, each stop is also a demeaning and humiliating experience" and finding that "statistical evidence of racial disparities in stops is sufficient to show a discriminatory effect.").

[27] Kyle Smith, We Were Wrong about Stop-and-Frisk, Nat'l Rev., Jan. 1, 2018, https://www.nationalreview.com/2018/01/new-york-city-stop-and-frisk-crime-decline-conservatives-wrong/.

[28] Floyd, 959 F. Supp. 2d at 602-03.

[29] Atwater v. City of Lago Vista, 532 U.S. 318 (2001) (parenthetical in original).

[30] Megan Stevenson & Sandra Mayson, The Scale of Misdemeanor Justice, 98 B.U. L. Rev. 731, 737 759 (2018), http://www.bu.edu/bulawreview/files/2018/06/STEVENSON-MAYSON.pdf ("There is substantial racial disparity in the majority of offense categories." "The black arrest rate is at least twice as high as the white arrest rate for disorderly conduct, drug possession, simple assault, theft, vagrancy, and vandalism. The black arrest rate for prostitution is almost five times higher than the white arrest rate, and the black arrest rate for gambling is almost ten times higher.").

[31] Brown v. Mississippi, 297 U.S. 278, 285–86 (1936) (noting that the "rack and torture chamber may not be substituted for the witness stand" and concluding that coerced confessions violate the due process clause of the Fourteenth Amendment).

[32] Adarand Constructors v. Pena, 515 U.S. 200, 213, 227 (1995) (concluding that "classifications based explicitly on race" violate the equal protection clause unless they are "narrowly tailored measures that further compelling governmental interests."); Reed v. Reed 404 U.S. 71, 76 (1971) ("To give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment[.]").

[33] See Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886) (reasoning that although a policy may "be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."); Washington v. Davis, 426 U.S. 229, 241 (1976) ("A statute, otherwise neutral on its face, must not be applied so as to invidiously discriminate on the basis of race."); Arlington Heights v. Metro. Housing Dev. Corp., 429 U.S. 252, 266 (1977) ("Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face.").

[34] See, e.g., Brown v. City of Oneonta, 221 F.3d 329 (2d. Cir. 2000).

[35] *Id.* at 334.

[36] *Id.* at 337, 339 (concluding that officers stopped individuals based "not only [on] race, but also [on] gender and age, as well as the possibility of a cut on the hand."), overruled in part on other grounds by Gonzaga Univ. v. Doe, 536 U.S. 273 (2002).

[37] See Am. Civ. Liberties Union, The War on Marijuana in Black and White 4 (June 2013), https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf (finding Blacks are 3.73 times more likely to be arrested for marijuana possession than Whites despite similar usage rates); Langton & Durose, *supra* note 1; NAACP, Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America 9 (2014), http://action.naacp.org/page/-/Criminal%20Justice/Born_Suspect_Report_final_web.pdf (discussing national data on racial profiling that show "racial profiling happened to men, women, and children of all ages and socio-economic backgrounds, and in virtually every context of people's lives: on the streets, inside cars, at home, at airports, at shopping centers, and at places of worship"); New York Civil Liberties Union, Stop-and-Frisk Data, https://www.nyclu.org/en/stop-and-frisk-data (last accessed Dec. 17, 2018) (noting that "[n]early nine out of 10 stopped-and-frisked New Yorkers have been completely innocent and "black and Latino communities continue to be the overwhelming target of these tactics"); Lowery, *supra* note 1.

[38] Stevenson & Mayson, *supra* note 30, at 759.

[39] L. Song Richardson, Arrest Efficiency and the Fourth Amendment, 95 Minn. L. Rev. 2035, 2037–38 (2011), http://www.minnesotalawreview.org/wp-content/uploads/2011/06/Richardson_PDF.pdf; see also Ian Ayres & Jonathan Borowsky, A Study of Racially Disparate Outcomes in the Los Angeles Police Department (Oct. 2008), https://www.aclusocal.org/sites/default/files/wp-content/uploads/2015/09/11837125-LAPD-Racial-Profiling-Report-ACLU.pdf.

[40] State v. Soto, 734 A.2d 350, 360 (N.J. Super. Ct. Law Div. 1996).

[41] *Id.* at 352-57.

[42] *Id.* at 360.

[43] Consent Decree, United States v. State Police of New Jersey, No. 99-5970 (MLC) (D.N.J. Dec. 30, 1999), https://www.justice.gov/crt/us-v-new-jersey-joint-application-entry-consent-decree-and-consent-decree; Press Release, Office of the Att'y Gen., N.J., State Police Racial Profiling Consent Decree Dissolved (Sept. 21, 2009), https://www.nj.gov/oag/newsreleases09/pr20090921a.html.

[44] Floyd, 959 F. Supp. 2d at 561, 602.

[45] *Id.* at 556.

[46] *Id.* at 558-59, 565-69, 574 n.118.

[47] *Id.* at 556, 559.

[48] *Id.* at 559.

[49] *Id.* at 558-559.

[50] Jason Hanna, Judge Rules NYC's Stop-and-Frisk Policy Unconstitutional; City Vows Appeal, CNN (Aug. 12, 2013), https://www.cnn.com/2013/08/12/justice/new-york-stop-frisk/.

[51] Peter L. Zimroth, Fifth Report of the Independent Monitor Analysis of NYPD Stops Reported, 2013-2015, 7 (May 30, 2017), http://nypdmonitor.org/wp-content/uploads/2017/06/2017-05-30-MonitorsFifthReport-AnalysisofNYPDStopsReported2013-2015-Asfiled.pdf (examining trends in the NYPD's stop, question and frisk data during the period 2013-2015); N.Y. Civ. Liberties Union, Stop-and-Frisk Data, https://www.nyclu.org/en/stop-and-frisk-data (last accessed Dec. 17, 2018); *see also* Al Baker, Street Stops by New York City Police Have Plummeted, N.Y. Times, May 30, 2017 at A17, https://www.nytimes.com/2017/05/30/nyregion/nypd-stop-and-frisk.html; Ashley Southall, Crime in New York City Plunges to a Level Not Seen since the 1950s, N.Y. Times, Dec 27, 2017, https://www.nytimes.com/2017/12/27/nyregion/new-york-city-crime-2017.html.

[52] See The Sentencing Project, Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance Regarding Racial Disparities in the United States Criminal Justice System (Mar. 2018), https://www.sentencingproject.org/publications/un-report-on-racial-disparities/.

[53] See e.g., Katherine Reed, Q&A: Police Chief Ken Burton Talks about Racial Profiling, Community Policing and Why He's So Frustrated, Missourian (Sept. 17, 2017), https://www.columbiamissourian.com/news/local/q-a-police-chief-ken-burton-talks-about-racial-profiling/article_9538af60-9990-11e7-98bf-5bdbb91f3a3d.html (discussing traffic stop data and the problem of racial profiling coming into sharper focus); Heather MacDonald, What Looks Like Profiling Might Just Be Good Policing, Manhattan Institute (Jan. 19, 2003), https://www.manhattan-institute.org/html/what-looks-profiling-might-just-be-good-policing-1506.html (discussing the effects of racial profiling such as going "where the crime is").

[54] Amanda Geller et al., Aggressive Policing and the Mental Health of Urban Young Men, 104 Am. J. Public Health 2321 (Dec. 2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4232139/ (finding that participants with more police contact generally reported more trauma and anxiety-like symptoms, which were associated with the number of stops reported, the level of the encounter, and perception); *see also* Nancy La Vigne, Pamela Lachman, Shebani Rao & Andrea Matthews, U.S. Dep't of Justice, Community Oriented Policing Services, Stop and Frisk: Balancing Crime Control with Community Relations 20 (2014), https://ric-zai-inc.com/Publications/cops-p306-pub.pdf (discussing the importance of "community policing"); Jennifer Fratello, Andres F. Rengifo, Jennifer Trone & Brenda Velazquez, Vera Institute of Justice, Coming of Age with Stop and Frisk: Experiences, Perceptions, and Public Safety Implications 27 (2013), https://storage.googleapis.com/vera-web-assets/downloads/Publications/coming-of-age-with-stop-and-frisk-experiences-self-perceptions-and-public-safety-implications/legacy_downloads/stop-and-frisk-technical-report-v4.pdf (describing young people who were stopped as having "lingering feelings of fear and anxiety"); Josephine Ross, Warning: Stop-and-Frisk May Be Hazardous to Your Health, 25 Wm. & Mary Bill Rts. J. 689, 727 (2016), http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1804&context=wmborj ("[R]esearchers recorded self-reported mental health factors and measured them against the number of times the person had been stopped. As anticipated, greater police contact correlated with higher anxiety scores[.]").

[55] *See* La Vigne, Lachman, Rao & Matthews, *supra* note 54, at 20; Center for Constitutional Rights, Stop and Frisk: The Human Impact 6 (2012), https://ccrjustice.org/sites/default/files/attach/2015/08/the-human-impact-report.pdf ("The experience of being stopped and frisked by police often has a lasting emotional impact. People interviewed by CCR described feeling a range of emotions during stops, including anger, fear, shame, and vulnerability. One man described feeling 'disgusted, insulted, humiliated!'"); U.S. Dep't of Justice, U.S. Attorney's Office Dist. of N.J., Investigation of Newark Police Department 9 n.8 (Jul. 22, 2014) ("Being placed in the backseat of a police vehicle can be a humiliating and often frightening experience."); Gellar et al., Aggressive Policing and the Mental Health of Young, Urban Men, Men, *supra* note 54, at 2322.

[56] Stephanie A. Wiley & Finn-Aage Esbensen, The Effect of Police Contact: Does Official Intervention Result in Deviance Amplification, 62 Crime & Delinquency 283, 299 (2013), https://www.researchgate.net/publication/277456150_The_Effect_of_Police_Contact_Does_Official_Intervention_Result_in_Deviance_Amplification ("[O]ur findings show that the negative consequences of police contact are compounded for arrested youth; subsequent to arrest, they report less anticipated guilt and more delinquency compared with stopped youth"); *see also* Fratello, Rengifo, Trone & Velazquez, *supra* note 54, at 1 ("There's reason to believe that being stopped can also influence young people's self-perceptions, potentially causing them to see themselves as deviant and to actually commit delinquent acts[.]"); U.S. Dep't of Justice, Civil Rights Div., Investigation of the Ferguson Police Department 94 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [hereinafter Ferguson Investigation] (discussing how to change responses to students "to avoid criminalizing youth while maintaining a learning environment").

[57] Fratello, Rengifo, Trone & Velazquez, *supra* note 54, at 5.

[58] Floyd, 959 F. Supp. 2d 540.

[59] Stephanie Gosk et. al., After Stop and Frisk, the NYPD Reinvents Policing Yet Again, NBC News, May 13, 2018, https://www.nbcnews.com/news/crime-courts/after-stop-frisk-nypd-reinvents-policing-yet-again-n873446.

[60] *See* Jeffery Fagan & Amanda Geller, Profiling and Consent: Stops, Searches and Seizures after Soto, 5th Annual Conference on Empirical Legal Studies Paper 17 (July 16, 2010), https://www.law.columbia.edu/sites/default/files/microsites/contract-economic-organization/files/Fagan%20and%20Geller%20_%20Profiling%20and%20Consent%2011_01_10.pdf (finding that New Jersey State Police found contraband in only 0.52% of vehicle stops between October 2005 and March 2007).

[61] Rich Morin, Kim Parker, Renee Stepler & Andrew Mercer, Pew Research Ctr., Behind the Badge (Jan. 11, 2017), http://www.pewsocialtrends.org/2017/01/11/behind-the-badge/.

[62] *Id.*

[63] *See* Floyd, 959 F. Supp. at 561, 596-602 (describing the pressure on officers to meet numerical enforcement goals); *see also* Christopher Mathiast, Police Quotas Are Terrible, and the NYPD Still Seems to Be Using Them, Huffington Post (Oct. 2, 2014), http://www.huffingtonpost.com/2014/10/02/nypd-quotas_n_5916596.html ("If there's one subject on which New York City police unions and police reform advocacy groups seem to agree, it's this: Arrest quotas for police officers are terrible and counterproductive, and they sow distrust between cops and communities.").

But note that some jurisdictions have prohibited police from using quotas, pursuant to state law or court order. *See* Consent Decree, United States v. City of Ferguson, No. 4:16-CV-00180-CDP, ¶ 91 (D. Mo. Mar. 17, 2016), https://www.justice.gov/opa/file/833431/download (prohibiting the city from using "citation or arrest quotas, whether formal or informal, of any kind."); *see* Cal. Veh. Code § 41602 (2017) ("No state or local agency employing peace officers or parking enforcement employees engaged in the enforcement of this code or any local ordinance adopted pursuant to this code, may establish any policy requiring any peace officer or parking enforcement employees to meet an arrest quota.").

[64] *See, e.g.*, Gravitte v. N.C. Div. of Motor Vehicles, 33 Fed. Appx. 45 (4th Cir. Mar. 25, 2002), cert denied, 537 U.S. 884 (2002) (affirming district court's dismissal of claim by officer and union that the police department's ticket quota policy forced officers to violate motorists' constitutional rights).

[65] Ferguson Investigation, *supra* note 56, at 3-4.

[66] *See* Morin, Parker, Stepler & Mercer, *supra* note 61; Joel Rose, Despite Laws and Lawsuits, Quota-based Policing Lingers, Nat'l Public Radio, Apr. 4, 2015, http://www.npr.org/2015/04/04/395061810/despite-laws-and-lawsuits-quota-based-policing-lingers (California, Florida, New York, and Illinois have outlawed quota systems).

[67] Cal. Veh. Code § 41603 (2018).

[68] Consent Decree, United States v. Police Dep't of Baltimore City, No. 1:17-CV-00099-JKB, ¶¶ 56-57 (D. Md. Jan. 12, 2017), https://www.justice.gov/opa/file/925056/download [hereinafter Baltimore Consent Decree].

[69] Amer. Civ. Liberties Union of Northern Cal., Know Your Rights: Police Interactions, May 2015, https://www.aclunc.org/our-work/know-your-rights/your-rights-and-police; Saint Paul Police Dep't, 409.08, Physical Searches, Saint Paul Police Department Manual (Oct. 2018), https://www.stpaul.gov/books/40908-physical-searches.

[70] Chapel Hill Police Dep't, Policy Manual: Fair and Impartial Policing (rev. Jul. 1, 2018) ("The Chapel Hill Police Department requires written documentation on any consent search that is conducted"), https://www.townofchapelhill.org/home/showdocument?id=28619; Baltimore Consent Decree, *supra* note 68, at ¶ 56.

[71] Agreement for the Sustainable Reform of the P.R. Police Dep't, United States v. Commonwealth of P.R., No. 3:12-cv-02039-GAG (D.P.R. July 17, 2013), ¶ 60 (requiring officers of the Puerto Rico police department to document the reason for each stop and/or search), https://www.justice.gov/sites/default/files/crt/legacy/2013/07/17/prpd_agreement_7-17-13.pdf; Baltimore Consent Decree, *supra* note 68, at ¶ 46 (requiring officers to document the reason for each stop and the facts giving rise to probable cause for a search, if one was conducted).

[72] New Orleans Police Dep't, New Orleans Police Department Operations Manual, Chapter 1.2.4: Title: Search and Seizure ¶ 20 (Jul. 10, 2016), https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-2-4-Search-and-Seizure.pdf/.

[73] Austin Police Dep't, Austin Police Dep't Policy Manual, 306.5 Consent 145-7 (Jul. 20, 2017), https://www.austintexas.gov/sites/default/files/files/Current_APD_Policy_Manual_2017-1.5_issued_7-20-2017.pdf.

[74] *Id.*

[75] Sharon LaFraniere & Andrew W. Lehren, The Disproportionate Risks of Driving While Black, N.Y. Times (Oct. 24, 2015), https://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving-black.html.

[76] Jonathan Blanks, Thin Blue Lines: How Pretextual Stops Undermine Police Legitimacy, 66 Case W. Res. L. Rev. 931, 932 (2016), https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4660&context=caselrev.

[77] *Id.*

[78] *Id.* at 931, 934.

[79] *See id.* at 931, 946; *see also* Adero S. Jernigan, Driving While Black: Racial Profiling in America, 24 L. & Psychol. Rev. 127, 136-37 (2000) (unless Whren v. United States is overturned or legislators address the issue, police will continue to search minority drivers based on race).

[80] Ladson, 979 P.2d at 837-40.(holding that under Washington State Constitution, pretextual traffic stops are prohibited); State v. Ochoa, 206 P.3d 143, 155 (N.M. Ct. App. 2008) (holding that "pretextual traffic stops are not constitutionally reasonable in New Mexico").

[81] State v. Heath, 929 A.2d 390, 402 (2006) ("traffic stops demonstrated to have been made exclusively for the purpose of investigating an officer's hunch about some other offense" are unconstitutional).

[82] John M. Broder, California Ending Use of Minor Traffic Stops as Search Pretext, N.Y. Times, Feb. 28, 2003, https://www.nytimes.com/2003/02/28/us/california-ending-use-of-minor-traffic-stops-as-search-pretext.html.

[83] Cindy Chang & Ben Poston, Garcetti Orders LAPD to Scale Back Vehicle Stops Amid Concerns Over Black Drivers Being Targeted, L.A. Times, Feb. 6, 2019, https://www.latimes.com/local/lanow/la-me-ln-garcetti-lapd-metro-20190206-story.html.

[84] The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 10 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [hereinafter President's Task Force Report], (citing Lorraine Mazerolle, et al., Legitimacy in Policing: A Systematic Review, The Campbell Collection Library of Systematic Reviews 9 (2013)).

[85] Int'l Ass'n of Chiefs of Police, Model Policy: Standards of Conduct (Aug. 1997) ("Officers shall treat violators with respect and courtesy, guard against employing an officious or overbearing attitude or language that may belittle, ridicule, or intimidate the individual, or act in a manner that unnecessarily delays the performance of their duty."); Megan Quattlebaum et al., The Justice Collaboratory at Yale Law Sch., Principles of Procedurally Just Policing 47-56 (2018), https://law.yale.edu/system/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf; La Vigne, Lachman, Rao & Matthews, *supra* note 54, at 21-22 (2014).

[86] Sacramento Police Dep't, Sacramento Police Department General Orders 210.05: Bias-Based Policing (June 5, 2017), https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Transparency/GO-21005-Bias-Based-Policing.pdf?la=en.

[87] *Id.*

[88] City of Charleston Police Dep't, City of Charleston Police Department Policy and Procedure Manual Administrative General Order 8: Fair and Impartial Policing (Apr. 6, 2018), https://www.charleston-sc.gov/DocumentCenter/View/18114.

[89] Fort Worth Police Dep't, National Initiative, https://police.fortworthtexas.gov/About/national-initiative (last visited Dec. 18, 2018).

[90] Fort Worth Police Dep't, Fort Worth Police Department General Orders, 347.01 Police and Community Relationships 231-34 (Jul. 18, 2018), https://police.fortworthtexas.gov/Public/general-orders (download "General Orders").

[91] Seattle Police Dep't., WA State Justice Based Policing Initiative, Apr. 25, 2011, http://spdblotter.seattle.gov/2011/04/25/wa-state-justice-based-policing-initiative/.

[92] *See* Chang & Poston, *supra* note 83.

[93] Kan. Stat. Ann. § 22-4609 (2017), http://www.kslegislature.org/li_2018/b2017_18/statute/022_000_0000_chapter/022_046_0000_article/022_046_0009_section/022_046_0009_k/; Mo. Rev. Stat. § 590.650 (2018), http://revisor.mo.gov/main/OneSection.aspx?section=590.650&bid=30357&hl=; N.M. Stat. §§ 29-21-1 to 29-21-4 (2009), https://law.justia.com/codes/new-mexico/2009/chapter-29/article-21/.

[94] See Baltimore Police Dep't, Draft Policy 317: Fair and Impartial Policing 5 (Aug. 24, 2018), https://www.baltimorepolice.org/317-draft-fair-and-impartial-policing.

[95] Seattle Police Dep't, Seattle Police Department Manual, 5.140 – Bias-Free Policing (Jul. 15, 2018), https://www.seattle.gov/police-manual/title-5---employee-conduct/5140---bias-free-policing (eff. July, 15 2019).

[96] See, e.g., Anne Arundel County Police Department, Interactions with Transgender Individuals (eff. Dec. 27, 2017), https://www.powerdms.com/public/aac/documents/1278177; Seattle Policy Dep't, Policy 16.200: Interaction With Transgender Individuals (Oct. 29, 2018), https://www.seattle.gov/police-manual/title-16---patrol-operations/16200---interaction-with-transgender-individuals.

[97] Salt Lake City Police Dep't, Salt Lake City Police Department Policy Manual, Policy 344: Transgender Individuals 273-4 (rev. Mar. 8, 2018), http://www.slcdocs.com/police/ppm.pdf.

[98] Vt. Stat. tit. 20 § 2366; See Vermont Criminal Justice Training Council, Fair and Impartial Policing Policy (Dec. 7, 2017), https://vcjtc.vermont.gov/sites/vcjtc/files/files/Fair%20and%20Impartial%20Policing%20Policy%2012-7-2017.pdf.

[99] Olmstead v. United States, 277 U.S. 438, 466 (1928) (asserting that Fourth Amendment violations occur when "there has been an official search and seizure of [the defendant's] person, or such a seizure of his papers or his tangible material effects, or an actual physical invasion of his house 'or curtilage' for the purpose of making a seizure"); Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J. concurring) (explaining that the Fourth Amendment's protections extend beyond tangible items to include conversations and anything in which a person has "exhibited an actual (subjective) expectation of privacy" that society would consider reasonable); California v. Ciraolo, 476 U.S. 207, 211 (1986) ("The touchstone of Fourth Amendment analysis is whether a person has a constitutionally protected reasonable expectation of privacy.") (internal citations omitted).

[100] United States v. Jones, 565 U.S. 400, 412 (2012).

[101] Riley v. California, 134 S. Ct. 2473, 2493 (2014).

[102] Wis. Stat. § 175.55 (2018); Ind. Code § 35-33-5-9 (2017).

[103] See Oakland, Cal. Ord. 16-1028 Surveillance And Community Safety Ordinance (2018), codified Oakland, Cal. Code § 9.64, https://oakland.legistar.com/LegislationDetail.aspx?ID=3034026&GUID=F0BB8485-CDFA-40F9-B9B3-1E9B58C8AA73&Options=&Search=; Nathan Sheard, Electronic Frontier Found., Oakland: The New Gold Standard in Community Control of Police Surveillance (May 18, 2018), https://www.eff.org/deeplinks/2018/05/oakland-new-gold-standard-community-control-police-surveillance (discussing Community Control Over Policing Surveillance ordinances passed in Oakland, CA; Santa Ana, CA; Seattle, WA; Berkley, CA; and Davis, CA); Am. Civ. Liberties Union of Mass., Cambridge Passes Law Requiring Community Control of Police Surveillance (Dec. 10, 2018), https://www.aclum.org/en/news/cambridge-passes-law-requiring-community-control-police-surveillance.

[104] See Am. Civ. Liberties Union of Mass., *supra* note 103. Cambridge Passes Law Requiring Community Control of Police Surveillance (Dec. 10, 2018), https://www.aclum.org/en/news/cambridge-passes-law-requiring-community-control-police-surveillance.

[105] President's Task Force Report, *supra* note 84, at 34.

[106] Judith Andersen et al., Highly realistic scenario based training simulates the psychophysiology of real world use of force encounters: implications for improved police officer performance, J. L. Enforcement (2016), https://tspace.library.utoronto.ca/bitstream/1807/73822/3/highly_realistic_scenario_based.pdf.

[107] Press Release, Office of the Sheriff: City and County of San Francisco, SF Sheriff Announces Pioneering Policy (Feb. 20, 2018), http://www.sfsheriff.com/files/PR_TGN.pdf.

[108] Conn. Gen Stat. § 54-1m (2016).

[109] Cal. Gov't Code § 12525.5 (2015); 625 Ill. Comp. Stat. 5/11-212 (2015).

[110] City of Minneapolis, opendataminneapolis, http://www.minneapolismn.gov/opendata/ (last visited Aug. 16, 2018) (The portal provides access to public safety data at http://opendata.minneapolismn.gov/datasets?group_ids=79606f50581f4a33b14a19e61c4891f7).

[111] City of Dallas, Dallas Open Data – Public Safety, https://www.dallasopendata.com/browse?category=Public+Safety&provenance=official (last visited Dec. 18, 2018); City of Raleigh, Raleigh Open Data Portal – Public Safety http://data-ral.opendata.arcgis.com/datasets?t=Public%20Safety (last visited Dec. 18, 2018).

[112] City of Raleigh, Raleigh Open Data – Suggest a Data Set, https://www.surveymonkey.com/r/752GR3P (last visited Dec. 18, 2018).

[113] John Gramlich, Pew Research Ctr., America's Incarceration Rate Is at a Two-Decade Low (May 2, 2018), http://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/.

[114] Mariel Alper et. al., U.S. Dep't of Justice, Bureau of Justice Statistics, 2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period 2005-2014 (May 2018), https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf; U.S. Dep't of Justice, Nat'l Inst. of Justice, Recidivism (last updated June 17, 2014), https://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx#statistics.

[115] Ferguson Investigation, *supra* note 56, at 13 ("the City's finance director stated publicly that Ferguson intends to make up a 2014 revenue shortfall in 2015 through municipal code enforcement"); see also Policing and Profit, 128 Harv. L. Rev. 1723 (2015), http://harvardlawreview.org/wp-content/uploads/2015/04/Policing-and-Profit.pdf.

[116] Atwater, 532 U.S. at 354 ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.").

[117] Minneapolis Police Dep't, Minneapolis Police Department Policy and Procedure Manual Section 9-103, Misdemeanor Arrests (Sept. 14, 2018), http://www.ci.minneapolis.mn.us/police/policy/mpdpolicy_9-100_9-100.

[118] Jennifer Elek, Sara Sapia, & Susan Keilitz, Nat'l Ctr. for State Courts, Pretrial Justice Ctr. for Courts, Use of Court Date Reminder Notices to Improve Court Appearance Rates (Sept. 2017), https://www.ncsc.org/~/media/Microsites/Files/PJCC/PJCC%20Brief%2010%20Sept%202017%20Court%20Date%20Notification%20Systems.ashx.

[119] Timothy Schnacke et al., Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program, J. Amn. Judges Ass'n 86 (2012), http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1396&context=ajacourtreview.

[120] *Id.* at 88.

[121] Press Release, City of New York Office of the Mayor, New Text Message Reminders for Summons Recipients Improves Attendance in Court and Dramatically Cuts Warrants (Jan. 24, 2018), https://www1.nyc.gov/office-of-the-mayor/news/058-18/new-text-message-reminders-summons-recipients-improves-attendance-court-dramatically.

[122] Bedford Police Dep't, Policies and Procedures, Policy 1-1, Arrest Policy 6 (Aug. 11, 2015), https://www.bedfordma.gov/sites/bedfordma/files/file/file/arrest_policy_chapter_1-1_0.pdf ("there are limited circumstances in the discretion of the officer involved when the public interest would be better served by not making an arrest, even though there is legal justification for such action").

[123] Tucson Police Dep't, Tucson Police Department General Orders: 2117 Arrest Warrants 7 (Mar. 31, 2015), https://www.tucsonaz.gov/files/hr/tpd/2100ARREST_POLICIES.pdf.

[124] See, e.g., Baltimore Consent Decree, Baltimore Consent Decree, *supra* note 68, at ¶ 62.

[125] William Glaberson, Long Fight Ends Over Arrests for Loitering, N.Y. Times (Feb, 7, 2012), https://www.nytimes.com/2012/02/08/nyregion/new-york-settles-suit-on-illegal-arrests-for-loitering.html.

[126] Law Enforcement Assisted Diversion, http://leadkingcounty.org/ (last visited Dec. 18, 2018).

[127] City of Bedford, Teen Court, https://www.bedfordtx.gov/163/Teen-Court (last visited Dec. 18, 2018).

[128] Susan E. Collins, Heather S. Lonczak & Seema L. Clifasefi, Harm Reduction Research and Treatment Lab, Univ. of Washington – Harborview Medical Center, LEAD Program Evaluation: Recidivism Report 22 (Mar. 27, 2015), http://static1.1.sqspcdn.com/static/f/1185392/26121870/1428513375150/LEAD_EVALUATION_4-7-15.pdf?token=Xt1EPYRnyYrl75W41XTC0DCg4wE%3D.

[129] Caitlin Schmidt, New Tucson Police Program Will Refer Opioid Addicts to Treatment, Not Jail, Ariz. Daily Star (Jun. 30, 2018), https://tucson.com/news/local/new-tucson-police-program-will-refer-opioid-addicts-to-treatment/article_01b5576b-b401-5a2f-9c1a-8d8efd8a9a0d.html.

Chapter 4

[1] See, e.g., Christian Sheckler & Ken Armstrong, Elkhart cops to be charged after video shows them beating handcuffed man, South Bend Tribune (Nov. 2, 2018), https://www.southbendtribune.com/news/publicsafety/elkhartjustice/elkhart-cops-to-be-charged-after-video-shows-them-beating/article_401f6756-613b-53b0-91ad-b15b6276489a.html (officers were caught on station house video punching a man who was sitting handcuffed); Tim Elfrink, 'It's still a blast beating people': St. Louis police indicted in assault of undercover officer posing as protester (Nov. 30, 2018), https://www.washingtonpost.com/nation/2018/11/30/its-still-blast-beating-people-st-louis-police-indicted-assault-undercover-officer-posing-protester/?utm_term=.ed48da7935de (officer beat and kicked an unarmed undercover detective posing as a protestor even as he complied with their instructions); Joseph Goldstein & Nate Schweber, Man's Death After Chokehold Raises Old Issue for the Police, N.Y. Times (July 18, 2014), https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html (Eric Garner died when an officer put him in a chokehold); Alan Blinder, Michael Slager, Officer in Walter Scott Shooting, Gets 20-Year Sentence, N.Y. Times (Dec. 7, 2017), https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html (Walter Scott was unarmed and shot in the back eight times by an officer).

[2] Int'l Ass'n of the Chiefs of Police, Police Use of Force in America 1 (2001), https://www.theiacp.org/sites/default/files/2018-08/2001useofforce.pdf.

[3] Karen M. Hess et al., Police Operations: Theory and Practice at 23, https://books.google.com/books?id=zN6-7kt9F_cC&pg=PA23&lpg=PA23&dq=Police+use+discretion+because+no+set+of+policies+and+procedures+can+prescribe+what+to+do+in+every+circumstance&source=bl&ots=qwHyQjCOSD&sig=iRvQl3_Fm_c0KloBeOp3j0DDNG8&hl= en&sa=X&ved=2ahUKEwiph-zzjenfAhWEMd8KHXOVCDUQ6AEwAXoECAgQAQ#v=onepage&q=police%20use%20discretion&f=false ("Police use discretion because no set of policies and procedures can prescribe what to do in every circumstance.").

[4] Graham v. Connor, 490 U.S. 386, 388-90 (1989).

[5] *Id.* at 389-90.

[6] *Id.* at 396.

[7] *Id.*

[8] *Id.* ("...proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight").

[9] Police Exec. Res. Forum, Guiding Principles on Use of Force 94 (2016), http://www.policeforum.org/assets/30%20guiding%20principles.pdf) [hereinafter PERF Guiding Principles on Use of Force].

[10] See, e.g., Han v. City of Folsom, 551 Fed. Appx. 923, 926 (9th Cir. 2014) (asserting that although "officers' alleged pre-shooting negligence does not establish a constitutional violation, it may establish common-law negligence under [state] law.").

[11] Judicial Council of Calif., Civil Jury Instructions, CACI No. 440: Unreasonable Force by Law Enforcement Officer in Arrest or Other Seizure — Essential Factual Elements 311 (2016) (citing Hayes v. County of San Diego, 57 Cal. 4th 622 (2013)), https://www.justia.com/documents/trials-litigation-caci.pdf.
In Hayes, the California Supreme Court drew upon earlier case law recognizing that officers may unnecessarily create circumstances leading to the use of force:

> Instructive here is our decision in Grudt v. City of Los Angeles, (1970), 2 Cal.3d 575. In Grudt, a police officer in plain clothes, carrying a double-barreled shotgun, approached a car, possibly causing the driver to think he was being robbed or attacked. The driver accelerated the car toward a second plainclothes officer, and then both officers opened fire on the driver, killing him. This court held that the trial court erred in barring a claim of negligence against the officers. Significantly, the shooting in Grudt appeared justified if examined in isolation, because the driver was accelerating his car toward one of the officers just before the shooting. Nevertheless, we concluded that the totality of the circumstances, including the preshooting conduct of the officers, might persuade a jury to find the shooting negligent. In other words, preshooting circumstances might show that an otherwise reasonable use of deadly force was in fact unreasonable.

Hayes, 57 Cal. 4th at 629.

[12] See, e.g., Samuel Sinyangwe, Examining the Use of Force Policies in Ending Police Violence 4 (2016), https://static1.squarespace.com/static/56996151cbced68b170389f4/t/57e17531725e25ec2e648650/1474393399581/Use+of+Force+Study.pdf, (finding that policies "requiring officers to exhaust all other means before using deadly force were associated with the largest reductions in police-involved killings").

[13] Seattle Police Monitor, Ninth Systemic Assessment: Use of Force 14 (2017), https://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/58e6a753ff7c50ebbad126f8/1491511130661/.

[14] Carmen Best, Chief of Police, Seattle Police Dep't Manual, § 8.200 – Using Force, Seattle.gov (Sept. 1, 2015), https://www.seattle.gov/police-manual/title-8---use-of-force/8200---using-force [hereinafter Seattle P.D. Manual § 8.200].

[15] Carmen Best, Chief of Police, Seattle Police Dep't Manual, § 8.000 – Use of Force Core Principles, Seattle.gov (Sept. 1, 2015) [hereinafter Seattle P.D. Manual § 8.000], https://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles.

[16] Carmen Best, Chief of Police, Seattle Police Dep't Manual, § 8.100 – De-Escalation, Seattle.gov (Sept. 1, 2015), https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation [hereinafter Seattle P.D. Manual § 8.100].

[17] Seattle Police Monitor, *supra* note 13, at 2-3.

[18] PERF Guiding Principles on Use of Force, *supra* note 9, at 34.

[19] Las Vegas Metro. Police Dep't, Use of Force Policy 2 (2017) [hereinafter Las Vegas Metro Use of Force Policy], https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf; New Orleans Police Dep't, Operations Manual: Use of Force 5 (2015) [hereinafter New Orleans Use of Force Policy], https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/.

[20] Sir Robert Peel's Nine Principles of Policing, N.Y. Times (Apr. 15, 2014), https://www.nytimes.com/2014/04/16/nyregion/sir-robert-peels-nine-principles-of-policing.html.

[21] Los Angeles Police Dep't, Office of the Chief of Police, Policy on the Use of Force – Revised (2017).

[22] U.N. Office of the High Comm'r for Human Rights, Code of Conduct for Law Enforcement Officials art. 2 (1979), https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx ("Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.").

[23] PERF Guiding Principles on Use of Force, *supra* note 9, at 94–95.

[24] PERF Guiding Principles on Use of Force, *supra* note 9, at 21; James "Chip" Coldren et al., U.S. Dep't of Justice, Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, Collaborative Reform Initiative: Six-Month Assessment Report on the Philadelphia Police Department 13 (2015), https://ric-zai-inc.com/Publications/cops-w0792-pub.pdf ("The primary duty of all police officers is to preserve human life. Only the amount of force necessary to protect life or to effect an arrest should be used by an officer.") (quoting Phila. Police Dep't Directive 22).

[25] See Seth Stoughton, Police Shouldn't Ask if a Shooting Is Justified, But if It's Avoidable, N.Y. Times (Apr. 9, 2015), https://www.nytimes.com/roomfordebate/2015/04/09/are-police-too-quick-to-use-force/police-shouldnt-ask-if-a-shooting-is-justified-but-if-its-avoidable (arguing that, for police officers, "the use of avoidable violence is a failure, even if it satisfies the legal standard.").

[26] Seattle P.D. Manual § 8.200, *supra* note 14.

[27] PERF Guiding Principles on Use of Force, *supra* note 9, at 22.

[28] PERF Guiding Principles on Use of Force, *supra* note 9, at 19.

[29] PERF Guiding Principles on Use of Force, *supra* note 9, at 19.

[30] Seattle P.D. Manual § 8.200, *supra* note 14.

[31] Int'l Ass'n of the Chiefs of Police, *supra* note 2, at 2.

[32] See, *e.g.*, Santa Monica Police Dep't, Policy Manual 1-2, https://www.santamonicapd.org/uploadedFiles/Police/Policies/Policy%20-%20Force%20De-Escalation.pdf. ; *see also* Int'l Ass'n of the Chiefs of Police, *supra* note 2, at 6.

[33] Ga. Peace Officers Standards and Training Council, 20 Hour Training Requirement Update 1 (2016), https://www.gapost.org/pdf_file/20_hour_update_2016.pdf (mandating 1-hour de-escalation training annually); Mass.gov, Training Year 2019 In-service Training Requirement, https://www.mass.gov/mandate/training-year-2019-in-service-training-requirement (mandating 3-hour in-service Integrating Communications, Assessments, and Tactics (ICAT) training annually).

[34] See Initiative Measure No. 940 (Wash. 2017), https://www.sos.wa.gov/_assets/elections/initiatives/finaltext_1372.pdf; Steve Miletich, Initiative 940, modifying law regulating police use of deadly force, passes with strong support, Seattle Times (Nov. 6, 2018), https://www.seattletimes.com/seattle-news/politics/initiative-940-modifying-law-regulating-police-use-of-deadly-force-holds-strong-lead-in-tuesdays-returns/; Wash. State Crim. Just. Training Comm'n, De-escalation Training, https://fortress.wa.gov/cjtc/www/index.php?option=com_content&view=article&id=495&Itemid=424 (providing information about training that is available).

[35] Int'l Ass'n of the Chiefs of Police, *supra* note 2, at 3 ("An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training wherever possible and appropriate before resorting to force and to reduce the need for force.").

[36] See U.S. Dep't of Justice, Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies 4 (2001) ("[O]fficers should assess the incident to determine which nondeadly technique or weapon will best de-escalate the incident and bring it under control in a safe manner."), https://www.ncjrs.gov/pdffiles1/ojp/186189.pdf; The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 2, 20-21 (2015) [hereinafter President's Task Force Report] (recommending policies that emphasize de-escalation), http://elearning-courses.net/iacp/html/webinarResources/170926/FinalReport21stCenturyPolicing.pdf; Police Exec. Res. Forum, Re-Engineering Training on Police Use of Force passim (2015), http://www.policeforum.org/assets/reengineeringtraining1.pdf (recommending use of de-escalation techniques); Sinyangwe, *supra* note 12, at 1, 4 (connecting the largest reductions in police-involved killings with policies that require "officers [to] exhaust all other means before using deadly force").

[37] Seattle P.D. Manual § 8.000, *supra* note 15.

[38] Seattle P.D. Manual § 8.000, *supra* note 15. Seattle enacted a stand-alone de-escalation policy in 2015 requiring that officers "attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution" "[w]hen safe and feasible under the totality of circumstances." Seattle P.D. Manual § 8.100, *supra* note 16. The policy clarified that officers will be accountable for failing to attempt de-escalation where appropriate during the sequence of events leading to use of force. Seattle P.D. Manual § 8.000, *supra* note 15.

[39] New Orleans Police Dep't, Policy Manual, Law Enforcement Role and Authority 38 (2014), https://nola.gov/nopd/publications/documents/new-orleans-police-department-policy-manual-2014-1/ [hereinafter New Orleans Policy Manual] (asserting that "[t]he degree of force used must be reasonable, and necessary, and in a manner that avoids unnecessary injury to officers and civilians" and permitting officers to "only use enough force to overcome the amount of resistance or aggression met. *When such resistance or aggression is reduced, the officer must correspondingly and immediately reduce the degree of force he/she is applying, or the use of force is NOT legal*" (emphasis added)).

[40] New Orleans Use of Force Policy, *supra* note 19, at 5.

[41] Tom Dart, 'Verbal judo': The Police Tactic that Teaches Cops to Talk before They Shoot, The Guardian (July 21, 2016), https://www.theguardian.com/us-news/2016/jul/21/verbal-judo-police-shootings-deescalation-communication.

[42] *Id.*; John Wilkens, Police Embrace 'De-escalation' to Reduce Shootings, but Some Officers Remain Skeptical, L.A. Times (Oct. 1, 2016), http://www.latimes.com/local/california/la-me-elcajon-tactics-20161001-snap-story.html.

[43] Laurence Miller, Patrol Psychology 101: Communication and Conflict Resolution, PoliceOne (Apr. 18, 2008), https://www.policeone.com/health-fitness/articles/1685390-Patrol-psychology-101-Communication-and-conflict-resolution/; *see also* Int'l Ass'n of the Chiefs of Police, National Consensus Policy and Discussion on Use of Force 9 (2017), https://www.theiacp.org/sites/default/files/all/n-o/National_Consensus_Policy_On_Use_Of_Force.pdf [hereinafter IACP National Consensus Policy] (recommending that officers "speak in low, or nonthreatening tones," make "positive statements," and maintain "[a]wareness of body language" during incidents).

[44] PERF Guiding Principles on Use of Force, *supra* note 9, at 54; *see also* New Orleans Police Dep't, Operations Manual: Use of Procedure 1160 (2015), https://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad92b57eb8d0f11460ead/1452988719385/Las+Vegas+Use+of+Force+Policy.pdf ("Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater number of Force Options.").

[45] PERF Guiding Principles on Use of Force, *supra* note 9, at 25, 54.

[46] Ron Martinelli, Revisiting the "21-Foot Rule", Police Magazine (Sept. 18, 2014), http://www.policemag.com/channel/weapons/articles/2014/09/revisiting-the-21-foot-rule.aspx; *see also* PERF Guiding Principles on Use of Force, *supra* note 9, at 20.

[47] PERF Guiding Principles on Use of Force, *supra* note 9, at 20.

[48] PERF Guiding Principles on Use of Force, *supra* note 9, at 20.

[49] PERF Guiding Principles on Use of Force, *supra* note 9, at 5, 20, 54.

[50] Goldstein & Schweber, *supra* note 1.

[51] D.C. Code §§ 5-125.01-125.03, https://code.dccouncil.us/dc/council/code/titles/5/chapters/1/subchapters/XIII/; 720 Ill. Comp. Stat. 5 § 7-5.5, http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=072000050K7-5.5.

[52] *See, e.g.*, Carmen Best, Chief of Police, Seattle Police Dep't Manual, § 8.300 – Use of Force Tools, Seattle.gov (Sept. 1, 2015), https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools [hereinafter Seattle P.D. Manual § 8.300].

[53] Nat'l Law Enf't Tech. Ctr., U.S. Dep't of Justice, Positional Asphyxia—Sudden Death 1 (1995), https://www.ncjrs.gov/pdffiles/posasph.pdf.

[54] *Id.* at 2.

[55] *Id.* at 1-2.

[56] PERF Guiding Principles on Use of Force, *supra* note 9, at 44; *see, e.g.*, Denver Police Dep't, Operations Manual 105.05 (2015), http://extras.mnginteractive.com/live/media/site36/2015/0609/20150609_081455_OMS-105-05_APPROVED_06-08-15.pdf.

[57] Denver Police Dep't, *supra* note 56. Michael Roberts, Denver Cops Change Shooting-at-Moving-Vehicles Policy After Hernandez Decision, Westord, (June 9, 2015, 7:29am), https://www.westword.com/news/denver-cops-change-shooting-at-moving-vehicles-policy-after- hernandez-decision-6788874; PERF Guiding Principles on Use of Force, *supra* note 9, at 45.

[58] Denver Police Dep't, *supra* note 56.

[59] *See, e.g.*, Noelle Phillips & Jon Murray, Denver Will Pay $1 Million to Jessica Hernandez's Family for 2015 Fatal Shooting, Denver Post (Apr. 12, 2017), https://www.denverpost.com/2017/04/12/jessica-hernandez-2015-fatal-police-shooting-settlement/; Bobby Allyn, Record $4.4M settlement in 2014 Philadelphia police shooting, WHYY (Jan. 6, 2017), https://whyy.org/articles/record-44m-settlement-in-2014-philadelphia-police-shooting/.

[60] PERF Guiding Principles on Use of Force, *supra* note 9, at 45-46.

[61] PERF Guiding Principles on Use of Force, *supra* note 9, at 47.

[62] *See, e.g.*, Michael Harriot, How 1 of America's Deadliest Police Forces Gets Away With Shooting and Killing Black People, The Root (Sept. 11, 2017), https://www.theroot.com/how-one-of-americas-deadliest-police-forces-gets-away-w-1803142042 (discussing Kansas City's 4.8 million settlement); Allyn, *supra* note 59; Finch McCranie LLP, $2.3 Million Judgement In Excessive Force Case, http://finchmccranie.com/2-3-million-judgement-in-excessive-force-case/ (discussing a $2.3 million judgment in Gainesville, Georgia); Rick Orlov, City OKs Devin Brown Payout, L.A. Daily News (June 8, 2006) https://www.dailynews.com/2006/06/08/city-oks-devin-brown-payout (discussing a $1.5 million settlement in Los Angeles).

[63] Christopher Ingraham, Police Chases Kill More People Each Year than Floods, Tornadoes, Hurricanes and Lightning — combined, Wash. Post (July 25, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/07/25/why-police-shouldnt-chase-criminals/?utm_term=.b4753153b304.

[64] Thomas Frank, High-Speed Police Chases Have Killed Thousands of Innocent Bystanders, USA Today (July 30, 2015), https://www.usatoday.com/story/news/2015/07/30/police-pursuits-fatal-injuries/30187827/.

[65] *Id.* (citing a report by the Int'l Ass'n of Chiefs of Police and the Nat'l Inst. of Just.).

[66] Carmen Best, Chief of Police, Seattle Police Dep't Manual, § 13.031 – Vehicle Eluding/Pursuits (Jan. 1, 2018), https://www.seattle.gov/police-manual/title-13---vehicle-operations/13031---vehicle-eluding/pursuits.

[67] *Id.*

[68] *Id.*

[69] *See* Miles v. United States, No. 13-CF-1523, at 17, 18 n.14 (D.C. Cir. Mar. 29, 2018) (concluding that the suspect's flight from police was not sufficient corroboration to establish the reliability of "the anonymous tip" justifying the investigatory stop of a Black man), https://www.dccourts.gov/sites/default/files/2018-04/13-CF-1523.pdf. Fear of police among Blacks likely stems from negative interactions that disproportionately impact the communities of color; *see, e.g.*, Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

[70] *See* Robert J. Kaminski & Jeff Rojek, Police foot-pursuit policies, practices and training: Findings from a national survey 3 (2015), https://www.researchgate.net/publication/280829775_Police_foot-pursuit_policies_practices_and_training_Findings_from_a_national_survey (citing studies revealing that 12% of fatal police-involved shootings in Dekalb County involved foot pursuits); Merrick J. Bobb, The Los Angeles County Sheriff's Department 19th Semiannual Report 6 (2005) (stating that between 1997 and 2002, 22% of officer-involved shooting in Los Angeles involved foot pursuits, and from 2003-2004, 27% of such shootings involved foot pursuits), https://www.clearinghouse.net/chDocs/public/JC-CA-0021-0001.pdf; Tony Plohetski, Dangerous pursuit: Austin police foot chases can lead to injuries, shootings, Austin American-Statesman (Sept. 8, 2013) https://www.statesman.com/news/20130908/dangerous-pursuit-austin-police-foot-chases-can-lead-to-injuries-shootings (reporting that since 2008, over 30% of police shootings in Austin involved foot pursuits).

[71] Police Exec. Res. Forum, An Integrated Approach to De-Escalation and Minimizing Use of Force 36 (2012), https://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf.

[72] *See* U.S. Dep't of Justice, Civ. Rights Div. & U.S. Atty's Office N.D. Ill., Investigation of the Chicago Police Department 26 (2017), https://www.justice.gov/opa/file/925846/download [hereinafter Chicago Findings Report].

[73] *See, e.g.*, New Orleans Police Dep't Operations Manual, Foot Pursuits 1 (2015), https://nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-41-4-Foot-Pursuits-(1).pdf/ (stating that police and public safety "shall be the primary consideration when determining whether officers should initiate or continue a foot pursuit"); *see also* Chicago Findings Report, supra note 72, at 151 (recommending that the Chicago Police Department "[d]evelop, train and implement a foot pursuit policy that makes clear that foot pursuits are dangerous and that sets forth guidelines for foot pursuits that balance the objective of apprehending the suspect with the risk of potential injury to the officer, the public, and the suspect."); Tennessee v. Garner, 471 U.S. 1, 11 (1985) ("Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.").

[74] Kaminski & Rojek, *supra* note 70, at 4-5.

[75] *See* Steven Levingston, Children Have Changed America Before, Braving Fire Hoses and Police Dogs for Civil Rights, Wash. Post (Mar. 23, 2018), https://www.washingtonpost.com/news/retropolis/wp/2018/02/20/children-have-changed-america-before-braving-fire-hoses-and-police-dogs-for-civil-rights/?utm_term=.dfea668465f3.

[76] Julia Carrie Wong, Dakota Access pipeline: 300 Protesters Injured after Police Use Water Cannons, The Guardian (Nov. 21, 2016), https://www.theguardian.com/us-news/2016/nov/21/dakota-access-pipeline-water-cannon-police-standing-rock-protest.

[77] *See* Lily Hay Newman, This Is the Sound Cannon Used Against Protesters in Ferguson, Slate (Aug. 14, 2014), https://slate.com/technology/2014/08/lrad-long-range-acoustic-device-sound-cannons-were-used-for-crowd-control-in-ferguson-missouri-protests.html.

[78] Alan Yuhas, U.S. Agents Fire Tear Gas Across Mexican Border, N.Y. Times (Jan. 1, 2019), https://www.nytimes.com/2019/01/01/world/americas/migrants-border-tear-gas.html.

[79] Physicians for Human Rights, Water Cannons 1-2, https://s3.amazonaws.com/PHR_other/PHR_INCLO_Fact_Sheets_Water_Cannons.pdf.

[80] Sanya Mansour, England, Wales Ban Water Cannon Use by Police. How Do UK Police Tactics Compare Globally? Christian Sci. Monitor (July 15, 2015), https://www.csmonitor.com/World/Global-News/2015/0715/England-Wales-ban-water-cannon-use-by-police.-How-do-UK-police-tactics-compare-globally.

[81] Physicians for Human Rights & Int'l Network of Civ. Liberties Orgs., Lethal in Disguise: The Health Consequences of Crowd-Control Weapons 7 (2016), https://www.aclu.org/sites/default/files/field_document/lethal_in_disguise_inclo_single_page.pdf.

[82] *Id.* at 41.

[83] *Id.* at 43.

[84] *Id.* at 41.

[85] *Id.* at 74, 76.

[86] *Id.*

[87] See Aaron C. Davenport et al., An Evaluation of the Department of Defense's Excess Property Program xi (2018), https://www.rand.org/pubs/research_reports/RR2464.html. The 1033 Program, also known as the Law Enforcement Support Office (LESO) Program, is managed by the Defense Logistics Agency on behalf of the U.S. Department of Defense; the program was created by the National Defense Authorization Act (NDAA) of 1997. *Id.* See also Niall McCarthy, How Much Is The Military Equipment Transferred to Law Enforcement Worth?, Forbes (May 29, 2018), https://www.forbes.com/sites/niallmccarthy/2018/05/29/how-much-is-the-military-equipment-transferred-to-law-enforcement-worth-infographic/#19187b863718.

[88] David Nakamura & Niraj Chokshi, Obama Orders Review of Military Equipment Supplied to Police, Wash. Post (Aug. 23, 2014), https://www.washingtonpost.com/politics/obama-orders-review-of-military-equipment-supplied-to-police/2014/08/23/6316b8aa-2b03-11e4-8593-da634b334390_story.html?utm_term=.256ec02c1b97.

[89] See U.S. Dep't of Justice, Office of Cmty. Oriented Policing Servs., After Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson Missouri 60 (2015) https://ric-zai-inc.com/Publications/cops-p317-pub.pdf [hereinafter Response to Ferguson].

[90] Exec. Order No. 13,688, Federal Support for Local Law Enforcement Equipment Acquisition, 80 Fed. Reg. 3451 (Jan 16, 2015), https://www.govinfo.gov/content/pkg/FR-2015-01-22/pdf/2015-01255.pdf.

[91] Response to Ferguson, *supra* note 89, at 60; *see also* Nakamura & Chokshi, *supra* note 88; Niraj Chokshi, Militarized Police in Ferguson Unsettles Some, Pentagon Gives Cities Equipment, Wash. Post (Aug. 14, 2014), https://www.washingtonpost.com/politics/militarized-police-in-ferguson-unsettles-some-pentagon-gives-cities-equipment/2014/08/14/4651f670-2401-11e4-86ca-6f03cbd15c1a_story.html?noredirect=on&utm_term=.bfd3eed5c7b8.

[92] Law Enforcement Equipment Working Group, Recommendations Pursuant to Executive Order 13688: Federal Support for Local Law Enforcement Equipment Acquisition 12-13 (2015), https://www.bja.gov/publications/LEEWG_Report_Final.pdf.

[93] Exec. Order No. 13,809, Restoring State, Tribal, and Local Law Enforcement's Access to Life-Saving Equipment and Resources, 82 Fed. Reg. 41,499 (Aug. 28, 2017), https://www.govinfo.gov/content/pkg/FR-2017-08-31/pdf/2017-18679.pdf.

[94] Law Enforcement Equipment Working Group, *supra* note 92, at 13.

[95] Casey Delehanty et al., Militarization and Police Violence: The Case of the 1033 Program, Res. & Pol., June 2017, at 3, https://journals.sagepub.com/doi/full/10.1177/2053168017712885.

[96] *Id.* at 2.

[97] See Law Enforcement Equipment Working Group, *supra* note 92, at 6.

[98] Am. Civ. Liberties Union, War Comes Home: The Excessive Militarization of American Policing 31-32 (2014), https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rel1.pdf (citing Peter Kraska, Militarization and Policing—Its Relevance to 21st Century Police, Policing 6-7 (2007)).

[99] *Id.*; see also Radley Balko, Rise of the Warrior Cop, Wall St. J. (Aug. 7, 2013), https://www.wsj.com/articles/rise-of-the-warrior-cop-1375908008.

[100] See, *e.g.*, Consent Decree, United States v. City of New Orleans, No. 2:12-CV-1924-SM, ¶ 70–75 (E.D. La. July 24, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2012/11/07/nopd_consentdecree_7-24-12.pdf; Am. Civ. Liberties Union, *supra* note 98, at 41 (recommending SWAT "only if the police can demonstrate, before deployment, that ordinary law enforcement officers cannot safely execute a warrant without facing an imminent threat of serious bodily harm.").

[101] See, *e.g.*, New Orleans Police Dep't, Operations Manual: Crisis Response Unit—SWAT (2017), https://www.nola.gov/getattachment/NOPD/Policies/Chapter-46-7-Crisis-Response-Unit.pdf/.

[102] See, *e.g.*, Fields v. City of Phila., 862 F.3d 353, 356 (3d Cir. 2017) (asserting that the Third Circuit joins the "growing consensus" among federal circuit courts that "the First Amendment protects the act of photographing, filming, or otherwise recording police officers conducting their official duties in public.").

[103] See Seattle P.D. Manual § 8.200, *supra* note 14 (prohibiting officers from using physical force as punishment or retaliation or on a restrained person "except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, or escape, destruction of property").

[104] See, *e.g.*, New Orleans Police Dep't, Operations Manual: Authorized Firearms 2 (2015), https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-4-Authorized-Firearms.pdf/ (department-authorized firearm); Carmen Best, Chief of Police, Seattle Police Dep't Manual, § 9.060 – Firearms (Nov. 20, 2013), https://www.seattle.gov/police-manual/title-9---equipment-and-uniforms/9060---firearms (department-approved firearms); New Orleans Police Dep't, Operations Manual: Conducted Electrical Weapon (CEW) 3-4 (2018), https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-7-1-CEW-EFFECTIVE-4-01-18.pdf/ [hereinafter New Orleans CEW] (department-issued Tasers); Consent Decree, United States v. Police Dep't of Baltimore, No. 1:17-CV-99-JKB, ¶ 149 (D. Md. 2017)], https://www.justice.gov/opa/file/925056/download [hereinafter Baltimore Consent Decree (department-approved batons, department-issued or department-approved pepper spray); Seattle P.D. Manual § 8.300, supra note 52 (department issues or approved pepper spray); Police Exec. Res. Forum, Use-of-Force Policy and Practice Review of the Fairfax County Police Department: Final Report 52 (2015), https://www.fairfaxcounty.gov/police/sites/police/files/assets/images/chief/policies/fairfax-county-police-dept-final-report-june19.pdf.

[105] See Police Exec. Res. Forum, *supra* note 104, at 52; *see also* Seattle P.D. Manual § 8.300, *supra* note 104, at ¶ 149 (pepper spray); N.J. Office of the Att'y Gen., Div. of Crim. Just., K-9 Training Standards and Qualification Requirements for New Jersey Law Enforcement (2002), https://www.state.nj.us/lps/dcj/agguide/k9_policy_2002.pdf; New Orleans Police Dep't, Operations Manual: Canine (2015), https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-41-22-Canine.pdf [hereinafter New Orleans Police Dep't, Canine]; Amended and Restated Consent Decree Regarding the New Orleans Police Department, United States v. City of New Orleans, No. 12-CV-01924, ¶¶ 48-50 (E.D. La. 2018), https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/NOPD-Consent-Decree-2018-10-2.pdf/ [New Orleans Amended and Restated Consent Decree] (dog handlers must receive in-service classroom instruction at least annually and be reevaluated semi-annually).

[106] See, *e.g.*, Settlement Agreement, United States. v. City of Cleveland, No. 1:15-CV-01046-SO, ¶ 58 (firearms) (N.D. Ohio June 12, 2015), https://www.justice.gov/crt/case-document/file/908536/download [hereinafter Cleveland Settlement Agreement]; Seattle P.D. Manual § 8.300, *supra* note 52.

[107] IACP National Consensus Policy, *supra* note 43, at 4 ("Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.").

[108] Police. Exec. Res. Forum & Office of Cmty. Oriented Policing Servs., Electronic Control Weapon Guidelines 12 (2011), https://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf [hereinafter ECW Guidelines] ("ECWs should not be used in situations where alternative options, including other types of force or verbal de-escalation techniques, are more appropriate."); Seattle P.D. Manual § 8.300, *supra* note 52; Settlement Agreement, United States v. City of Portland, No. 3:12-CV-02265-SI, ¶ 68 (D. Or. 2012), https://www.portlandoregon.gov/police/article/506328.

[109] See IACP National Consensus Policy, *supra* note 43, at 4 ("Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force."); Consent Decree, United States v. City of Ferguson, No. 4:16-CV-00180-CDP, ¶ 136, 152 (E.D. Mo. Mar. 17, 2016) [hereinafter Ferguson Consent Decree], https://www.justice.gov/opa/file/833431/download; ECW Guidelines, *supra* note 108, at 20 (tasers); Seattle P.D. Manual § 8.300, *supra* note 52 (tasers); Baltimore Consent Decree, *supra* note 104, at ¶ 155; Settlement Agreement, United States v. City of Seattle, No. 12-CV-1282, ¶ 84 (W.D. Wash. July 27, 2012), https://www.justice.gov/sites/default/files/usao-wdwa/legacy/2012/07/27/SPD%20Settlement%20Agreement.pdf [hereinafter Seattle Settlement Agreement].

[110] PERF Guiding Principles on Use of Force, *supra* note 9, at 21 ("Proportionality requires officers to consider if they are using only the level of force necessary to mitigate the threat, and whether there is another, less injurious option available that will safely and effectively achieve the same objective."); *see also* Chicago Findings Report, *supra* note 72, at 151 (tasers); Seattle P.D. Manual § 8.300, *supra* note 52 (tasers).

[111] See, *e.g.*, Seattle P.D. Manual § 8.300, *supra* note 52; Mark G. Peters & Philip K. Eure, N.Y.C. Dep't of Investigation, Off. of the Inspector Gen. for the NYPD, Police Use of Force in New York City: Findings and Recommendations on NYPD's Policies and Practices, A app. Proc. No. 212-95, at 1 (2013), http://www.nyc.gov/html/oignypd/assets/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf (stating that "pepper spray may be used when a member reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force, or to take a resisting emotionally disturbed person into custody."); Baltimore Consent Decree, *supra* note 104, at ¶ 154 (pepper spray).

[112] Ferguson Consent Decree, *supra* note 109, at ¶¶ 141 (firearms), 148 (batons), 151 (pepper spray); ECW Guidelines, *supra* note 108, at 20 (more than one standard-cycle Taser). Seattle P.D. Manual § 8.300, *supra* note 52 (batons); Seattle Settlement Agreement, *supra* note 109, at ¶ 84 (pepper spray).

[113] Brandon Garrett & Seth Stoughton, A Tactical Fourth Amendment, 103 VA. L. Rev. 211, 278 (2017).

[114] Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, Officer-Involved Shootings: A Guide for Law Enforcement Leaders 1, 7 (2016), https://www.theiacp.org/sites/default/files/2018-08/e051602754_Officer_Involved_v8.pdf.

[115] U.S. Dep't of Justice, Civ. Rights Div., Investigation of the Puerto Rico Police Department 35 (2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/09/08/prpd_letter.pdf [hereinafter Puerto Rico Findings Report].

[116] See Robinson v. Solano Cty., 278 F.3d 1007, 1013 (9th Cir. 2002) (concluding that police conducted a seizure when they pointed a gun at and handcuffed a suspect); Couden v. Duffy, 446 F.3d 483, 493, 496–98 (3d Cir. 2006) (concluding that police were not entitled to qualified immunity when they pointed gun at plaintiff in excessive use of force that constituted an unconstitutional seizure); Jacobs v. City of Chicago, 215 F.3d 758, 774 (7th Cir. 2000) (asserting that the law was "established that holding the gun to a person's head and threatening to pull the trigger is a use of deadly force" and declining to extend qualified immunity to officers who committed such actions); Baker v. Monroe Twp., 50 F.3d 1186, 1193 (3d Cir.1995) (finding officers liable for excessive force when they pointed guns at and handcuffed family members without sufficient justification); McDonald by McDonald v. Haskins, 966 F.2d 292, 294–95 (7th Cir. 1992) (finding that police were not entitled to qualified immunity in claim alleging unconstitutional seizure and excessive use of force after officer pointed a gun at the head of a 9-year-old boy who did not pose a danger or risk of flight); *see also* Seattle P.D. Manual § 8.300, *supra* note 52 ("Pointing a Firearm at a Person is Type I Reportable Force"); New Orleans Policy Manual, *supra* note 39, at 98 (use of force includes pointing a firearm at a person).

[117] Puerto Rico Findings Report, *supra* note 115, at 88; Cleveland Settlement Agreement, *supra* note 106, at ¶ 55; Ferguson Consent Decree, *supra* note 109, at ¶ 82.

[118] See, *e.g.*, PERF Guiding Principles on Use of Force, *supra* note 9, at 67.

[119] See Liza Lucas, Changing the Way Police Respond to Mental Illness, CNN (Sept. 28, 2016), http://www.cnn.com/2015/07/06/health/police-mental-health-training/index.html ("Traditional training teaches police to control situations by demanding compliance, and the unpredictable nature of a person with a psychiatric condition can be misinterpreted as a threat and quickly escalate to violence. CIT training is meant to prevent that.").

[120] See, e.g., Seattle P.D. Manual § 8.300, *supra* note 52 (requiring police to "document all incidents where they point a firearm at a person"); PERF Guiding Principles on Use of Force, *supra* note 9, at 48; see also Ferguson Consent Decree, *supra* note 109, at ¶ 173.

[121] See, e.g., Carmen Best, Chief of Police, Seattle Police Dep't Manual, § 8.400 – Use of Force Reporting and Investigation, Seattle.gov (Sept. 1, 2015), https://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation [hereinafter Seattle P.D. Manual § 8.400];Denver Police Dep't, *supra* note 56, at 105-16; U.S. Comm'n on Civil Civ. Rights, Who Is Guarding the Guardians: A Report on Police Practices: A Report 156 (1981), https://babel.hathitrust.org/cgi/pt?id=uc1.32106015219253;view=1up;seq=172.

[122] PERF Guiding Principles on Use of Force, *supra* note 9, at 50-51; Seattle P.D. Manual § 8.300, *supra* note 52; Ferguson Consent Decree, *supra* note 109, at ¶ 143.

[123] See, e.g., Ferguson Consent Decree, *supra* note 109, at ¶ 143.

[124] PERF Guiding Principles on Use of Force, *supra* note 9, at 44; Denver Police Dep't, *supra* note 56, at 105-20; Agreement for Effective and Constitutional Policing, United States v. Town of East Haven & East Haven Bd. of Police Comm'rs, No. 3:12-CV-01652-AWT, ¶ 84 (D. Conn. Dec. 21, 2012), https://www.clearinghouse.net/chDocs/public/PN-CT-0001-0004.pdf.

[125] Nat'l Inst. of Justice, U.S. Dep't of Justice, Police Use of Force, Tasers and Other Less-Lethal Weapons 1 (2011), https://www.ncjrs.gov/pdffiles1/nij/232215.pdf [hereinafter Nat'l Inst. of Justice, Tasers] (reporting that as of 2011, more than 15,000 law enforcement agencies used Tasers); New Orleans CEW, *supra* note 104, at 1.

[126] Nat'l Inst. of Justice, Tasers, *supra* note 125, at 2.

[127] See Seattle P.D. Manual § 8.300, *supra* note 52.

[128] Nat'l Inst. of Justice, Tasers, *supra* note 125, at 2.

[129] Nat'l Inst. of Justice, Tasers, *supra* note 125, at ii; see also Bruce Taylor et al., Comparing Safety Outcomes in Police Use-of-Force Cases for Law Enforcement Agencies That Have Deployed Conducted Energy Devices and a Matched Comparison Group That Have Not 1, 12-13, 66-68 (2009), http://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/conducted%20energy%20devices%20matched%20agency%20study%202009.pdf (finding that rates of suspect and officer injuries were lower among agencies using Tasers than among agencies using more traditional methods of force); John M. MacDonald et al., The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events, 99 Am. J. Pub. Health 2268, 2269, 2272-73 (2009), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2775771/pdf/2268.pdf (concluding that the rates of injury to members of the public and officers were lower when police used conductive energy devices like Tasers than when they inflicted physical force via punches, kicks, high-impact weapons, and other more traditional methods).

[130] See, e.g., Dan Hinkel & Jennifer Smith Richards, Chicago Cops Get More Tasers, But Red Flags Remain, Chicago Trib. (Aug. 28, 2017), https://www.chicagotribune.com/news/local/breaking/ct-chicago-police-tasers-met-20170825-story.html.

[131] N.Y. Civ. Liberties Union, Taking Tasers Seriously: The Need for Better Regulation of Stun Guns in New York 2 (2011), https://www.nyclu.org/sites/default/files/publications/nyclu_TaserFinal.pdf.

[132] Bocar Ba & Jeffrey Grogger, The Introduction of Tasers and Police Use of Force: Evidence from the Chicago Police Department, Nat'l Bureau of Econ. Res. (2018), https://www.nber.org/papers/w24202.

[133] ECW Guidelines, *supra* note 108, at 11; see also PERF Guiding Principles on Use of Force, *supra* note 9, at 67.

[134] See, e.g., ECW Guidelines, *supra* note 108, at 22.

[135] See, e.g., ECW Guidelines, *supra* note 108, at 17; New Orleans CEW, *supra* note 104, at 4; Ferguson Consent Decree, *supra* note 109, ¶ at 146.

[136] ECW Guidelines, *supra* note 108, at 20.

[137] ECW Guidelines, *supra* note 108, at 20; see also Cleveland Settlement Agreement, *supra* note 106, at ¶ 62.

[138] See, e.g., ECW Guidelines, *supra* note 108, at 14; Seattle P.D. Manual § 8.300, *supra* note 52.

[139] See, e.g., ECW Guidelines, *supra* note 108, at 20; Seattle P.D. Manual § 8.300, *supra* note 52.

[140] See, e.g., ECW Guidelines, *supra* note 108, at 20.

[141] See, e.g., ECW Guidelines, *supra* note 108, at 18 ("multiple applications or continuous cycling of an ECW resulting in an exposure longer than 15 seconds (whether continuous or cumulative) may increase the risk of serious injury or death and should be avoided").

[142] See, e.g., Seattle P.D. Manual § 8.300, *supra* note 52; Cleveland Settlement Agreement, *supra* note 106, at ¶ 64.

[143] ECW Guidelines, *supra* note 108, at 14.

[144] ECW Guidelines, *supra* note 108, at 14; *see also* New Orleans CEW, *supra* note 104, at 1; Ferguson Consent Decree, *supra* note 109, at ¶ 146; Baltimore Consent Decree, *supra* note 104, at ¶ 146.

[145] *See* New Orleans Police Dep't, Operations Manual: Control Devices and Techniques 4 (2018), https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-1-2-Control-Devices-and-Techniques-EFFECTIVE-4-01-18.pdf/.

[146] *See* U.S. Dep't of Justice, Civ. Rights Div., Investigation of the New Orleans Police Department 1 (2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf [hereinafter New Orleans Finding Report].

[147] Seattle P.D. Manual § 8.300, *supra* note 52 (noting that batons can deliver lethal blows, and explicitly prohibiting strikes to the head unless deadly force is justified).

[148] *See, e.g.*, Seattle P.D. Manual § 8.300, *supra* note 52; Denise Rodriguez et al., Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, Collaborative Reform Initiative: Assessment Report on Fayetteville Police Department 30 (2015), https://ric-zai-inc.com/Publications/cops-w0790-pub.pdf (recommending that the Fayetteville Police Department reconcile inconsistent guidance on the use of flashlights as impact weapons by stating "that while a flashlight can be used as an impact weapon, it should not be 'used to strike any person in the head, spine, neck, kidney[,] or groin unless circumstances justify the use of deadly force'").

[149] Baltimore Consent Decree, *supra* note 104, at ¶ 152; *see also* Richard Winton, How the Rodney King Beating 'Banished' the Baton from the LAPD, L.A. Times (Mar. 2, 2016), https://www.latimes.com/local/california/la-me-rodney-king-baton-20160303-story.html.

[150] PERF Guiding Principles on Use of Force, *supra* note 9, at 66-67.

[151] PERF Guiding Principles on Use of Force, *supra* note 9, at 66-67.

[152] *See* Baltimore Consent Decree, *supra* note 104, at ¶ 154; Ferguson Consent Decree, *supra* note 109, at ¶

[153] *See* Seattle P.D. Manual § 8.300, *supra* note 52; Baltimore Consent Decree, *supra* note 104, at ¶ 157.

[154] R. Paul McCauley et al., The Police Canine Bite: Force, Injury, and Liability 27, Ctr. for Res. in Criminology (2008), http://www.iup.edu/criminology/research/policek9/.

[155] New Orleans Finding Report, *supra* note 146, at 7.

[156] The Times-Picayune, NOPD Suspends Use of Dogs to Catch Suspects, NOLA.com (Oct. 10, 2010), https://www.nola.com/crime/index.ssf/2010/10/nopd_suspends_use_of_dogs_to_c.html.

[157] Mara H. Gottfried, St. Paul Police Tighten Policy after 2 High-Profile K-9 Bites, Twin Cities Pioneer Press (June 1, 2018), https://www.twincities.com/2018/06/01/st-paul-police-tighten-policy-after-2-high-profile-k-9-bites-they-say-reviews-are-always-underway/.

[158] St. Paul Police Dep't, 462.00 Canine Unit (K-9 Team) 1-2 (2018), https://www.stpaul.gov/sites/default/files/Media%20Root/Police/462.00%20Canine%20Unit%20%28K-9%29_redacted%205%2022%20%202018.pdf.

[159] N.J. Office of the Att'y Gen., *supra* note 105.

[160] N.J. Office of the Att'y Gen., *supra* note 105, at 6-8.

[161] U.S. Dep't of Just., Examples of Promising Police Practices and Policies (2001), https://www.ncjrs.gov/pdffiles1/ojp/186189.pdf

[162] U.S. Dep't of Justice, Civ. Rights Div., Investigation of the Ferguson Police Department 93 (2015), https://www.courts.mo.gov/file.jsp?id=95274 [hereinafter Ferguson Findings Report]; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 41; Ferguson Consent Decree, *supra* note 109, at ¶ 160 (requiring "verbal supervisory approval" before any canine deployment).

[163] Seattle P.D. Manual § 8.300, *supra* note 52 (requiring "canine officers to have approval from an immediate supervisor before the canine can be deployed off-leash.").

[164] New Orleans Police Dep't, Canine, *supra* note 105, at 1; *see also* St. Paul Police Dep't, *supra* note 158, at 2.

[165] Ferguson Consent Decree, *supra* note 109, at ¶ 159; Amended and Restated New Orleans Consent Decree, supra note 105, at ¶ 40.

[166] Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 39; Seattle P.D. Manual § 8.300, *supra* note 52 (requiring canines to be leashed except under limited circumstances, including searches for armed suspects or those wanted for serious or violent crimes, or when a clear risk of death or serious physical injury to an officer or member of the public exists); Ferguson Consent Decree, *supra* note 109, at ¶ 163.

[167] New Orleans Police Dep't, Canine, *supra* note 105, at 5.

[168] Ferguson Consent Decree, *supra* note 109, at ¶ 165; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 44.

[169] *See, e.g.*, St. Paul Police Dep't, *supra* note 158, at 2.

[170] N.J. Office of the Att'y Gen., *supra* note 105, at 19.

[171] Ferguson Findings Report, *supra* note 162, at 94; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶¶ 46–47; Settlement Agreement, United States v. City of Albuquerque, No. 1:14-CV-01025-RB-SMV, ¶¶ 102–03 (D.N.M. Nov. 14, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/12/19/apd_settlement_11-14-14.pdf [hereinafter Albuquerque Settlement Agreement].

[172] *See, e.g.*, Blake Norton et al., Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, Collaborative Reform Initiative: An Assessment of the St. Louis County Police Department 56 (2015), https://ric-zai-inc.com/Publications/cops-p316-pub.pdf; Puerto Rico Findings Report, *supra* note 115, at 90; Seattle P.D. Manual § 8.300, *supra* note 52; Ferguson Consent Decree, *supra* note 108, at ¶ 167; Albuquerque Settlement Agreement, *supra* note 171, at ¶ 39.

[173] New Orleans Police Dep't, Canine, *supra* note 105, at 4.

[174] *See, e.g.*, Seattle P.D. Manual § 8.300, *supra* note 52; Ferguson Consent Decree, *supra* note 108, at ¶ 163; 21st Century Task Force, *supra* note 36, at 4-5; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 43.

[175] *See, e.g.*, Ferguson Consent Decree, *supra* note 108, at ¶¶ 164, 166; Cf. Seattle P.D. Manual § 8.300, *supra* note 52 ("In the case of known or suspected juvenile suspects, special consideration should be given to the suspect's age and propensity for violence, and officers shall explore alternatives to the deployment of a canine"); New Orleans Police Dep't, Canine, *supra* note 104.

[176] Ferguson Findings Report, *supra* note 161, at 32 (citing Kuha v. City of Minnetonka, 365 F.3d 590, 598 (8th Cir. 2004), abrogated on other grounds by Szabla v. City of Brooklyn Park, Minn., 486 F.3d 385, 391 (8th Cir. 2007) (en banc) (holding that "a jury could find it objectively unreasonable to use a police dog trained in the bite and hold method without first giving the suspect a warning and opportunity for peaceful surrender") (emphasis added)).

[177] Santa Ana Police Dep't, Use of Force Policy No. 300, § 300.3.2(e) (2015), https://www.santa-ana.360-biz.com/sites/default/files/Documents/Policy300.pdf.

[178] Las Vegas Metro Use of Force Policy, *supra* note 19, at 4.

[179] *See generally* Office of Cmty. Oriented Policing Servs. & Vera Inst. of Just., Police Perspectives: How to Serve Diverse Communities 1-2 (2016), https://storage.googleapis.com/vera-web-assets/downloads/Publications/police-perspectives-guidebook-series-building-trust-in-a-diverse-nation/legacy_downloads/police-perspectives-guide-series-building-trust-diverse-nation-diverse-communities_1.pdf.

[180] Baltimore Consent Decree, *supra* note 104, at ¶ 131.

[181] *See* Jones v. City of Hartford, 285 F. Supp. 2d 174, 182 (D. Conn. 2003) ("Police officers 'have an affirmative duty to intercede on the behalf of a citizen whose constitutional rights are being violated in their presence by other officers.'" (citing O'Neill v. Krzeminski, 839 F.2d 9, 11 (2d Cir. 1988))).

[182] Rich Morin et al., Pew Res. Ctr., Behind the Badge: Amid Protests and Calls for Reform, How Police View Their Jobs, Key Issues and Recent Fatal Encounters Between Blacks and Police 13 (2017), http://assets.pewresearch.org/wp-content/uploads/sites/3/2017/01/06171402/Police-Report_FINAL_web.pdf.

[183] Campaign Zero, Police Use of Force Policy Analysis 8 (2016), https://static1.squarespace.com/static/56996151cbced68b170389f4/t/57e1b5cc2994ca4ac1d97700/1474409936835/Police+Use+of+Force+Report.pdf.

[184] PERF Guiding Principles on Use of Force, *supra* note 9, at 41; *see also* Ferguson Consent Decree, *supra* note 109, at ¶ 128; Baltimore Consent Decree, *supra* note 104, at ¶ 141.

[185] *See, e.g.*, Las Vegas Metro Use of Force Policy, *supra* note 19, at 6; Anaheim Police Dep't, Anaheim PD Policy Manual, Use of Force Policy 300, at § 300.2.1 (2017), https://www.anaheim.net/DocumentCenter/View/18938/Policy-300---Use-of-Force; Corpus Christi Police Dep't, Policy Manual: Use of Force Policy 200, at § 200.2.1 (2014), https://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad5383b0be35eb45271e0/1452987707478/Corpus+Christi+Use+of+Force+Policy.pdf.

[186] *See, e.g.*, Campaign Zero, *supra* note 183, at 10; Phoenix Police Dep't, Operations Order 1.5—Use of Force, at § 3.C (2018), https://www.phoenix.gov/policesite/Documents/operations_orders.pdf ("All sworn employees will intervene, if a reasonable opportunity exists, when they know or should know another employee is using unreasonable force."); Ferguson Consent Decree, *supra* note 109, at ¶¶ 128, 131.

[187] New Orleans Use of Force Policy, *supra* note 19, at 10.

[188] *See, e.g.*, PERF Guiding Principles on Use of Force, *supra* note 9, at 36; Consent Decree, United States v. City of Newark, No. 2:16-CV-01731-MCA-MAH, ¶¶ 67, 69 (D.N.J. 2016), https://www.justice.gov/crt/file/868131/download [hereinafter Newark Consent Decree].

[189] New Orleans Use of Force Policy, *supra* note 19, at 6.

[190] 21st Century Task Force, *supra* note 36, at 66, 97 (recommending that Congress authorize funding for emergency first-aid kits); *see also* Balt. Police Dep't, Policy 811: Individual First Aid Kit (IFAK), https://www.powerdms.com/public/BALTIMOREMD/documents/353296.

[191] The President's Task Force Report, *supra* note 36, at 66.

[192] *See* PERF Guiding Principles on Use of Force, *supra* note 9, at 9.

[193] *Id.*

[194] Ferguson Consent Decree, *supra* note 109, at ¶¶ 52-53, 310, 312.

[195] *Id.* at ¶¶ 66, 307, 310.

[196] *See* Seth Stoughton, How Police Training Contributes to Avoidable Deaths, The Atlantic (Dec. 12, 2014), https://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681/ (pointing out that although officers are frequently well trained, they lack training on "unconscious racial biases" and that "training should also emphasize de-escalation and flexible tactics in a way that minimizes the need to rely on force, particularly lethal force."); Garrett & Stoughton, *supra* note 113, at 273-78 (discussing appropriate training on use of force).

[197] Albuquerque Settlement Agreement, *supra* note 171, at ¶¶ 86-88; Baltimore Consent Decree, *supra* note 104, at ¶¶ 166, 168; Ferguson Consent Decree, *supra* note 109, at ¶ 130; Consent Decree, United States v. City of Los Angeles, No. 2:00-CV-11769-GAF-RC, ¶ 55 (C.D. Calif. June 15, 2001), https://www.justice.gov/crt/file/826956/download.

[198] See Sinyangwe, *supra* note 12, at 2-3 (finding that a policy requiring officers to report both uses of force and threats/attempted uses of force led to a 25% reduction in the number of police-involved killings per population); Barbara E. Armacost, Organizational Culture and Police Misconduct, 72 Geo. Wash. L. Rev. 453, 529–30 (2004); Kami Chavis Simmons, New Governance and the "New Paradigm" of Police Accountability: A Democratic Approach to Police Reform, 59 Cath. U. L. Rev. 373, 395-98 (2010); *see also* Data, Information, and Video Footage, *supra* Chapter 8.

[199] *See, e.g.*, New Orleans Use of Force Policy, *supra* note 19, at 3-4 (describing hand controls and escort techniques as non-reportable uses of force).

[200] *See, e.g.*, Seattle P.D. Manual § 8.400, *supra* note 121.

[201] Baltimore Consent Decree, *supra* note 104, at ¶ 173 (requiring a detailed narrative that includes a specific description of the acts that led to the use of force and the force options that were available to the officers).

[202] Ferguson Consent Decree, *supra* note 109, at ¶ 177; Baltimore Consent Decree, *supra* note 104, at ¶ 138.

[203] See Ferguson Consent Decree, *supra* note 109, at ¶ 180, 183; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 84.

[204] See Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 83.

[205] New Orleans Police Dep't, Operations Manual: Reporting Use Of Force, 4 (2015, revised 2018), https://nola.gov/getattachment/NOPD/Policies/Chapter-1-3-6-Reporting-Use-of-Force-EFFECTIVE-4-01-18.pdf/.

[206] *See, e.g.*, L.A. Police Dep't, Vol. 1 Policies on the Use of Force, § 556.10 ("The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force."), http://www.lapdonline.org/lapd_manual/volume_1.htm#556.

[207] PERF Guiding Principles on Use of Force, *supra* note 9, at 37-38.

[208] *Id.*

[209] New Orleans Use of Force Policy, *supra* note 19, at 3 (Force Investigation Teams investigate all serious uses of force, all potentially criminal force, all uses of force by officers above the rank of sergeant, and all in-custody deaths); *see also* Las Vegas Metro Use of Force Policy, *supra* note 19, at 31-32 (listing different Force Investigation Team and Critical Incident Review Team responsibilities); Albuquerque Police Dep't, Prof. Accountability Bureau, SOP 7-3, at § 7-3-5 (2016), http://documents.cabq.gov/police/standard-operating-procedures/7-03-force-investigation-team-fit.pdf (providing overview of the relationship between the Force Investigation Team and Critical Investigation Review Team).

[210] New Orleans Use of Force Policy, *supra* note 19, at 3.

[211] Samuel Walker, Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure, 32 St. Louis U. Pub. L. Rev. 57, 66-67 (2012) (pointing out that "[a] written policy (e.g., on less-than-lethal force), no matter how well crafted, is nothing more than a piece of paper and will have no meaningful impact on police conduct if it is not properly enforced through a reporting requirement, thorough investigations, and the imposition of appropriate discipline where it is warranted."); Wesley G. Skogan, Why Reforms Fail, 18 Policing & Soc'y 23, 26-30 (2008), https://www.tandfonline.com/doi/abs/10.1080/10439460701718534; Michael D. White, Controlling Police Decisions to Use Deadly Force: Reexamining the Importance of Administrative Policy, 47 Crime & Delinq. 131, 146 (2001) (noting that "absent meaningful enforcement, administrative policies that purport to control officers' discretion are mere homilies rather than guides to action"), https://journals.sagepub.com/doi/pdf/10.1177/0011128701047001006.

[212] L.A. Police Dep't, Categorical Use of Force, http://www.lapdonline.org/categorical_use_of_force (last visited Jan. 10, 2019).

[213] *See, e.g.*, Baltimore Consent Decree, *supra* note 104, at ¶¶ 212–15; Amended and Restated New Orleans Consent Decree *supra* note 105, at ¶¶ 67, 427-29 (requiring the New Orleans Police Department to conduct "audits of ECW deployment data" and "collect and maintain all data and records necessary to facilitate and ensure transparency and wide public access to information related to NOPD decision making and activities, as permitted by law."); Newark Consent Decree, *supra* note 188, at ¶ 75 (mandating Newark police to "adopt a use of force reporting system").

[214] See Simmons, *supra* note 198, at 395-98 (recommending that departments implement "early warning tracking systems" to collect and analyze data regarding use of force and to investigate incidents of use of force); David A. Harris, How Accountability-Based Policing Can Reinforce—Or Replace—The Fourth Amendment Exclusionary Rule, 7 Ohio S.J. of Crim. Law 149, 166–71 (2009) (discussing implementation of "early intervention systems" to identify officers' behavioral patterns), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1411650; Philip M. Stinson, Sr. et al., Police Integrity Lost: A Study of Law Enforcement Officers Arrested 1–2 (2016), https://www.ncjrs.gov/pdffiles1/nij/grants/249850.pdf; Rachel Moran, In Police We Trust, 62 Vill. L. Rev. 953, 996–97 (2017), https://ssrn.com/abstract=2843769 (recommending the mandatory implementation of "early intervention systems").

[215] PERF Guiding Principles on Use of Force, *supra* note 9, at 52.

[216] See Las Vegas Metro Use of Force Policy, *supra* note 19, at 33; Interdepartmental Correspondence from Inspector Gen., L.A. Police Comm'n, to Honorable Bd. of Police Comm'rs, Comparative Review of Selected Agency Policies, Investigations, and Training on the Use of Force: OIG Final Report 11 (Oct. 6, 2016), http://www.lapdpolicecom.lacity.org/101116/BPC_16-0119A.pdf ("The LVMPD stands out among the selected agencies because, as soon as it is feasible, this agency posts a video statement about every incident on YouTube. Approximately 48 hours after an [officer-involved shooting] incident, the LVMPD releases the name, rank, tenure, and age of the involved officer. Then, following an internal briefing approximately 72 hours later, the Undersheriff conducts a comprehensive media briefing.").

[217] See, e.g., Seattle P.D. Manual § 8.000, *supra* note 15 (requiring officers to explain use of force actions "to subjects or members of the public" and including subsections that describe policies on use of force); New Orleans Use of Force Policy, *supra* note 19 at 4-6 (outlining policies on use of force); Las Vegas Metro Use of Force Policy, *supra* note 19 (describing policies on use of force).

[218] The idea that police policies should be subjected to traditional rulemaking procedures, including public dissemination, has been floated for a half century. See, e.g., Herman Goldstein, Police Policy Formulation: A Proposal for Improving Police Performance, 65 Mich. L. Rev. 1123, 1145–46 (1967), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2536598; see also Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, The State of Policing in the United States 46 (2016), https://ric-zai-inc.com/Publications/cops-w0815-pub.pdf.

[219] Eric. J. Miller, Challenging Police Discretion, 58 How. L.J. 521, 523, 525 (2015) (lamenting that "community members lack the ability to participate in—and especially, to challenge—police policy at the front-end during the equivalent of the drafting and comment process" and advocating a "more republican, inclusive form of public participation in law-enforcement decision-making" in order "to give local communities and disadvantaged individuals a more meaningful voice in evaluating and checking local police policy"); Kami Chavis Simmons, The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies, 98 J. Crim. L. & Crim'y 489, 494, 519-41 (2008), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7289&context=jclc; see also Drew Diamond & Deirdre Mead Weiss, Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, Advancing Community Policing Through Community Governance: A Framework Document (2009), https://www.masc.sc/SiteCollectionDocuments/Public%20Safety/advancing%20community%20policing.pdf; Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, Community Policing Defined (2014), https://ric-zai-inc.com/Publications/cops-p157-pub.pdf; Int'l Assoc. of Chiefs of Police, IACP National Policy Summit on Community-Police Relations: Advancing a Culture of Cohesion and Community Trust 19-20 (2015), https://www.theiacp.org/sites/default/files/2018-09/CommunityPoliceRelationsSummitReport_web.pdf.

Chapter 5

[1] See, e.g., Mental Health America, Position Statement 59: Responding to Behavioral Health Crises, http://www.mentalhealthamerica.net/issues/position-statement-59-responding-behavioral-health-crises (last visited Dec. 22, 2018) (indicating that since 1960, police contact with people experiencing behavioral health crises has increased); Police Exec. Res. Forum, Critical Issues in Policing Series: An Integrated Approach to De-Escalation and Minimizing Use of Force 9 (2012), https://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf [hereinafter PERF Critical Issues] (quoting Sheriff Doug Gillespie of the Las Vegas Metropolitan Police Department to explain that, because funding for mental health services decreased, a significant portion of the jail population is under psychiatric care).

[2] Mental Health America, *supra* note 1 ("Approximately 10% of all police contacts involve persons with serious mental illness."); https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5342894/ (noting that 7 to 10 percent of all police encounters involve people affected by mental illness); Doris A. Fuller et al., Treatment Advocacy Ctr., Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters (Dec. 2015), https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf.

[3] Mental Health America, *supra* note 1 (citing Wash. Post, "Fatal Force,"(2016), https://www.washingtonpost.com/graphics/national/police-shootings-2016/) http://www.mentalhealthamerica.net/issues/position-statement-59-responding-behavioral-health-crises (last visited Dec. 22, 2018) (indicating that, since 1960, police contact with people experiencing behavioral health crises has increased); see also Fuller et al., *supra* note 2, at 5.

[4] Kevin M. Simon, MD, et al., Addressing Poverty and Mental Illness, Psychiatric Times (June 29, 2018), https://www.psychiatrictimes.com/special-reports/addressing-poverty-and-mental-illness ("Poverty in adulthood is linked to depressive disorders, anxiety disorders, psychological distress, and suicide.") (citing Leventhal T, Brooks-Gunn J., Moving to opportunity: an experimental study of neighborhood effects on mental health. Am J Public Health. 93:1576-1582 (2003); Pickett KE, Wilkinson RG. Child Wellbeing and Income Inequality in Rich Societies: Ecological Cross Sectional Study. BMJ. 335:1080 (2007)); see Paolo del Vecchio, Substance Abuse and Mental Health Servs. Admin., Increasing Community Capacity to Respond to Mental Health Crises (May 22, 2014), https://web.archive.org/web/20160130004608/http://blog.samhsa.gov/2014/05/22/increasing-community-capacity-to-respond-to-mental-health-crises/; Organization for Economic Co-operation and Development, Poverty Rate; Substance Abuse and Mental Health Services Administration, Community Conversations About Mental Health: Information Brief, HHS Publication No. SMA-13-4763 13, 16 (2013), https://store.samhsa.gov/system/files/sma13-4763.pdf.

[5] PERF Critical Issues, *supra* note 1, at 16 (quoting Ron Honberg).

[6] See Liza Lucas, Changing the Way Police Respond to Mental Illness, CNN (Sept. 28, 2016), http://www.cnn.com/2015/07/06/health/police-mental-health-training/index.html ("Traditional training teaches police to control situations by demanding compliance, and the unpredictable nature of a person with a psychiatric condition can be misinterpreted as a threat and quickly escalate to violence. CIT training is meant to prevent that."); Kurt Vorndran et al., Police Complaints Bd., Enhancing Police Response to People with Mental Illness in the District of Columbia: Incorporating the Crisis Intervention Team (CIT) Community Policing Model 10 (2006), https://policecomplaints.dc.gov/sites/default/files/dc/sites/police%20complaints/publication/attachments/Enhancing%20Police%20Repsonse%20to%20People%20with%20Mental%20Illness.pdf ("In instances where police know or suspect that a person is mentally ill, they often respond based on commonly held misconceptions.").

[7] PERF Critical Issues, *supra* note 1, at 20; *see also* Lucas, *supra* note 6; Vorndran et al., *supra* note 6, at 10.

[8] Americans With Disabilities Act of 1990, 42 U.S.C.A. § 12101 (West 2018).

[9] See U.S. Dep't of Justice, Civil Rights Division, Disability Rights Section, Questions and Answers: The Americans with Disabilities Act and Hiring Police Officers (Mar. 25, 1997), https://www.ada.gov/copsq7a.pdf.

[10] Univ. of Memphis CIT Ctr., The CIT Program: Background, http://cit.memphis.edu/overview.php?page=1, [hereinafter Memphis CIT Background] (last visited Feb. 25, 2019); *see also* Daniel Connolly, Memphis Police Crisis Intervention Team Approaches 30 Years, But How Effective Is It?, Commercial Appeal (Aug. 6, 2017), https://www.commercialappeal.com/story/news/crime/2017/08/06/memphis-police-mental-health-crisis-team-30-years/493740001/.

[11] Connolly, *supra* note 10.

[12] Memphis CIT Ctr., *supra* note 10; *see also* Yolanda Jones, Memphis Police Crisis Intervention Team Works to Defuse Mental Health Calls, Commercial Appeal (Mar. 5, 2016), http://archive.commercialappeal.com/news/memphis-police-crisis-intervention-team-works-to-defuse-mental-health-calls--2c9bba98-fe28-1e3b-e053-371108951.html/.

[13] Univ. of Memphis CIT Ctr., The CIT Program: National Model, http://www.cit.memphis.edu/overview.php?page=7 (last visited Feb. 25, 2019); How Memphis Has Changed the Way Police Respond to Mental Health Crises, PBS News Hour (Nov 7, 2015 3:17 PM EST), https://www.pbs.org/newshour/show/memphis-changed-way-police-respond-mental-health-crises.

[14] Mark G. Peters & Philip K. Eure, N.Y.C. Dep't of Investigation, Putting Training into Practice: A Review of NYPD's Approach to Handling Interactions with People in Mental Crisis 8 (2017), http://www1.nyc.gov/assets/oignypd/downloads/pdf/Reports/CIT_Report_01192017.pdf ("The training also emphasizes de-escalation strategies through role-playing scenarios involving people in crisis (in clinical or informal settings) in order to increase officers' capacity to successfully resolve encounters.").

[15] Randolph Dupont, et al., Univ. of Memphis, Crisis Intervention Team Core Elements 17 (2007), http://cit.memphis.edu/pdf/CoreElements.pdf.

[16] See, e.g., Deborah L. Bower & W. Gene Pettit, The Albuquerque Police Department's Crisis Intervention Team: A Report Card, FBI Law Enforcement Bull. 2 (Feb. 2001), http://www.au.af.mil/au/awc/awcgate/fbi/crisis_interven.pdf (finding that the Albuquerque CIT program improved outcomes, and that injuries to members of the public occurred in slightly more than 1 percent of CIT contact calls, 58 percent of which involved mental health crises); Michael T. Compton et al., Use of Force Preferences and Perceived Effectiveness of Actions Among Crisis Intervention Team (CIT) Police Officers and Non-CIT Officers in an Escalating Psychiatric Crisis Involving a Subject With Schizophrenia, 37 Schizophrenia Bull. 737, 742 (Nov. 2009), https://www.researchgate.net/publication/40027064_Use_of_Force_Preferences_and_Perceived_Effectiveness_of_Actions_Among_Crisis_Intervention_Team_CIT_Police_Officers_and_Non-CIT_Officers_in_an_Escalating_Psychiatric_Crisis_Involving_a_Subject_With_Sch (finding that "CIT-trained officers chose less escalation (*i.e.*, opting for less force at the third scenario) than non-CIT-trained officers" during psychiatric crises); Fuller et al., *supra* note 2, at 10 ("De-escalation techniques such as those used in CIT have been documented to produce 'positive outcomes for police, offenders, and the community[.]'").

[17] The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 56 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [hereinafter President's Task Force Report].

[18] *Id.* at 44, 56.

[19] Preventing Tragedies Between Police and Communities Act of 2017, H.R. 3060, 115th Cong. (2017), https://www.congress.gov/bill/115th-congress/house-bill/3060/text.

[20] See Dupont, et al., *supra* note 15, at 6, 8.

[21] U.S. Dep't of Health and Human Servs., Substance Abuse and Mental Health Services Administration, Community Conversations About Mental Health: Information Brief, HHS Publication No. SMA-13-4763 ii (2013), https://store.samhsa.gov/system/files/sma13-4763.pdf; U.S. Dep't of Health and Human Servs., Substance Abuse and Mental Health Services Administration, "Crisis Response": An Alternative, 22 SAMSHA News no. 4 (Fall 2014) [hereinafter SAMHSA, "Crisis Response"], https://www.samhsa.gov/samhsaNewsLetter/Volume_22_Number_4/crisis_response_an_alternative/.

[22] Substance Abuse and Mental Health Services Administration, SAMHSA, "Crisis Response," *supra* note 21.

[23] See Olmstead v. L.C., 527 U.S. 581 (1999) (holding that people with disabilities have a right to services in the most integrated setting appropriate).

[24] Nat'l Alliance on Mental Illness, Psychosocial Treatment, https://www.nami.org/Learn-More/Treatment/Psychosocial-Treatments (last visited Feb. 24, 2019).

[25] *Id.* Settlement Agreement, United States v. Delaware, No. 11-cv-591 (D. Del. Jul. 6, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/07/06/DE_settlement_7-6-11.pdf [hereinafter Delaware Settlement Agreement].

[26] Nat'l Alliance on Mental Illness, Psychosocial Treatment, *supra* note 24.

[27] Mental Health America, supra note 1 (indicating that, since 1960, police contact with people experiencing behavioral health crises has increased).

[28] See U.S. Dep't of Health and Human Servs., Substance Abuse and Mental Health Services Administration, Crisis Services: Effectiveness, Cost Effectiveness, and Funding Strategies (2014), https://store.samhsa.gov/system/files/sma14-4848.pdf [hereinafter SAMHSA Crisis Services]; see also Florida Philanthropic Network, $6 Million Project to Address Student Isolation in Broward (Apr. 16, 2018), https://www.fpnetwork.org/funding-area/mental-healthcrisis-services ("creat[ing] a fresh new approach to address the social, emotional and academic needs of isolated, struggling middle school students").

[29] Nat'l Alliance on Mental Illness, Getting Treatment During a Crisis, https://www.nami.org/Learn-More/Treatment/Getting-Treatment-During-a-Crisis (last visited Feb. 25, 2019).

[30] SAMHSA Crisis Services, *supra* note 28, at 8.

[31] SAMHSA Crisis Services, *supra* note 28, at 11.

[32] Delaware Settlement Agreement, *supra* note 25, at §§(II) (C) (2) (a) (i-ii).

[33] Nat'l Alliance on Mental Illness, Getting Treatment During a Crisis, https://www.nami.org/Learn-More/Treatment/Getting-Treatment-During-a-Crisis (last visited Feb. 25, 2019); see e.g., Tenn. Dep't of Mental Health and Substance Abuse Services, Crisis Walk-In Centers, https://www.tn.gov/behavioral-health/need-help/crisis-services/mental-health-crisis-services/crisis-walk-in-centers.html (last visited Feb. 25, 2019).

[34] Delaware Settlement Agreement, *supra* note 25, at §§(II) (C) (2) (b) (i-iii).

[35] Mental Health America, *supra* note 1.

[36] SAMHSA Crisis Services, *supra* note 28, at 15.

[37] SAMHSA Crisis Services, *supra* note 28, at 23.

[38] SAMHSA Crisis Services, *supra* note 28, at 12, 23.

[39] Verlatta Saxon, Dhrubodhi Mukherjee, & Deborah Thomas, Behavioral Health Crisis Stabilization Centers: A New Normal, 2(3) J. Mental Health & Clinical Psychol. 23, 24 (2018), http://www.mentalhealthjournal.org/articles/behavioral-health-crisis-stabilization-centers-a-new-normal.pdf.

[40] SAMHSA Crisis Services, *supra* note 28, at 22.

[41] See Peters & Eure, *supra* note 14, at 9; Dupont, et al., *supra* note 15, at 10 ("Policies and procedures are a necessary component of CIT. They provide a set of guidelines that direct the actions of both law enforcement and mental health officials.").

[42] Peters & Eure, *supra* note 14, at 8-9, 33.

[43] See Dupont, et al., *supra* note 15, at 10 ("Due to the large number of stakeholders in CIT, it is important that these guidelines be designed by all those affected."); Mecklenburg Cty., N.C. Health Dep't, Crisis Intervention Team, https://www.mecknc.gov/healthdepartment/communityhealthservices/tjp/pages/cit.aspx?redirect=charmeck (last visited Dec. 23, 2018) ("Consumer and family advocates are integrally involved in the design and implementation of local CIT programs.").

[44] See e.g., David Lohr, Police Allegedly Beat Pearl Pearson For Disobeying Orders He Could Not Hear, Huffington Post (Jan. 15, 2014), https://www.huffingtonpost.com/2014/01/15/pearl-pearson-police-brutality_n_4603445.html; see also Vanderbilt Kennedy Center for Excellence in Developmental Disability, Healthcare for Adults with Intellectual and Developmental Disabilities Toolkit for Primary Care Providers: Communicating Effectively, https://vkc.mc.vanderbilt.edu/etoolkit/general-issues/communicating-effectively/ (last visited Feb. 25, 2019); Nat'l Inst. on Deafness and Other Communication Disorders, Autism Spectrum Disorder: Communication Problems in Children, https://www.nidcd.nih.gov/health/autism-spectrum-disorder-communication-problems-children (Mar. 23, 2018).

[45] Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165 (2018); U.S. Dep't of Justice, Civil Rts. Div., Disability Rights Section, ADA Requirements Effective Communication (Jan. 31, 2014), https://www.ada.gov/effective-comm.htm.

[46] See Dupont, et al., *supra* note 15, at 10 ("All dispatchers should be trained to appropriately elicit sufficient information to identify a mental health related crisis."); Peters & Eure, *supra* note 14, at 31 ("A look at successful CIT programs around the country demonstrates that exposing dispatchers and call takers to CIT training is essential to the implementation of a successful CIT program."); Vorndran et al., *supra* note 6, at 17 ("A crucial component of the CIT model is dispatch operations. To ensure that calls involving mental health issues are properly identified and that CIT officers are dispatched to those calls, dispatchers and 911 call takers receive specialized training on how to perform their duties in support of the CIT program."); Carmen Best, Chief of Police, Seattle Police Dep't Manual, 16.110 – Crisis Intervention, Seattle.gov (Aug. 16, 2018), https://www.seattle.gov/police-manual/title-16---patrol-operations/16110---crisis-intervention (noting that CIT-trained officers should be dispatched to calls that appear to involve a subject in behavioral crisis).

[47] Civil Rights Coalition on Police Reform, A Uniform Statement of Action to Promote Reform and Stop Police Abuse (Aug. 18, 2014), https://lawyerscommittee.org/wp-content/uploads/2015/08/Civil-Rights-Coalition-on-Police-Reform-Resource-Packet.pdf.

[48] PERF Critical Issues, *supra* note 1 at 15.

[49] President's Task Force Report, *supra* note 17, at 10-11, 56-57 (asserting that "mitigating implicit bias should be a part of training at all levels of a law enforcement organization" and recommending that law enforcement departments "adopt procedural justice as the guiding principle for internal and external policies").

[50] President's Task Force Report, *supra* note 17, at 3-4.

[51] Dupont, et al., *supra* note 15, at 12 ("Officers within a patrol division should voluntarily apply for CIT positions … [E]ach of the CIT Officers maintains their role as a patrol officer and gains new duties and skills through the CIT training, serving as the designated responder and lead officer in mental health crisis events.").

[52] *See* Dupont, et al., *supra* note 15, at 14 ("Police officers receive intensive training to effectively respond to citizens experiencing a behavioral crisis. … Officers are encouraged to maintain these skills throughout the course, while incorporating new de-escalation techniques to more effectively approach a crisis situation."); Vorndran et al., *supra* note 6, at 14 ("The CIT model … consists of a select group of police officers who, although continuing to serve as regular patrol officers in a district or precinct, are certified to provide highly specialized mental health crisis intervention."); Charles Dempsey, Beating Mental Illness: Crisis Intervention Team Training and Law Enforcement Response Trends, 26 S. Cal. Interdisc. L.J. 323, 324 (2017), https://gould.usc.edu/why/students/orgs/ilj/assets/docs/26-2-Dempsey.pdf (stating that one of the primary goals of CIT models is to "redirect individuals with mental illness from the judicial system to the health care system.").

[53] William Harms, Police Need to Work More with Mental Health Professionals, 23 Univ. of Chi. Sch. of Social Serv. Admin. Mag. (Summer 2016), https://ssa.uchicago.edu/ssa_magazine/police-need-work-more-mental-health-professionals.

[54] Civil Rights Coalition, *supra* note 47.

[55] *See, e.g.*, Melissa Reuland, Police Exec. Res. Forum, A Guide to Implementing Police-Based Diversion Programs for People with Mental Illness 10–11 (Jan. 2004), http://www.pacenterofexcellence.pitt.edu/documents/A%20Guide%20to%20Implementing%20Police-Based%20Diversion%20Programs.pdf; see also Henry J. Steadman et al., Comparing Outcomes of Major Models of Police Responses to Mental Health Emergencies, 51 Psychiatry Servs. 645 (2000), https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.51.5.645?url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Acrossref.org&rfr_dat=cr_pub%3Dpubmed& (finding that a "specialized" response to mental health crises, partnering police with mental health professionals, was effective in reducing arrests); Council of State Gov'ts, Criminal Justice/Mental Health Consensus Project 41 (June 2002), https://www.ncjrs.gov/pdffiles1/nij/grants/197103.pdf ("Some law enforcement agencies hire licensed mental health workers as secondary responders. These civilians serve in units that are either located in the police department — where civilian workers are under the chief's supervision — or reside outside the department because staffing is shared with other county or city mental health providers. These civilian workers may either ride along with officers in special teams or respond when called by an officer after the scene has been secured for various crisis calls, including those involving people with mental illness."); U.S. Dep't of Justice, Police Mental Health Collaboration, Co-Responder Team, https://pmhctoolkit.bja.gov/learning/types-of-pmhc-programs/co-responder-team (last visited Dec. 23, 2018).

[56] *See* Best, *supra* note 46 (utilizing an intercept continuum that balances criminal charges with mental health interventions at different levels of crisis and provides for referral to a crisis solutions center in certain instances when resolving behavioral crisis-related misdemeanor property crimes).

[57] *See, e.g.*, N.C. Dep't. of Health and Human Servs., Mental Health, Developmental Disabilities and Substance Abuse Servs. Div., Attachment D: Lessons Learned 24, https://files.nc.gov/ncdhhs/documents/files/cit-lessonslearned3_6-09.pdf ("While all officers should be informed about CIT, officers shouldn't be required to go through CIT training. Officers that are ordered to go through CIT training may resent it, resist the training, and may lack commitment to being a CIT officer.").

[58] *Id.* ("You want experienced street-level officers (and their immediate supervisors) who want to help persons with mental illness, and who already possess good interpersonal skills that CIT training can enhance.").

[59] Civil Rights Coalition, *supra* note 47.

[60] *See* Civil Rights Coalition, *supra* note 47.

[61] Marc Krupanski, Open Society Foundations, Police & Harm Reduction 3 (2018), https://www.opensocietyfoundations.org/sites/default/files/police-harm-reduction-20180720.pdf.

[62] *Id.*

[63] Caitlin Schmidt, New Tucson Police Program Will Refer Opioid Addicts to Treatment, Not Jail, Ariz. Daily Star, (June 30, 2018), https://tucson.com/news/local/new-tucson-police-program-will-refer-opioid-addicts-to-treatment/article_01b5576b-b401-5a2f-9c1a-8d8efd8a9a0d.html.

[64] Memorandum from Office of the Att'y Gen. to Heads of Department Components 3 (Sept. 21, 2016), https://www.justice.gov/opioidawareness/file/896776/download; see also U.S. Dep't of Justice, Bureau of Justice Assistance, Nat'l Training and Tech. Assistance Ctr., Law Enforcement Naloxone Toolkit, https://bjatta.bja.ojp.gov/tools/naloxone/Naloxone-Background (last visited Dec. 24, 2018).

[65] North Carolina Harm Reduction Coalition, Law Enforcement Departments Carrying Naloxone, http://www.nchrc.org/law-enforcement/us-law-enforcement-who-carry-naloxone/ (last visited Feb. 25, 2019); Peter Jamison, D.C. Mayor Announces Large New Investment in Opioid Overdose Antidote, Wash. Post (Jan. 18, 2019), https://www.washingtonpost.com/local/dc-politics/dc-police-officers-to-carry-opioid-overdose-antidote-naloxone/2019/01/18/b76de64a-1b44-11e9-8813-cb9dec761e73_story.html?utm_term=.79ae522dde94.

[66] U.S. Office of Nat'l Drug Control Policy, Fentanyl Safety Recommendations for First Responders, https://www.whitehouse.gov/ondcp/key-issues/fentanyl/ (last visited Dec. 23, 2018).

[67] Peters & Eure, *supra* note 14, at 9 ("CIT stresses data collection, evaluation, and research to 'help measure [the program's] impact, continuous outcomes, and efficiency.'").

[68] *See* President's Task Force Report, *supra* note 17, at 44.

[69] Dupont, et al., *supra* note 15, at 17 ("Evaluation and research can help measure the impact, continuous outcomes, and efficiency of a community's CIT program. More specifically, it may help to identify whether the program is achieving its objectives and should be an ongoing part of CIT.").

Chapter 6

[1] See, e.g., Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308, 315 (1968) ("[S]treets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely."); Hudgens v. NLRB, 424 U.S. 507, 515 (1976); Carey v. Brown, 447 U.S. 455, 460 (1980).

[2] Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) (emphasis added).

[3] See, e.g., Grayned v. City of Rockford, 408 U.S. 104, 115 (1972) ("Clearly, government has no power to restrict such [picketing] activity because of its message. Our cases make equally clear, however, that reasonable 'time, place and manner' regulations may be necessary to further significant governmental interests, and are permitted.").

[4] See, e.g., Nathan W. Kellum, Permit Schemes: Under Current Jurisprudence, What Permits Are Permitted?, 56 Drake L. Rev. 381, 407 (2008), https://lawreviewdrake.files.wordpress.com/2015/06/irvol56-2_kellum.pdf ("Courts entertaining this issue routinely hold that a permit requirement imposed on individual or small group speech to be overly burdensome.") (citing Cox v. City of Charleston, 416 F.3d 281, 285 (4th Cir. 2005); Parks v. Finan, 385 F.3d 694, 705-06 (6th Cir. 2004); Douglas v. Brownell, 88 F.3d 1511, 1524 (8th Cir. 1996); Grossman v. City of Portland, 33 F.3d 1200, 1206-07 (9th Cir. 1994); Cmty. for Creative Non-Violence v. Turner, 893 F.2d 1387, 1392 (D.C. Cir. 1990); Diener v. Reed, 232 F. Supp. 2d 362, 387-88 (M.D. Pa. 2002); Paulsen v. Lehman, 839 F. Supp. 147, 163–64 (E.D.N.Y. 1993)).

[5] See, e.g., Police Dep't of Chicago v. Mosley, 408 U.S. 92, 96 (1972) ("Under the Equal Protection Clause of the Fourteenth Amendment, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views."); Thomas v. Chicago Park Dist., 227 F. 3 921, 925, 928 (2000).

[6] See, e.g., American-Arab Anti-Discrimination Comm. v. City of Dearborn, 418 F.3d 600, 605 (6th Cir. 2005) ("Any notice period is a substantial inhibition on speech."); Sullivan v. City of Augusta, 511 F.3d 16, 38 (1st Cir. 2007).

[7] See, e.g., Fields v. City of Philadelphia, 862 F.3d 353, 355-56 (3d Cir. 2017) ("Every Circuit Court of Appeals to address this issue (First, Fifth, Seventh, Ninth, and Eleventh) has held that there is a First Amendment right to record police activity in public. Today we join this growing consensus." (citations omitted)); see also Howard M. Wasserman, Police Misconduct, Video Recording, and Procedural Barriers to Rights Enforcement, 96 N.C. L. Rev. 1313, 1319 (2018).

[8] See, e.g., Lamont v. Postmaster Gen., 381 U.S. 301 (1965) (holding a federal statute that imposed an affirmative duty on the recipient to have communitst propaganda delivered unconstitutional because the "requirement is almost certain to have a deterrent effect, especially as respects those who have sensitive positions"); Ashcroft v. Free Speech Coal., 535 U.S. 234, 244 (2002) ("With these severe penalties [for a ban on materials that are neither obscene nor produced through exploitation of real children], few legitimate movie producers or book publishers, or few other speakers in any capacity, would risk distributing images in or near the uncertain reach of this law."); see generally, Note, The Chilling Effect in Constitutional Law, 69 Colum. L. Rev. 808 (1969) (describing the First Amendment's chilling effect jurisprudence).

[9] See, e.g., Marissa J. Lang, More Than 500 Arrested as Women Rally in D.C. to Protest Trump's Immigration Policy, Chi. Tribune (June 28, 2018), https://www.chicagotribune.com/news/nationworld/ct-arrested-women-trump-immigration-policy-20180628-story.html; Daniel S. Levy, Behind the Anti-War Protests that Swept America in 1968, TIME (Jan. 19, 2018), http://time.com/5106608/protest-1968/.

[10] See, e.g., France Fuel Protests: Tear Gas and Water Cannon Fired By Police, BBC News (Nov. 25, 2018), https://www.bbc.com/news/av/world-europe-46328934/france-fuel-protests-tear-gas-and-water-cannon-fired-by-police; Sandra Laville & Duncan Campbell, Baton Charges and Kettling: Police's G20 Crowd Control Tactics Under Fire, The Guardian (Apr. 2, 2009), https://www.theguardian.com/world/2009/apr/03/g20-protests-police-tactics.

[11] The relatively few agencies that have used police dogs for crowd control have faced considerable pressure to abandon the practice. See, e.g., Victoria Bekiempis, St. Louis County Police Board: No More Police Dogs for Crowd Control, Newsweek (Sept. 15, 2015), https://www.newsweek.com/ferguson-st-louis-county-police-michael-brown-police-dog-protest-crowd-control-373407. The recent use of water cannons to dispel pipeline protestors in 2016 likewise drew critical national criticism and led to a class action lawsuit. See, e.g., Derek Hawkins, Police Defend Use Of Water Cannons on Dakota Access Protesters in Freezing Weather, Wash. Post (Nov. 21, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/11/21/police-citing-ongoing-riot-use-water-cannons-on-dakota-access-protesters-in-freezing-weather/?utm_term=.3409cc562eee; Dundon v. Kirchmeier, No. 1:16-cv-406 (D. N.D. 2016) (pending class action by pipeline protestors).

[12] U.S. Dep't of Health, Education, and Welfare, National Insitutuion of Education, The Report of the President's Commission on Campus Unrest, 152 (Arno Press, N.Y., 1970), https://files.eric.ed.gov/fulltext/ED083899.pdf.

[13] *Id.*

[14] See, e.g., Mark Guarino, Chicago Police Officer Jason Van Dyke Convicted of Second-Degree Murder for Killing Laquan McDonald, Wash. Post (Oct. 5, 2018), https://www.washingtonpost.com/news/post-nation/wp/2018/10/05/chicago-police-officer-jason-van-dyke-convicted-of-second-degree-murder-for-killing-laquan-mcdonald/?utm_term=.5de6cba78b34; Alan Blinder, Michael Slager, Officer in Walter Scott Shooting Gets 20-Year Sentence, N.Y. Times (Dec. 7, 2017), https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html.

[15] See, e.g., Mark Morales & Laura Ly, Released NYPD Emails Show Extensive Surveillance of Black Lives Matter Protesters, CNN.com (Jan. 18, 2019), https://www.cnn.com/2019/01/18/us/nypd-black-lives-matter-surveillance/index.html; Nina Renata Aron, When the Black Justice Movemet Got Too Powerful, the FBI Got Scared and Got Ugly, Medium Timeline (Feb. 9, 2017), https://timeline.com/black-justice-fbi-scared-ebcf2986515c.

[16] Abigail Hauslohner, NYPD Settles Third Lawsuit over Surveillance of Muslims, Wash. Post (April 5, 2018), https://www.washingtonpost.com/national/nypd-settles-third-lawsuit-over-muslim-surveillance/2018/04/05/710882b2-3852-11e8-9c0a-85d477d9a226_story.html?utm_term=.a538f04cb083.

[17] See, e.g., Turner v. Lieutenant Driver, 848 F.3d 678, 690 (5th Cir. 2017) (explaining the right to record is subject to reasonable time, place, and manner restrictions); Glik v. Cunniffe, 655 F.3d 78, 84 (1st Cir. 2011) (same).

[18] See Am. Civil Liberties Union of Ill. v. Alvarez, 679 F.3d 583, 607 n. 13 (7th Cir. 2012) ("We are not suggesting that the First Amendment protects only open recording. The distinction between open and concealed recording, however, may make a difference in the intermediate-scrutiny calculus because surreptitious recording brings stronger privacy interests into play." (citing Bartnicki v. Vopper, 532 U.S. 514, 529 (2001)); Justin Marceau & Alan K. Chen, Free Speech and Democracy in the Video Age, 116 Colum. L. Rev. 991, 1028 (2016), https://columbialawreview.org/content/free-speech-and-democracy-in-the-video-age/ ("An important caveat to any asserted right to record, then, is that the right is only applicable to persons who have lawful access to the place where the recording occurs.") (referring to S.H.A.R.K. v. Metro Parks Serving Summit County, 499 F.3d 553 (6th Cir. 2007) as an example).

[19] See, e.g., Lauren Regan, Policing the Police: Your Right to Record Law Enforcement, Civil Liberties Defense Center, (Apr. 21, 2015), https://cldc.org/news/policing-the-police; Dia Kayyali, Want to Record the Cops? Know Your Rights, Electronic Frontier Foundation, (Apr. 16, 2015), https://www.eff.org/deeplinks/2015/04/want-record-cops-know-your-rights; Legal Observer Training Manual, Nat'l Lawyers Guild, (2003), http://cldc.org/wp-content/uploads/2012/01/LO_Manual.pdf.

[21] Dan Klepal, NAACP: Atlanta Police 'Exemplary' During Protests, Atlanta Journal-Constitution (July 9. 2016), https://www.myajc.com/news/local/naacp-atlanta-police-exemplary-during-protests/OKVniB5z83ApG3yY9XfISl/ (quoting Atlanta Police Maj. Darin Schierbaum).

[22] See, e.g., Niraj Choskshi, Militarized Police in Ferguson Unsettles Some; Pentagon Gives Cities Equipment, Wash. Post (Aug. 14, 2014), https://www.washingtonpost.com/politics/militarized-police-in-ferguson-unsettles-some-pentagon-gives-cities-equipment/2014/08/14/4651f670-2401-11e4-86ca-6f03cbd15c1a_story.html?noredirect=on&utm_term=.c36e1d9896dc.

[23] See, e.g., Am. Civ. Liberties Union, War Comes Home: The Excessive Militarization Of American Police, 2 (2014), https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police ("[T]he use of hyper-aggressive tools and tactics results in tragedy for civilians and police officers, escalates the risk of needless violence, destroys property, and undermines individual liberties."); Michael Carlson et. al., Effects of Situational Aggression Cues: A Quantitative Review, J. of Personality and Social Psychology, 58, 622–33 n.4 (1990); see also Radley Balko, After Ferguson, How Should Police Respond to Protests?, Wash. Post (Aug. 14, 2014), https://www.washingtonpost.com/news/the-watch/wp/2014/08/14/after-ferguson-how-should-police-respond-to-protests/?utm_term=.596ff835f9cd; Jesse Singal, How Militarizing Police Can Increase Violence, Law Enforcement, New York Magazine (Aug. 14, 2014), http://nymag.com/scienceofus/2014/08/how-militarizing-police-can-increase-violence.html.

[24] See Casey Delehanty et al., Militarization and Police Violence: the Case of the 1033 Program, Research and Politics 2 (2017), https://journals.sagepub.com/doi/pdf/10.1177/2053168017712885 (concluding that police departments that received military gear were more likely to kill people).

[25] See, e.g., Press Release, U.S. Dep't of Justice, Statement by Attny. Gen. Holder on Recent Shooting Incident in Ferguson, Missouri (Aug. 11, 2014), https://www.justice.gov/opa/pr/statement-attorney-general-holder-recent-shooting-incident-ferguson-missouri; Elliott C. McLaughlin & Ana Cabrera, Apology or Not, Ferguson Police Chief Tells CNN: I Will Not Step Down, CNN (Sept. 29, 2014), http://www.cnn.com/2014/09/25/us/ferguson-michael-brown-police-chief-apology/; Press Release, U.S. Dep't of Justice, Statement by Attny. Gen. Eric Holder on Latest Developments in Ferguson, Missouri (Aug. 14, 2017), https://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-latest-developments-ferguson-missouri.

[26] Police Exec. Res. Forum, Critical Issues in Policing Series, Managing Major Events: Best Practices from the Field, 7-10 (June 2011), http://www.policeforum.org/assets/docs/Critical_Issues_Series/managing%20major%20events%20-%20best%20practices%20from%20the%20field%202011.pdf.

[27] See Klepal, *supra* note 21; Tony Narr, et al., Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches, Police Executive Research Forum, 58 (2006), https://www.policeforum.org/assets/docs/Critical_Issues_Series/police%20management%20of%20mass%20demonstrations%20-%20identifying%20issues%20and%20successful%20approaches%202006.pdf.

[28] See Narr, *supra* note 27, at 60; see also Martin Kaste, Police Struggle to Balance Public Safety with Free Speech During Protests, NPR (Aug. 26, 2017), http://www.npr.org/2017/08/26/546167516/police-struggle-to-balance-public-safety-with-free-speech-during-protests ("One tactic that is quickly catching on is separation. When opposing political groups converge on the same place, police now do what they can to keep the groups apart. When alt-right groups held a small rally on Boston Common last Saturday, police used barricades to create a large buffer zone between them and the thousands of protesters who showed up in opposition.").

[29] See Amensty International, Good Practice for Law Enforcement Officials Policing Demonstrations, July 26, 2016, https://www.amnestyusa.org/press-releases/amnesty-international-usa-says-philadelphia-protests-appear-peaceful-still-gathering-information-on-citations/ (follow "Background on best practices for law enforcement handling protests" link).

[30] Int'l Network of Civ. Liberties Organizations, Physicians for Human Rights, Water Cannons, Crowd-Control Weapon Control, 1-2, https://s3.amazonaws.com/PHR_other/PHR_INCLO_Fact_Sheets_Water_Cannons.pdf.

[31] Int'l Assoc. of Chiefs of Police, National Law Enforcement Policy Center, Crowd Management And Control, Model Policy, at 2 (Oct. 2014).

[32] See Jones v. Parmley, 465 F.3d 46, 56-58 (2d Cir. 2006) (citing Cantwell v. State of Conn., 310 U.S. 296, 308-09 (1940)); Cox v. State of La., 379 U.S. 536, 546-47, 549 n.12 (1965); Edwards v. S.C., 372 U.S. 229, 232, 237 (1963)).

[33] Jamiles Lartey, St. Louis Police Condemned for 'Alarming' Attitude Towards Protesters, The Guardian (Sept. 19, 2017), https://www.theguardian.com/us-news/2017/sep/19/st-louis-police-condemned-alarming-behavior; Joe Sterling, St. Louis Protest Police Accused of Controversial 'Kettling' Tactics, CNN (Sept. 19, 2017), https://www.cnn.com/2017/09/19/us/missouri-st-louis-kettling/index.html; ACLU Sues City of St. Louis over Police Conduct During Protests, St. Louis Post-Dispatch, (Sept. 23, 2017), https://www.stltoday.com/news/local/crime-and-courts/aclu-sues-city-of-st-louis-over-police-conduct-during/article_325102fb-38c8-502b-867b-8e745c051ec5.html.

[34] Narr, *supra* note 27, at 45 (2006) ("The Miami Police Department opted to organize a bicycle patrol to escort all major parades and rallies during the [Free Trade Area of the Americas] meeting week. Bicycle officers could not only provide a rapid response (unlike cars or vans that would be impeded by heavy vehicular and pedestrian traffic), but also present a nonthreatening image to protestors and the media.").

Chapter 7

[1] See Nat'l Assoc. for Civilian Oversight of Law Enforcement, NACOLE, Building Public Trust Through Police Accountability and Transparency, FAQS, https://www.nacole.org/faqs (last visited Feb. 19, 2019) (describing the functions and benefits of civilian oversight agencies).

[2] Deputy Chief Beau Thurnauer, Best Practices Guide, Int'l Ass'n of Chiefs of Police, Smaller Police Dep'ts Technical Assistance Program, Internal Affairs: A Strategy for Smaller Police Dep'ts 3, [hereinafter IACP Best Practices Guide] https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf.

[3] In Washington, D.C., for example, the Metropolitan Police Department's Office of Police Complaints provides complaint forms in nine languages and in audio on its website. Mayor Muriel Bowser, Office of Police Complaints, Complaint Forms and Brochures, https://policecomplaints.dc.gov/node/161132.

[4] IACP Best Practices Guide, *supra* note 2, at 2.

[5] IACP Best Practices Guide, *supra* note 2, at 2, 3 (referring to CALEA accreditation standard 52.1.1); *see also* Mayor Muriel Bowser, Metropolitan Police Dep't, How to File a Citizen Complaint or Commendation, https://mpdc.dc.gov/page/how-file-citizen-complaint-or-commendation; see also U. Pa., Div. of Public Safety, Police Complaint Procedure, https://www.publicsafety.upenn.edu/about/uppd/police-complaint-procedure/ (advising complainants that it may not be possible to investigate anonymous complaints).

[6] The Chicago Tribune reported in 2015 that the city agency charged with reviewing misconduct complaints against Chicago Police Department officers dismissed nearly 60 percent of complaints for lack of a signed affidavit. Jeremy Gorner & Geofffrey Hing, Tribune Analysis: Cops who pile up complaints escape discipline, Chi. Trib., Jun, 13, 2015, https://www.chicagotribune.com/news/ct-chicago-police-citizen-complaints-met-20150613-story.html.

[7] See IACP Best Practices Guide, *supra* note 2, at 2, 3.

[8] See IACP Best Practices Guide, *supra* note 2, at 1-6.

[9] Generally, the adverse action standard is fairly low – it involves actions sufficiently adverse to dissuade a reasonable person from making a complaint. See, *e.g.*, Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 67-68 (2006), (In explaining a retaliation the Court found "a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, 'which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.'") (citing Rochon v. Gonzales, 438 F.3d 1211, 1219 (C.A.D.C. 2006) (quoting Washington v. Illinois Dep't. of Revenue, 420 F.3d 658, 662 (C.A.7 2005)).

[10] There may be some information that should not be made public to protect a complainant. For example, a gay man may file a complaint that an officer made homophobic remarks to him and may not be "out" to his employer or family. Generally, though, it is "good policy to make public all complaints received for the year." IACP Best Practices Guide, *supra* note 2, at 7.

[11] See e.g., Public Safety Officers Procedural Bill of Rights, Cal. Gov't Code § 3300-13, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=9.7.&article=.

[12] Americans With Disabilities Act, 42 U.S.C.A. § 12101 (West 2018).

[13] L.A. Police Dep't, Employee's Duty to Report Misconduct, 1 LAPD Policy Manual Section 210.46, http://www.lapdonline.org/lapd_manual/volume_1.htm#210._EMPLOYEE_CONDUCT (emphasis added).

[14] For example, the Los Angeles Police Department prohibits retaliation against any employee that provides information or files a complaint with the Office of the Inspector General. *Id.* at §§ 272, 273.

[15] See e.g., U.S. Dep't of Justice ADDRESSING POLICE MISCONDUCT LAWS ENFORCED BY THE DEPARTMENT OF JUSTICE, Title VI of the Civil Rights Act of 1964 and the "OJP Program Statute" https://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice; Office of Justice Programs, 34 U.S.C.A § 10101 (West 2018).

[16] New Orleans Police Dep't, EPIC: Ethical Policing Is Courageous, http://epic.nola.gov/home/;Subject to Debate, A Newsletter of The Police Executive Research Forum, 30, No. 2, July-Sept. 2016, https://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2016/debate_2016_julsep.pdf at 2.

[17] Subject to Debate, A Newsletter of the Police Executive Research Forum, 30, No. 2, July-Sept. 2016, https://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2016/debate_2016_julsep.pdf at 2.

[18] See, e.g., U.S. Dep't of Just., Office of Community Oriented Policing Serv., Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice 31 (2003), https://ric-zai-inc.com/Publications/cops-p164-pub.pdf (recommending that internal affairs units investigate all "officer-involved shootings, in-custody deaths, alleged constitutional violations, allegations of racial profiling or discriminatory policing or racial prejudice, dishonesty, drug use, sexual misconduct, cases handled for other jurisdictions, interagency cases,[] cases referred directly by the agency head or command staff," "all administrative investigations of allegations of misconduct that are likely to result in litigation against the agency or its members," and, "[u]nless there is a specialized unit to handle internal complaints by employees of discrimination, sexual harassment, and other unlawful employment practices").

[19] See Nat'l Assoc. for Civilian Oversight of Law Enforcement, Building Public Trust Through Police Accountability and Transparency, FAQS, https://www.nacole.org/faqs.

[20] These factors come from Douglas v. Veterans Administration and apply in virtually all civil service and labor arbitration tribunals. See Douglas v. Veterans Admin., 5 M.S.P.R. 280, 332 (1981), https://www.mspb.gov/mspbsearch/viewdocs.

[21] See Andrea J. Ritchie & Delores Jones-Brown, Policing Race, Gender, and Sex: A Review of Law Enforcement 27 Policies, Women & Crim. Justice 21, 24-25 (2017) http://andreajritchie.com/wp-content/uploads/2017/05/Policing-Race-Gender-and-Sex-A-Review-of-Law-Enforcement-Policies.pdf [hereinafter Ritchie, Policing Race].

[22] Brett G. Stoudt, et al. Growing Up Policed in the Age of Aggressive Policing Policies. 56 N.Y. L. Sch. L. Rev., 1331, 1350-51 (2011) http://www.nylslawreview.com/wp-content/uploads/sites/16/2012/04/56-4.Growing-up-Policed-in-the-Age-of-Aggressive-Policing-Policies.Stoudt-Fine-Fox.pdf. (LGBTQ youth are more likely to experience negative verbal, physical, and legal contact with the police and more than twice as likely to experience negative sexual contact in preceding six months.)

[23] Andrea J. Ritchie, Invisible No More: Police Violence Against Black Women and Women of Color 106-109, 112-113, 118-119, 156-158 (Boston, MA: Beacon Press, 2017); see also Andrea J. Ritchie, How Some Cops Use the Badge to Commit Sex Crimes, Sexual Misconduct Persists During Traffic Stops, Ridealongs and Mentorship programs, Wash. Post Jan. 12, 2018, https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html?noredirect=on&utm_term=.6afc86fdfabb [hereinafter Ritchie, Wash. Post].

[24] See Ritchie, Wash. Post, *supra* note 23 ("most police departments have no policies or training making it clear that on-duty sexual misconduct against civilians is prohibited") (citing Ritchie, Policing Race, *supra* note 21).

[25] Int'l Ass'n of Chiefs of Police, Addressing Sexual Offenses and Misconduct by Law Enforcement: Executive Guide 1 (Jun. 2011), https://www.theiacp.org/sites/default/files/all/a/ AddressingSexualOffensesandMisconductby byLawEnforcementExecutiveGuide.pdf.

[26] See, e.g., U.S. Dep't of Justice, Civil Rights Div. & U.S. Atty's Office, N.D. Ill., Investigation of the Chicago Police Department, at 115, 118, 124 (2017), https://www.justice.gov/opa/file/925846/download [hereinafter Chicago Investigation] (describing how victims of officer-involved domestic violence may be reluctant to file complaints because of shame and the possibility that officers will lose their jobs, affecting finances); see also Rafaqat Cheema, Black and Blue Bloods: Protecting Police Officer Families from Domestic Violence, 7 Hofstra Law Student Works 488 (2016) https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1009&context=hofstra_law_student_works.

[27] Int'l Ass'n of Chiefs of Police, DOMESTIC VIOLENCE BY POLICE OFFICERS, Model Policy, at 2-3 https://www.theiacp.org/sites/default/files/all/d-e/DomesticViolencebyPolicePolicy.pdf.

[28] See, e.g., MCC §2-78-135, https://www.chicago.gov/content/dam/city/depts/copa/general/COPAOrdinance.pdf, (requiring that investigations be completed within six months that the mayor, superintendent, complainant, involved employee, and other officials are notified of the reasons for the failure to complete the investigation).

[29] The New Orleans Police Department requires that an investigation for alleged employee misconduct be initiated within 14 days of the supervisor receiving the complaint and completed within 60 days of the initiation of the investigation. New Orleans Police Dep't Manual, Ch. 52.1.1, Misconduct Complaint Intake and Investigation 16:83, 19:98 (March 18, 2018), https://www.nola.gov/getattachment/NOPD/Policies/Chapter-52-1-1-Misconduct-Intake-and-Complaint-Investigation-EFFECTIVE-3-18-18.pdf. A 60 day extension may be granted by the City Civil Service Commission.

[30] Albuquerque Police Dep't Admin. Orders, Review of Completed Administrative Investigation Cases 4 (June 6, 2016), http://documents.cabq.gov/police/standard-operating-procedures/3-44-review-of-completed-administrative-investigation-cases.pdf.

[31] Albuquerque Police Dep't Prof'l Accountability Bureau Orders, 7-2 Critical Incident Review Team (CIRT) 21 (June 7, 2016), http://documents.cabq.gov/police/standard-operating-procedures/7-02-critical-incident-review-team-cirt.pdf.

[32] *Id.*

[33] *See, e.g.*, Interim Chief Administrator Patricia Banks, Chicago Civilian Office of Police Accountability, COPA Looking Ahead to 2018 (Dec. 29, 2017), https://www.chicagocopa.org/copa-looking-ahead-to-2018

[34] *See, e.g.*, New Orleans Police Dep't Manual, *supra* note 29, at 7, 10.

[35] For example, gender bias may result in less robust investigations of sexual assault or domestic violence allegations. See U.S. Dep't of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence, at 3 https://www.justice.gov/opa/file/799366/download.

[36] *See* IACP Best Practices Guide, *supra* note 2, at 1, 2.

[37] Community Policing Dispatch, The e-newsletter of the COPS Office, Organizational Change through Decision Making and Policy: A New Procedural Justice Course for Managers and Supervisors 8, Issue 4 (Apr. 2015), https://cops.usdoj.gov/html/dispatch/04-2015/a_new_procedural_justice_course.asp.

[38] *Id.*

[39] *Id.*

[40] *See, e.g.*, Monica Davey, Police 'Code of Silence' Is on Trial After Murder by Chicago Officer, N.Y. Times (Dec. 3, 2018), https://www.nytimes.com/2018/12/03/us/chicago-police-code-of-silence.html; Jerome Skolnick, Code Blue, The American Prospect (Dec. 19, 2001), https://prospect.org/article/code-blue.

[41] Austin Police Dep't, Policy Manual 537:Policy 903, 503:Policy 902 (2015), https://static1.squarespace.com/static/56996151cbced68b170389f4/t/569abb6e25981de028ab67e6/1452981151162/Austin+Police+Policies.pdf.

[42] Int'l Ass'n of Chiefs of Police, Midsize Agencies Division, https://www.theiacp.org/working-group/division/midsize-agencies-division (The IACP defines mid-size agencies as those comprised of 50 to 999 sworn officers. Large size agencies are those with 1,000 or more sworn officers).

[43] Samuel Walker Ph.D., Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide, U.S. Dep't of Justice, Community Oriented Policing Services, 8 (2003), https://ric-zai-inc.com/Publications/cops-w0085-pub.pdf [hereinafter Walker, Planning] (citing Comm'n on Accreditation for Law Enforcement Agencies, CALEA Standards for Law Enforcement Agencies Standard 35.1.5 (2001) ("A comprehensive Personnel Early Warning System is an essential component of good discipline in a well-managed law enforcement agency. The early identification of potential problem employees and a menu of remedial actions can increase agency accountability and offer employees a better opportunity to meet the agency's values and mission statement.").

[44] Gurbir S. Grewal, State of N.J. Office of the Att'y Gen., Attorney General Law Enforcement Directive 2018-3 Statewide Mandatory Early Warning Systems (Mar. 20, 2018) https://www.nj.gov/lps/dcj/agguide/directives/ag-directive-2018-3.pdf.

[45] Samuel Walker, Ph.D. et al., U.S. Dep't of Justice, Nat'l Inst. of Justice, Early Warning Systems for Police: Responding to the Problem Police Officer, Research in Brief 7 (July 2001), http://www.ncjrs.gov/pdffiles1/nij/188565.pdf.

[46] *See id.* at 2 (finding that a study of three departments showed significant reductions in problem behaviors and encouraged changes for both officers and supervisors); *see, e.g.*, Thomas D. Bazley, et al., Early Intervention Program Criteria: Evaluating Officer Use of Force, 26 Just. Q. 107 (March 2009) (suggesting improvements to EIS implementation by demonstrating through a small study that merely measuring the number of times officers use force as compared to their peers is insufficient to identify all the officers that need to be enrolled in an early intervention program. Departments should also take into account whether the force applied equals the resistance encountered, thus identifying and enrolling those officers who use excessive force, albeit infrequently, into early intervention programs.), https://www.tandfonline.com/doi/pdf/10.1080/07418820801989742; Samuel Carton et al., Identifying Police Officers at Risk of Adverse Events, 22nd ACM SIGKDD Conference on Knowledge Discovery and Data Mining (2016), https://www.kdd.org/kdd2016/papers/files/adf0832-cartonAemb.pdf (suggesting ways to improve EIS systems, such as assigning risk scores to police officers and subsequently dispatching officers to neighborhoods and incidents with those scores as a filter. For example, not dispatching a "hot" officer to a high intensity incident in a high-risk neighborhood.); *but see*, Robert E. Worden, et al., Intervention with Problem Officers: An Outcome Evaluation of an EIS Intervention, 40 Crim. Just. & Behav. 409, 415 (2013), https://www.researchgate.net/profile/Robert_Worden/publication/258129275_Intervention_With_Problem_Officers_An_Outcome_Evaluation_of_an_EIS_Intervention/links/55133d650cf23203199baca6.pdf (reporting that rates of complaints declined following implementation but expressing skepticism and finding that evidence is neutral and does not support the emphasis being placed on adoption of these systems).

[47] Samuel Walker Ph.D., et al., Supervision and Intervention within Early Intervention Systems: A Guide for Law Enforcement Chief Executives, U.S. Dep't of Justice, Community Oriented Policing Services 32 (Dec. 2005), https://www.policeforum.org/assets/docs/Free_Online_Documents/Early_Intervention_Systems/supervision%20and%20intervention%20within%20early%20intervention%20systems%202005.pdf.

[48] Worden et al., *supra* note 53, at 410-411; *see* Frank Hughes, Lisa B. Andre, Int'l Ass'n of Chiefs of Police, Police Chief Magazine, Problem Officer Variables and Early-Warning Systems, http://www.policechiefmagazine.org/problem-officer-variables-and-early-warning-systems/ ("approximately 10 percent of police officers can cause, or have caused, 90 percent of the problems in law enforcement agencies.").

[49] *See* Samuel Walker Ph.D., et, al., Supervision and Intervention within Early Intervention Systems: A Guide for Law Enforcement Chief Executives, Community Oriented Policing Services, 31 (Dec. 2005), https://www.policeforum.org/assets/docs/Free_Online_Documents/Early_Intervention_Systems/supervision%20and%20intervention%20within%20early%20intervention%20systems%202005.pdf ("[S]maller systems cannot do as much, but they are less expensive and easier to create. Some departments still use paper files or simple Excel spreadsheets. A police department must determine the size, capacity, and purpose of the system at the outset."); Walker, Planning, *supra* note 50, at 21 ("Medium-sized and small agencies do not need as complex and sophisticated a system as do large departments.").

[50] *See* Brady v. Maryland 373 U.S. 83, 87 (1963); *See* Giglio v. United States, 405 U.S. 150, 153-55 (1972).

[51] *See* Strickler v. Greene, 527 U.S. 263, 280-81 (1999) (Brady also "encompasses evidence known only to police investigators and not to the prosecutor.") (quoting Kyles v. Whitley, 514 U.S. 419, 438 (1995).

[52] *See* Giglio, 405 U.S. 154-55 (defendant and jury entitled to evidence bearing on witness' credibility); Strickler v. Greene, 527 U.S. 263.

[53] *See, e.g.*, Owens v. Balt. City State's Atty's Office, 767 F.3d 379, 401 (4th Cir. 2014) (officers' failure to provide impeachment material may sustain damages claim).

[54] Moldowan v. City of Warren, 578 F.3d 351, 379 (6th Cir., 2009).

[55] Austin Police Dep't, Policy Manual, 910.7 Brady Material in Personnel Files 574 (Rev. July 2017), https://www.austintexas.gov/sites/default/files/files/Current_APD_Policy_Manual_2017-1.5_issued_7-20-2017.pdf.

[56] Louisville Metro Police Dep't, Standard Operating Procedure 11.7 Exculpatory Evidence and Information (Sec. Rev. June 2017), https://www.louisville-police.org/DocumentCenter/View/615/Standard-Operating-Procedures-PDF.

[57] N.Y. Division of Human Rights, Basic Guide to EMPLOYMENT Discrimination, How to File a Complaint, https://dhr.ny.gov/sites/default/files/pdf/bg-employment.pdf; City of Atlanta, Ga., Human Relations Comm'n, https://www.atlantaga.gov/government/mayor-s-office/executive-offices/office-of-constituent-services/human-relations-commission.

[58] D.C. Office of Police Complaints, About Office of Police Complaints, https://policecomplaints.dc.gov/page/about-office-police-complaints.

[59] *See* Las Vegas Metro. Police Dep't Citizen Review Bd., Policy and Procedure Manual, Section 3.13 Hearing Panel, at 7-10 (Mar. 2008), https://www.citizenreviewboard.com/Pages/Documents/CRB_Pol_amended_version2008.pdf.

[60] *See* Nat'l Ass'n for Civilian Oversight of Law Enf't, Certified Practitioner of Oversight (CPO) Credential Program https://www.nacole.org/cpo_credential_program; Ass'n of Local Gov't Auditors, Training, https://algaonline.org/index.aspx?NID=31.

[61] *See* Civilian Office of Police Accountability, General FAQs, https://www.chicagocopa.org/faqs/.

[62] Andrew Myerberg, Civilian Director, Seattle Gov't, Office of Police Accountability, https://www.seattle.gov/opa.

[63] Chicago Investigation, *supra* note 26, at 48-74 (describing systemic failures in the oversight body's operations including failing to investigate complaints it deemed not serious enough to warrant a full investigation and the failure to investigate certain types of force, such as Taser discharges and officer-involved shootings that result in a no hit, despite being required to result in a hit.).

[64] Compare N.Y.C. Gov't, Civilian Complaint Review Bd., About CCRB, https://www1.nyc.gov/site/ccrb/about/about.page and Cleveland, Office of Prof'l Standards & Civilian Police Review Bd., http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/PublicSafety/OPS_PoliceReview with Seattle Gov't, Cmty Police Comm'n, http://www.seattle.gov/community-police-commission.

[65] Nat'l Ass'n for Civilian Oversight of Law Enforcement, Agency Profile-Albany, https://www.nacole.org/agency_profile_albany.

[66] Nat'l Ass'n for Civilian Oversight of Law Enforcement, Who Should Make the Final Determination as to Whether the Allegations in a Complaint Should be Sustained and What Corrective Actions, or Disciplinary Measures Should be Imposed?, https://www.nacole.org/final_determination ("few existing oversight agencies have the authority to make final determinations as to the outcome of an investigation."); DC Office of Police Complaints, Policy Recommendations, https://policecomplaints.dc.gov/page/policy-recommendations; Las Vegas Metro. Police Dep't, Citizen Review Board, https://www.citizenreviewboard.com/.

[67] Police Assessment Resource Ctr., Nat'l Guidelines for Police Monitors 30-31 (2008), https://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54d3b1eae4b07e4908f9ed64/1423159786656/Monitoring+Guidelines.pdf.

[68] Office of the Inspector General L.A. Police Comm'n, https://www.oig.lacity.org/ (housed on a different website than L.A. City; *see* Official Site of The LOS ANGELES POLICE DEPARTMENT, Office of the Inspector General http://www.lapdonline.org/police_commission/content_basic_view/1076); Portland: City of Portland, Independent Police Review, https://www.portlandoregon.gov/ipr/.

[69] Office of the Inspector General L.A. Police Comm'n, Use of Force Section, https://www.oig.lacity.org/use-of-force-section.

[70] See Amari L. Hammonds, et al., Stanford Law School, Stanford Criminal Justice Ctr., At Arm's Length: Improving Criminal Investigations of Police Shootings 12-13 (Oct. 2016), https://law.stanford.edu/wp-content/uploads/2016/09/At-Arms-Length-Oct-2016.pdf (citing Kate Levine, Who Shouldn't Prosecute the Police, 101 Iowa L. Rev. 1447, 1470-71 https://ilr.law.uiowa.edu/assets/Uploads/ILR-101-4-Levine.pdf); Daniel Richman, Prosecutors and Their Agents, Agents and Their Prosecutors, 103 Colum. L. Rev. 749, 758-67 (2003); Rachel E. Barkow, Federalism and Criminal Law: What the Feds Can Learn from the States, 109 Mich. L. Rev. 519, 545-65 (2011), https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1165&context=mlr.

[71] See Kimberly Kindy & Kimbriell Kelly, Thousands Dead, Few Prosecuted, Wash. Post (Apr. 11 2015), https://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/?utm_term=.6926938baf0d ("Among the thousands of fatal shootings at the hands of police since 2005, only 54 officers have been charged"); Cynthia Lee, Reforming the Law on Police Use of Deadly Force: De-Escalation, Preseizure Conduct, and Imperfect Self-Defense, 2018 U. Ill. L. Rev. 629, 635 (March 13, 2018), https://illinoislawreview.org/wp-content/uploads/2018/03/Lee.pdf ("Despite the increased number of prosecutions in recent years, it is still the case that law enforcement officers are rarely convicted."); Roger Goldman, Importance of State Law in Police Reform, 60 St. Louis U. L. J. 363, 377 (2016), https://www.slu.edu/law/law-journal/pdfs/issues-archive/v60-no3/roger_goldman_article.pdf (noting that between 2005 and 2015, there were only 54 indictments of police officers despite approximately 1,000 police shootings per year); Zusha Elinson & Joe Palazzolo, Police Rarely Criminally Charged for On-Duty Shootings: Research Shows 41 Officers Were Charged With Murder or Manslaughter for On-Duty Shootings Over 7 Years, Wall St. J. (Nov. 24, 2014), https://www.wsj.com/articles/police-rarely-criminally-charged-for-on-duty-shootings-1416874955?mg=prod/accounts-wsj.

[72] See Joseph P. Williams, Why Aren't Police Prosecuted? Experts say different standards, and laws protecting police, raise the bar for prosecution, U.S. News & World Rep. (July 13, 2016), https://www.usnews.com/news/articles/2016-07-13/why-arent-police-held-accountable-for-shooting-black-men.

[73] See Megan Crepeau et al., Jason Van Dyke taken into custody after jury convicts him of 2nd-degree murder, aggravated battery for each of 16 shots, Chi. Trib, Oct. 5, 2018, https://www.chicagotribune.com/news/local/breaking/ct-met-laquan-mcdonald-jason-van-dyke-verdict-20181005-story.html.

[74] Various entities have recommended a range of options for how to assign a special prosecutor to oversee police misconduct complaints, whether by assigning the state's attorney general as the special prosecutor in police use-of-force cases, adopting an automatic referral model to special prosecutors overseen by the attorney general for charges involving killings of members of the public or excessive use of force and similar allegations, or having local police departments agree to memoranda of understanding to investigate each other's police misconduct complaints. See, e.g., Investigation of the use of deadly physical force by peace officers, Conn. Gen. Stat. § 51-277a (2017), https://www.cga.ct.gov/2015/pub/chap_886.htm#sec_51-277a; The Ferguson Comm'n, Forward Through Ferguson: A Path Toward Racial Equality 27 (Oct. 14, 2015), http://3680or2khmk3bzkp33juiea1.wpengine.netdna-cdn.com/wp-content/uploads/2015/09/101415_FergusonCommissionReport.pdf; Mo. Advisory Comm. to the U.S. Comm'n on Civil Rights, The Impact of Community/Police Interactions on Individual Civil Rights in Missouri 34 (June 2016), https://www.usccr.gov/pubs/docs/MOPoliceRelationsReport_Publish.pdf.

[75] The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 21 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf. The President's Task Force Report provides two approaches for facilitating external and independent criminal investigations of lethal use of force: (1) create a multi-agency investigative body staffed by state and local investigators, or (2) referring the investigations to other jurisdictions or state agencies. *Id.*

[76] Garrity v. State of N.J., 385 U.S. 493 (1967).

[77] See IACP Best Practices Guide, *supra* note 2, at 3-4.

[78] See, e.g., Law enforcement officers' and correction officers' rights, Fla. Officer Bill of Rights, Fla. Stat. § 112.532(d) ("All identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of the investigative interview of the accused officer."), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0112/Sections/0112.532.html; Rights of Law Enforcement Officers While Under Investigation, La. Stat. § 40:2531(b)(i) ("The police employee or law enforcement officer shall be granted up to thirty days to secure such representation, during which time all questioning shall be suspended."), http://legis.la.gov/legis/Law.aspx?d=98276; Interrogation or Investigation of Law Enforcement Office, Md. Code, Public Safety, § 3-1043-104(j)(2) (West 2018), https://govt.westlaw.com/mdc/Document/ N292209D05A5711E68B71AFB4A5916F03?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default), ("The interrogation shall be suspended for a period not exceeding 5 business days until representation is obtained."); see also Paul Butler, The Police Officers' Bill of Rights Creates a Double Standard, N.Y. Times (June 27, 2015), https://www.nytimes.com/roomfordebate/2015/04/29/baltimore-and-bolstering-a-police-officers-right-to-remain-silent/the-police-officers-bill-of-rights-creates-a-double-standard.

[79] Jeffrey J. Noble J.D. & Geoffrey P. Alpert Ph.D., Criminal Interrogations of Police Officers After Use-of-Force Incidents, Law Enf't Bull. (Sep. 3 2013), https://leb.fbi.gov/articles/featured-articles/criminal-interrogations-of-police-officers-after-use-of-force-incidents.

[80] For example, the Seattle Police Department's Use of Force Policy requires any officer involved in a serious force incident (not a firearm discharge) to provide an audio-recorded interview by the end of the shift. See Seattle Police Dep't Manual, 8,400 Use of Force Reporting and Investigation (Sept. 1, 2015), https://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation; see also Police Assessment Res. Ctr., The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths 59-60 (Aug. 2003), https://www.portlandoregon.gov/ipr/article/26225 . For example, the Seattle Police Department's Use of Force Policy requires officers involved in a serious force incident (not a firearm discharge) to provide an audio-recorded interview by the end of their shift. See Seattle Police Dep't Manual, 8.400 Use of Force Reporting and Investigation (Sept. 1, 2015), https://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation.

[81] See, e.g., Investigation or Interrogation of Law Enforc't Officer, Md. Code, Pub. Safety, § 11-1005(c)(2) (West 2018), https://govt.westlaw.com/mdc/Document/N58378D404EAC11DD90A1957440A93AC6?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default) ("Unless a complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated."); see generally Stephen Rushin, Police Union Contracts, 66 Duke L. J. 1191, 1224 (2017), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3890&context=dlj.

[82] Reade Levinson, Protecting the Blue, Across the U.S., Police Contracts Shield Officers from Scrutiny and Discipline, Reuters Investigates (Jan. 13, 2017) https://www.reuters.com/investigates/special-report/usa-police-unions/ (study finding that nearly half of 82 police union contracts reviewed allowed officers accused of misconduct to view video as well other investigative evidence before being interviewed).

Chapter 8

[1] Leadership Conf. on Civil and Human Rights, Civil Rights Principles on Body Worn Cameras (May 2015), https://civilrights.org/civil-rights-privacy-and-media-rights-groups-release-principles-for-law-enforcement-body-worn-cameras/ [hereinafter Leadership Conf. Principles].

[2] Neill Franklin, The Marshall Project, The Video Doesn't Lie - Even if the Officer Did (Oct. 16, 2018), https://www.themarshallproject.org/2018/10/16/the-video-doesn-t-lie-even-if-the-officer-did.

[3] The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 19–20 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [hereinafter President's Task Force Report].

[4] U.N. Office on Drugs and Crime, Handbook on Police Accountability, Oversight and Integrity 9 (2011), https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf (noting that "transparency, openness to scrutiny, integrity and legitimacy are also mutually reinforcing," and "enhancing accountability can improve police legitimacy and increase public confidence").

[5] Leadership Conf. Principles, *supra* note 1.

[6] *Id.*

[7] *Id.*

[8] See, e.g., Cal. Gov't Code § 6250 et. seq.; Wash. Rev. Code § 42.56 et. seq.; see also Dan Freedman, Connecticut to Share Police Profiling Data, Conn. Post, May 2, 2018, https://www.ctpost.com/news/article/Connecticut-to-share-police-profiling-data-12882727.php (discussing the Connecticut Governor, Dannel Malloy's announcement that the state intends to "enlist in a nationwide bid to share law enforcement racial profiling data it collects from individual police departments and state police"); see generally Bryan Arnold, A Survey of Public Records Laws—Issues Affecting State and Local Contractors, Bidders, and Contractors, http://apps.americanbar.org/dch/thedl.cfm?filename=/PC500000/relatedresources/A_SURVEY_OF_OPEN_GOVERNMENT_LAWS.pdf (including a survey of state public record laws); see also Jessica Barker, Building Trust through Data Transparency, Officer.com, July 31, 2017, https://www.officer.com/command-hq/technology/computers-software/blog/12355227/building-trust-through-data-transparency.

[9] Thomas Nolan, The Trouble with So-Called "Gang Databases": No Refuge in the "Sanctuary", American Constitutional Society Blog (June 27, 2018), https://www.acslaw.org/acsblog/the-trouble-with-so-called-gang-databases-no-refuge-in-the-sanctuary/; see also Joshua D. Wright, The Constitutional Failure of Gang Databases, 2 Stan. J. C.R. & C.L. 115, 142 (2005).

[10] Bianca Bruno, Challenge to CalGang Database Lands in Court, Courthouse News Service (Mar. 9, 2018), https://www.courthousenews.com/challenge-to-calgang-database-lands-in-court/.

[11] Fair and Accurate Gang Database Act of 2017, 2017 Cal. Stat. 91, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB90.

[12] Andrew G. Ferguson, Policing Predictive Policing, 94 Wash. U. L. Rev. 1109, 1114 (2017), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6306&context=law_lawreview.

[13] Victoria McKenzie, The Dirty Data Feeding Predictive Police Algorithms, The Crime Report (Aug. 18, 2017), https://thecrimereport.org/2017/08/18/does-predictive-policing-mathwash-bias/.

[14] See Am. Civ. Liberties Union, Community Control Over Police Surveillance, https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance (last visited Feb. 16, 2019).

[15] Barker, *supra* note 8.

[16] See, e.g., Inside Privacy, Covington & Burling LLP, Virginia Supreme Court Holds that Police License Plate Readers Collect Personal Information (May 7, 2018), https://www.insideprivacy.com/united-states/litigation/virginia-supreme-court-holds-that-police-license-plate-readers-collect-personal-information/; Va. Code § 2.2-3801 (2018), https://law.lis.virginia.gov/vacode/title2.2/chapter38/section2.2-3801/ (defining personal information to include social security numbers, driver's license numbers, education, medical history, ancestry, religion, political ideology criminal record, or information from which personal characteristics such as finger and voice prints can be inferred); Neal v. Fairfax Cty. Police Dep't, 812 S.E.2d 444 (Va. 2018).

[17] See generally Leadership Conf. on Civil and Human Rights, Police Body Worn Cameras: A Policy Scorecard (2017), https://www.bwcscorecard.org/static/pdfs/LCCHR%20and%20Upturn%20-%20BWC%20Scorecard%20v.3.04.pdf. [hereinafter Leadership Conf. Scorecard].

[18] See generally Leadership Conf. Scorecard, *supra* note 17.

[19] Linsday Miller & Jessica Tolliver, U.S. Dep't of Justice, Community Oriented Policing Services & Police Executive Research Forum, Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned 5 (rev. 2017), https://ric-zai-inc.com/Publications/cops-p296-pub.pdf.

[20] *Id.*

[21] Josh Sanburn, The Company that Makes Tasers Is Giving Free Body Cameras to Police, Time, Apr. 5, 2017, http://time.com/4726775/axon-taser-free-body-cameras-police/.

[22] President's Task Force Report, *supra* note 3, at 2.

[23] President's Task Force Report, *supra* note 3, at 24.

[24] Sarah Eppler-Epstein et. al., Urban Institute, The Alarming Lack of Data on Latinos in the Criminal Justice System (Dec. 2016), http://apps.urban.org/features/latino-criminal-justice-data/.

[25] See Christy E. Lopez, The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment – A Response (forthcoming 2019) (on file with The Leadership Conference).

[26] *Id.*

[27] Eppler-Epstein, *supra* note 24.

[28] D.C. Code § 5-113.01(a) (4B) (I)-(K) (2018), https://code.dccouncil.us/dc/council/code/sections/5-113.01.html (requiring collection of demographic and other data for traffic stops); Cal. Gov't Code § 12525.5(b)(6) (West 2018); Conn. Gen. Stat. § 54-1m(b)(1) (2017), https://www.cga.ct.gov/current/PUB/chap_959.htm#sec_54-1m; Md. Code Ann. Transp. § 25-113(d)(12)-(15) (2015), http://mgaleg.maryland.gov/webmga/frmStatutesText.aspx?article=gtr&section=25-113&ext=html&session=2019RS&tab=subject5; Mo. Rev. Stat. § 590.650(2)(1) (2013), https://www.ago.mo.gov/docs/default-source/public-safety/racialprofilingstatute.pdf?sfvrsn=2; Neb. Rev. Stat. § 20-504(3)(b) (2014), https://nebraskalegislature.gov/agencies/find_stat.php?statute=20-504; N.C. Gen. Stat. § 143B-903(a)(2) (2014), https://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S464v6.pdf; 31 R.I. Gen. Laws § 21.2-6(b) (2012), http://webserver.rilin.state.ri.us/Statutes/TITLE31/31-21.2/31-21.2AC-6.HTM; Vt. Stat. Ann. tit. 20, § 2366(e)(1) (2016), https://legislature.vermont.gov/statutes/section/20/151/02366.

[29] City of Sacramento, Vehicle Stop History and Information, https://www.cityofsacramento.org/Police/Transparency/Vehicle-Stop-Data-History-and-Information.

[30] *Id.*

[31] Settlement Agreement, Class Certification, and Consent Decree, Bailey v. City of Philadelphia, No. 2:10-CV-05952-SD (E.D. Pa. June 21, 2011), https://www.aclupa.org/download_file/view_inline/744/198.

[32] See Citizens Police Data Project, https://cpdp.co/ (last visited Dec. 12, 2018).

[33] President's Task Force Report, *supra* note 3, at 2-3.

[34] President's Task Force Report, *supra* note 3, at 13 ("To embrace a culture of transparency, law enforcement agencies should make all department policies available for public review and regularly post on the department's website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics.").

[35] Julie Tate et al., How The Washington Post Is Examining Police Shootings in the United States, Wash. Post, Jul. 7, 2016, https://www.washingtonpost.com/national/how-the-washington-post-is-examining-police-shootings-in-the-united-states/2016/07/07/d9c52238-43ad-11e6-8856-f26de2537a9d_story.html ("The FBI and the Centers for Disease Control and Prevention log fatal shootings by police, but officials acknowledge that their data is incomplete. In 2015, The Post documented more than twice as many fatal shootings by police as had been recorded by the FBI.").

[36] See Robert Lewis et. al., Is Police Misconduct a Secret in Your State?, WNYC News, (Oct. 15, 2015), https://www.wnyc.org/story/police-misconduct-records/ (showing that only 12 states—Alabama, Arizona, Connecticut, Florida, Georgia, Maine, Minnesota, North Dakota, Ohio, Utah, Washington, and Wisconsin—generally make police disciplinary records available to the public).

[37] San Jose Police Department Introduces Web Access to Use of Force Data, CBS SF Bay Area, Jan. 10, 2018, http://sanfrancisco.cbslocal.com/2018/01/10/san-jose-police-department-use-of-force-data/; Brandt Williams, Minneapolis Police Use of Force Data Now Online, MPRNews, Nov. 14, 2017, https://www.mprnews.org/story/2017/11/14/mpd-use-of-force-data-now-online.

[38] Seattle Police Dep't, Information & Data, https://www.seattle.gov/police/information-and-data (last visited Jan. 10, 2019).

[39] Jon Eligon, Hate Crimes Increase for the Third Consecutive Year, F.B.I. Reports, N.Y. Times, Nov. 13, 2018, https://www.nytimes.com/2018/11/13/us/hate-crimes-fbi-2017.html.

[40] Sandra Peddie, Despite Progress After Hate Crime, SCPD and Hispanics Struggle with Trust, Newsday, Nov. 2, 2018, https://projects.newsday.com/long-island/ms13-lucero-suffolk-police/.

[41] Agreement Between the U.S. Dep't of Justice and Suffolk Cty. Police Dep't, 7 (E.D.N.Y. Jan. 13, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/01/23/suffolk_agreement_1-13-14.pdf.

[42] See Police Data Initiative, https://www.policedatainitiative.org (last visited Dec. 13, 2018); *see also* Press Release, White House Office of the Press Secretary, FACT SHEET: White House Police Data Initiative Highlights New Commitments (Apr. 21, 2016) (stating that the Police Data initiative launched in 2015), https://obamawhitehouse.archives.gov/the-press-office/2016/04/22/fact-sheet-white-house-police-data-initiative-highlights-new-commitments.

[43] Police Data Initiative, Participating Agencies, https://www.policedatainitiative.org/participating-agencies/ (last visited Jan. 10, 2018).

[44] Las Vegas Metropolitan Police Dep't, Use of Force Policy: INVESTIGATIVE RESPONSIBILITIES - Use of Deadly Force or Force Involving Serious Bodily Injury/Death 33 (2017), https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf; *see also* Office of the Inspector General, L.A. Police Comm'n, Comparative Review of Selected Agency Policies, Investigations, and Training on the Use of Force 11 (Oct. 6, 2016), http://www.lapdpolicecom.lacity.org/101116/BPC_16-0119A.pdf ("The [Las Vegas Metropolitan Police Department] stands out among the selected agencies because, as soon as it is feasible, this agency posts a video statement about every incident on YouTube. Approximately 48 hours after an OIS incident, the LVMPD releases the name, rank, tenure, and age of the involved officer. Then, following an internal briefing approximately 72 hours later, the Undersheriff conducts a comprehensive media briefing.").

[45] Office of the Inspector General, *supra* note 44, at 11.

[46] LVMPD Controls Narrative After Officer Involved Shootings, Law Enforcement Today, Aug, 3, 2017, https://www.lawenforcementtoday.com/lvmpd-controls-narrative-officer-shootings/.

[47] William Lee, Jeremy Gorner, & Morgan Greene, Chicago Police Release Body Camera Footage of Fatal Officer-Involved Shooting that Prompted Protests, Chi. Trib., July 16, 2018, http://www.chicagotribune.com/news/local/breaking/ct-met-man-shot-and-killed-by-police-identified-additional-protests-planned-20180715-story.html.

[48] Nausheen Husain, Laquan McDonald Timeline: The Shooting, the Video and the Verdict, Chi. Trib., Oct. 5, 2018, http://www.chicagotribune.com/news/laquanmcdonald/ct-graphics-laquan-mcdonald-officers-fired-timeline-htmlstory.html#.

[49] See Office of the Chief of Police, L.A. Police Dep't, Administrative Order No. 6: Critical Incident Video Release Policy - Established (Apr. 13, 2018), http://assets.lapdonline.org/assets/pdf/Administrative%20Order%20No.%206.pdf.

[50] See Am. Civ. Liberties Union, Community Control Over Police Surveillance (CCOPS) Model Bill (Oct. 2018), https://www.aclu.org/other/community-control-over-police-surveillance-ccops-model-bill.

[51] For example, the NYPD and the Camden County Police Department sought public feedback about the content of their BWC policies to reflect community interests and revise their policies based on the feedback. See New York City Police Dep't, NYPD Response to Public and Officer Input on the Department's Proposed Body-Worn Camera Pol'y (Apr. 2017), https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/body-worn-camera-policy-response.pdf; Camden Cty. Police Dep't, Body-Worn Cameras, http://camdencountypd.org/body-worn-cameras/ (last visited Jan. 10, 2019).

[52] Miller & Tolliver, *supra* note 19, at 12.

[53] *Id.* at 12-13.

[54] Leadership Conf. Principles, *supra* note 1 ("While some types of law enforcement interactions (e.g., when attending to victims of domestic violence) may happen off-camera, the vast majority of interactions with the public — including all that involve the use of force — should be captured on video.").

[55] See e.g., Consent Decree, United States v. Police Dep't of Baltimore City, No. 1:17-CV-00099-JKB, ¶ 271 (D. Md. Jan. 12, 2017), http://www.mdd.uscourts.gov/sites/mdd/files/ConsentDecree_1.pdf (requiring Baltimore police officers to inform individuals "that they are being recorded unless doing so would be unsafe, impractical, or impossible.").

[56] Leadership Conf. Scorecard, *supra* note 17, at 6; *see, e.g.*, Oakland Police, Department General Order I-15.1 Portable Video Management System 3 (eff. July, 16, 2015), http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak054254.pdf (activation is not required when interviewing a child abuse victim or sexual assault victim).

[57] Wash. Rev. Code § 10.109.010 (2018), http://app.leg.wa.gov/RCW/default.aspx?cite=10.109.010.

[58] H.B. 533, Reg. Sess. (Md. 2015), http://mgaleg.maryland.gov/2015RS/Chapters_noln/CH_129_hb0533e.pdf.

[59] Fraternal Order of Police, Body Worn Camera Recommended Best Practices 6, https://www.bja.gov/bwc/pdfs/FOP_BestPracticesBWC_Policy.pdf (the pre-event buffering mode is a "[d]evice feature where the camera continuously records and holds the most recent 30 seconds of video and audio prior to record activation. With this feature, the initial event that causes the officer to activate recording is likely to be captured automatically, thereby increasing the capability of recording the entire activity.").

[60] See Leadership Conf. Scorecard, *supra* note 17, at 7.

[61] Leadership Conf. Scorecard, *supra* note 17, at 71.

[62] See Policing Project, N.Y.U., Should Police Departments Release Video After Officer-Involved Shootings?, YouTube (Mar. 22, 2017), https://www.youtube.com/watch?v=VNrDpeSYDic#action=share (The Policing Project prepared a video for its efforts in Los Angeles on this issue, setting out the competing concerns).

[63] See, e.g., Oakland Police, *supra* note 56, at 7-9.

[64] See Harlan Yu & Miranda Bogen, Upturn, Leadership Conf. on Civil and Human Rights, The Illusion of Accuracy: How Body-Worn Camera Footage Can Distort Evidence (Nov. 2017), https://www.upturn.org/reports/2017/the-illusion-of-accuracy/eten.

[65] Memorandum from John J. Hoffman, Acting Att'y. Gen. of N.J., ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO.2015-1 15,19 Law Enforcement Directive Regarding Body Worn Cameras and Stored BWC Recordings (July 28, 2015), https://nj.gov/oag/newsreleases15/AG-Directive_Body-Cams.pdf.

[66] City of Maplewood, Minn., Body Worn Cameras Policy, Department Use of Data 7 (Aug. 29, 2016), https://maplewoodmn.gov/DocumentCenter/View/16805/BodyWornCamera?bidId.

[67] Greensboro Police Dep't Directives Manual, No. 15.11: Body Worn Cameras 8 (2016), https://www.greensboro-nc.gov/home/showdocument?id=32161.

[68] Clare Garvie, Alvaro Bedoya & Jonathan Frankle, Georgetown Law Ctr. on Privacy & Tech., The Perpetual Lineup: Unregulated Police Facial Recognition in America 26 (Oct. 18, 2016), https://www.perpetuallineup.org/sites/default/files/2016-12/The%20Perpetual%20Line-Up%20-%20Center%20on%20Privacy%20and%20Technology%20at%20Georgetown%20Law%20-%20121616.pdf.

[69] *Id.* at 116-17.

[70] See, e.g., 18millionrising.org et al., Letter to Axon AI Board 1 (Apr. 26, 2018), http://civilrightsdocs.info/pdf/policy/letters/2018/Axon%20AI%20Ethics%20Board%20Letter%20FINAL.pdf; Am. Civ. Liberties Union et al., Letter to Jeffrey P. Bezos, Founder and Chief Executive Officer, Amazon.com, Inc. 1 (May 22, 2018), https://www.aclunc.org/docs/20180522_AR_Coalition_Letter.pdf; Georgetown Law Ctr. on Privacy & Technology, *supra* note 68, at 3.

[71] See, e.g., 18millionrising.org et al., *supra* note 70, at 1; ACLU et al., *supra* note 70, at 1; Joy Buolamwini & Timnit Gebru, Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification, 81 Proc. of Machine Learning Res. (2018), http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf; Drew Harwell, Amazon Facial-identification Software Used by Police Falls Short on Tests for Accuracy and Bias, New Research Finds, Wash. Post (Jan. 25, 2019), https://www.washingtonpost.com/technology/2019/01/25/amazon-facial-identification-software-used-by-police-falls-short-tests-accuracy-bias-new-research-finds/?utm_term=.7d381727c2be.

[72] Georgetown Law Ctr. on Privacy & Technology, *supra* note 68, at 3.

[73] Georgetown Law Ctr. on Privacy & Technology, *supra* note 68, at 116-19 ("There is no interface of the face recognition system to any form of video surveillance, including surveillance cameras, drone footage, and body worn cameras.").

[74] See Carpenter v. United States, 138 S. Ct. 2206, 2217, 2223 (2018) (asserting that warrantless acquisition of cell phone records that enabled law enforcement to track subject's movements over a period of 127 days violated Fourth Amendment); see generally United States v. Jones, 565 U.S. 400 (2012) (concluding that GPS tracking device enabling tracking of subject's movements for 27 days constituted a search under the Fourth Amendment).

[75] Leadership Conf. Scorecard, *supra* note 17, at 6.

[76] 2015 Or. Laws Ch. 550, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2015orLaw0550.pdf.

[77] Cal. Penal Code § 832.18 (2015), https://leginfo.legislature.ca.gov/ faces/codes_displayText.xhtml?lawCode=PEN&division=&title=3.&part=2.&chapter=4.5.&article=.

[78] See *id.*

Chapter 9

[1] See, e.g., The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 11-12 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [hereinafter President's Task Force Report] (recommending that procedural justice serve as the underpinning of a change in culture that will contribute to building trust and confidence in the community); Int'l Ass'n of Chiefs of Police, IACP National Policy Summit On Community-Police Relations: Advancing a Culture of Cohesion and Community Trust 12 (2015), https://www.theiacp.org/sites/default/files/2018-09/CommunityPoliceRelationsSummitReport_web.pdf (noting that the lack of truly integrated community policing into police department culture inhibits true community-police cohesion and poses a challenge to community leaders and police); S. David Mitchell, Chair, Missouri Advisory Committee, Columbia, et al., Missouri Advisory Committee to the U.S. Commissions on Civil Rights, The Impact of Community/Police Interactions on individual Civil Rights in Missouri 19-20 (2016), https://www.usccr.gov/pubs/docs/MOPoliceRelationsReport_Publish.pdf (observing that community distrust developed at least in part from the Ferguson Police Department's culture of racial bias nurtured by the department's leadership regarding as it pertains to the "pack mentality").

[2] See, e.g., COPS, How to Support Trust Building in Your Agency (change requires an organizational transformation, led by police leadership); Kami Chavis Simmons, New Governance and the 'New Paradigm' of Police Accountability: A Democratic Approach to Police Reform, 59 Cath. U. L. Rev. 373, 381 (2010).

[3] See Simmons, *supra* note 2, at 376-381.

[4] *Id.*; Bennett Capers, Policing, Race, and Place, 44 HARV. C.R.-C.L. L. Rev. . 43, 71 (2009).

[5] Simmons, *supra* note 2, at 387-388.

[6] Sue Rahr & Stephen K. Rice, From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals, New Perspectives in Policing, Harvard Kennedy School, National Institute of Justice 3, 4, 6 (2015), https://www.ncjrs.gov/pdffiles1/nij/248654.pdf.

[7] Debbie Demon-Berger, U.S. Dep't. of Justice, Community Oriented Policing Services, Leadership for Public Safety: Professional Dimensions of Leadership in Law Enforcement 16 (Marilyn Simpson ed., 2011), https://ric-zai-inc.com/Publications/cops-w0633-pub.pdf.

[8] See, e.g., U.S. Dep't. of Justice, Community Relations Service, Principles of Good Policing: Avoiding Violence Between Police and Citizens (3d ed., 2003), https://www.justice.gov/archive/crs/pubs/principlesofgoodpolicingfinal092003.pdf [hereinafter Community Relations Service]; Police Exec. Res. Forum, Critical Issues in Policing Series, Advice from Police Chiefs and Community Leaders on Building Trust: "Ask for Help, Work Together, and Build Respect" 35, 63 (2016), http://www.policeforum.org/assets/policecommunitytrust.pdf [hereinafter PERF, Advice]; William J. Bratton, How to Reform Policing from Within, N.Y. Times (Sept. 16, 2016), https://www.nytimes.com/2016/09/16/opinion/william-j-bratton-how-to-reform-policing-from-within.html ("What changes police culture is leadership from within.").

[9] Samuel Walker, National Institute of Justice, Police Accountability: Current Issues and Research Needs 12 (2007), http://www.ncjrs.gov/pdffiles1/nij/grants/218583.pdf; see also Lt. Sean E. Moriarty, The Leadership in Police Organizations Program in the Delaware State Police: Recommendations for Law Enforcement Leadership Development, Police Chief Magazine (2009), http://www.policechiefmagazine.org/the-leadership-in-police-organizations-program/ (noting that supervisors "essentially determine[] the efficiency and effectiveness of the [police] agency").

[10] Police Exec. Res. Forum, Critical Issues in Policing Series, Promoting Excellence in First-Line Supervision: New Approaches to Selection, Training, and Leadership Development 5-6 (2018), https://www.policeforum.org/assets/FirstLineSupervision.pdf [hereinafter PERF, New Approaches].

[11] Community Relations Service, *supra* note 8; see also Barbara Armacost, The Organizational Reasons Police Departments Don't Change, Harv. Bus. Rev. (Aug. 19, 2016), https://hbr.org/2016/08/the-organizational-reasons-police-departments-dont-change ("[P]olice scholars have agreed that the organizational culture of policing — the set of informal, cultural norms that are unique to the occupation of law enforcement — is the most important determinant of police behavior.").

[12] President's Task Force Report, *supra* note 1, at 11.

[13] See *id.* at 12 ("Behavior is more likely to conform to culture than rules.").

[14] PERF, New Approaches, *supra* note 10, at 12.

[15] See *id.* at 60 ("[I]t is a narrative that largely shapes and defines a culture.").

[16] Rahr & Rice, *supra* note 6, at 3, 4, 8 (2015).

[17] See Camden Policy on Escorting Victims, N.Y. Times (Apr. 2, 2017) (embedded with: Camden County Police Dep't, 3, Chapt. 38 at 2), https://www.nytimes.com/interactive/2017/04/02/nyregion/camden-police-policy.html ("[O]fficers must be prepared to initiate an emergency medical transport of a victim when deemed necessary.").

[18] Rahr & Rice, *supra* note 6, at 7-9.

[19] *Id.* at 9.

[20] 21st Century Task Force, *supra* note 1, at 14 ("Research shows that agencies should also use tools that encourage employee and supervisor collaboration and foster strong relationships between supervisors and employees. A more effective agency will result from a real partnership between the chief and the staff and a shared approach to public safety.") (citing Tim Richardson, Senior Legislative Liaison, Fraternal Order of Police, in Discussion with Ajima Olaghere, Research Assistant, U.S. Dep't of Justice, Community Oriented Policing Services (2014)).

[21] See Maarten Van Craen & Wesley G. Skogan, Achieving Fairness in Policing: The Link Between Internal and External Procedural Justice, 20(1) Police Quarterly 3, 6 (2017), http://journals.sagepub.com/doi/pdf/10.1177/1098611116657818 ("[T]he extent to which police officers' behavior toward citizens is guided by the principles of neutrality, respect, voice, and accountability depends on the extent to which supervisors' behavior toward their officers is characterized by these principles.").

[22] See PERF, Advice, *supra* note 8, at 18-19 (quoting Atlanta Chief: "As police chiefs … [w]e have to push the bad apples out, no matter how difficult.").

[23] See President's Task Force Report, *supra* note 1, at 13.

[24] See *id.* at 14 ("For example, internal department surveys should ask officers what they think of policing strategies in terms of enhancing or hurting their ability to connect with the public.").

[25] See Las Vegas Metropolitan Police Department, Annual Reports, https://www.lvmpd.com/en-us/Pages/AnnualReports.aspx. Each annual report begins with a statement of the department's vision, mission, values, and goals. The goals change every few years, reflecting the department's current priorities and strategies.

[26] PERF, New Approaches, *supra* note 10, at 3.

[27] See Cleveland Police Monitoring Team, First Semiannual Report 62 (2016), http://www.clevelandpolicemonitor.net/s/First-Semiannual-Report-2016-06-02-FOR-RELEASE.pdf (noting that "effectively managing, supervising, and leading individuals who were only recently a new sergeant's direct peers involves a significant and sometimes-foreign skill set for newly-minted supervisors").

[28] See *id*.

[29] See PERF, New Approaches, *supra* note 10, at 3-4 ("[D]espite the critically important roles that sergeants play, our systems for selecting new sergeants, training them, and developing them as leaders have never been very good"). Additionally, in many jurisdictions, promotions are limited by civil service regulations or union contracts resulting in a limited ability "to promote the most qualified officers with the skills and aptitude to be strong 21st century leaders." *Id.* at 3. Jurisdictions should bear this in mind when negotiating contracts to allow them to make promotion decisions based on character qualities that reflect the agency's values..

[30] See, e.g., Police Exec. Res. F., Senior Management Institute for Police, Preparing Today's Police Executives for the Challenges of the Next Decade and Beyond, http://www.policeforum.org/smip; Edward A. Flynn & Victoria Herrington, Toward a Profession of Police Leadership, New Perspectives in Policing Bulletin, Harvard Kennedy School, National Institute of Justice 6 (2015), https://www.ncjrs.gov/pdffiles1/nij/248573.pdf ("Highly regarded programs and schools that provide leader development opportunities for mid- and senior-level managers include the University of Louisville's Southern Police Institute, Northwestern University's Center for Public Safety, and Johns Hopkins University's Division of Public Safety Leadership. In addition, the FBI National Academy, the Police Executive Research Forum, and individual organizations utilizing the International Association of Chiefs of Police's Leadership in Police Organizations (LPO) course … offer opportunities specifically for police leadership development.").

[31] See Flynn & Herrington, *supra* note 30, at 1-3 (noting little attention is paid "to the system in which the leader operates or to how individuals can create and distribute a climate of leadership throughout a police organization").

[32] See President's Task Force Report, *supra* note 1, at 54 (recommending an investment in leadership training "for each level of leadership" to focus on "procedural justice, community policing, police accountability, teaching, coaching, mentoring, and communicating with the media and the public").

[33] 21st Century Police Leadership Program, Executive Leadership Flyer (on file with Leadership Conference).

[34] U.S. Dep't of Justice, Community Oriented Policing Services, How to Support Trust Building in Your Agency, 3 Police Perspectives: Building Trust in a Diverse Nation 32 (Caitlin Gokey & Susan Shah, eds. 2016), https://ric-zai-inc.com/Publications/cops-p346-pub.pdf.

[35] Brian A. Reaves, Local Police Departments, 2013: Personnel, Policies, and Practices, U.S. Dep't of Justice, Bureau of Justice Statistics 9 (May 2015), https://www.bjs.gov/content/pub/pdf/lpd13ppp.pdf.

[36] Rich Morin et al., Pew Research Center, Behind the Badge 37 (Jan. 11, 2017), http://www.pewsocialtrends.org/wp-content/uploads/sites/3/2017/01/Police-Report_FINAL_web.pdf.

[37] *Id.*

[38] Vanita Gupta, Principal Deputy Assistant Attorney General U.S. Dep't of Justice, Jenny R. Yang Chair, U.S. Equal Employment Opportunity Commission, Advancing Diversity In Law Enforcement ii (Oct. 2016), https://www.justice.gov/crt/case-document/file/900761/download ("[W]hen members of the public believe their law enforcement organizations represent them, understand them, and respond to them — and when communities perceive authorities as fair, legitimate, and accountable —it deepens trust in law enforcement, instills public confidence in government, and supports the integrity of democracy.").

[39] See *id.* at 39 (approximately "43% [of] women say men are treated better …but only 6% of men say the same.").

[40] Brian A. Reaves, Local Police Departments, 2013: Personnel, Policies, and Practices, U.S. Dep't of Justice, Bureau of Justice Statistics 4 (May 2015), https://www.bjs.gov/content/pub/pdf/lpd13ppp.pdf.

[41] Dr. Kim Lonsway et al., Equality Denied — The Status of Women in Policing: 2001, National Center For Women In Policing, a division of the Feminist Majority Foundation, at 3 (2002), http://womenandpolicing.com/PDF/2002_Status_Report.pdf; see also Carole G. Garrison et al., Utilization of Police Women, 32(7) The Police Chief 4 (Sept. 1998).

[42] See, e.g., U.S. Dep't of Justice, Civil Rights Div. & U.S. Attorney's Office, N.D. Ill., Investigation of the Chicago Police Dep't, at 122 (2017), https://www.justice.gov/opa/file/925846/download ("Women officers … feel particularly unsupported in the Department, both because of its culture and because the available support systems do not take into account the particular needs of female officers.").

[43] Margo Frasier, We Need More Female Police Officers, N.Y. Times (Aug. 17, 2016) (citing Steven Brandl et al., Who are the Complaint-Prone Officers?: An Examination of the Relationship Between Police Officers' Attributes, Arrest Activity, Assignment, and Citizens' Complaints about Excessive Force, 29 J. of Crim. Just., 521-529 (2001) https://www.wifle.org/pdf/Who_are_the_complaint-prone_officers_Examination2001.pdf), https://www.nytimes.com/roomfordebate/2016/08/17/how-can-police-do-a-better-job-of-recruiting-officers/we-need-more-female-police-officers.

[44] See Amie M. Schuck & Cara Rabe-Hemp, Women Police: The Use of Force by and Against Female Officers, 16 Women & Crim. Just. 96 (2007), https://doi.org/10.1300/J012v16n04_05 ("In theory, female officers may be better able to communicate with citizens, thus, deescalating a situation and lowering the need to use force"); Steven Brandl et al., Who Are the Complaint-Prone Officers?: An Examination of the Relationship Between Police Officers' Attributes, Arrest Activity, Assignment, and Citizens' Complaints about Excessive Force, 29 J. of Crim. Just., 521-529 (2001), https://www.wifle.org/pdf/Who_are_the_complaint-prone_officers_Examination2001.pdf (noting that the "the relationship between gender and complaints about excessive force is rather clear" and though "the reasons for the relationship are subject to debate" there is evidence that "female officers are more adept at avoiding violence and de-escalating potentially violent situations")..

[45] Community Relations Service, *supra* note 8 (emphasis in original).

Chapter 10

[1] U.S. Dep't of Justice & Equal Emp. Opportunity Comm'n, Advancing Diversity in Law Enforcement 7 (2016), https://www.justice.gov/crt/case-document/file/900761/download [hereinafter Advancing Diversity in Law Enforcement].

[2] The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 16 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [hereinafter President's Task Force Report].

[3] Yamiche Alcindor & Nick Penzenstadler, Police Redouble Efforts to Recruit Diverse Officers, USA Today, Jan. 21, 2015, http://www.usatoday.com/story/news/2015/01/21/police-redoubling-efforts-to-recruit-diverse-officers/21574081/.

[4] See, e.g., Pat Pratt, Professor: Community Policing Requires Change in Attitude, Columbia Daily Tribune (Nov. 23, 2018 at 6:37 PM), https://www.columbiatribune.com/news/20181123/professor-community-policing-requires-change-in-attitude (describing officers' opposition to community policing and their view that it is not "true policing").

[5] Advancing Diversity in Law Enforcement, *supra* note 1, at 24.

[6] Advancing Diversity in Law Enforcement, *supra* note 1, at ii.

[7] See, e.g., The Sentencing Project, Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System, I & II, http://sentencingproject.org/wp-content/uploads/2015/11/Black-Lives-Matter.pdf.

[8] See ICMA & Vera Institute, The Model Police Officer: Recruitment, Training, and Community Engagement 4 (Sept. 2018), https://storage.googleapis.com/vera-web-assets/downloads/Publications/the-model-police-officer/legacy_downloads/19-009-Model-Police-Officer-Survey-Report_web.pdf ([hereinafter The Model Police Officer] (noting that "competition with the private sector, as well as societal changes in the perception of policing and public service generally" may be decreasing the supply of recruits.); Tom Jackman, Who wants to be a police officer? Job applications plummet at most U.S. departments, Wash. Post (Dec. 4, 2018), https://www.washingtonpost.com/crime-law/2018/12/04/who-wants-be-police-officer-job-applications-plummet-most-us-departments/?utm_term=.ec6acc10403a (attributing the recent decline in applications to "a diminished perception in policing" and healthy economy that officers better salaries in the private sector).

[9] See Jackman, *supra* note 8 (citing a survey that found 40 percent of officers voluntarily left the force in under five years); Jeremy M. Wilson et al., RAND Center on Quality Policing, Police Recruitment and Retention for the New Millennium: The Slate of Knowledge 35 (2010), https://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG959.pdf (citing research suggesting that young people and new officers, as well as women and minorities, leave policing in disproportionate numbers; for example, nearly two-thirds of officers who left the Cincinnati Police Department had served for fewer than five years).

[10] Steven Hale, FOP Survey Finds Low Morale, Doubts About Policing Strategies Among Nashville Cops, Nashville Scene (Dec. 5, 2018 11 AM), https://www.nashvillescene.com/news/pith-in-the-wind/article/21035392/fop-survey-finds-low-morale-doubts-about-policing-strategies-among-nashville-cops (finding staffing levels as a reason for low morale).

[11] U.S. Dep't of Justice, Cmty. Oriented Policing Servs., Organizational Change through Decision Making and Policy: A New Procedural Justice Course for Managers and Supervisors (Apr. 2015), https://cops.usdoj.gov/html/dispatch/04-2015/a_new_procedural_justice_course.asp.

[12] See Maarten Van Craen & Wesley G. Skogan, Achieving Fairness in Policing: The Link Between Internal and External Procedural Justice, 20(1) Police Quarterly 3, 6 (2017), http://journals.sagepub.com/doi/pdf/10.1177/1098611116657818 ("[T]he extent to which police officers' behavior toward citizens is guided by the principles of neutrality, respect, voice, and accountability depends on the extent to which supervisors' behavior toward their officers is characterized by these principles.").

[13] See Advancing Diversity in Law Enforcement, *supra* note 1, at ii-iii.

[14] President's Task Force Report, *supra* note 2, at 11 (noting that "[b]y the time [youth in poor communities] are 17, [they] have been stopped and frisked a dozen times. That does not make that 17-year-old want to become a police officer...").

[15] President's Task Force Report, *supra* note 2, at 1.

[16] The Model Police Officer, *supra* note 8, at 5.

[17] The Model Police Officer, *supra* note 8, at 10, 12. (noting, e.g., that better police-community relations "could help identify potential future officers or make a career in police work more attractive to them.").

[18] President's Task Force Report, *supra* note 2, at 11.

[19] Justin Anderson, et al., King County Sheriff's Office Overtime: Better Strategy Could Reduce Hidden Costs and Safety Risks, King County Auditor's Office 30 (2017), https://www.kingcounty.gov/~/media/depts/auditor/new-web-docs/2017/kcao-overtime-2017/kcao-overtime-2017.ashx?la=en.

[20] See Matthew Yglesias, The Case for Hiring More Police Officers, A Crime-Fighting Idea that Actually Works, and New Exclusive Polling Shows It's Popular Across all Racial Groups, Vox (Feb. 13, 2019, 9:00am), https://www.vox.com/policy-and-politics/2019/2/13/18193661/hire-police-officers-crime-criminal-justice-reform-booker-harris.

[21] See *id.*

[22] See Mychal Denzel Smith, Abolish the Police. Instead, Let's Have Full Social, Economic, and Political Equality. When People Ask Me, "Who Will Protect Us," I want to Say: Who Protects You Now?, The Nation (Apr. 9, 2015), https://www.thenation.com/article/abolish-police-instead-lets-have-full-social-economic-and-political-equality/; Maya Dukmasova, Abolish the Police? Organizers Say It's Less Crazy than It Sounds. Grassroots Groups around Chicago Are Already Putting Abolitionist Ideas into Practice, Chi. Reader, https://www.chicagoreader.com/chicago/police-abolitionist-movement-alternatives-cops-chicago/Content?oid=23289710 (last visited Feb. 17, 2019).

[23] See *generally* Freedom to Thrive Reimagining Safety & Security In Our Communities, The Center for Popular Democracy, Law For Black Lives, Black Youth Project, 4, 26, 38, 42, https://populardemocracy.org/sites/default/files/Freedom%20To%20Thrive%2C%20Higher%20Res%20Version.pdf.

[24] See *generally* Freedom to Thrive, *supra* note 23, at 3.

[25] See, *e.g.*, Mike Maciag, Where Police Don't Mirror Communities and Why It Matters, (Aug. 28, 2015), http://www.governing.com/topics/public-justice-safety/gov-police-department-diversity.html (noting that "[t]he longstanding perception of police as an oppressive force has hurt minority recruitment.").

[26] W. Dwayne Orrick, Best Practices Guide: Recruitment, Retention, and Turnover of Law Enforcement Personnel 5, https://www.theiacp.org/sites/default/files/2018-08/BP-RecruitmentRetentionandTurnover.pdf.; Yamiche Alcin-dor & Nick Penzenstadler, Police Redouble Efforts to Recruit Diverse Officers, USA Today, Jan. 21, 2015, http://www.usatoday.com/story/news/2015/01/21/police-redoubling-efforts-to-recruit-diverse-officers/21574081/.

[27] Maciag, *supra* note 25.

[28] See, *e.g.*, President's Task Force Report, *supra* note 2, at 16-17.

[29] *Id.* at 28.

[30] Advancing Diversity in Law Enforcement, *supra* note 1, at 28; Metropolitan Police Dep't, Cadet Corps, https://joinmpd.dc.gov/career-program-page/cadet-corps (last visited Jan. 18, 2019).

[31] Metropolitan Police Dep't, MPD Launches Junior Cadet Explorers Program (Feb. 28, 2017), https://mpdc.dc.gov/release/mpd-launches-junior-cadet-and-cadet-explorers-program.

[32] See, *e.g.*, Metropolitan Police Dep't, Affinity Groups, https://mpdc.dc.gov/page/affinity-groups (last visited Jan. 18, 2019).

[33] President's Task Force Report, *supra* note 2, at 11.

[34] The Model Police Officer, *supra* note 8, at 12.

[35] See, *e.g.*, Evan McDonald, Cleveland Police Recruitment Plan Says More Women, Minority Officers Needed to Reflect City's Diversity, Cleveland.com (May 29, 2018), https://www.cleveland.com/metro/index.ssf/2018/05/cleveland_police_recruitment_p.html (noting that the Cleve-land Police Department in 2018 implemented a recruitment plan as part of a consent decree). See also the Grand Rapids Police Department, which since 2017 has had a Police Policy and Procedure Review Task Force that substantively engages with the community on various issues, including recruitment practices. Grand Rapid Police Department, Police Policy and Procedure Review Task Force, (Nov. 13, 2018), https://www.grandrapidsmi.gov/Government/Programs-and-Initiatives/Police-Policy-and-Procedure-Review-Task-Force.

[36] Equal Emp. Opportunity Comm'n, What You Should Know About EEOC and the Enforcement Protections for LGBT Workers, https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm#examples. (last visited Jan. 18, 2019). Title VII was amended with the Pregnancy Discrimination Act in 1978, which made it illegal to discriminate against a woman based on pregnancy, childbirth, or a related medical condition. See Pub. L. 95-555, 92 Stat 2076 (1978) (now codified at 42 U.S.C. § 2000e-(k)).

[37] See 42 U.S.C. § 2000e-(k); Griggs v. Duke Power Co., 401 U.S. 424, 430 (1971).

[38] U.S. Dep't of Labor, Testing and Assessment: An Employer's Guide to Good Practices 2-3 (1999), http://uniformguidelines.com/testassess.pdf (criteria having a disparate impact must be job-related and a business necessity).

[39] See Griggs, *supra* note 37, at 430-36; Advancing Diversity in Law Enforcement, *supra* note 1, at 20-21.

[40] Advancing Diversity in Law Enforcement, *supra* note 1, at 20-21; see, *e.g.*, Compl., U.S. v. Rhode Island & Rhode Island Dep't of Corr. (R.I. Feb. 10, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/03/13/rhodeislandcomp.pdf (discussing the statistically significant difference in pass rates on the written and video examinations between Black and Latinx applicants compared to White applicants for the Rhode Island Department of Corrections); Compl., U.S. v. Pennsylvania & Penn-sylvania State Police, no.1:14-cv-01474-SHR (M.D. Pa. July 29, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/07/31/pennsylvaniapdcomp.pdf (describing the difference in pass rates between men and women on the physical fitness test for the Pennsylvania State Police).

[41] Advancing Diversity in Law Enforcement, *supra* note 1, at 51, 53-54; see 42 U.S.C. § 2000e-(k).

[42] See, *e.g.*, Ricci V. DeStefano, 557 U.S. 557, 587, 615 (2009) ("[T]he City could be liable for disparate-impact discrimination only if the examinations were not job related and consistent with business necessity, or if there existed an equally valid, less discriminatory alternative that served the City's needs but that the City refused to adopt."); Advancing Diversity in Law Enforcement, *supra* note 1, at 20-21.

[43] Advancing Diversity in Law Enforcement, *supra* note 1, at 20-21, 53-54.

[44] Advancing Diversity in Law Enforcement, *supra* note 1, at 20-21, 53-54.

[45] Advancing Diversity in Law Enforcement, *supra* note 1, at 32-33.

[46] Advancing Diversity in Law Enforcement, *supra* note 1, at 51, 53-54.

[47] Mark S. Brodin, Discriminatory Job Knowledge Tests, Police Promotions, and What Title VII Can Learn from Tort Law, 59 B.C. L. Rev. 2319, 2344 (2018), https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3700&context=bclr (pointing out that "racial subgroup differences on cognitive tests are so large that they will create substantial reductions in the number of black applicants hired, to an extent that far exceeds the performance advantages of these tests.") (internal citations omit-ted); *see also* Susan Sturm & Lani Guinier, The Future of Affirmative Action: Reclaiming the Innovative Ideal, 84 Cal. L. Rev. 953, 996 (1996) ("It is incontestable that the existing meritocracy [relying on cognitive test scores] ex-cludes people based on their race, gender, and class status. It is also without question that the construction of our conventional meritocracy disproportionately includes people who are wealthy, male, and white.").

[48] Advancing Diversity in Law Enforcement, *supra* note 1, at 53-54.

[49] Advancing Diversity in Law Enforcement, *supra* note 1, at 21, 31-32, 51, 53-54· *see also* Consent Decree, United States v. City of Lubbock, No.: 5:15-CV-234, at 4-5, (N.D. Tex. 2016), https://www.justice.gov/opa/file/862461/download (noting that 37.2 percent of female applicants passed the physical fitness test to become a probationary officer as compared to 80.7 percent of male applicants).

[50] Advancing Diversity in Law Enforcement, *supra* note 1, at 32.

[51] Advancing Diversity in Law Enforcement, *supra* note 1, at 20, 30.

[52] Advancing Diversity in Law Enforcement, *supra* note 1, at 20, 23, 30.

[53] *See, e.g.,* The Model Police Officer, *supra* note 8, at 8.

[54] *See, e.g.,* Kevin Morison, Office of Cmty. Oriented Policing Servs., Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success 18 (2017), https://www.ric-zai-inc.com/Publications/cops-w0831-pub.pdf; Dave Collins and Lisa Marie Pane, 'We Have a National Crisis': Police Relax Old Standards to Fill Positions Fewer Want, The Sacramento Bee (Nov. 14, 2016), https://www.sacbee.com/news/nation-world/national/article114717463.html.

[55] *See, e.g.,* David L. Carter & Andra J. Katz-Bannister, Racial Profiling: Issues and Responses for the Lansing, Michigan Police Department, (Dec. 2000), https://www.lansingmi.gov/DocumentCenter/View/1032/Racial-Profiling-Issues-and-Responses-for-the-Lansing-Michigan-Police-Department-PDF?bidId; Amer. Civ. Liberties Union,, Picking Up the Pieces: A Minneapolis Case Study, https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/picking-pieces.

[56] Carl F. Matthies, Kirsten M. Keller & Nelson Lim, RAND Ctr. on Quality Policing, Identifying Barriers to Diversity in Law Enforcement 3 (2012), https://rand.org/content/dam/rand /pubs/occasional_papers/2012/RAND_OP370.pdf.

[57] Sarah Ludwig, Credit Scores in America Perpetuate Racial Injustice. Here's How, The Guardian (Oct. 13, 2015), https://www.theguardian.com/commentisfree/2015/oct/13/your-credit-score-is-racist-heres-why.

[58] Ylan Q. Mui, For black Americans, financial damage from subprime implosion is likely to last, Wash. Post (July 8, 2012), https://www.washingtonpost.com/business/economy/for-black-americans-financial-damage-from-subprime-implosion-is-likely-to-last/2012/07/08/gJQAwNmzWW_story.html?utm_term=.b1fb0c7b04db.

[59] As a related example, the U.S. Department of Education recommends that institutions of higher learning remove inquiries into criminal records from the application process because of the chilling effect it can have on prospective students who have an arrest history. *See* U.S. Dep't of Educ., Education Department Pushes for Alternatives to Criminal History Questions in College Admissions (May 9, 2016), https://www.ed.gov/news/press-releases/education-department-pushes-alternatives-criminal-history-questions-college-admissions.

[60] U.S. Dep't of Labor, Testing and Assessment: An Employer's Guide to Good Practices 2-4 (1999), http://uniformguidelines.com/testassess.pdf.

[61] Advancing Diversity in Law Enforcement, *supra* note 1, at 21, 56.

[62] Neil Baxley, Recruiting Officers in the New Millennium, 48 Law & Order, article excerpt (2000), https://www.questia.com/magazine/1P3-52216565/recruiting-officers-in-the-new-millennium (noting that multiple departments "now take into consideration the type and amount of drugs used, the length of time since last use and the nature of the offense."); *see also* Rand Corp., Police Recruitment and Retention for the New Millennium: The State of Knowledge 82 (2010), https://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG959.pdf (asserting that many agencies have "become more tolerant of experimental drug use, bad credit history, and minor arrest records to attain larger numbers of applicants"); Int'l Ass'n of Directors of Law Enforcement Standards and Training, Model Minimum Standards 25-26 (undated), https://www.iadlest.org/Portals/0/IADLEST%20Model%20Minimum%20Standards%20document.pdf?ver=2019-01-11-113813-143 (establishing criteria for policy academy admission that allow past "experimental" use of marijuana and a "dangerous drug or narcotic").

[63] Baxley, *supra* note 62, at article excerpt.

[64] Fran Spielman, Past 'Pot' Use Will No Longer Bar You from Becoming a Chicago Cop, Chicago Sun Times, July 20, 2018, https://chicago.suntimes.com/cannabis/chicago-police-department-relaxes-hiring-rules-regarding-past-marijuana-use/.

[65] Maciag, *supra* note 25.

[66] *See* Nat'l Center for Women & Policing, Recruiting & Retaining Women: A Self-Assessment Guide for Law Enforcement 95, https://www.ncjrs.gov/pdffiles1/bja/185235.pdf.

[67] Advancing Diversity in Law Enforcement, *supra* note 1, at 29.

[68] *See* Int'l Ass'n of Chiefs of Police, Law Enforcement Recruitment Toolkit 43 (June 2009), http://www.theiacp.org/portals/0/pdfs/RecruitmentToolkit.pdf.

[69] See, e.g., U.S. Dep't. Justice Civ. Rights Div. & U.S. Att'y's Office N.D. Ill., Investigation of the Chicago Police Dep't 13, 129 (Jan. 13, 2017), https://www.justice.gov/opa/file/925846/download [hereinafter Chicago Investigation], (noting that the Chicago Police Department "[does] not effectively communicate the details of its promotions process to the rank-and-file, and does not provide sufficient transparency following promotional decisions to allay officer concerns.").

[70] See, e.g., *id.* at 129-34 (describing how the lack of transparency around promotional systems and decisions created a narrative among officers that the department "does not value good leadership, and that current leaders are unqualified to lead").

[71] *Id.* at 129.

[72] See The Model Police Officer, *supra* note 8, at 25.

[73] The Model Police Officer, *supra* note 8, at 25.

[74] Chicago Investigation, *supra* note 69, at 13.

[75] *Id.*

[76] See, e.g, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Assistance, Recruiting & Retaining Women: A Self-Assessment Guide for Law Enforcement 4-5, (June 2001), https://www.theiacp.org/sites/default/files/all/p-r/Recruiting_Retaining%20Women%20officers.pdf.

[77] Megan Quattlebaum, Tracey Meares & Tom Tyler, The Justice Collaboratory at Yale Law School, Principles of Procedurally Just Policing 7 (Jan. 2018), https://law.yale.edu/system/files/documents/pdf/policing_report.3.20.18.pdf.

[78] Charles Duhigg, What Google Learned from Its Quest to Build the Perfect Team, N.Y. Times (Feb. 25, 2016), https://www.nytimes.com/2016/02/28/magazine/what-google-learned-from-its-quest-to-build-the-perfect-team.html.

[79] Wendy Hirsch, Five Questions About Psychological Safety, Answered, Science at Work, Oct. 9, 2017, https://scienceforwork.com/blog/psychological-safety/ (last visited Dec. 8, 2018).

[80] Forbes Coaches Council, 14 Ways You Can Improve Psychological Safety at Work, Forbes (Nov. 15, 2017), https://www.forbes.com/sites/forbescoachescouncil/2017/11/15/14-ways-you-can-improve-psychological-safety-at-work/#59393efd5610 (last visited Feb. 18, 2019).

Chapter 11

[1] The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 3 (2015), https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf [hereinafter President's Task Force Report].

[2] Brian A. Reaves, U.S. Dep't of Justice, State and Local Law Enforcement Training Academies, 2013, 1 (2016), https://www.bjs.gov/content/pub/pdf/slleta13.pdf.

[3] *Id.* at 2.

[4] Ill. Police Training Act, 50 Ill. Comp. Stat. 705/7 (2018), http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=731&ChapterID=11.

[5] See *id.*

[6] See James D. Livingston, Contact Between Police and People with Mental Disorders: A Review of Rates, 67 Psychiatric Servs. 851 (2016), https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.201500312.

[7] Office of Research & Pub. Affairs, Doris A. Fuller et al., Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters 12 (2015), http://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf.

[8] President's Task Force Report, *supra* note 1, at 4, 56.

[9] President's Task Force Report, *supra* note 1, at 56-57.

[10] President's Task Force Report, *supra* note 1, at 3, 54.

[11] President's Task Force Report, *supra* note 1, at 3-4.

[12] See Seattle Police Dep't Search & Seizure and Bias Free Policing at 78 (2014) , http://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/Complete_Terry_Bias_ISDM_submitted_9-2.pdf.

[13] See James E. Copple & Patricia M. Dunn, U.S. Dep't of Justice, Community Oriented Policing Services, Gender, Sexuality and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community 22–23 (2017), https://ric-zai-inc.com/Publications/cops-w0837-pub.pdf.

[14] See Malcolm S. Knowles, The Modern Practice of Adult Education: From Pedagogy to Andragogy 44 (1970) ("As people grow and develop they accumulate an increasing reservoir of experience that becomes an increasingly rich resource for learning . . . ."); see, e.g., Police Executive Research Forum, Critical Issues in Policing Series: Re-Engineering Training on Police Use of Force 4 (2015), http://www.policeforum.org/assets/reengineeringtraining1.pdf.

[15] See, e.g., Judith P. Andersen et al., Highly Realistic Scenario Based Training Simulates the Psychophysiology of Real World Use of Force Encounters: Implications for Improved Police Officer Performance, 5 J.L. Enforcement, no. 4 1, 3 (2016), https://www.researchgate.net/publication/299425632_Highly_Realistic_Scenario_Based_Training_Simulates_the_Psychophysiology_

of_Real_World_Use_of_Force_Encounters_Implications_for_Improved_Police_Officer_Performance; Judith P. Andersen & Harri Gustafsberg, A Training Method to Improve Police Use of Force Decision Making: A Randomized Controlled Trial, 6 SAGE Open No. 2 1, 9-12 (2016), http://journals.sagepub.com/doi/pdf/10.1177/2158244016638708; *see generally* Michael L. Birzer, The Theory of Andragogy Applied to Police Training, 26 Policing: Int'l J. Police Strategies & Mgmt. 29 (2003), https://www.researchgate.net/publication/242020962_The_theory_of_andragogy_applied_to_police_training.

[16] *See* Police Exec. Res. Forum, Guiding Principles on Use of Force 9 (2016), https://www.policeforum.org/assets/30%20guiding%20principles.pdf.

[17] *See generally* Michael S. McCampbell, U.S. Dep't of Justice, Nat'l Inst. of Justice, Field Training for Police Officers: The State of the Art (1987), https://www.ncjrs.gov/pdffiles1/nij/105574.pdf (describing the "San Jose model" of field officer training).

[18] U.S. Dep't of Justice Civil Rights Div. & U.S Attorney's Office N. Dist. of Ill., Investigation of the Chicago Police Department 98 (2017), https://www.justice.gov/opa/file/925846/download ("[B]eing an FTO is not viewed by CPD officers as a prestigious position because unlike other departments in which serving as an FTO is a stepping stone to promotion, CPD FTOs receive no such benefit. . . . As one supervising training official described it, serving as an FTO is a 'road to nowhere.'").

[19] *See, e.g.,* Consent Decree, United States v. Police Dep't of Baltimore City, No. 1:17-cv-00099-JKB, ¶ 300 (D. Md. Jan. 12, 2017), http://www.mdd.uscourts.gov/sites/mdd/files/ConsentDecree_1.pdf (ordering the Baltimore Police Department to "develop and implement a training data tracking system"); Settlement Agreement, United States v. City of Albuquerque, No. 1:14-cv-1025-RB-SMV, ¶ 153, (D.N.M. Nov. 14, 2014), https://www.cabq.gov/mental-health-response-advisory-committee/documents/court-approved-settlement-agreement-final.pdf (ordering the Albuquerque Police Department to "maintain complete and accurate records of all training provided to sworn APD officers"); Agreement for the Sustainable Reform of the Puerto Rico Police Department, United States v. Puerto Rico, No. 3:12-cv-02039, ¶ 133–34 (D.P.R. Dec. 21, 2012), https://www.justice.gov/iso/opa/resources/849201212211522481676 9.pdf (ordering the Puerto Rico Police Department to "electronically maintain complete and accurate records" related to training); Consent Judgment, United States v. City of Detroit, No. 2:03-cv-72258-AC-DRG, ¶ 74, (E.D. Mich. June 12, 2003), https://www.clearinghouse.net/chDocs/public/PN-MI-0001-0004.pdf (ordering the Detroit Police Department to "create and maintain individual training records for all detention officers"); *cf.* Consent Decree, United States v. Territory of the Virgin Islands, No. 3:08-cv-00158-CVG-RM, ¶ 76 (D.V.I. Mar. 24, 2009), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/VIPD_CD_03-23-09.pdf (ordering the Virgin Islands police department to "continue to keep adequate records of lesson plans and other training materials").

[20] *See* Merrick J. Bob et al., Police Assessment Res. Ctr., The Los Angeles County Sherriff's Department 16th Semiannual Report 85–86 (2003), http://www.parc.info/s/16th-Semiannual-Report.pdf.

[21] *Id.* at 86.

Chapter 12

[1] BLUE H.E.L.P., 159 American Police Officers Died by Suicide in 2018 (Dec. 31, 2018), https://bluehelp.org/158-american-police-officers-died-by-suicide-in-2018/?fbclid=IwAR0eCgLUQ0zrmtf75B_mWHQqMH6eccmluYT-J3eoJomclckdPFI7pCwgAcM.

[2] The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 4 (2015) [hereinafter President's Task Force Report], https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf ("[t]he wellness and safety of law enforcement officers is critical not only for the officers, their colleagues, and their agencies but also to public safety").

[3] *Id.* at 27.

[4] President's Task Force Report, *supra* note 2, at 61 (quoting Tracey Meares).

[5] *See* Samuel Stebbins et al., Workplace Fatalities: 25 Most Dangerous Jobs in America, USA Today (Jan. 9, 2018) (citing U.S. Dep't of Labor, Bureau of Labor Statistics, Census of Fatal Occupational Injuries, Fatal Injury Rates, 2016, https://www.bls.gov/iif/oshcfoi1.htm#rates (click and download XLSX 26K) (showing the rate of fatal on-the-job injuries among police officers as more than four times the overall national rate for 2016)), https://www.usatoday.com/story/money/careers/2018/01/09/workplace-fatalities-25-most-dangerous-jobs-america/1002500001/ (explaining that there were 3.6 deaths for every 100,000 full-time workers across all industries in the private and public sectors but for police and sheriff's patrol officers the figure is 14.6 fatal injuries per 100,000).

[6] Tara A. Hartley et al., Health Disparities in Police Officers: Comparisons to the U.S. General Population, in 13 Int'l J. Emergency Mental Health 211, 217 (Laurence Miller et al. eds., 2011), https://www.omicsonline.org/open-access/health-disparities-in-police-officers-comparisons-to-the-us-general-populations.pdf [hereinafter Hartley, Health]; Luenda E. Charles et al., Association of perceived stress with Sleep Duration and Sleep Quality in Police Officers, in 13 Int'l J. Emergency Mental Health 229, 239 (Laurence Miller et al. eds., 2011), https://www.omicsonline.org/open-access/health-disparities-in-police-officers-comparisons-to-the-us-general-populations.pdf.

[7] Stefanos N. Kales et al., Blood Pressure in Firefighters, Police Officers, and Other Emergency Responders, 22 Am. J. Hypertension 11, 12 (2009) (cross referencing: Murray A. Mittleman et. al., Triggering of Acute Myocardial Infarction by Heavy Physical Exertion--Protection Against Triggering by Regular Exertion, 329, New England J. Med. 1677-1683 (1993), https://academic.oup.com/ajh/article/22/1/11/226424; Barry A. Franklin, et al., Snow Shoveling: A Trigger for Acute Myocardial Infarction and Sudden Coronary Death, 77, Am. J. Cardiology 855-858 (1996); Ute Wilbert-Lampen et. al., Cardiovascular Events During World Cup Soccer, 358, New England J. Med. 475-483 (2008)).

[8] Ellen Goldbaum, Univ. at Buffalo News Center, Police Officer Stress Creates Significant Health Risks Compared to General Population, Study Finds (July 9, 2012), http://www.buffalo.edu/news/releases/2012/07/13532.html (shift work contributes to elevated rate of metabolic syndrome, a cluster of symptoms including obesity, hypertension, and glucose intolerance, in police officers); Tara A. Hartley et al., Associations Between Police Officer Stress and the Metabolic Syndrome, in 13 Int'l J. Emergency Mental Health 243, 244 (Laurence Miller et al. eds., 2011), https://www.omicsonline.org/open-access/health-disparities-in-police-officers-comparisons-to-the-us-general-populations.pdf; Hartley, Health, *supra* note 6, at 216-217.

[9] *See* Butler Center for Research, Links Between Officer Trauma and Substance Abuse, Hazelden Betty Ford Foundation (Nov. 1, 2015), https://www.hazeldenbettyford.org/education/bcr/addiction-research/alcohol-abuse-police-ru-716.

[10] BLUE H.E.L.P., *supra* note 1; *see also* Nat'l Law Enforcement Officers Memorial Fund, 2018 End-of-Year Preliminary Officer Fatalities Report 1 (2018) https://view.joomag.com/2018-end-of-year-preliminary-law-enforcement-officers-fatality-report-2018-end-of-year-report/0160170001545883698?short (reporting 52 firearms-related and 50 traffic-related law enforcement deaths); Nat'l Alliance on Mental Illness, Law Enforcement Officers (last visited Jan. 10, 2018) (citing: Ruderman Family Foundation, White Papers and Research, Study: Police Officers and Firefighters Are More Likely to Die by Suicide than in Line of Duty), http://www.nami.org/Law-Enforcement-and-Mental-Health/Strengthening-Officer-Resilience; Chrystal Hayes, 'Silence Can Be Seadly': 46 Officers Were Fatally Shot Last Year. More Than Triple That Committed Suicide, USA Today (Apr. 12, 2018); *see also* John M. Violanti, Police Suicide: A National Comparison with Fire-Fighter and Military Personnel, 33 Policing 270 (2009).

[11] Nat'l Alliance on Mental Illness, *supra* note 10 (citing Gordon J.G. Asmundson & Jennifer A. Stapleton, Associations Between Dimensions of Anxiety and PTSD Symptom Clusters in Active-Duty Police Officers, 37 Cognitive Behavior Therapy 66 (2008)); Goldbaum, *supra* note 8; U.S. Dep't of Justice, Civil Rights Div. & U.S. Atty's Office, N.D. Ill., Investigation of the Chicago Police Department, 120 (2017), https://www.justice.gov/opa/file/925846/download [hereinafter Chicago Investigation]; U.S. Dep't of Justice, Civil Rights Div., Investigation of the New Orleans Police Department, at 106-107 (2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf [hereinafter New Orleans Investigation]; *see also* U.S. Comm'n on Civil Rights, Who Is Guarding the Guardians?: A Report on Police Practices, at 32-34, 154-156 (1981), https://catalog.hathitrust.org/Record/007105152.

[12] Chad L. Cross & Larry Ashley, Police Trauma and Addiction: Coping with the Dangers of the Job, FBI Law Enforcement Bulletin, at 24, 26-27 (Oct. 2004), https://leb.fbi.gov/file-repository/archives/oct04leb.pdf/view; Mark W. Clark, Treatment and Redemption, Police: The Law Enforcement Magazine (June 18, 2013), http://www.policemag.com/channel/careers-training/articles/2013/06/treatment-and-redemption.aspx.

[13] *See, e.g.*, Leanor Boulin Johnson et al., Violence in Police Families: Work-Family Spillover, 20 J. Family Violence 3, 4 (2005) (reviewing literature discussing causes of domestic violence).

[14] *See*, Am. Acad. of Sleep Med., Study of Police Officers Finds Fatigue Impacts Tactical Social Interaction (June 8, 2016), https://aasm.org/study-of-police-officers-finds-fatigue-impacts-tactical-social-interaction/.

[15] *See, e.g.*, New Orleans Investigation, *supra* note 11, at 106-107; see also Judith P. Andersen & Harri Gustafsberg, A Training Method to Improve Police Use of Force Decision Making: A Randomized Controlled Trial, SAGE Open 1-13 (Apr.-June 2016).

[16] *See e.g.*, Am. Acad. of Sleep Med., *supra* note 14; Anderson & Gustafsberg, *supra* note 15.

[17] *C.f.* Consent Decree at ¶ 271-72, United States v. City of Ferguson, No. 4:16-CV-00180-CDP (E.D. Mo. 2016), ECF No. 41; Settlement Agreement at ¶ 299, United States v. Cleveland, No. 1:15-CV-1046-SO (N.D. Ohio 2015) [hereinafter Cleveland Settlement Agreement], ECF No. 7-1.

[18] *See, e.g.*, Consent Decree at ¶ 436, United States v. the Mayor and City Council of Balt. and the Police Dep't of Balt., No. 1:17-cv-99 (JKB) (D. Md. 2017); Settlement Agreement at ¶ 248, U.S. v. Albuquerque, No. 1:14-CV-01025-RB (SMV) (D.N.M. 2014) [hereinafter Albuquerque Settlement Agreement], ECF No. 9-1; Agreement for the Sustainable Reform of the Puerto Rico Police Dep't at ¶ 201, U.S. v. Puerto Rico and the Puerto Rico Police Dep't, No. 3:12-cv-2039 (GAG) (D.P.R. 2013); Consent Decree at ¶ 289–290, United States v. New Orleans, No. 2:12-cv-01924 (E.D. La. 2012) [hereinafter New Orleans Consent Decree].

[19] The Ferguson Comm'n, Forward Through Ferguson: A Path Toward Racial Equality, at 86 (2015), https://forwardthroughferguson.org/report/executive-summary/overview/ (click "Download Report", top right corner).

[20] New Orleans Consent Decree, *supra* note 18, at ¶ 292; Albuquerque Settlement Agreement, *supra* note 18, at ¶ 249; Agreement for the Sustainable Reform of the Puerto Rico Police Dep't, *supra* note 18, at ¶ 202.

[21] Chicago Investigation, *supra* note 11, at 157-158.

[22] *Id.* at 120.

[23] Cole, Zercoe, Cops in Crisis: The Power of Peer Support in PDs, PoliceOne.com (Oct. 20, 2015), https://www.policeone.com/pulse-of-policing/articles/25980006-Cops-in-crisis-The-power-of-peer-support-in-PDs/.

[24] *Id.*

[25] *See, e.g.*, Indianapolis Metropolitan Police Dep't, Office of Professional Development and Wellness, https://s3.amazonaws.com/destination-zero/2017/DZ%20Conf/Indianapolis-Metropolitan-Police-Department.pdf; Leischen Stetler, Putting Experience to Work: The Value of a Formal Mentoring Program, In Public Safety. (Feb. 25, 2015), https://inpublicsafety.com/2015/02/putting-experience-to-work-the-value-of-a-formal-mentoring-program/.

[26] Michelle Johnson, Nation's Top Cop Lauds IMPD for Officer Wellness Program, WFYI (Apr. 13, 2016), https://www.wfyi.org/news/articles/nations-top-cop-lauds-impd-for-officer-wellness-program.

[27] See Officer Resiliency and Wellness, Tacoma, Free Training, (June 1, 2017), https://fortress.wa.gov/cjtc/www/administrator/class/5932.pdf; Johnson, *supra* note 26.

[28] See Zercoe, *supra* note 23.

[29] See Johnson, *supra* note 26.

[30] Danyelle Solomon, Ctr. for Am. Progress, The Intersection of Policing and Race, at 8 (2016), https://cdn.americanprogress.org/wp-content/uploads/2016/08/31134647/PoliceCommunity-brief.pdf.

[31] Lawrence Miller, 5 Questions Answered About Pre-Employ Psych Testing for Cops, Practical Police Psychology (Sept. 10, 2015), https://www.policeone.com/police-jobs-and-careers/articles/9496939-5-questions-answered-about-pre-employ-psych-testing-for-cops/.

[32] *See, e.g.,* The Ferguson Comm'n, *supra* note 19, at 87 (recommending psych screenings when new officers are hired); San Diego Police Dep't Use of Force Task Force, Final Report, at 46 (2001), https://www.sandiego.gov/sites/default/files/legacy/police/pdf/taskreport.pdf (recommending that San Diego P.D. "[e]stablish periodic, random evaluations of officers to determine and track their stress levels, areas of potential stress, bias, and coping skills").

[33] See Jeffrey M. Lating ed. et al., Emergency Mental Health Updates, in 13 Int'l J. Emergency Mental Health 291, 293 (Laurence Miller et al. eds., 2011), https://www.omicsonline.org/open-access/health-disparities-in-police-officers-comparisons-to-the-us-general-populations.pdf ("[C]onfidential and routine mental health screenings may be useful in monitoring the health and wellbeing of police officers."); *see also* San Diego Police Dep't Use of Force Task Force, *supra* note 30, at 46 (making same recommendation).

[34] See U.S. Comm'n on Civil Rights, *supra* note 11, at 33.

[35] See Joseph B. Kuhns et al., Health, Safety, and Wellness Program: Case Studies in Law Enforcement, Community Oriented Policing Services, U.S. Dep't of Justice, at 8-9, 26 (2015), https://ric-zai-inc.com/Publications/cops-p332-pub.pdf (finding a 20-to-1 return on the investment in a pilot program that includes exercise wellness); Elizabeth Lang Sanberg et al., A Guide to Occupational Health and Safety for Law Enforcement Executives, Bureau of Justice Assistance U.S. Dep't of Justice, at 7-8 (2010), https://www.bja.gov/publications/perf_le_occhealth.pdf.

[36] Chicago Investigation, *supra* note 11, at 100, 151.

[37] *Id.*; President's Task Force Report, *supra* note 1, at 4.

[38] Am. Acad. of Sleep Med., *supra* note 14 ("[o]ur results indicate that officers who work biologically normal day shifts perform much better than those on other shifts").

[39] *Id.*

[40] Nat'l Law Enforcement Officers Memorial Fund, *supra* note 10.

[41] President's Task Force Report, *supra* note 2, at 97.

[42] High-speed pursuits threaten both officers and bystanders. See James Queally, Police Pursuits Cause Unnecessary Deaths and Injuries, L.A. County Grand Jury Says, L.A. Times (July 12, 2017), http://www.latimes.com/local/lanow/la-me-ln-police-pursuits-dangers-20170711-story.html. For an example of appropriate guidelines, see Cal. Comm'n on Peace Officer Standards and Training, California Law Enforcement Vehicle Pursuit Guidelines (2007), http://lib.post.ca.gov/Publications/vp_guidelines.pdf (addressing when to initiate a pursuit, tactics, speed, conditions, bystanders, and reporting, among other things).

[43] *See, e.g.,* Balt. Police Dep't Policy 1503 Emergency Vehicle Operation and Pursuit Policy (Sep. 13, 2017), https://www.baltimorepolice.org/1503-emergency-vehicle-operation-and-pursuit-policy (outlining factors for officers to consider in initiating or continuing a vehicle pursuit); Bos. Police Dep't Rule 301 Pursuit Driving (Apr. 29, 2013), https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/52af5f16e4b0dbce9d22a7dd/1387224854494/Rule+301.pdf (same); Phila. Police Dep't Directive 9.4 Vehicular Pursuits (June 16, 2016), https://www.phillypolice.com/assets/directives/D9.4-VehicularPursuits.pdf (requiring supervisor or police radio acknowledgment of vehicle pursuit and requiring supervisors to terminate pursuits with no justification or if they believe the pursuit has become too dangerous); S.F. Police Dep't General Order 5.05 Emergency Response and Pursuit Driving (June 26, 2013), https://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/27229-DGO%205.05%20rev.%2005-22-13.pdf (requiring an officer's supervisor to "assume control of the pursuit" and to "manage and control the pursuit, including the speed of the pursuit, assess risk factors associated with the pursuit, and evaluate whether and when to terminate a pursuit").

[44] *See, e.g.,* Metropolitan Police Dep't of the D.C. General Order 201.28 (Apr. 1, 1993), https://go.mpdconline.com/GO/GO_201_28.pdf (establishing a "Post-Shooting Trauma Group" to which MPD members must report after being directly involved, witnessing, or being the victim of a serious or fatal wounding); Phila. Police Dep't Directive 6.14 Employee Assistance Program (EAP) (Apr. 26, 2013), https://www.phillypolice.com/assets/directives/D6.14-EmployeeAssistanceProgram.pdf (establishing "Critical Incident Stress Management" by which EAP personnel contact the commanding officer or supervisor of personnel involved in a critical incident when they believe intervention "may be beneficial").

[45] President's Task Force Report, *supra* note 2, at 66, 97 (recommending that Congress authorize funding for these kits); Baltimore Police Dep't Pol'y 811, Individual First Aid Kit (IFAK) (Mar. 27, 2018), https://www.powerdms.com/public/BALTIMOREMD/documents/353296; Cleveland Settlement Agreement, supra note 17, at ¶ 293.

[46] President's Task Force Report, *supra* note 2, at 97.

[47] *Id.* at 67.

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